# ACTS

OF THE

# LEGISLATURE

OF

# WEST VIRGINIA

First Extraordinary Session, 1960

Regular Session, 1961

First Extraordinary Session, 1961

Regular Session, 1962

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# FOREWORD

This volume contains the Acts of the First Extraordinary Session of 1960, the Regular Session of 1961, the First Extraordinary Session of 1961 and the Regular Session of 1962, and resolutions of general interest adopted by the Legislature during these sessions.

### First Extraordinary Session, 1960

This session was called by the Governor for the purpose of considering and acting upon the following:

> "First: Legislation to permit maximum participation by the State of West Virginia and its citizens in the benefits provided under an Act of the Congress entitled 'Social Security Amendments of 1960.' (HR 12580).
>
> "Second: Legislation to provide and appropriate additional revenues: (a) For the purposes specified in Paragraph First above; (b) for the purchase, development, improvement and expansion of state parks, state forests and scenic attractions; the reclamation of strip-mined areas; the improvement of streams; and the development of recreational areas and facilities; and (c) for the expansion of the Department of Public Safety to the maximum strength now provided by law."

The Legislature convened on October 3 and adjourned *sine die* October 5, 1960, after passing two bills. One provided for medical assistance to needy persons receiving public assistance and establishing a program of medical assistance for persons over the age of 65 years; and the other made a supplemental appropriation of funds for a program of medical assistance to the aged.

During the session 15 bills were introduced—8 House Bills and 7 Senate Bills. The two bills passed and approved by the Governor were S. B. Nos. 1 and 6. There were 5 House Concurrent and 6 House Resolutions offered, all of which were adopted. Six Senate Concurrent Resolutions were offered and 5 adopted; and the 5 Senate Resolutions offered were all adopted.

### Regular Session, 1961

There was a total of 785 bills introduced in the Senate and House of Delegates during the 1961 Regular Session of the Legislature. Of this total 488 were House Bills and 297 Senate Bills. The Legislature passed 101 House Bills and 75 Senate Bills.

Of the 176 enactments of the session, the Governor approved 169, vetoed three and permitted three to become law without his approval. The Budget Bill does not require executive action. The Acts vetoed were HB 59 (Driver Instruction Permits for Motor Vehicles), SB 62 (Removing Washington Carver Camp as an adjunct of West Virginia State College), and SB 272 (Issuance and Sale of Road Bonds). The three that became law without approval were HB 162 (Unlawful Practice of Optometry), HB 472 (Arranging Counties into Congressional Districts) and SB 121 (Assessment of Property and Levy and Collection of Taxes).

There were 54 House Concurrent, 12 House Joint and 36 House Resolutions offered during the session, of which 30 House Concurrent, three House Joint and 30 House Resolutions were adopted. The Senate had 27 Senate Concurrent, 10 Senate Joint and 15 Senate Resolutions, of which 13 Senate Concurrent, one Senate Joint (SJR 1, Ratifying an Amendment to the Constitution of the United States providing for the appointment of presidential electors for the District of Columbia) and 15 Senate Resolutions were adopted.

Three Amendments to the State Constitution were proposed. The amendments and the Resolutions proposing them are as follows: Executive Department, Article VII of the Constitution (HJR 2), Alcoholic Liquor Control Amendment, §46, Article VI of the Constitution (HJR 4) and Limitation of Taxes on Income Amendment (HJR 7).

There were 115 House Bills, passed by the House, which were not passed by the Senate; and 12 Senate Bills, passed by that body, were not passed by the House.

**First Extraordinary Session, 1961**

The principal item of business in the Governor's call for this extraordinary session was the enactment of legislation to permit maximum participation by the State in the federal program of aid to dependent children of unemployed parents. However, a total of fourteen items of business were listed in the three separate proclamations convening the session.

The Legislature met on June 14 and adjourned *sine die* June 16, 1961, after passing 13 bills which embodied action upon all the matters set forth in the proclamations.

During the session, 36 bills were introduced—20 House Bills and 16 Senate Bills. There were six House Concurrent Resolutions and five House Resolutions offered, of which five House Concurrent and all House Resolutions were adopted. The Senate had six Senate Concurrent and five Senate Resolutions, of which three Senate Concurrent and all Senate Resolutions were adopted.

**Regular Session, 1962**

The fourth 30-day session of the Legislature convened January 10 and adjourned *sine die* February 10.

There was a total of 134 bills introduced in the Senate and House of Delegates during the 1962 Regular Session of the Legislature. Of this total 74 were House Bills and 60 Senate Bills. The Legislature passed 16 House Bills and 23 Senate Bills.

The Governor approved all the bills passed, except the Budget Bill, which does not require executive action.

There were 45 House Concurrent, 6 House Joint and 30 House Resolutions offered during the session, of which 20 House Concurrent, 2 House Joint and 29 House Resolutions were adopted. The Senate had 27 Senate Concurrent, 4 Senate Joint and 13 Senate Resolutions, of which 12 Senate Concurrent, 1 Senate Joint and 13 Senate Resolutions were adopted.

Three Constitutional Amendments were proposed. The amendments and the resolutions proposing them are as follows: Sheriffs' Succession Amendment (HJR 3), Fair Representation Amendment (HJR 1) and Legislative Amendment (SJR 3). The Legislature also submitted the State Executive and Budget Amendment, proposed by HJR 2, Regular Session, 1961, to the voters.

There were 12 House Bills, passed by the House, which were not passed by the Senate; and 5 Senate Bills, passed by that body, not passed by the House.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston 5, West Virginia.

C. A. BLANKENSHIP, *Clerk*
*House of Delegates*

May 15, 1962

## ERRATA

Page 332, Chapter 84, Section 15, Line 6, the word "void" should be "valid".

Page 916, HJR 2, Section 5, Line 1 of the last paragraph, a comma should follow the word "provisions".

Page 917, HJR 2, Section 10, last line of section, the word "repeal" should be "repel".

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# LEGISLATURE OF WEST VIRGINIA

## MEMBERS AND OFFICERS

### FIFTY-FIFTH LEGISLATURE

## SENATE

### OFFICERS

*President*—Howard W. Carson, Fayetteville
*President Pro Tempore*—Ward Wylie, Mullens
*Clerk*—J. Howard Myers, Martinsburg
*Sergeant-at-Arms*—John E. Howell, Charleston
*Doorkeeper*—Paul Babich, Beckley

| District | Name | Address |
|---|---|---|
| First | *Arch W. Riley (D) | Wheeling |
| | William Tompos (D) | Weirton |
| Second | Theodore M. Bowers (R) | New Martinsville |
| | *John E. Carrigan (R) | Moundsville |
| Third | *Joseph M. Handlan (R) | Parkersburg |
| | J. C. Powell (R) | St. Marys |
| Fourth | Jack Johnson (R) | Pt. Pleasant |
| | *Paul R. Moore (D) | Ravenswood |
| Fifth | C. H. McKown (D) | Wayne |
| | *Lyle A. Smith (D) | Huntington |
| Sixth | Glenn D. Hatcher (D) | War |
| | *Glenn Taylor (D) | Matewan |
| Seventh | Daniel D. Dahill (D) | Logan |
| | *Lloyd G. Jackson (D) | Hamlin |
| Eighth | *J. Hornor Davis, II (D) | Charleston |
| | Paul J. Kaufman (D) | Charleston |
| Ninth | †George C. Porter (D) | Beckley |
| | Ward Wylie (D) | Mullens |
| Tenth | R. E. Barnett (D) | Bluefield |
| | *O. Roy Parker (D) | Union |
| Eleventh | Howard W. Carson (D) | Fayetteville |
| | *W. N. Jasper, Jr. (D) | Lewisburg |
| Twelfth | *Carl E. Gainer (D) | Richwood |
| | E. Hans McCourt (D) | Webster Springs |
| Thirteenth | *Walter A. Holden (D) | Clarksburg |
| | William R. Sharpe, Jr. (D) | Weston |
| Fourteenth | O. G. Hedrick (D) | Fairmont |
| | *William A. Moreland (D) | Morgantown |
| Fifteenth | *Dayton R. Stemple (R) | Philippi |
| | Dallas Wolfe (R) | Rowlesburg |
| Sixteenth | *Clarence E. Martin, Jr. (D) | Martinsburg |
| | Charles A. Millar (D) | Keyser |

(D) Democrats ..... 25
(R) Republicans ..... 7

Total ..... 32

*Senators elected in 1958, all others elected in 1960.
†Appointed June 14, 1961, to fill the vacancy caused by the resignation of Jack A. Nuckols.

# HOUSE OF DELEGATES

## OFFICERS

*Speaker*—Julius W. Singleton, Jr., Morgantown
*Clerk*—C. A. Blankenship, Pineville
*Sergeant-at-Arms*—Don Yoak, Spencer
*Doorkeeper*—D. Earl Brawley, Charleston

| County | Name | Address |
|---|---|---|
| Barbour | Kenneth Auvil (D) | Belington |
| Berkeley | Cecil S. Noll (D) | Martinsburg |
| Boone | Dennie Lee Hill (D) | Madison |
| Braxton | Paul S. Moyers (D) | Burnsville |
| Brooke | Mino R. D'Aurora (D) | Follansbee |
| Cabell | Tennyson J. Bias (D) | Huntington |
| | Mike Casey (D) | Huntington |
| | T. E. Holderby (R) | Huntington |
| | Hugh A. Kincaid (D) | Huntington |
| | J. Bernard Poindexter (D) | Huntington |
| Calhoun | James E. Morford (D) | Grantsville |
| Clay | J. C. Cruikshank (D) | Ivydale |
| Doddridge | Paul B. Davis (R) | Smithburg |
| Fayette | T. E. Myles (D) | Fayetteville |
| | Roy Swanigan (D) | Fayetteville |
| | Earl M. Vickers (D) | Montgomery |
| | Mrs. Nell W. Walker (D) | Winona |
| Gilmer | Maurice Boggs (D) | Sand Fork |
| Grant | Larkin B. Ours (R) | Dorcas |
| Greenbrier | Walter Roy Blankenship (D) | Frankford |
| | Richard E. Ford (D) | Lewisburg |
| Hampshire | William B. Slonaker (D) | Capon Bridge |
| Hancock | Callie Tsapis (D) | Weirton |
| Hardy | James M. Miley (D) | Moorefield |
| Harrison | Carmine J. Cann (D) | Clarksburg |
| | Wade H. Garrett (D) | Salem |
| | H. Laban White, Jr. (D) | Clarksburg |
| | Rene V. Zabeau (D) | Clarksburg |
| Jackson | B. Noel Poling (R) | Ripley |
| Jefferson | Kenneth W. Metz (D) | Charles Town |
| Kanawha | John A. Amick (D) | Charleston |
| | Jesse S. Barker (D) | Charleston |
| | J. F. Bedell, Jr. (D) | Charleston |
| | Thomas L. Black (D) | East Bank |
| | Pat Board, Jr. (D) | Charleston |
| | Ivor F. Boiarsky (D) | Charleston |
| | W. T. Brotherton, Jr. (D) | Charleston |
| | Kelly L. Castleberry (D) | South Charleston |
| | James Hornor Davis, III (D) | Charleston |
| | Edward D. Knight, Jr. (D) | Charleston |
| | Charles G. Peters, Jr. (D) | Charleston |
| Lewis | John L. Bailey (D) | Weston |
| Lincoln | A. J. Belcher (D) | Hamlin |
| Logan | Luther H. Ghiz (D) | Logan |
| | Charlie Gore, Jr. (D) | Chapmanville |
| | Earl B. Hager (D) | Logan |
| | Thomas W. Mathis (D) | Logan |
| Marion | Robert H. Tennant (D) | Fairmont |
| | J. E. Watson (D) | Fairmont |
| | W. R. Wilson (D) | Fairmont |

| County | Name | Address |
|---|---|---|
| Marshall | Robert F. McCarthy (D) | Glendale |
| | [1]Mrs. Pearle Yoho (D) | Moundsville |
| Mason | Carroll W. Casto (R) | Pt. Pleasant |
| McDowell | Jack L. Christian (D) | Welch |
| | Fred E. Counts (D) | Bartley |
| | Mrs. Elizabeth Drewry (D) | Northfork |
| | Richard R. Parsons (D) | Welch |
| | Fred G. Wooten (D) | Coalwood |
| Mercer | Clarence C. Christian, Jr. (D) | Princeton |
| | Charles E. Lohr (D) | Princeton |
| | Dan Wells (D) | Bluefield |
| Mineral | Paul F. Giffin (R) | Keyser |
| Mingo | Noah E. Floyd (D) | Williamson |
| | Cecil Mitchell (D) | Newtown |
| Monongalia | Charles W. Lloyd (D) | Morgantown |
| | Julius W. Singleton, Jr. (D) | Morgantown |
| | [2]Doyle S. Woodford (D) | Morgantown |
| Monroe | T. G. Matney (D) | Peterstown, RFD |
| Morgan | A. Foster Lineweaver (R) | Berkeley Springs |
| Nicholas | D. R. Frazer (D) | Richwood |
| Ohio | Harry L. Buch (R) | Wheeling |
| | Chester R. Hubbard (R) | Wheeling |
| | George H. Seibert, Jr. (R) | Wheeling |
| Pendleton | William McCoy, Jr. (D) | Franklin |
| Pleasants | Clarence E. Creek (D) | St. Marys |
| Pocahontas | Thomas C. Edgar (D) | Hillsboro |
| Preston | Chester Liller (R) | Kingwood |
| Putnam | Earl Keith Kelley (D) | Red House, RFD 1 |
| Raleigh | [3]A. David Abrams (D) | Beckley |
| | [4]D. W. Kinzer (D) | Beckley |
| | C. Berkley Lilly (D) | Beckley |
| | Mrs. W. W. Withrow (D) | Beckley |
| Randolph | Jack R. Nuzum (D) | Elkins |
| Ritchie | J. F. Deem (R) | Harrisville |
| Roane | Gene M. Ashley (R) | Amma |
| Summers | Ray Haythe (D) | Hinton |
| Taylor | Ted H. Rollins (D) | Grafton, Rt. 5 |
| Tucker | Joseph R. Gilmore (D) | Parsons |
| Tyler | Curtis M. Keys (R) | Alma |
| Upshur | David Lee Sheppard (R) | Buckhannon |
| Wayne | Lewis Glenn Mills (D) | Wayne |
| | Y. J. Rife (D) | Kenova |
| Webster | D. P. Given (D) | Webster Springs |
| Wetzel | Herbert Schupach (D) | New Martinsville |
| Wirt | Ray R. Palmer (D) | Sandyville, RFD |
| Wood | Spencer K. Creel (R) | Parkersburg, RFD 5 |
| | Robert T. Goldenberg (R) | Parkersburg |
| | Jack L. Miller (R) | Parkersburg |
| Wyoming | J. Paul England (D) | Pineville |
| | Marshall G. West (D) | Oceana |

(D) Democrats—82. (R) Republicans—18. Total 100

[1] Appointed September 14, 1961, to fill vacancy caused by the resignation of Edward C. Pastilong.

[2] Appointed December 12, 1961, to fill vacancy caused by the resignation of David L. Solomon.

[3] Appointed June 14, 1961, to fill vacancy caused by the resignation of George C. Porter.

[4] Appointed June 14, 1961, to fill vacancy caused by the resignation of Roy Lee Harmon.

## STANDING COMMITTEES OF THE SENATE

### Regular Session, 1962

**AERONAUTICS**

Messrs. Hedrick *(Chairman)*, Sharpe *(Vice Chairman)*, Barnett, Hatcher, Millar, Carrigan and Johnson.

**AGRICULTURE**

Messrs. Parker *(Chairman)*, Millar *(Vice Chairman)*, Hedrick, McCourt, McKown, Taylor, Wylie, Johnson and Wolfe.

**BANKS AND CORPORATIONS**

Messrs. Davis *(Chairman)*, Smith *(Vice Chairman)*, Jasper, Millar, Moreland, Porter, Carrigan, Handlan and Johnson.

**CLAIMS AND GRIEVANCES**

Messrs. Martin *(Chairman)*, Porter *(Vice Chairman)*, Davis, Hedrick, Kaufman, Taylor, Handlan, Johnson and Stemple.

**COUNTIES AND MUNICIPAL CORPORATIONS**

Messrs. Jasper *(Chairman)*, Gainer *(Vice Chairman)*, Davis, Hedrick, Porter, Sharpe, Taylor, Handlan and Stemple.

**EDUCATION**

Messrs. McKown *(Chairman)*, Holden *(Vice Chairman)*, Hatcher, Jasper, Kaufman, McCourt, Moore, Parker, Porter, Riley, Taylor, Bowers, Carrigan, Johnson and Wolfe.

**EXAMINE CLERK'S OFFICE**

Messrs. Hatcher *(Chairman)*, Davis and Stemple.

**FEDERAL RELATIONS**

Messrs. Millar *(Chairman)*, Kaufman *(Vice Chairman)*, Gainer, Moore, Sharpe, Tompos, Bowers, Carrigan and Johnson.

**FINANCE**

Messrs. McCourt *(Chairman)*, Smith *(Vice Chairman)*, Barnett, Holden, Jackson, Jasper, Kaufman, Martin, McKown, Millar, Moore, Moreland, Sharpe, Taylor, Wylie, Bowers, Powell and Wolfe.

**FORESTRY AND CONSERVATION**

Messrs. Gainer *(Chairman)*, Hatcher *(Vice Chairman)*, Barnett, Davis, Hedrick, Jackson, Jasper, McCourt, McKown, Millar, Wylie, Bowers, Handlan, Powell and Stemple.

FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Moreland *(Chairman)*, Kaufman *(Vice Chairman)*, Davis, Martin, McKown, Handlan and Powell.

INSURANCE

Messrs. Moreland *(Chairman)*, Barnett *(Vice Chairman)*, Gainer, Jasper, Martin, Smith, Bowers and Powell.

INTERSTATE COOPERATION

Messrs. Jackson *(Chairman)*, Smith *(Vice Chairman)*, McKown, Bowers and Stemple.

THE JUDICIARY

Messrs. Riley *(Chairman)*, Barnett, Gainer, Hatcher, Hedrick, Holden, Jackson, Kaufman, McKown, Moore, Moreland, Parker, Porter, Tompos, Carrigan, Handlan, Johnson and Stemple.

LABOR

Messrs. Hedrick *(Chairman)*, Tompos *(Vice Chairman)*, Barnett, Davis, Holden, Millar, Porter, Johnson and Wolfe.

MEDICINE AND SANITATION

Messrs. Wylie *(Chairman)*, Moreland *(Vice Chairman)*, Barnett, Hedrick, Holden, Smith, Tompos, Powell and Stemple.

MILITIA

Messrs. Sharpe *(Chairman)*, Barnett, Gainer, Hedrick, Moreland, Smith, Handlan, Powell and Wolfe.

MINES AND MINING

Messrs. Jackson *(Chairman)*, Hatcher *(Vice Chairman)*, Barnett, Gainer, Jasper, Kaufman, Wylie, Powell and Stemple.

PENITENTIARY

Messrs. Holden *(Chairman)*, Hatcher, Hedrick, McCourt, Parker, Taylor, Wylie, Bowers and Johnson.

PRIVILEGES AND ELECTIONS

Messrs. Gainer *(Chairman)*, Kaufman, Moore, Parker, Riley, Sharpe, Powell, Stemple and Wolfe.

PUBLIC BUILDINGS AND HUMANE INSTITUTIONS

Messrs. Moore *(Chairman)*, Sharpe *(Vice Chairman)*, Gainer, Hedrick, Jackson, Kaufman, McKown, Millar, Parker, Taylor, Tompos, Wylie, Handlan, Johnson and Stemple.

PUBLIC LIBRARY

Messrs. Kaufman *(Chairman)*, Hatcher, Holden, Porter, Riley, Smith, Bowers, Powell and Wolfe.

**PUBLIC PRINTING**

Messrs. Barnett *(Chairman)*, Davis, Hatcher, Martin, McKown, Tompos, Wylie, Bowers and Carrigan.

**RAILROADS**

Messrs. Taylor *(Chairman)*, Millar *(Vice Chairman)*, Davis, Jasper, McKown, Porter, Smith, Johnson and Stemple.

**REDISTRICTING**

Messrs. Jasper *(Chairman)*, Gainer *(Vice Chairman)*, Barnett, Holden, Martin, Moore, Wylie, Carrigan and Wolfe.

**ROADS AND NAVIGATION**

Messrs. Smith *(Chairman)*, Jasper *(Vice Chairman)*, Gainer, Hatcher, Jackson, Martin, Millar, Moore, Moreland, Parker, Porter, Sharpe, Tompos, Bowers, Carrigan, Handlan and Wolfe.

**RULES**

Messrs. Carson *(Chairman ex officio)*, Martin, McCourt, Moreland, Riley, Smith, Wylie, Carrigan and Stemple.

**TEMPERANCE**

Messrs. Parker *(Chairman)*, Jackson *(Vice Chairman)*, Davis, Holden, Sharpe, Smith, Tompos, Powell and Stemple.

**VETERANS' AFFAIRS**

Messrs. Tompos *(Chairman)*, Sharpe *(Vice Chairman)*, Gainer, Hedrick, Jackson, Millar, Porter, Carrigan and Johnson.

**JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE SENATE**

Messrs. Davis *(Chairman)*, Hatcher, Millar, Handlan and Wolfe.

**JOINT COMMITTEE ON GOVERNMENT AND FINANCE ON THE PART OF THE SENATE**

Messrs. Carson *(Chairman ex officio)*, McCourt, Moreland, Carrigan and Handlan.

**JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE SENATE**

Messrs. Carson *(Chairman ex officio)*, Moreland and Carrigan.

## STANDING COMMITTEES OF THE HOUSE OF DELEGATES

### Regular Session, 1962

#### AGRICULTURE

Messrs. Slonaker *(Chairman)*, Palmer *(Vice Chairman)*, Blankenship, Boggs, Creek, Edgar, Ford, Frazer, Gilmore, Haythe, Kelley, Knight, Matney, McCoy, Metz, Miley, Moyers, Peters, Rife, Rollins, Mrs. Yoho, Messrs. Ashley, Giffin, Lineweaver and Ours.

#### BANKING

Mrs. Walker *(Chairman)*, Messrs. Garrett *(Vice Chairman)*, Amick, Belcher, Black, Boiarsky, Cann, D'Aurora, Ford, Gore, Hill, Lilly, Lloyd, Lohr, Metz, Myles, Peters, Swanigan, Watson, Woodford, Mrs. Yoho, Messrs. Casto, Davis (of Doddridge), Goldenberg and Keys.

#### CLAIMS

Messrs. Knight *(Chairman)*, Nuzum *(Vice Chairman)*, Amick, England, Ghiz, Hager, Haythe, Kincaid, Mathis, McCarthy, Moyers, Myles, Nuzum, Palmer, Parsons, Peters, Rollins, Schupbach, Swanigan, Watson, Wells, Woodford, Casto, Giffin, Lineweaver and Miller.

#### COUNTIES, DISTRICTS AND MUNICIPALITIES

Miss Tsapis *(Chairman)*, Messrs. Amick *(Vice Chairman)*, Abrams, Bailey, Bias, Black, Brotherton, Christian (of Mercer), Creek, Cruikshank, Mrs. Drewry, Messrs. Floyd, Ford, Kelley, Kincaid, Lilly, Mathis, McCarthy, Mitchell, Morford, Woodford, Casto, Goldenberg, Holderby and Hubbard.

#### DELINQUENT LANDS

Messrs. West *(Chairman)*, Given *(Vice Chairman)*, Auvil, Barker, Bedell, Boiarsky, Brotherton, Castleberry, Davis (of Kanawha), Garrett, Hager, McCarthy, Miley, Nuzum, Parsons, Peters, Poindexter, Swanigan, Vickers, White, Wooten, Ashley, Buch, Goldenberg and Miller.

#### EDUCATION

Messrs. Floyd *(Chairman)*, Rife *(Vice Chairman)*, Amick, Auvil, Bailey, Bias, Christian (of Mercer), Mrs. Drewry,

Messrs. England, Frazer, Gore, Hager, Kelley, Lloyd, Metz, Mills, Palmer, Schupbach, Slonaker, Mrs. Walker, Messrs. Wilson, Casto, Davis (of Doddridge), Keys and Liller.

**ELECTIONS**

Messrs. Kincaid *(Chairman)*, Counts *(Vice Chairman)*, Auvil, Bailey, Boggs, Boiarsky, Brotherton, Castleberry, Christian (of McDowell), England, Floyd, Garrett, Ghiz, Kinzer, Lilly, Mathis, Metz, Mills, Palmer, Parsons, West, Mrs. Yoho, Messrs. Holderby, Liller, Miller and Poling.

**FINANCE**

Messrs. Boiarsky *(Chairman)*, Hill *(Vice Chairman)*, Bedell, Bias, Black, Cann, Castleberry, Christian (of McDowell), D'Aurora, Frazer, Ghiz, Hager, Kincaid, Lohr, McCarthy, McCoy, Metz, Schupbach, Vickers, Mrs. Withrow, Messrs. Zabeau, Davis (of Doddridge), Deem, Keys and Ours.

**FORESTRY AND CONSERVATION**

Messrs. McCoy *(Chairman)*, Belcher *(Vice Chairman)*, Auvil, Barker, Blankenship, Boggs, Casey, Christian (of Mercer), Counts, Edgar, Hill, Kinzer, Knight, Lohr, Matney, Miley, Mitchell, Nuzum, Slonaker, Tennant, Wells, Deem, Goldenberg, Liller and Sheppard.

**GAME AND FISH**

Messrs. Gilmore *(Chairman)*, Cruikshank *(Vice Chairman)*, Amick, Bailey, Blankenship, Boggs, Edgar, Ford, Frazer, Knight, Lohr, Matney, McCoy, Miley, Mills, Morford, Noll, Slonaker, Tennant, Watson, Wooten, Creel, Deem, Giffin and Ours.

**HEALTH**

Mrs. Drewry *(Chairman)*, Messrs. Casey *(Vice Chairman)*, Abrams, Auvil, Black, Blankenship, Castleberry, Davis (of Kanawha), England, Floyd, Gilmore, Hager, Kincaid, Lohr, Matney, Mills, Parsons, Poindexter, Tennant, Miss Tsapis, Mrs. Walker, Mrs. Withrow, Messrs. Giffin, Hubbard, Keys and Lineweaver.

**HUMANE INSTITUTIONS**

Messrs. Creek *(Chairman)*, Bailey *(Vice Chairman)*, Bedell, Board, Castleberry, D'Aurora, Mrs. Drewry, Messrs. Floyd, Ghiz, Haythe, Kincaid, Mills, Mitchell, Moyers, Nuzum, Parsons, Poindexter, Wilson, Mrs. Withrow, Mrs. Yoho, Messrs. Giffin, Hubbard, Keys and Miller.

INSURANCE

Messrs. Board *(Chairman)*, Hill *(Vice Chairman)*, Belcher, Castleberry, Christian (of McDowell), Creek, England, Frazer, Garrett, Gore, Lilly, Moyers, Myles, Nuzum, Peters, Poindexter, Rife, Rollins, Schupbach, Wells, Woodford, Ashley, Davis (of Doddridge), Keys and Sheppard.

INTERSTATE COOPERATION

Messrs. Hager *(Chairman)*, Frazer, McCoy, Ours and Seibert.

JUDICIARY

Messrs. White *(Chairman)*, Wells *(Vice Chairman)*, Abrams, Barker, Brotherton, Casey, Cruikshank, Davis (of Kanawha), Ford, Gilmore, Knight, Lilly, Moyers, Myles, Nuzum, Parsons, Peters, Rife, Miss Tsapis, Mrs. Walker, Messrs. West, Buch, Casto, Hubbard and Miller.

LABOR AND INDUSTRY

Messrs. Zabeau *(Chairman)*, D'Aurora *(Vice Chairman)*, Barker, Bedell, Bias, Blankenship, Board, Boggs, Cann, Casey, Mrs. Drewry, Messrs. Given, Kinzer, Lloyd, McCarthy, Rollins, Swanigan, Mrs. Walker, Messrs. West, Wooten, Mrs. Yoho, Messrs. Ashley, Creel, Poling and Sheppard.

MILITARY AFFAIRS

Messrs. Garrett *(Chairman)*, Bailey *(Vice Chairman)*, Board, Boiarsky, Christian (of McDowell), D'Aurora, Davis, (of Kanawha), Edgar, Gore, Kinzer, Lohr, Metz, Morford, Rife, Slonaker, Tennant, Vickers, West, White, Woodford, Zabeau, Creel, Goldenberg, Lineweaver and Miller.

MINING

Messrs. Mitchell *(Chairman)*, Swanigan *(Vice Chairman)*, Abrams, Barker, Belcher, Black, Cann, Christian (of Mercer), Counts, Mrs. Drewry, Messrs. Given, Gore, Hill, Kinzer, Lloyd, Tennant, Vickers, West, Mrs. Withrow, Messrs. Wooten, Zabeau, Creel, Deem, Miller and Sheppard.

PENAL AND CORRECTIONAL INSTITUTIONS

Messrs. Schupbach *(Chairman)*, Noll *(Vice Chairman)*, Auvil, Barker, Bias, Cann, Casey, Christian (of Mercer), Cruikshank, Edgar, Ghiz, Gilmore, Given, Gore, Kelley, Mathis, Miley, Mitchell, Morford, Rollins, Miss Tsapis, Messrs. Ashley, Liller, Poling and Sheppard.

RAILROADS

Messrs. Christian (of Mercer) *(Chairman)*, Watson *(Vice*

*Chairman),* Bedell, Belcher, Black, Board, Boggs, Cruikshank, Davis (of Kanawha), Floyd, Given, Haythe, Matney, Mills, Noll, Poindexter, Rollins, White, Wilson, Mrs. Yoho, Messrs. Zabeau, Creel, Hubbard, Ours and Seibert.

**REDISTRICTING**

Messrs. Frazer *(Chairman),* Myles *(Vice Chairman),* Amick, Brotherton, Counts, Creek, Gilmore, Given, Kelley, Lilly, McCoy, Morford, Nuzum, Poindexter, Miss Tsapis, Messrs. Vickers, Watson, Wells, White, Wilson, Woodford, Goldenberg, Hubbard, Poling and Seibert.

**ROADS**

Messrs. Morford *(Chairman),* Lloyd *(Vice Chairman),* Bedell, Christian (of McDowell), Counts, Creek, Davis (of Kanawha), Ford, Ghiz, Haythe, Kelley, Kinzer, Mathis, Mitchell, Moyers, Noll, Palmer, Slonaker, Wells, Mrs. Withrow, Messrs. Wooten, Casto, Davis (of Doddridge), Deem and Poling.

**RULES**

Messrs. Singleton *(Chairman ex officio),* Brotherton, Boiarsky, Floyd, Myles, Poindexter, Watson, Wells, White, Zabeau, Ours and Seibert.

**TEMPERANCE**

Messrs. McCarthy *(Chairman),* Matney *(Vice Chairman),* Abrams, Bailey, Board, Boiarsky, Cann, Casey, Cruikshank, D'Aurora, Given, Hager, Hill, Knight, Lloyd, McCoy, Myles, Tennant, Miss Tsapis, Messrs. Watson, Zabeau, Ashley, Buch, Holderby and Hubbard.

**VETERANS AFFAIRS**

Messrs. Rife *(Chairman),* Bias *(Vice Chairman),* Abrams, Belcher, Blankenship, Brotherton, Christian (of McDowell), Edgar, Garrett, Haythe, Mathis, Miley, Mills, Noll, Palmer, Schupbach, Swanigan, Vickers, Wilson, Wooten, Ashley, Buch, Giffin and Sheppard.

**JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE HOUSE**

Mrs. Withrow *(Chairman),* Messrs. Counts *(Vice Chairman),* Vickers, Goldenberg and Lineweaver.

**JOINT COMMITTEE ON GOVERNMENT AND FINANCE ON THE PART OF THE HOUSE**

Messrs. Singleton *(Chairman ex officio),* Cruikshank, Schupbach, Deem and Hubbard.

**JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE HOUSE**

Messrs. Singleton *(Chairman ex officio),* Brotherton and Seibert.

# LEGISLATURE OF WEST VIRGINIA

# ACTS OF 1961

## REGULAR SESSION

## CHAPTER 1

**(Com. Sub. for Senate Bill No. 188—Originating in the Senate Committee on the Judiciary)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to the tolling of statutes of limitation with respect to certain actions and claims.

**Article 2. Limitation of Actions and Suits.**

Section

21. When running of statutes of limitation shall be tolled as to certain actions and claims.

*Be it enacted by the Legislature of West Virginia:*

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

Section 21. *When Running of Statutes of Limitation Shall Be Tolled as to Certain Actions and Claims.*—After a civil action is commenced or a claim is asserted therein, the running of any statute of limitation shall be tolled as

to any claim which the party against whom a claim has been asserted may assert, or be permitted by the court to assert, in the action against another person who is, or may be, liable to him for all or any part of the claim which was originally asserted against the party in the action. The running of any statute of limitation on any such claim shall be tolled so long as the claim originally asserted remains pending in the action.

# CHAPTER 2

**(House Bill No. 78—By Mr. Myles and Mr. Seibert)**

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recovering damages in wrongful death actions.

**Article 7. Actions for Injuries.**

Section
6. Party plaintiff in such action; damages; distribution; limitation.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6. *Party Plaintiff in Such Action; Damages; Distribution; Limitation.*—Every such action shall be brought by and in the name of the personal representative of such deceased person, and the amount recovered in every such action shall be distributed to the parties and in the proportion provided by law in relation to the distribution of personal estate, left by persons dying intestate. In every such action the jury may give such

damages as they shall deem fair and just, not exceeding ten thousand dollars: *Provided, however,* That if the plaintiff in such action shall prove by a preponderance of the evidence financial or pecuniary loss sustained by a distributee or distributees of such deceased person, the jury may give such further damages as shall equal such financial or pecuniary loss to such distributee or distributees, not exceeding the sum of twenty-five thousand dollars as the total of all damages recoverable in such action, and the amount so recovered shall not be subject to any debts or liabilities of the deceased.

Items of pecuniary loss or expenses recoverable under general law by the personal representative of the deceased for the benefit of the estate of the deceased, including but not limited to loss or expense caused by damage to property of the deceased, reasonable and necessary expense incurred in medical or surgical treatment, hospitalization, and burial of deceased shall not be admissible in evidence or considered by the jury in such action. Nothing herein contained shall bar the recovery of such items of loss or expense in an action proper for such purpose.

In every case in which the jury shall give damages for financial or pecuniary loss in such action, the jury shall state in their verdict the part thereof given for such financial or pecuniary loss.

Every such action shall be commenced within two years after the death of such deceased person.

The provisions of this section shall not apply to actions brought for the death of any person occurring prior to the effective date hereof.

# CHAPTER 3

**(Com. Sub. for House Bill No. 44—Originating in the House Committee on the Judiciary)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to actions by or against nonresident operators of motor vehicles involved in highway accidents.

## Article 3. Writs, Process and Order of Publication.

Section

31. Actions by or against nonresident operators of motor vehicles involved in highway accidents.

*Be it enacted by the Legislature of West Virginia:*

That section thirty-one, article three, 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:

Section 31. *Actions by or against Nonresident Operators of Motor Vehicles Involved in Highway Accidents.*—The operation by a nonresident, or by his duly authorized agent, of a motor vehicle upon a public street, road or highway of this state, shall be deemed equivalent to an appointment by such nonresident of the state auditor, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him, in any court of record in this state, including action or proceeding brought by nonresident plaintiff or plaintiffs, growing out of any accident or collision in which such nonresident may be involved while so operating or so permitting to be operated a motor vehicle on any such street, road or highway, and such operation shall be a signification of his agreement that any such process against him, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident were personally served with a summons and complaint within this state.

(a) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action that he will reimburse the defendant, or cause him to be reimbursed, the necessary expense incurred by him in and about the defense

of the action in this state, and upon the issue of a summons the clerk will certify thereon that said bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and complaint with the certificate aforesaid of the clerk thereon, and a fee of two dollars with said auditor, or in his office, and said service shall be sufficient upon said nonresident: *Provided,* That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered mail, return receipt requested, by said auditor to the defendant, and the defendant's return receipt signed by himself or his duly authorized agent or the registered mail so sent by said auditor is refused by the addressee and the registered mail is returned to said auditor, or to his office, showing thereon the stamp of the postoffice department that delivery has been refused, is appended to the original summons and complaint, and filed therewith in the clerk's office of the court from which process issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

(b) The fee of two dollars, remitted to the said auditor at the time of service, shall be taxed in the costs of the proceeding and said auditor shall pay into the state treasury all funds so coming into his hands from such services. The auditor shall keep a record in his office of all such process and the day and hour of service thereof.

(c) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature be apparent from the context, have the following meanings:

(1) "Duly authorized agent" shall mean and include among others a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure, or otherwise, or who comes into this state and operates a motor vehicle therein for, or with the knowledge or acquiescence of, such nonresident; and shall include among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) "Motor vehicle" shall mean and include any self-propelled vehicle, including motorcycle, tractor, and trailer, not operated exclusively upon stationary tracks.

(3) "Nonresident" shall mean any person who is not a resident of this state or resident who has moved from the state subsequent to said accident or collision, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to said accident or collision.

(4) "Nonresident plaintiff or plaintiffs" shall mean a nonresident of this state who institutes an action in a court in this state having jurisdiction against a nonresident of this state in pursuance of the provisions of this article.

(5) "Street," "road" or "highway" shall mean the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(d) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in such action served in any other mode and manner provided by law.

(e) This section shall not be retroactive and the provisions thereof shall not be available to a plaintiff in a cause of action arising or an accident occurring prior to the date this section takes effect.

# CHAPTER 4

**(Com. Sub. for Senate Bill No. 186—Originating in the Senate Committee on the Judiciary)**

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifty-nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to security by nonresidents for costs.

## Article 2. Costs Generally.

Section

2. Security by nonresidents for costs.

*Be it enacted by the Legislature of West Virginia:*

That section two, article two, 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:

Section 2. *Security by Nonresidents for Costs.*—In any action (except where such poor person is plaintiff) there may be a suggestion filed with the court or the clerk thereof, by a defendant or any other officer of the court, that the plaintiff is not a resident of this state, and that security is required of him. After such suggestion is filed, all proceedings in the action shall be suspended until the security, hereinafter provided, has been given. The party giving the security shall serve written notice thereof on all other parties to the action, in the manner provided by the West Virginia rules of civil procedure for trial courts of record, and the action shall, from the date of service or the date of acceptance of service of such notice, proceed in accordance with such rules: *Provided, however,* That any time periods therein shall be tolled from the date the suggestion was filed until the date the notice of security is served or accepted. After sixty days from such suggestion, unless the time for filing such security be extended by the court for good cause shown, the action shall by order of the court be dismissed, unless before the dismission the plaintiff be proved to be a resident of the state, or security be given before such court, or the clerk thereof, for payment of the costs which may be awarded to the defendant, in the trial court and in all appellate courts, and of the fees due, or to become due, in such action, to the officers of any such court or courts. The security shall be by cash or bond payable to the state; and if by bond there need be only one obligor therein, if he be

sufficient, but, unless the obligor be a surety corporation or bonding corporation which has complied with the laws of this state for the purpose of doing business therein, at least one of the obligors shall be a resident of this state. The court before whose clerk such bond is given may, on motion by a defendant or any other officer thereof, give judgment for so much as he is entitled to by virtue of such bond.

# CHAPTER 5

**(Com. Sub. for House Bill No. 271—Originating in the House Committee on Agriculture)**

[Passed March 4, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to standards for milk and milk products.

**Article 11. Milk and Milk Products.**

Section
3. Standards.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Standards.*—It shall be unlawful for any person to manufacture, offer or expose for sale or exchange, or have in his possession with intent to sell, offer or expose for sale or exchange, any milk or milk products that do not conform to rules and regulations promulgated by the public health council and to the following standards or definitions:

(a) Milk is hereby defined to be the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than eight and one-half per cent solids not fat and not less than three and one-half per cent milk fat: *Provided, however,* That the standard set out in this subsection shall not be construed to include persons producing milk and selling the same on a wholesale basis to dairies or receiving plants;

(b) The terms "pasteurization" and "pasteurized", and similar terms shall be taken to refer to the process of heating every particle of milk or milk products to at least one hundred forty-five degrees Fahrenheit, and holding it at such temperature continuously for at least thirty minutes, or to at least one hundred sixty-one degrees fahrenheit, and holding it at such temperature continuously for at least fifteen seconds, in approved and properly operated equipment: *Provided,* That nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and which is approved by the commissioner of agriculture and state director of health;

(c) Skimmed milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to less than three and one-half per cent, and shall contain not less than nine per cent milk solids not fat;

(d) Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than eight per cent milk solids not fat;

(d-1) Cultured buttermilk is a fluid product resulting from the souring or treatment by a lactic acid or other culture of pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It contains not less than eight per cent milk solids not fat;

(e) Condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, and contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent total solids and not less than seven and eight-tenths per cent milk fat;

(f) Sweetened condensed milk, sweetened evaporated

milk, sweetened concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, to which sugar has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent total milk solids and not less than seven and eight-tenths per cent milk fat;

(g) Condensed skimmed milk, evaporated skimmed milk, concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains, all tolerances being allowed for, not less than twenty per cent milk solids;

(h) Sweetened condensed skimmed milk, sweetened evaporated skimmed milk, sweetened concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent milk solids;

(i) Dried milk is the product resulting from the removal of water from milk, and contains, all tolerances being allowed for, not less than twenty-six per cent milk fat, and not more than five per cent moisture;

(j) Dried skimmed milk is the product resulting from the removal of water from skimmed milk, and contains, all tolerances being allowed for, not more than five per cent moisture;

(k) Sweet cream is a fresh, clean portion of milk which contains not less than eighteen per cent milk fat. Whipping cream is cream which shall contain not less than thirty percent milk fat. Cream for buttermaking shall be clean and contain no foreign matter and shall be free from filth, putrefaction, mold or decomposition;

(l) Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per cent milk fat. The addition of vegetable butter coloring is permitted;

(m) Cheese is the sound solid, and ripened product made from milk or cream by coagulating the casein

thereof with rennett or lactic acid, with or without the addition of ripening ferments and seasoning and contains, in the water-free substance, not less than fifty per cent milk fat. The addition of harmless coloring matter is permitted;

(n) Ice cream is a frozen substance made from pure, wholesome milk products sweetened with sugar and may contain not to exceed one half of one per cent gelatin, vegetable gum or other wholesome stabilizer. When wholesome and harmless flavoring extracts are used, ice cream shall contain not less than eight per cent milk fat and ten percent milk solids not fat. When eggs, fruits, nuts, chocolate or cake are used, such reduction in the percentage of milk fat and milk solids not fat shall be allowed as may be caused by the addition of such ingredients;

(o) Half and half is a product consisting of a mixture of milk and cream which contains not less than eleven and one-half per cent milk fat;

(p) Sour cream is cream the acidity of which is more than two tenths of one per cent, expressed as lactic acid, which contains not less than eighteen per cent milk fat;

(q) Cottage cheese is the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It contains not more than eighty per cent moisture;

(r) Creamed cottage cheese is the soft uncured cheese prepared by mixing cottage cheese with pasteurized cream or a pasteurized mixture of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milk fat added thereby is not less than four per cent by weight of the finished creamed cottage cheese. The finished creamed cottage cheese contains not more than eighty per cent moisture;

(s) Homogenized milk is milk which has been treated in such a manner as to insure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters

of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten per cent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" shall be interpreted to include homogenized milk;

(t) Vitamin D milk is milk the vitamin D content of which has been increased by an approved method to at least four hundred U.S.P. units per quart.

# CHAPTER 6

**(House Bill No. 285—By Mr. Liller)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions regulating nurserymen and dealers in nursery stock.

**Article 12. Insects and Plant Diseases.**

**Section**

1. Definitions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Definitions.*—The following words, as used in this article, unless the context otherwise requires or a different meaning is specifically prescribed, shall have the following meaning:

(a) "Commissioner," the state commissioner of agriculture;

(b) "Plant" or "plants," nursery stock, orchard, fruit, forest and shade trees, vines, cuttings, seeds and bulbs,

plants or parts of plants, or any products of the foregoing;

(c) "Insects" or "plant disease," any dangerously injurious insects or plant disease, in any stage of their development, which have been or may hereafter be adjudged and published by the commissioner as necessary to control or eradicate;

(d) "Nursery stock," all florist stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit and ornamental trees and shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous bulbs and roots;

(e) "Nursery," any grounds or premises on which nursery stock is grown or in which nursery stock is propagated and grown for sale, or any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored;

(f) "Nurseryman," the person who owns, leases, manages or is in charge of a nursery;

(g) "Dealer," any person not a grower of nursery stock who buys or receives on consignment for the purpose of offering for sale, receiving orders, or selling nursery stock for the purpose of reselling and reshipping;

(h) "Agent," any person selling nursery stock under the partial or full control of a nurseryman, or of a dealer or other agent, or any person engaged with a nurseryman, dealer or agent in handling nursery stock on a cooperative basis.

# CHAPTER 7

**(House Bill No. 232—By Mr. Slonaker and Mr. Kelley)**

[Passed March 6, 1961; 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 sixteen-a, relating to the distribution, sale, advertisement, or transportation of adulterated or misbranded insecticides, fungi-

cides, herbicides, rodenticides, defoliants, desiccants, plant growth regulators, nematocides, other economic poisons and devices, and regulating traffic therein; providing for registration and examination of such materials, imposing penalties, and for other purposes.

## Article 16-a. Pesticides.

Section

1. Title.
2. Definitions.
3. Prohibited acts.
4. Registration; board of review.
5. Determinations; rules and regulations; "Stop Sale" orders; right of access; samples; appeals from commissioner's decisions; uniformity.
6. Enforcement.
7. Exemptions.
8. Penalties.
9. Seizures; disposition of condemned items; court costs and expenditures.
10. Delegation of duties.
11. Cooperation.
12. Separability.
13. Repeals.

*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 sixteen-a, to read as follows:

Section 1. *Title.*—This article shall be known as the "Pesticide Act of One Thousand Nine Hundred Sixty-one."

Sec. 2. *Definitions.*—For the purpose of this article:

A. The term "economic poison" means—

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, or which the commissioner may declare to be a pest, and

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant, or herbicide.

B. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or

mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the commissioner, but not including equipment used for the application of economic poisons when sold separately therefrom.

C. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

D. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

E. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any undesirable rodents or any other vertebrate animals or others which the commissioner may declare to be a pest.

F. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

G. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

H. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

I. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

J. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

K. The term "nematode" means invertebrate animals of the phylum nemathelminthes, that is, unsegmented round worms with elongated, fusiform, or saclike bodies

covered with cuticle, and inhabiting soil, water, animals, plants or plant parts; may also be called nemas or eelworms.

L. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, either winged or wingless forms, as, for example, beetles, bugs, bees, flies, aphids and termites, and to other allied classes of arthopods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

M. The term "fungi" means all non-chlorophyll-bearing thallophytes (this is, all non-chlorophyll-bearing plants of a lower taxonomic rank than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

N. The term "weed" means any plant which grows where not wanted.

O. The term "ingredient statement" means either—

1. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

2. A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option one shall apply if the preparation is highly toxic to man, determined as provided in section five of this article); and, in addition to one or two in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

P. The term "active ingredient" means—

1. In the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

2. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter

the behavior of ornamental or crop plants or the produce thereof;

3. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

4. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

Q. The term "name" as applied to the active ingredient shall be designated by an accepted chemical name and in addition the accepted common name, or by a common name promulgated by the commissioner. It is recommended that the commissioner adopt the nomenclature approved by the interdepartmental committee on pest control or the American standards committee or any national committee similarly functioning.

R. The term "inert ingredient" means an ingredient which is not an active ingredient.

S. The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

T. The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

U. The term "commissioner" means the commissioner of agriculture.

V. The term "registrant" means the person registering any economic poison pursuant to the provisions of this article.

W. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

X. The term "labeling" means all labels and other written, printed, graphic matter, or advertising—

1. Upon the economic poison or device or any of its containers or wrappers;

2. Accompanying the economic poison or device at any time;

3. To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, nonmisleading reference is made to current official publications of the United States departments

of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons;

4. Conveyed in any public media such as newspapers, periodicals, radio or television, relative to the offering for sale of any economic poison or device.

Y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below or is in excess of the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

Z. The term "misbranded" shall apply—

1. To any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

2. To any economic poison—

a. If it is an imitation of or is offered for sale under the name of another economic poison;

b. If its labeling bears any reference to registration under this article;

c. If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;

d. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

e. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

f. If any word, statement, or other information required by or under authority of this article to appear on the

label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statement, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, except weeds to which it is applied, or to the person applying such economic poison; or

h. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided,* That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

Sec. 3. *Prohibited Acts.*—A. It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any economic poison which has not been registered pursuant to the provisions of section four of this article, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided,* That, in the discretion of the commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

2. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one,

through which the required information on the immediate container cannot be clearly read, a label bearing:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trade-mark under which said item is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit.

3. Any economic poison which contains any substance or substances in quantities toxic to man, determined as provided in section five of this article, unless the label shall bear, in addition to any other matter required by this article:

a. The skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the economic poison.

4. The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, sodium arsenite, arsenious oxide, disodium methyl arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, barium fluosilicate, and any other compounds containing arsenic or fluorine, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white powder economic poison which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored: *Provided,* That the commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

5. Any economic poison which is adulterated or misbranded, or any device which is misbranded.

B. It shall be unlawful—

1. For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this article;

2. For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section four of this article.

Sec. 4. *Registration; Board of Review.*—A. Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually: *Provided,* That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the current period of registration. The period of registration shall be for one year, beginning January one and ending December thirty-one of that year. The registrant shall file with the commissioner a statement including:

1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

2. The name of the economic poison;

3. A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and

4. If requested by the commissioner a full description of the tests made and the results thereof upon which the claims are based, and the analytical method or methods

employed in determining the percentage of each active ingredient listed on the label to be registered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last registered.

B. The registrant shall pay an annual fee of ten dollars for the first twenty economic poisons registered and five dollars for each additional label registered. Such fees to be deposited in the treasury of the state and to the credit of a special fund to be used only for carrying out the provisions of this article, and shall be expended upon order of the commissioner of agriculture.

C. The commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the commissioner that the composition of the item is such as to warrant the proposed claims for it and if the item and its labeling and other material required to be submitted to comply with the requirements of section three of this article, he shall register the item.

D. If it does not appear to the commissioner that the item is such as to warrant the proposed claims for it or if the item and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the item, labeling, or other material required to be submitted fails to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the item be registered, a review of this matter may be brought before a board of review.

1. The board of review shall consist of five individual members.

a. Two of these members shall be appointed by the dean of the college of agriculture, forestry and home economics of West Virginia university.

b. One member of the board of review shall be appointed by the commissioner of agriculture.

c. One member of the board of review shall be appointed by the registrant.

d. One member of the board of review shall be appointed by the governor of the state of West Virginia and shall act as chairman.

2. This board shall have the power to subpoena witnesses and employ competent help.

3. The decision of this board of review shall be final.

4. All expenses of the board shall be paid by the commissioner, except all salaries, fees and expenses accrued by the appointee of the registrant.

E. In order to protect the public, the commissioner, on his own motion, may at any time, cancel the registration of an economic poison.

F. Notwithstanding any other provisions of this article, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

Sec. 5. *Determinations; Rules and Regulations; "Stop Sale" Orders; Right of Access; Samples; Appeals from Commissioner's Decisions; Uniformity.*—A. The commissioner is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious or undesirable to plants, man, domestic animals, articles, or substances;

2. To determine whether economic poisons are highly toxic to man; and

3. To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section three, A, four of this article.

B. The commissioner of agriculture is hereby charged with the enforcement of the provisions of this article, and is empowered to prescribe and enforce rules and regulations consistent with this article in carrying out its provisions.

1. The commissioner is hereby authorized to fix minimum and/or maximum standards or requirements covering all economic poisons and devices, and to prohibit and to prevent the sale of such worthless, deleterious or questionable items.

2. Whenever it appears that any economic poison or

device is being offered or exposed for sale in this state in violation of any of the provisions of this article, the commissioner is hereby authorized to issue a written or printed "stop sale" order or "embargo", and it shall be unlawful for any person, firm, corporation or manufacturer to permit any such economic poison or device to be moved or disposed of in any manner except upon written order of the commissioner of agriculture or by court order. The commissioner shall cause notice of such violation to be given to the person affected thereby, and any person so notified shall be given an opportunity to be heard under such rules and regulations as the commissioner may prescribe. After such hearing if it still further appears that any of the provisions of this article have been violated, the commissioner may institute proceedings in any court of competent jurisdiction for the disposal of such economic poisons and/or devices.

3. The commissioner or his agent shall have free access to all places of business, mills, buildings and conveyances of any kind used in the transportation, importation, manufacture, sale or storage of any economic poison or device, with power and authority to open any parcel containing or supposed to contain any economic poison or device, and upon full payment of the selling price, to take therefrom samples for analyses, and to examine the books and all records pertaining to the shipment, manufacture, sale or distribution of any economic poison or device.

C. Nothing contained in this article shall prevent any person from appealing from the commissioner's decision, and the circuit court of the county in which the alleged infraction occurred shall have jurisdiction thereof.

D. In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the commissioner is authorized, after due public hearing, to adopt

by regulation such regulations, applicable to and in conformity with the primary standards established by this article, as have been or may be prescribed by appropriate federal agencies with respect to economic poisons.

Sec. 6. *Enforcement.*—A. The examination of economic poisons or devices shall be made under the direction of the commissioner for the purpose of determining whether they comply with the requirements of this article. If it shall appear from such examination that an economic poison or device fails to comply with the provisions of this article, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the commissioner it shall appear that the provisions of this article have been violated by such person, then the commissioner may institute suit in a court of competent jurisdiction: *Provided, however,* That nothing in this article shall be construed as requiring the commissioner to report for prosecution or for the institution of libel proceedings minor violations of this article whenever he believes that the public interest will be best served by a suitable notice of warning in writing.

B. The commissioner shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this article.

Sec. 7. *Exemptions.*—A. The penalties provided for violations of section three, A of this article shall not apply to:

1. Any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

2. Public officials of this state and the federal government engaged in the performance of their official duties;

3. The manufacturer or shipper of an economic poison for experimental use only—

a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons, or

b. By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only—not to be sold", together with the manufacturer's name and address: *Provided, however,* That if a written permit has been obtained from the commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

B. No item shall be deemed in violation of this article when intended solely for export to a foreign country, and when prepared or packaged according to the specifications or directions of the purchaser. If not so exported, all the provisions of this article shall apply.

Sec. 8. *Penalties.*—A. Any person violating section three, A, one of this article shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars.

B. Any person violating any provision of this article other than section three, A, one shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars for the first offense and upon conviction for a subsequent offense shall be fined not more than two thousand dollars: *Provided,* That any offense committed more than five years after a previous conviction shall be considered a first offense: *And provided further,* That in any case where a registrant was issued a warning by the commissioner pursuant to the provisions of this article, such registrant shall upon conviction of a violation of any provision of this article other than section three, A, one be fined not more than three thousand dollars, and the registration of the item with reference to which the violation occurred shall terminate automatically. An item the registration of which has been terminated may not again be registered unless the item, its labeling, and other material required to be submitted

appear to the commissioner to comply with all the requirements of this article.

C. Notwithstanding any other provisions of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of section four of this article, he shall be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

Sec. 9. *Seizures; Disposition of Condemned Items; Court Costs and Expenditures.*—A. Any economic poison or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

1. In the case of an economic poison,

a. If it is adulterated or misbranded;

b. If it has not been registered under the provisions of section four of this article;

c. If it fails to bear on its label the information required by this article;

d. If it is a white powder economic poison and is not colored as required under this article.

2. In the case of a device, if it is misbranded.

B. If the item is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such item is sold, less legal costs, shall be paid to the state treasurer: *Provided,* That the item shall not be sold contrary to the provision of this article: *And provided further,* That upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the item shall not be disposed of unlawfully, the court may direct that said item be delivered to the owner thereof for relabeling or reprocessing as the case may be.

C. When a decree of condemnation is entered against an item, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the item.

Sec. 10. *Delegation of Duties.*—All authority vested in the commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for said purpose.

Sec. 11. *Cooperation.*—The commissioner is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this article and securing uniformity of regulations.

Sec. 12. *Separability.*—If any provision of this article is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this article and the applicability thereof to other persons and circumstances shall not be affected thereby.

Sec. 13. *Repeals.*—Jurisdiction in all matter pertaining to the distribution, sale and transportation of economic poisons and devices is by this article vested exclusively in the commissioner, and all acts and parts of acts inconsistent with this article are hereby expressly repealed.

# CHAPTER 8

**(Com. Sub. for Senate Bill No. 1—Originating in the Senate Committee on Finance)**

[Passed March 11, 1961; in effect from passage.]

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

**Title**

1. **General Provisions.**
2. **Appropriations.**
3. **Administration.**

## Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.

*Be it enacted by the Legislature of West Virginia:*

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

Sec. 2. *Definitions.*—For the purpose of this act:

"Board" shall mean the board of public works;

"Spending unit" shall mean the department, agency or institution to which an appropriation is made;

The "fiscal year one thousand nine hundred sixty-two" shall mean the period from July first, one thousand nine hundred sixty-one through June thirtieth, one thousand nine hundred sixty-two.

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated "from collections" the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by chapter thirty-nine, acts of the legislature, regular session, one thousand nine hundred thirty-nine.

Sec. 3. *Classification of Appropriations.*—An appropriation for:

"Personal services" shall be expended only for the payment of salaries, wages, fees, and other compensation for skill, work, or employment;

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending unit.

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

"Repairs and alterations" shall include all expenditures for materials, supplies and labor used in repairing and altering buildings, grounds and equipment;

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

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

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

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

Sec. 4. *Method of Expenditure.*—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, or according to any law detailing a procedure specifically limiting that article.

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Section 1. *Appropriations from General Revenue.*—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-two.

## LEGISLATIVE

### 1—*Senate*

Acct. No. 101

| | *Fiscal Year 1961-62* |
|---|---|
| Salaries of Members | $ 49,500.00 |
| Compensation and per diem of officers and attaches | 50,000.00 |
| Mileage of Members | 2,000.00 |
| Current Expenses and Contingent Fund | 85,000.00 |
| To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the Office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state | 10,000.00 |
| To pay cost of printing the 1961 edition of Blue Book | 46,000.00 |
| Drafting Service | 7,500.00 |

The appropriations for the Senate for the fiscal year 1960-61 are to remain in full force and effect, and are hereby reappropriated to June 30, 1962.

Any balances so reappropriated may be transferred and credited to the 1961-62 accounts.

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

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

## 2—*House of Delegates*

Acct. No. 102

| | |
|---|---|
| Salaries of Members | $ 150,000.00 |
| Compensation and per diem of officers and attaches | 75,000.00 |
| Mileage of Members | 5,000.00 |
| Current Expenses and Contingent Fund | 88,000.00 |
| Drafting Service | 5,000.00 |

An amount, not to exceed $3,600.00 per year, is hereby authorized to be expended from the contingent fund of the House of Delegates for janitor services, etc.

The House Committee on Rules, with the approval of the Speaker, is hereby authorized to expend from the House Contingent Fund for the fiscal year 1961-62 an amount, not to exceed the sum of Thirteen Thousand ($13,000.00) Dollars, for the purposes of carpeting the House Chamber and altering the electrical wiring for the roll call and public address systems in said Chamber in the main unit of the Capitol Building. The appropriations for the House of Delegates for the fiscal year 1960-61 are to remain in full force and effect, and are hereby reappropriated to June 30, 1962.

Any balances so reappropriated may be transferred and credited to the 1961-62 accounts.

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

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

For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a salary of $900.00 per month, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at a salary not to exceed $375.00 per month each, payable monthly from the same fund.

### 3—*Joint Expenses*

Acct. No. 103

| | |
|---|---|
| To pay the cost of legislative printing and stationery | $ 75,000.00 |
| Commission on Interstate Cooperation | 15,000.00 |
| Joint Committee on Government and Finance | 225,000.00 |
| Other Authorized Legislative Committees | 50,000.00 |

The appropriations for Joint Expenses for the fiscal year 1960-61 are to remain in full force and effect, and are hereby reappro-

priated to June 30, 1962.
Any balances so reappropriated may be transferred and credited to the 1961-62 accounts.
Upon the written request of the Clerk of the Senate and the Clerk of the House of Delegates the State Auditor shall transfer from the 1960-1961 appropriations, as reappropriated by the 1961-62 Budget Act, for "Other Authorized Legislative Committees" the sum of $25,000.00 to Account No. 101, Compensation and Per Diem of Officers and Attaches.
Upon the written request of the Clerk of the Senate and Clerk of the House of Delegates, the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

## JUDICIAL

### 4—*Supreme Court of Appeals*

Acct. No. 110

| | | |
|---|---|---|
| 1 | Salaries of Judges | $ 87,500.00 |
| 2 | Other Personal Services | 109,700.00 |
| 3 | Current Expenses | 22,000.00 |
| 4 | Equipment | 2,000.00 |
| 5 | Total | $ 221,200.00 |

### 5—*Judicial—Auditor's Office*

Acct. No. 111

| | | |
|---|---|---|
| 1 | Salaries of Judges | $ 345,000.00 |
| 2 | Other Personal Services | 81,000.00 |
| 3 | Current Expenses | 26,000.00 |
| 4 | Judges Retirement System | 25,000.00 |
| 5 | Criminal Charges | 300,000.00 |
| 6 | Total | $ 777,000.00 |

This appropriation shall be administered by the State Auditor who shall draw his requisition for warrants in payment of salaries 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 State Auditor.

### 6—*State Law Library*

Acct. No. 114

| | | |
|---|---|---|
| Personal Services | $ | 18,580.00 |
| Current Expenses | | 2,000.00 |
| Equipment | | 14,500.00 |
| Total | $ | 35,080.00 |

### 7—*Judicial Council*

Acct. No. 118

| | | |
|---|---|---|
| To pay expenses of Members of the council | $ | 12,000.00 |

## EXECUTIVE

### 8—*Governor's Office*

Acct. No. 120

| | | |
|---|---|---|
| Salary of Governor | $ | 17,500.00 |
| Other Personal Services | | 56,547.00 |
| Current Expenses | | 15,000.00 |
| Equipment | | 1,500.00 |
| Civil Contingent Fund | | 160,000.00 |

Of this appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000.00 as West Virginia's contribution to the Interstate Oil Compact Commission.

| | | |
|---|---|---|
| Custodial Fund | | 45,000.00 |

| | | | |
|---|---|---|---|
| | To be used for current general expenses, including compensation of servants and employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions. | | |
| | Total | $ | 295,547.00 |

*9—Board of Probation and Parole*

Acct. No. 123

| | | | |
|---|---|---|---|
| | Personal Services | $ | 187,360.00 |
| | Current Expenses | | 75,800.00 |
| | Equipment | | 2,000.00 |
| | Total | $ | 265,160.00 |

## FISCAL

*10—Auditor's Office—General Administration*

Acct. No. 150

| | | | |
|---|---|---|---|
| | Salary of State Auditor | $ | 11,000.00 |
| | Other Personal Services | | 293,680.00 |
| | Current Expenses | | 35,155.00 |
| | Equipment | | 27,500.00 |
| | Total | $ | 367,335.00 |

Any unexpended balance remaining in the appropriation "To match contributions of state employees for social security" at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

*11—Treasurer's Office*

Acct. No. 160

| | | | |
|---|---|---|---|
| | Salary of State Treasurer | $ | 11,000.00 |
| | Other Personal Services | | 99,000.00 |
| | Current Expenses | | 15,950.00 |

| | | |
|---|---|---|
| 4 | Equipment | 12,500.00 |
| 5 | Total | $ 138,450.00 |

12—*Sinking Fund Commission*

Acct. No. 170

| | | |
|---|---|---|
| 1 | Personal Services | $ 19,800.00 |
| 2 | Current Expenses | 1,500.00 |
| 3 | Total | $ 21,300.00 |

13—*State Tax Commissioner*

Acct. No. 180

| | | |
|---|---|---|
| 1 | Personal Services | $ 873,760.00 |
| 2 | Current Expenses | 234,470.00 |
| 3 | Equipment | 31,700.00 |
| 4 5 6 7 | Administration, Enforcement and Collection under the West Virginia Personal Income Tax law (Senate Bill No. 106—1961 Legislature) | 600,000.00 |
| 8 | Total | $ 1,739,930.00 |

14—*State Tax Commissioner*

Acct. No. 185

| | | |
|---|---|---|
| 1 | Property Evaluation | $ 140,000.00 |
| 2 | Property Appraisal | 1,500,000.00 |
| 3 | Total | $ 1,640,000.00 |

4 To be expended for "Property Evaluation"
5 and "Property Appraisal" as provided by
6 law.
7 Any unexpended balance remaining in the ac-
8 count "For Property Appraisal, Tax Maps,
9 etc., in accordance with the provisions of
10 Senate Bill No. 34 (1958 Legislature)", as
11 reappropriated, at the close of the fiscal
12 year 1960-61 is hereby reappropriated for

expenditure during the fiscal year 1961-62. Any unexpended balance remaining in the account "Reserve for Property Appraisal, Tax Maps, etc.", as reappropriated, at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

15—*State Commissioner of Public Institutions*

Acct. No. 190

| | |
|---|---|
| Salary of Commissioner | $ 10,000.00 |
| Other Personal Services | 39,390.00 |
| Current Expenses | 8,275.00 |
| Equipment | 3,000.00 |
| Total | $ 60,665.00 |

16—*Department of Finance and Administration*

Acct. No. 210

| | |
|---|---|
| Personal Services | $ 479,860.00 |
| Current Expenses | 167,400.00 |
| Repairs and Alterations | 75,000.00 |
| Equipment | 14,500.00 |
| Postage | 90,000.00 |
| Total | $ 826,760.00 |

The Workman's Compensation Commission, Department of Public Assistance, Public Service Commission, Natural Resources Commission, Department of Motor Vehicles, State Road Commission and State Health Department shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit receiving reimbursement for postage costs from the Federal Government shall refund to the Postage account of the Department of Fi-

nance and Administration such amounts. Should this appropriation for postage be insufficient to meet the mailing requirements of the state spending unit as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for that department for postage in excess of this appropriation. Any unexpended balance remaining in the postage account at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

### 17—*The Board of Public Works*

Acct. No. 220

| | | |
|---|---|---|
| Contingent Fund | $ | 85,000.00 |

Out of the above appropriation the sum of $60,000 shall be used to develop and improve the Morris Memorial Hospital property, if the board deems such expenditure advisable.

### 18—*State Board of Insurance*

Acct. No. 225

| | | |
|---|---|---|
| Personal Services | $ | 5,000.00 |
| Current Expenses | | 2,200.00 |
| Total | $ | 7,200.00 |

## LEGAL

### 19—*Attorney General*

Acct. No. 240

| | | |
|---|---|---|
| Salary of Attorney General | $ | 12,000.00 |
| Other Personal Services | | 144,840.00 |
| Current Expenses | | 18,000.00 |

| | | |
|---|---|---|
| 4 | Equipment | 7,500.00 |
| 5 | To protect the resources or tax structure of | |
| 6 | the State in controversies or legal proceed- | |
| 7 | ings affecting same | 4,000.00 |
| 8 | Total | $ 186,340.00 |

20—*Commisison on Uniform State Laws*

Acct. No. 245

| | | |
|---|---|---|
| 1 | Total | $ 3,150.00 |

## INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 250

| | | |
|---|---|---|
| 1 | Salary of Secretary of State | $ 11,000.00 |
| 2 | Other Personal Services | 56,100.00 |
| 3 | Current Expenses | 10,680.00 |
| 4 | Equipment | 3,300.00 |
| 5 | Total | $ 81,080.00 |

## EDUCATIONAL

22—*State Board of Education—Vocational Division*

Acct. No. 294

| | | |
|---|---|---|
| 1 | Total | $ 500,000.00 |
| 2 | To be transferred to General School Fund | |
| 3 | (Acct. No. 701) and to be administered in | |
| 4 | accordance with provisions of House Bill | |
| 5 | No. 7—1960 Legislature. | |

23—*State Board of School Finance—State Aid to Schools*

Acct. No. 295

| | | |
|---|---|---|
| 1 | State Aid to supplement the General School | |
| 2 | Fund | $ 58,080,585.00 |
| 3 | Reimbursement to counties which suffer re- | |

| | | |
|---|---|---|
| | ductions in state aid formula allocations for instruction as a result of participation in experimental programs approved by the State Board of Education | 40,000.00 |
| | Total | $ 58,120,585.00 |

To be transferred to the General School Fund upon requisition of the Governor.

The appropriation "State Aid to Supplement the General School Fund" to be distributed to counties as provided by law: *Provided,* That no county's state aid allocation shall be reduced more than five per cent from the allocation of the previous year.

### 24—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

| | | |
|---|---|---|
| Personal Services | | $ 12,500.00 |
| Current Expenses | | 4,000.00 |
| Out-of-State Instruction | | 15,000.00 |
| Aid to Counties | | 208,500.00 |
| | Total | $ 240,000.00 |

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

### 25—*Department of Education—Textbook Aid*

Acct. No. 297

| | | |
|---|---|---|
| Textbooks for Schools | | $ 150,000.00 |

To be distributed according to chapter fifty-one, acts of the Legislature, regular session, 1939.

### 26—*Teachers Retirement Board*

Acct. No. 298

| | | |
|---|---|---|
| Benefit Fund—Payments to Retired Teachers | | $ 2,367,800.00 |

| | | |
|---|---|---|
| 3 | Employers' Accumulation Fund—to match | |
| 4 | contributions of members | 3,344,000.00 |
| 5 | Expense Fund | 7,478.00 |
| 6 | Total | $ 5,719,278.00 |

### 27—*West Virginia University*

Acct. No. 300

| | | |
|---|---|---|
| 1 | Personal Services | $ 7,489,662.00 |
| 2 | Current Expenses | 1,232,000.00 |
| 3 | Repairs and Alterations | 400,000.00 |
| 4 | Equipment | 483,000.00 |
| 5 | Fire Insurance Premiums | 75,000.00 |
| 6 | Oak Wilt Control Research | 10,000.00 |
| 7 | State aid to students of Veterinary Medicine | 48,000.00 |
| 8 | State aid to Medical Students | 15,000.00 |
| 9 | Airport Hangar Relocation | 100,000.00 |
| 10 | Institute for Planning and Research | 35,700.00 |
| 11 | Total | $ 9,888,362.00 |

12 Out of the above appropriation for Personal
13 Services, the sum of $8,500.00 shall be used
14 only for the employment of a Spray Spe-
15 cialist who shall be stationed only at West
16 Virginia University Farm at Kearneysville,
17 and $7,200.00 for the employment of a Labor
18 Specialist.
19 All or any part of the application for "Air-
20 port Hangar Relocation" may be trans-
21 ferred to Special Revenue Fund for the
22 purpose of relocating hangar at Morgan-
23 town.

### 28—*Potomac State College of West Virginia University*

Acct. No. 315

| | | |
|---|---|---|
| 1 | Personal Services | $ 368,020.00 |
| 2 | Current Expenses | 57,250.00 |

| | | | |
|---|---|---|---|
| 3 | Repairs and Alterations | | 36,300.00 |
| 4 | Equipment | | 41,700.00 |
| 5 | Total | $ | 503,270.00 |

29—*Marshall University*

Acct. No. 320

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 2,229,901.00 |
| 2 | Current Expenses | | 235,900.00 |
| 3 | Repairs and Alterations | | 67,800.00 |
| 4 | Equipment | | 71,875.00 |
| 5 | Flood Wall Assessment | | 3,200.00 |
| 6 | Total | $ | 2,608,676.00 |

30—*Fairmont State College*

Acct. No. 321

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 727,740.00 |
| 2 | Current Expenses | | 78,650.00 |
| 3 | Repairs and Alterations | | 33,600.00 |
| 4 | Equipment | | 31,700.00 |
| 5 | Total | $ | 871,690.00 |

31—*Glenville State College*

Acct. No. 322

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 463,370.00 |
| 2 | Current Expenses | | 69,215.00 |
| 3 | Repairs and Alterations | | 43,180.00 |
| 4 | Equipment | | 28,400.00 |
| 5 | Rural Education Development Program | | 10,000.00 |
| 6 | Total | $ | 614,165.00 |

32—*West Liberty State College*

Acct. No. 323

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 526,562.00 |

| | | |
|---|---|---|
| 2 | Current Expenses | 65,300.00 |
| 3 | Repairs and Alterations | 40,800.00 |
| 4 | Equipment | 25,000.00 |
| 5 | Total | $ 657,662.00 |

33—*Shepherd College*

Acct. No. 324

| | | |
|---|---|---|
| 1 | Personal Services | $ 473,000.00 |
| 2 | Current Expenses | 65,250.00 |
| 3 | Repairs and Alterations | 29,800.00 |
| 4 | Equipment | 26,250.00 |
| 5 | Total | $ 594,300.00 |

34—*Concord College*

Acct. No. 325

| | | |
|---|---|---|
| 1 | Personal Services | $ 805,745.00 |
| 2 | Current Expenses | 80,570.00 |
| 3 | Repairs and Alterations | 37,170.00 |
| 4 | Equipment | 35,850.00 |
| 5 | Total | $ 959,335.00 |

6 Any unexpended balance remaining in the
7 appropriation for "Dormitory Equipment"
8 at the close of the fiscal year 1959-60 and
9 reappropriated for expenditure during the
10 fiscal year 1960-61 is hereby reappropriated
11 for expenditure during the fiscal year
12 1961-62.

35—*West Virginia Institute of Technology*

Acct. No. 327

| | | |
|---|---|---|
| 1 | Personal Services | $ 658,180.00 |
| 2 | Current Expenses | 82,800.00 |
| 3 | Repairs and Alterations | 44,470.00 |

| | | | |
|---|---|---|---|
| 4 | Equipment | | 79,480.00 |
| 5 | Total | $ | 864,930.00 |

36—*West Virginia State College*

Acct. No. 328

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 1,041,620.00 |
| 2 | Current Expenses | | 153,000.00 |
| 3 | Repairs and Alterations | | 83,440.00 |
| 4 | Equipment | | 46,100.00 |
| 5 | Total | $ | 1,324,160.00 |

37—*Bluefield State College*

Acct. No. 329

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 383,605.00 |
| 2 | Current Expenses | | 64,180.00 |
| 3 | Repairs and Alterations | | 23,900.00 |
| 4 | Equipment | | 68,200.00 |
| 5 | Total | $ | 539,885.00 |

38—*West Virginia State College 4-H Camp*

Acct. No. 330

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 12,960.00 |
| 2 | Current Expenses | | 5,000.00 |
| 3 | Repairs and Alterations | | 3,500.00 |
| 4 | Equipment | | 2,300.00 |
| 5 | Total | $ | 23,760.00 |

39—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 437,286.00 |
| 2 | Current Expenses | | 160,330.00 |
| 3 | Repairs and Alterations | | 40,700.00 |
| 4 | Equipment | | 19,850.00 |
| 5 | Total | $ | 658,166.00 |

40—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 22,040.00 |
| 2 | Current Expenses | | 6,000.00 |
| 3 | Repairs and Alterations | | 5,600.00 |
| 4 | Equipment | | 8,600.00 |
| 5 | Total | $ | 42,240.00 |

41—*Department of Archives and History*

Acct. No. 340

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 30,700.00 |
| 2 | Current Expenses | | 6,690.00 |
| 3 | Equipment | | 7,100.00 |
| 4 | Total | $ | 44,490.00 |

42—*West Virginia Library Commission*

Acct. No. 350

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 81,000.00 |
| 2 | Current Expenses | | 5,000.00 |
| 3 | Equipment | | 1,000.00 |
| 4 | Books and Periodicals | | 30,000.00 |
| 5 | Library Services for the Blind | | 5,000.00 |
| 6 | Total | $ | 122,000.00 |

## CHARITIES AND CORRECTION

43—*West Virginia Industrial School for Boys*

Acct. No. 370

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 196,418.00 |
| 2 | Current Expenses | | 99,250.00 |
| 3 | Repairs and Alterations | | 28,500.00 |
| 4 | Equipment | | 18,250.00 |
| 5 | Total | $ | 342,418.00 |

### 44—*Forestry Camp for Boys*

**Acct. No. 371**

| | | |
|---|---|---|
| 1 | Personal Services | $ 47,836.00 |
| 2 | Current Expenses | 63,854.00 |
| 3 | Repairs and Alterations | 2,500.00 |
| 4 | Equipment | 5,600.00 |
| 5 | Total | $ 119,790.00 |

### 45—*West Virginia Industrial Home for Girls*

**Acct. No. 372**

| | | |
|---|---|---|
| 1 | Personal Services | $ 103,429.00 |
| 2 | Current Expenses | 61,900.00 |
| 3 | Repairs and Alterations | 10,500.00 |
| 4 | Equipment | 9,950.00 |
| 5 | Vocational Training | 5,000.00 |
| 6 | Total | $ 190,779.00 |

### 46—*West Virginia State Prison for Women*

**Acct. No. 374**

| | | |
|---|---|---|
| 1 | Personal Services | $ 37,420.00 |
| 2 | Current Expenses | 31,600.00 |
| 3 | Repairs and Alterations | 12,600.00 |
| 4 | Equipment | 1,400.00 |
| 5 | Total | $ 83,020.00 |

### 47—*West Virginia Penitentiary*

**Acct. No. 375**

| | | |
|---|---|---|
| 1 | Personal Services | $ 571,280.00 |
| 2 | Current Expenses | 477,700.00 |
| 3 | Repairs and Alterations | 34,000.00 |
| 4 | Equipment | 17,700.00 |
| 5 | Total | $ 1,100,680.00 |

### 48—*Medium Security Prison*

**Acct. No. 376**

| | | |
|---|---|---|
| 1 | Personal Services | $ 215,544.00 |
| 2 | Current Expenses | 150,804.00 |
| 3 | Repairs and Alterations | 20,000.00 |
| 4 | Equipment | 11,300.00 |
| 5 | Total | $ 397,648.00 |

### 49—*West Virginia Children's Home*

**Acct. No. 380**

| | | |
|---|---|---|
| 1 | Personal Services | $ 42,195.00 |
| 2 | Current Expenses | 30,425.00 |
| 3 | Repairs and Alterations | 11,000.00 |
| 4 | Equipment | 5,850.00 |
| 5 | Total | $ 89,470.00 |

### 50—*Andrew S. Rowan Memorial Home*

**Acct. No. 384**

| | | |
|---|---|---|
| 1 | Personal Services | $ 175,920.00 |
| 2 | Current Expenses | 154,186.00 |
| 3 | Repairs and Alterations | 23,400.00 |
| 4 | Equipment | 8,275.00 |
| 5 | Total | $ 361,781.00 |

## HEALTH AND WELFARE

### 51—*State Health Department*

**Acct. No. 400**

| | | |
|---|---|---|
| 1 | Personal Services | $ 383,424.00 |
| 2 | Current Expenses | 50,060.00 |
| 3 | Equipment | 4,500.00 |
| 4 | Cancer Control and Treatment | 93,000.00 |
| 5 | Tuberculosis Field Clinic and Nursing Service | 10,000.00 |

| | | |
|---|---|---|
| 6 | Out-Patient Pneumothorax Treatment | 20,000.00 |
| 7 | Local Health Services | 450,000.00 |
| 8 | Total | $ 1,010,984.00 |

52—*Department of Veterans Affairs*

Acct. No. 404

| | | |
|---|---|---|
| 1 | Personal Services | $ 155,000.00 |
| 2 | Current Expenses | 43,000.00 |
| 3 | Equipment | 1,500.00 |
| 4 | To provide Educational Opportunities for | |
| 5 | Children of War Veterans as provided by | |
| 6 | Chapter thirty-nine, Acts of the Legisla- | |
| 7 | ture, 1943 | 12,500.00 |
| 8 | Total | $ 212,000.00 |

9 Any unexpended balance remaining in the
10 appropriation "To Provide Educational Op-
11 portunities for Children of War Veterans"
12 at the close of the fiscal year 1960-61 is
13 hereby reappropriated for expenditure dur-
14 ing the fiscal year 1961-62.

53—*Department of Welfare*

Acct. No. 405

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,575,476.00 |
| 2 | Current Expenses | 250,858.00 |
| 3 | Equipment | 18,290.00 |
| 4 | Public Assistance Grants (Classified Aid) | 7,068,000.00 |
| 5 | Aid to Crippled Children | 300,000.00 |
| 6 | Medical Services | 785,000.00 |
| 7 | Medical Aid to the Aged | 1,325,256.00 |
| 8 | Conservation of Vision and Prevention of | |
| 9 | Blindness | 40,000.00 |
| 10 | Child Welfare Services | 113,000.00 |
| 11 | General Relief | 125,000.00 |
| 12 | Boarding Care | 340,000.00 |
| 13 | Social Security Matching Fund | 25,600.00 |
| 14 | Total | $ 11,966,480.00 |

54—*Department of Welfare—Commodity Distribution*

Acct. No. 406

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 276,580.00 |
| 2 | Current Expenses | | 107,420.00 |
| 3 | Equipment | | 16,000.00 |
| 4 | Total | $ | 400,000.00 |

55—*Department of Mental Health*

Acct. No. 410

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 210,369.00 |
| 2 | Current Expenses | | 31,935.00 |
| 3 | Equipment | | 2,400.00 |
| 4 | Research and Training | | 25,000.00 |
| 5 | Merit System Costs | | 33,000.00 |
| 6 | Total | $ | 302,704.00 |

56—*West Virginia Training School*

Acct. No. 419

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 410,458.00 |
| 2 | Current Expenses | | 149,650.00 |
| 3 | Repairs and Alterations | | 35,500.00 |
| 4 | Equipment | | 16,500.00 |
| 5 | Total | $ | 612,108.00 |

57—*Weston State Hospital*

Acct. No. 420

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 1,334,583.00 |
| 2 | Current Expenses | | 746,330.00 |
| 3 | Repairs and Alterations | | 54,600.00 |
| 4 | Equipment | | 30,580.00 |
| 5 | Total | $ | 2,166,093.00 |

58—*Spencer State Hospital*

Acct. No. 421

| | | |
|---|---|---|
| 1 | Personal Services | $ 626,199.00 |
| 2 | Current Expenses | 376,755.00 |
| 3 | Repairs and Alterations | 49,600.00 |
| 4 | Equipment | 37,550.00 |
| 5 | Total | $ 1,090,104.00 |

59—*Huntington State Hospital*

Acct. No. 422

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,026,280.00 |
| 2 | Current Expenses | 538,665.00 |
| 3 | Repairs and Alterations | 54,175.00 |
| 4 | Equipment | 43,300.00 |
| 5 | Total | $ 1,662,420.00 |

60—*Lakin State Hospital*

Acct. No. 423

| | | |
|---|---|---|
| 1 | Personal Services | $ 330,453.00 |
| 2 | Current Expenses | 193,120.00 |
| 3 | Repairs and Alterations | 36,975.00 |
| 4 | Equipment | 37,950.00 |
| 5 | Total | $ 598,498.00 |

61—*Barboursville State Hospital*

Acct. No. 424

| | | |
|---|---|---|
| 1 | Personal Services | $ 285,368.00 |
| 2 | Current Expenses | 131,045.00 |
| 3 | Repairs and Alterations | 22,900.00 |
| 4 | Equipment | 6,150.00 |
| 5 | Total | $ 445,463.00 |

62—*Fairmont Emergency Hospital*

Acct. No. 425

| | | |
|---|---|---|
| 1 | Personal Services | $ 106,880.00 |
| 2 | Current Expenses | 65,380.00 |
| 3 | Repairs and Alterations | 6,800.00 |
| 4 | Equipment | 5,500.00 |
| 5 | Total | $ 184,560.00 |

63—*Welch Emergency Hospital*

Acct. No. 426

| | | |
|---|---|---|
| 1 | Personal Services | $ 135,320.00 |
| 2 | Current Expenses | 126,600.00 |
| 3 | Repairs and Alterations | 27,000.00 |
| 4 | Equipment | 17,000.00 |
| 5 | Total | $ 305,920.00 |

64—*Hopemont Sanitarium*

Acct. No. 430

| | | |
|---|---|---|
| 1 | Personal Services | $ 389,940.00 |
| 2 | Current Expenses | 291,050.00 |
| 3 | Repairs and Alterations | 15,000.00 |
| 4 | Equipment | 10,900.00 |
| 5 | Total | $ 706,890.00 |

65—*Pinecrest Sanitarium*

Acct. No. 431

| | | |
|---|---|---|
| 1 | Personal Services | $ 545,440.00 |
| 2 | Current Expenses | 462,940.00 |
| 3 | Repairs and Alterations | 26,500.00 |
| 4 | Equipment | 11,500.00 |
| 5 | Total | $ 1,046,380.00 |

66—*Denmar State Hospital*

Acct. No. 432

| | | |
|---|---|---|
| 1 | Personal Services | $ 297,785.00 |
| 2 | Current Expenses | 132,325.00 |
| 3 | Repairs and Alterations | 10,000.00 |
| 4 | Equipment | 6,400.00 |
| 5 | Total | $ 446,510.00 |

67—*Berkeley Springs Sanitarium*

Acct. No. 436

| | | |
|---|---|---|
| 1 | Personal Services | $ 27,800.00 |
| 2 | Current Expenses | 6,800.00 |
| 3 | Repairs and Alterations | 6,000.00 |
| 4 | Equipment | 1,600.00 |
| 5 | Total | $ 42,200.00 |

68—*State Board of Education—Rehabilitation Division*

Acct. No. 440

| | | |
|---|---|---|
| 1 | Personal Services | $ 182,530.00 |
| 2 | Current Expenses | 34,432.00 |
| 3 | Rehabilitation Center | 103,929.00 |
| 4 | Case Services | 290,000.00 |
| 5 | Supervisory Service for Vending Stand Pro- | |
| 6 | gram for the Blind | 16,658.00 |
| 7 | Training and Special Projects | 20,000.00 |
| 8 | Social Security | 16,000.00 |
| 9 | Total | $ 663,549.00 |

## BUSINESS AND INDUSTRIAL RELATIONS

69—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

| | | |
|---|---|---|
| 1 | Personal Services | $ 223,710.00 |
| 2 | Current Expenses | 69,090.00 |
| 3 | Equipment | 5,000.00 |
| 4 | Total | $ 297,800.00 |

70—*Department of Mines*

Acct. No. 460

| | | |
|---|---|---|
| Personal Services | $ | 661,500.00 |
| Current Expenses | | 142,500.00 |
| Equipment | | 31,000.00 |
| Total | $ | 835,000.00 |

71—*Department of Commerce*

Acct. No. 465

| | | |
|---|---|---|
| Expenses | $ | 500,000.00 |
| Industrial Development Loans | | 2,000,000.00 |
| Total | $ | 2,500,000.00 |

The above to be used in accordance with Com. Sub. for Senate Bill No. 39 and Senate Bill No. 40—1961 Legislature.

72—*Commission on Interstate Cooperation*

Acct. No. 472

| | | |
|---|---|---|
| Total | $ | 10,000.00 |

Out of the above appropriation the sum of $7,500.00 may be made available for West Virginia's membership in The Council of State Governments.

73—*Interstate Commission on Potomac River Basin*

Acct. No. 473

| | | |
|---|---|---|
| West Virginia's contribution to Potomac River Basin Interstate Commission | $ | 3,600.00 |

74—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

| | | |
|---|---|---|
| West Virginia's contribution to the Ohio River Valley Water Sanitation Commission | $ | 15,860.00 |

75—*Southern Regional Education Board*

Acct. No. 475

| | | |
|---|---|---|
| 1 West Virginia's Contribution to Southern | | |
| 2 Regional Education Board | $ | 52,000.00 |
| 3 To be expended upon requisition of the Gov- | | |
| 4 ernor. | | |

76—*Department of Banking*

Acct. No. 480

| | | |
|---|---|---|
| 1 Personal Services | $ | 71,600.00 |
| 2 Current Expenses | | 27,980.00 |
| 3 Equipment | | 1,000.00 |
| 4 Total | $ | 100,580.00 |

77—*West Virginia State Aeronautics Commission*

Acct. No. 485

| | | |
|---|---|---|
| 1 Personal Services | $ | 11,300.00 |
| 2 Current Expenses | | 5,710.00 |
| 3 Equipment | | 15,000.00 |
| 4 Aerial Markers | | 1,000.00 |
| 5 Civil Air Patrol Expense | | 7,500.00 |
| 6 Total | $ | 40,510.00 |

78—*West Virginia Centennial Commission*

Acct. No. 487

| | | |
|---|---|---|
| 1 Expenses for planning 1963 Centennial cele- | | |
| 2 bration | $ | 12,550.00 |
| 3 To be transferred to "West Virginia Centen- | | |
| 4 nial Fund" provided by House Bill No. 57 | | |
| 5 (1959 Legislature) | | 100,000.00 |
| 6 Total | $ | 112,550.00 |

79—*West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

| | | |
|---|---|---|
| 1 Personal Services | $ | 81,650.00 |
| 2 Current Expenses | | 41,500.00 |

| | | | |
|---|---|---|---|
| 3 | Equipment | | 800.00 |
| 4 | Total | $ | 123,950.00 |

80—*West Virginia Racing Commission*

Acct. No. 495

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 63,000.00 |
| 2 | Current Expenses | | 13,550.00 |
| 3 | Total | $ | 76,550.00 |

## AGRICULTURE

81—*Department of Agriculture*

Acct. No. 510

| | | | |
|---|---|---|---|
| 1 | Salary of Commissioner | $ | 11,000.00 |
| 2 | Other Personal Services | | 159,479.00 |
| 3 | Current Expenses | | 66,070.00 |
| 4 | Equipment | | 8,000.00 |
| 5 | Eradication and Control of White Pine Blister | | 15,725.00 |
| 6 | Eradication and Prevention of Livestock Dis- | | |
| 7 | eases | | 166,453.00 |
| 8 | Eradication and Control of Japanese beetle | | |
| 9 | and other plant pests | | 15,450.00 |
| 10 | Aid to Dairy Development Program | | 59,588.00 |
| 11 | Eradication and Control of Oak Wilt | | 67,930.00 |
| 12 | Total | $ | 569,695.00 |

13 The appropriation eradication and control of
14 Oak Wilt may be transferred to Special
15 Revenue Fund for the purpose of matching
16 Federal Funds.

82—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 60,000.00 |
| 2 | Current Expenses | | 30,000.00 |
| 3 | Total | $ | 90,000.00 |

83—*Department of Agriculture—Marketing and Research*

Acct. No. 513

For cooperation with the Federal Government in a program of marketing and research ....$ 100,000.00

Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching federal funds for the above named program.

84—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

| | |
|---|---|
| West Virginia State Fair ....$ | 25,000.00 |
| Agricultural Centennial .... | 15,000.00 |
| Walnut Festival .... | 3,500.00 |
| Agricultural Awards .... | 40,000.00 |
| Mountain State Forest Festival .... | 15,000.00 |
| Total ....$ | 98,500.00 |

To be expended at the discretion of the Commissioner of Agriculture in accordance with law.

## CONSERVATION AND DEVELOPMENT

85—*Geological and Economic Survey Commission*

Acct. No. 520

| | |
|---|---|
| Personal Services ....$ | 107,170.00 |
| Current Expenses .... | 30,080.00 |
| Equipment .... | 14,650.00 |
| Cooperative Mapping Program .... | 60,000.00 |
| Total ....$ | 211,900.00 |

Of the above appropriation for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

Of the above appropriation for Cooperative mapping program the sum of $10,000.00

may be used for preparation of accurate geographic and political maps of West Virginia.

86—*Natural Resources Commission*

Acct. No. 521

Any unexpended balance remaining in the 1959-60 appropriation "For construction of forest tree nursery facilities at McClintic Wildlife Station" at the close of the fiscal year 1959-60 and reappropriated for the fiscal year 1960-61; and any balance remaining in the 1960-61 appropriation "For construction of forest tree nursery facilities" at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62, and may be expended only in accordance with the following provisions: None of the funds herein appropriated shall be used for purchase of land. Expenditures shall be limited to construction of nursery facilities on presently owned state land which may be available for the purpose and only upon approval of the Board of Public Works as to the site and availability of such site.

87—*Natural Resources Commission—Division of State Parks*

Acct. No. 522

| | | |
|---|---|---|
| Personal Services | $ | 261,215.00 |
| Current Expenses | | 156,775.00 |
| Repairs and Alterations | | 316,950.00 |
| Equipment | | 176,000.00 |
| Total | $ | 910,940.00 |

To be used in accordance with Senate Bill No. 23 and House Concurrent Resolution No. 17—1961 Legislature.

88—*Natural Resources Commission—Clarke-McNary*

Acct. No. 523

| | | |
|---|---|---|
| For cooperation with the United States Department of Agriculture in Fire Prevention and Control | $ | 75,000.00 |
| Any unexpended balance remaining in this account at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62. | | |
| To be used in accordance with Senate Bill No. 23—1961 Legislature. | | |

89—*Natural Resources Commission—Historical Monuments and Parks*

Acct. No. 561

| | | |
|---|---|---|
| Care and maintenance of: | | |
| Point Pleasant Battle Monument and Park | $ | 4,500.00 |
| Rumsey Monument and Park | | 900.00 |
| Morgan Morgan Memorial | | 200.00 |
| Fairfax Stone | | 300.00 |
| Booker T. Washington Park | | 300.00 |
| Cathedral Park | | 2,100.00 |
| Pinnacle Rock Park | | 1,600.00 |
| Commemorate first Land Battle of the Civil War | | 5,000.00 |
| Total | $ | 14,900.00 |
| To be used in accordance with Senate Bill No. 23—1961 Legislature. | | |

90—*Department of Veterans Affairs*

Acct. No. 564

| | | |
|---|---|---|
| In aid of Veterans Day Patriotic Exercises | $ | 2,000.00 |
| 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. | | |

91—*Natural Resources Commission*

Acct. No. 565

| | | |
|---|---|---|
| 1 | Water Resources Division | $ 122,245.00 |
| 2 | Forestry Division | 531,100.00 |
| 3 | Public Land Corporation | 14,184.00 |
| 4 | Total | $ 667,529.00 |
| 5 | To be used in accordance with Senate Bill No. | |
| 6 | 23—1961 Legislature. | |

PROTECTION

92—*Department of Public Safety*

Acct. No. 570

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,359,620.00 |
| 2 | Current Expenses | 656,635.00 |
| 3 | Repairs and Alterations | 21,960.00 |
| 4 | Equipment | 112,500.00 |
| 5 | Total | $ 2,150,715.00 |

93—*Adjutant General—State Militia*

Acct. No. 580

| | | |
|---|---|---|
| 1 | Personal Services | $ 47,768.00 |
| 2 | Current Expenses | 125,800.00 |
| 3 | Repairs and Alterations | 7,200.00 |
| 4 | Equipment | 6,300.00 |
| 5 | Compensation of Commanding Officers, Cleri- | |
| 6 | cal Allowances and Uniform Allowances | 71,720.00 |
| 7 | Property Maintenance | 36,250.00 |
| 8 | State Armory Board | 298,564.00 |
| 9 | Total | $ 593,602.00 |

94—*Department of Civil and Defense Mobilization*

Acct. No. 581

| | | |
|---|---|---|
| 1 | Personal Services | $ 35,340.00 |
| 2 | Current Expenses | 11,045.00 |
| 3 | Equipment | 4,300.00 |
| 4 | Total | $ 50,685.00 |

95—*Auditor's Office—Social Security*

Acct. No. 582

To match contributions of state employees for social security ..... $ 830,000.00

The above appropriation is intended to cover the State's share of social security costs for those spending units operating from General Revenue Fund and General School Fund appropriations. The State Road Commission, Department of Motor Vehicles, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

96—*Department of Mental Health—Insurance*

Acct. No. 583

Fire Insurance Premiums ..... $ 70,900.00

To pay fire insurance covering Department of Mental Health and six mental hospitals.

97—*State Board of Education—Insurance*

Acct. No. 584

Fire Insurance Premiums ..... $ 74,500.00

To insure contents of buildings ..... 6,821.00

To insure contents of non-revenue producing buildings. Fifth annual installment due on a policy covering a five-year period ending July 1, 1962.

Total ..... $ 81,321.00

98—*Commissioner of Public Institutions—Insurance*

Acct. No. 585

Fire Insurance Premiums ..... $ 76,500.00

99—*West Virginia Board of Accountancy*

Acct. No. 586

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 15,000.00 |
| *From Collections* | | 15,000.00 |

100—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 14,000.00 |
| *From Collections* | | 14,000.00 |

101—*State Board of Examiners for Registered Nurses*

Acct. No. 588

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 32,000.00 |
| *From Collections* | | 32,000.00 |

102—*State Board of Dental Examiners*

Acct. No. 589

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 5,500.00 |
| *From Collections* | | 5,500.00 |

103—*State Board of Pharmacy*

Acct. No. 590

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 10,500.00 |
| *From Collections* | | 10,500.00 |

104—*State Board of Osteopathy*

Acct. No. 591

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 1,500.00 |
| *From Collections* | | 1,500.00 |

105—*State Board of Optometry*

Acct. No. 592

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 2,500.00 |
| *From Collections* | | 2,500.00 |

106—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 10,000.00 |
| *From Collections* | | 10,000.00 |

107—*State Board of Registration for Professional Engineers*

Acct. No. 594

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 20,000.00 |
| *From Collections* | | 20,000.00 |

108—*State Board of Architects*

Acct. No. 595

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 4,000.00 |
| *From Collections* | | 4,000.00 |

109—*State Veterinary Board*

Acct. No. 596

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 500.00 |
| *From Collections* | | 500.00 |

110—*State Board of Law Examiners*

Acct. No. 597

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 2,400.00 |

111—*Human Rights Commission*

Acct. No. 598

| | | |
|---|---|---|
| Personal Services | $ | 10,000.00 |
| Current Expenses | | 3,500.00 |
| Equipment | | 2,000.00 |
| Total | $ | 15,500.00 |

To be used in accordance with Com. Sub. for Eng. House Bill No. 115, 1961 Legislature.

112—*West Virginia State Board of Sanitarians*

Acct. No. 599

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 600.00 |
| *From Collections* | | 600.00 |

113—*West Virginia Public Employees Retirement Board*

Acct. No. 614

| | | |
|---|---|---|
| Employers Contribution | $ | 650,000.00 |

The above appropriation is intended to cover the State's share of the West Virginia Public Employees' Retirement cost in accordance with Senate Bill No. 22, (1961 Legislature) for those departments operating from General Revenue Fund and General School Fund appropriations. The State Road Commission, Department of Motor Vehicles, State Tax Commissioner, Gasoline Tax Division, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the retirement costs for their respective divisions. Such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

114—*State Road Commission*

Acct. No. 641

| | | |
|---|---|---|
| Total | $ | 6,345,000.00 |

The purpose of the above appropriation is to aid in payment of interest and principal on outstanding road bonds and may be transferred to the state road fund upon the requisition of the Governor.

Sec. 2. *Appropriations from Other Funds.*—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-two.

115—*State Road Commission—General Administration and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| Personal Services | $ | 425,000.00 |
| Current Expenses | | 90,000.00 |
| Equipment | | 8,000.00 |
| Total | $ | 523,000.00 |

In addition to the foregoing appropriations and claims as authorized by this act or by law to be paid from the state road fund, the balance or residue of the annual receipts of the state road fund is hereby appropriated first for the payment of interest on and principal of outstanding road bonds, and thereafter for maintenance, construction and reconstruction of state roads, in accordance with the provisions of chapter seventeen, code of West Virginia, 1931, as amended.

116—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 565,840.00 |
| 2 Current Expenses | | 264,625.00 |
| 3 Equipment | | 100,000.00 |
| 4 Purchase of License Plates | | 207,000.00 |
| 5 Social Security Matching Fund | | 16,500.00 |
| 6 Total | $ | 1,153,965.00 |

117—*State Tax Commissioner—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 108,500.00 |
| 2 Current Expenses | | 29,685.00 |
| 3 Equipment | | 5,000.00 |
| 4 Social Security Matching Fund | | 3,255.00 |
| 5 Total | $ | 146,440.00 |

118—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 35,360.00 |
| 2 Current Expenses | | 11,905.00 |
| 3 Equipment | | 800.00 |
| 4 Total | $ | 48,065.00 |

119—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 32,510.00 |
| 2 Current Expenses | | 7,000.00 |

| | | |
|---|---|---|
| 3 | Equipment | 2,900.00 |
| 4 | Vocational Aid | 350,000.00 |
| 5 | Total | $ 392,410.00 |

120—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 41,760.00 |
| 2 | Current Expenses | 13,187.00 |
| 3 | Total | $ 54,947.00 |

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

7 Federal funds in excess of the amounts here-
8 by appropriated may be made available
9 by budget amendment upon request of the
10 State Superintendent of Schools and ap-
11 proval of the Board of Public Works for
12 any emergency which might arise in the
13 operation of this division during the fiscal
14 year.

121—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Salary of State Superintendent | $ 12,000.00 |
| 2 | Other Personal Services | 244,240.00 |
| 3 | Current Expenses | 79,292.00 |
| 4 | Equipment | 5,000.00 |
| 5 | National Defense Education Act | 140,000.00 |
| 6 | Total | $ 480,532.00 |

7 Any part or all of the appropriation for "Na-
8 tional Defense Education Act" may be
9 transferred to a Special Revenue Fund for
10 the purpose of matching Federal Funds for
11 this program.

122—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 17,750.00 |
| 2 | Current Expenses | 3,310.00 |
| 3 | Total | $ 21,060.00 |

123—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 51,720.00 |
| 2 | Current Expenses | 13,250.00 |
| 3 4 | Aid to Counties—Includes hot lunches and canning for hot lunches | 150,000.00 |
| 5 | Total | $ 214,970.00 |

124—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Salaries of County Superintendents | $ 61,300.00 |

125—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | State Aid to Children's Homes | $ 25,000.00 |

126—*State Tax Commissioner—Store and General Licenses Division*

Acct. No. 712

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 36,800.00 |
| 2 | Current Expenses | 2,000.00 |
| 3 | Equipment | 1,000.00 |
| 4 | Total | $ 39,800.00 |

127—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Scholarships for Teacher Training | $ 200,000.00 |

128—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 20,450.00 |
| 2 | Current Expenses | 14,500.00 |
| 3 | Equipment | 2,000.00 |
| 4 | Social Security Matching Fund | 510.00 |
| 5 | Total | $ 37,460.00 |

6 The total amount of this appropriation shall
7 be paid from Special Revenue Fund out of
8 collections of license fees as provided by
9 law.

129—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Medical Expenses | $ 5,000.00 |

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

130—*Auditor's Office—Land Department Operating Fund*

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Current Expenses | $ 15,000.00 |

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

131—*Department of Finance and Administration*
*Division of Purchases—Revolving Fund*

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 71,860.00 |
| Current Expenses | | 15,330.00 |
| Equipment | | 5,000.00 |
| Social Security Matching Fund | | 2,155.00 |
| Total | $ | 94,345.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by Chapter 25-A, Article 2, Code of West Virginia.

The above appropriation includes salaries and operating expenses.

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

132—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 135,600.00 |
| Current Expenses | | 40,700.00 |
| Equipment | | 8,000.00 |
| Social Security Matching Fund | | 3,500.00 |
| Total | $ | 187,800.00 |

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

133—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 29,220.00 |
| 2 Current Expenses | | 17,650.00 |
| 3 Social Security Matching Fund | | 800.00 |
| 4 Total | $ | 47,670.00 |

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

134—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 98,240.00 |
| 2 Current Expenses | | 12,930.00 |
| 3 Equipment | | 1,000.00 |
| 4 Social Security Matching Fund | | 2,950.00 |
| 5 Total | $ | 115,120.00 |

6 The total amount of this appropriation shall
7 be paid from Special Revenue Fund out of
8 collections for license and report fees as
9 provided by law.

135—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 Personal Services | $ | 84,100.00 |
| 2 Current Expenses | | 30,344.00 |
| 3 Equipment | | 5,800.00 |
| 4 Building Repair and Maintenance | | 2,600.00 |
| 5 Social Security Matching Fund | | 2,525.00 |
| 6 Total | $ | 125,369.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of the special tax of one-half of one per cent of premium receipts of fire insurance companies as provided by law.

136—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Salaries of Commissioners | $ | 24,000.00 |
| Other Personal Services | | 366,475.00 |
| Current Expenses | | 45,000.00 |
| Equipment | | 6,650.00 |
| Social Security Matching Fund | | 7,875.00 |
| Total | $ | 450,000.00 |

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. Out of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission for use in co-operation with the U. S. Geological Survey in a program of stream gauging.

137—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 151,400.00 |
| Current Expenses | | 40,300.00 |
| Equipment | | 4,600.00 |
| Social Security Matching Fund | | 4,000.00 |
| Total | $ | 200,300.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Serv-

ice Commission pursuant to and in the exercise of regulatory authority over motor carriers as authorized by law.

### 138—*Natural Resources Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Administration | $ | 798,920.00 |
| Game and Fish Division | | 1,193,180.00 |
| Land Purchase | | 75,000.00 |
| Total | $ | 2,067,100.00 |

To be used in accordance with Senate Bill No. 23—1961 Legislature.

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Natural Resources Commission. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Natural Resources Commission and approval of The Board of Public Works for any emergency which might arise in the operation of this Division during the fiscal year.

### 139—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 96,000.00 |
| Current Expenses | | 67,142.00 |
| Repairs and Alterations | | 7,100.00 |
| Equipment | | 18,000.00 |
| Social Security Matching Fund | | 430.00 |
| Total | $ | 188,672.00 |

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

Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Public Safety and approval of the Board of Public Works for the purpose of repairs to, or construction of police barracks, not to exceed one hundred thousand dollars in any one fiscal year.

140—*West Virginia Liquor Control Commissioner*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Salary of Commissioner | $ | 10,000.00 |
| Other Personal Services | | 2,671,580.00 |
| Current Expenses | | 780,150.00 |
| Repairs and Alterations | | 31,200.00 |
| Equipment | | 57,500.00 |
| Social Security Matching Fund | | 80,000.00 |
| Total | $ | 3,630,430.00 |

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

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

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

141—*West Virginia Merit System Council*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 63,680.00 |
| 2 | Current Expenses | 16,390.00 |
| 3 | Social Security Matching Fund | 1,650.00 |
| 4 | Total | $ 81,720.00 |

5 The total amount of this appropriation shall
6 be paid from Special Revenue Fund sup-
7 ported by participating agencies as pro-
8 vided by law.

9 The Board of Public Works is hereby au-
10 thorized to make available by budget
11 amendment, upon request of the Merit
12 System Council, funds in excess of the
13 amounts hereby appropriated that may
14 become available as a result of Acts of
15 the Legislature—1961 Session.

142—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 7,980.00 |
| 2 | Current Expenses | 4,550.00 |
| 3 | Social Security Matching Fund | 390.00 |
| 4 | Total | $ 12,920.00 |

5 The total amount of this appropriation shall
6 be paid from Special Revenue Fund out of
7 fees, fines and penalties as provided by
8 law.

143—*West Virginia University—Special Capital Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Forestry Building | $ 571,250.00 |

The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

144—*State Board of Education—Special Capital Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

| | |
|---|---|
| Addition to Dining Hall at Shepherd College | $ 150,000.00 |
| Renovation of Administration Building at Concord College | 550,000.00 |
| Renovation of Administration Building at Glenville State College | 300,000.00 |
| Total | $ 1,000,000.00 |

The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

145—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

| | |
|---|---|
| Personal Services | $ 605,900.00 |
| Current Expenses | 245,000.00 |
| Equipment | 10,100.00 |
| Social Security Matching Fund | 18,000.00 |
| Total | $ 879,000.00 |

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 and bond custodian for the protection of the Workmen's Compensation Fund.

Sec. 3. *Supplemental and Deficiency Appropriations.*—From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-one to supplement the 1960-61 appropriations, and to be available for expenditure upon date of passage.

146—*Auditor's Office*

Acct. No. 150

| | |
|---|---|
| Current Expenses | $ 1,031.00 |
| Equipment | 25,000.00 |
| Social Security Matching Fund | 132,786.00 |
| Total | $ 158,817.00 |

Any unexpended balance remaining in the appropriation "Equipment" at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

147—*State Tax Commissioner*

Acct. No. 180

| | |
|---|---|
| Administration, Enforcement and Collection under the West Virginia Personal Income Tax Law. (Senate Bill 106, 1961 Legislature) | $ 250,000.00 |

Any unexpended balance remaining in the appropriation at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

148—*Secretary of State*

Acct. No. 250

| | | | |
|---|---|---|---|
| 1 | Equipment | $ | 7,701.38 |

149—*Marshall University*

Acct. No. 320

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 7,272.00 |
| 2 | Current Expenses | | 6,000.00 |
| 3 | Total | $ | 13,272.00 |

150—*West Virginia Library Commission*

Acct. No. 350

| | | | |
|---|---|---|---|
| 1 | Library Services for the Blind | $ | 5,000.00 |

151—*Forestry Camp for Boys*

Acct. No. 371

| | | | |
|---|---|---|---|
| 1 | Current Expenses | $ | 6,000.00 |

152—*West Virginia Penitentiary*

Acct. No. 375

| | | | |
|---|---|---|---|
| 1 | Current Expenses | $ | 75,000.00 |

153—*Department of Welfare*

Acct. No. 405

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 60,000.00 |
| 2 | Current Expenses | | 22,000.00 |
| 3 | Equipment | | 3,000.00 |
| 4 | Public Assistance Grants | | 262,000.00 |
| 5 | Total | $ | 347,000.00 |

154—*Department of Welfare—Commodity Distribution*

Acct. No. 406

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 9,400.00 |
| 2 | Current Expenses | | 24,140.00 |
| 3 | Equipment | | 19,100.00 |
| 4 | Total | $ | 52,640.00 |

155—*Natural Resources Commission—Clarke-McNary*

Acct. No. 523

| | | |
|---|---|---|
| For cooperation with the United States Department of Agriculture in Fire Prevention and Control | $ | 50,000.00 |

Any unexpended balance remaining in this account at the close of the fiscal year 1960-61 is hereby reappropriated for expenditure during the fiscal year 1961-62.

156—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| Personal Services | $ | 12,000.00 |
| Current Expenses | | 23,000.00 |
| Equipment | | 4,500.00 |
| Total | $ | 39,500.00 |

157—*Public Land Corporation*

Acct. No. 802

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 6,020.00 |

158—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Current Expenses | $ | 8,500.00 |
| Equipment | | 5,000.00 |
| Total | $ | 13,500.00 |

Sec. 4. *Awards for Claims Against the State.*—From the funds designated there are hereby appropriated for the fiscal year 1961-62, for payment of claims against the state, the following amounts, as itemized:

*Claims versus the Adjutant General*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | P. Marcum | $ 150.14 |
| 2 | Betsy Ross Bakeries, Inc. | 239.80 |
| 3 | Paul E. Myers | 211.76 |
| 4 | W. B. Phillips | 2,252.98 |

*Claims versus Department of Agriculture*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | G. C. Houser, dba Houser's Hatchery | $ 740.25 |
| 2 | R. N. Hewitt Corporation | 4,362.12 |

*Claims versus Department of Mental Health*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Glenn C. Hancock | $ 8,525.48 |
| 2 | Denton Hall | 308.88 |

*Claims versus Treasurer*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Guaranty National Bank of Huntington | $ 1,136.62 |

*Claims versus Department of Welfare*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Margaret G. Lippert | $ 2,035.75 |

*Claims versus Department of Public Safety*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Memorial General Hospital and Golden | |
| 2 | Clinic | $ 674.80 |
| 3 | Jack Nelson Morrison and Harry Lyons | 8,505.10 |
| 4 | Burford L. Snyder | 1,569.27 |

*Claims versus Vocational Rehabilitation*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | The Pullman Company | $ 11.90 |
| 2 | St. Joseph's Hospital | 676.00 |
| 3 | St. Mary's Hospital, Huntington, West Vir- | |
| 4 | ginia | 126.00 |

*Claims versus State Road Commission*

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 | Criss Pauley | $ 3,095.35 |
| 2 | Perdue Transfer and Storage Co. | 1,310.75 |
| 3 | R. L. Baumgardner, et al. | 2,902.03 |
| 4 | Abernethy, dba Abernethy Buick | 230.00 |
| 5 | Construction Equipment Co. | 572.82 |
| 6 | Stanley Cosner and Susan M., his wife | 795.00 |
| 7 | Alice Hartman | 1,105.00 |
| 8 | Nathan Allen | 375.00 |
| 9 | Curtis E. Mullins | 1,000.00 |
| 10 | John Falbo | 2,500.00 |

*Claims versus State Board of Education*

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Medora Mason Wolfe | $ 2,800.00 |
| 2 | Potomac Construction Company | 1,807.00 |

Sec. 5. *Appropriations from Surplus Revenues.*—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure only out of the surplus in the treasury on or after the first day of July, 1961, subject to the conditions and limitations hereinafter expressed.

(b) Expenditures authorized, which are for construction purposes, shall be for a complete and usable unit or project including necessary equipment.

(c) The Board of Public Works shall review the revenues of the state from the first day of July,1961, to the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in its opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under this and other sections of this budget bill, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues on hand or in prospect to meet all other appropriations and reappropriations made by this act (Budget Bill), the Board of Public Works may, from any excess over and above the amount required to meet all appropriations contained in

the act, release the following items subject to the foregoing conditions if available funds will permit:

Item 1: West Virginia Schools for the Deaf and Blind, for construction of classroom building ..... $ 548,250.00

Item 2: Weston State Hospital for construction of Sewage Disposal System ..... $ 80,000.00

Item 3: Lakin State Hospital for Auxiliary Well ..... $ 8,000.00

Sec. 6. *Appropriations for Emergency Relief of Unemployment.*—In addition to all other appropriations contained in this bill, the following items are hereby appropriated from the General Revenue Fund for the purpose of providing emergency relief of unemployment throughout the state of West Virginia:

Item 1. State Road Commission, for works projects of an improvement or maintenance nature relating to primary and secondary roads, such as installation and extension of drainage and drainage structures, development of roadside parks, cleaning of streams along and of right-of-ways of existing road system, and elimination of dangerous curves and widening of primary and secondary roads..$1,500,000.00

The appropriation to the state road commission may be transferred to the state road fund upon the requisition of the Governor.

Any unexpended balance remaining in the appropriation as provided under section one, item 1, of Senate Bill No. 2, regular session of the Legislature, 1961, for the fiscal year 1960-61 is hereby reappropriated for expenditure during the 1961-62 fiscal year.

Item 2. Natural Resources Commission, for repairs, maintenance, and improvement of Natural Resources Commission facilities, such as state parks, state forests, state game areas, lakes and streams ..... $ 750,000.00

Any unexpended balance remaining in the appropriation (Conservation Commission) as provided under section one, item II, of Senate Bill No. 2, regular session of the Legislature, 1961, for the fiscal year 1960-61 is hereby reappropriated to the Natural Resources Commission for expenditure during the 1961-62 fiscal year.

Item 3. Governor, for allocation and transfer in his discretion to those agencies and departments of state government which satisfy the Governor that they can and will expend requested sums in accordance with the purpose of this supplementary appropriation ..... $ 750,000.00

Any unexpended balance remaining in the appropriation as provided under section one, item III, of Senate Bill No. 2, regular session of the Legislature, 1961, for the fiscal year 1960-61 is hereby reappropriated for expenditure during the 1961-62 fiscal year.

Sec. 7. *Reappropriations.*—The date for expiring the unexpended balances, if any, in items 1 and 2, in the appropriations made by and under authority of Section 4 of the 1960 Budget Act is extended to June 30, 1962 and are hereby reappropriated to June 30, 1962.

Item 2—as herein reappropriated may be used for cooperation with the Federal Government in a program of Marketing and Research, Oak Wilt Control or Farm Market Facilities.

The date for expiring the unexpended balances, if any, in items 1, 2, 3, and 4, in the appropriations made by and under authority of Section 4-A of the 1960 Budget Act is extended to June 30, 1962 and are hereby reappropriated to June 30, 1962.

Under Item 1, Section 4-A, Conservation Commission, as herein reappropriated, the sum of $5,000.00 shall be made available for construction of Princeton Tourist Information Center.

The date for expiring the unexpended balances, if any, in items First, Fourth, Fifth, Thirteenth, Twenty-First and Twenty-Third in the appropriations made by and under authority of Section 4 of the 1958 Budget Act and reappropriated under Section 4 of the 1959 Budget Act and reappropriated again under Section 5 of the 1960 Budget Act is extended to June 30, 1962 and are hereby reappropriated to June 30, 1962.

The date for expiring the unexpended balance, if any, in item 23, under authority of Section 5 of the 1957 Budget Act and reappropriated under Section 5 of the 1958 Budget

Act, and reappropriated under Section 4 of the 1959 Budget Act, and reappropriated again under Section 5 of the 1960 Budget Act, is extended to June 30, 1962 and is hereby reappropriated to June 30, 1962.

Item Thirteenth, Conservation Commission, as herein reappropriated, may be used for general improvement of the Elk River Game Refuge.

Sec. 8. *Special Revenue Appropriations.*—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred sixty-two 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 two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one: *Provided, however,* That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, of chapter twelve, code of West Virginia and chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, and unless the spending unit has filed with the state director of the budget and the state auditor prior to the beginning of each fiscal year:

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

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

Sec. 9. *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 of West Virginia, one thousand nine hundred thirty-one.

Sec. 10. *Appropriations for Refunding Erroneous Payments.*—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person.

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

Sec. 11. *Sinking Fund Deficiencies.*—There is hereby appropriated to the board of public works a sufficient amount to meet a deficiency that may arise in the funds of the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The board of public works is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for this purpose.

The state sinking fund commission shall reimburse the State of West Virginia through the board of public works from the first remittance collected from any state agency or local taxing district for which the board of public works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 12. *Appropriations from Taxes and License Fees.*—There is hereby appropriated from the cigarette tax for administration and enforcement of the law relating to said tax a sum not to exceed one and one-half per cent of the tax collected or stamps sold. There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the tax commissioner through the state treasurer out of gross collections.

Sec. 13. *Appropriations to Pay Costs of Publication of Delinquent Corporations.*—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon 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 pro-

vided by sections seventy-five and seventy-seven of article twelve, chapter eleven, code of West Virginia.

Sec. 14. *Appropriations for Local Governments.*—There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district, and municipal corporations and which have been paid into the treasury:

(a) For the redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 15. *Total Appropriations.*—Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay, except as otherwise provided in Title I, Section 3.

Sec. 16. *General School Fund.*—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section six, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

## Title 3. Administration.

Section

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 five, chapter five, of the code of West Virginia, one thousand nine hundred thirty-one; as amended by chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine.

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 portions shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

# CHAPTER 9

**(Senate Bill No. 2—By Mr. Carson, Mr. President)**

[Passed January 13, 1961; in effect January 15, 1961. Approved by the Governor.]

AN ACT to make supplementary appropriations of public moneys out of the state treasury for the state road commission, the state conservation commission, and the governor to provide emergency relief of unemployment throughout the state of West Virginia, and to impose an additional consumers sales tax to provide revenues for such purpose.

**Supplementary Appropriations**

**Section**

1. Supplementary appropriation.
2. Imposition of additional consumers sales tax.
3. Purpose of this supplementary appropriation.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Supplementary Appropriation.*—That in addition and as a supplement to the appropriation made by chapter two, acts of the Legislature, regular session, one thousand nine hundred sixty, there is hereby appropriated from the state fund, general revenue, conditionally upon the fulfilment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, as amended, and of

this act the following supplemental sums of money for the purposes hereinafter stated:

Item I. State Road Commission, for works projects of an improvement or maintenance nature relating to primary and secondary roads, such as installation and extension of drainage and drainage structures, development of roadside parks, cleaning of streams along and of right-of-ways of existing road system, and elimination of dangerous curves and widening of primary and secondary roads ..... $ 2,250,000.00

The appropriation to the state road commission may be transferred to the state road fund upon the requisition of the Governor.

Item II. Conservation Commission, for repairs, maintenance, and improvement of conservation commission facilities, such as state parks, state forests, state game areas, lakes and streams ..... $ 1,125,000.00

Item III. Governor, for allocation and transfer in his discretion to those agencies and departments of state government which satisfy the Governor that they can and will expend requested sums in accordance with the purpose of this supplementary appropriation ..... $ 1,125,000.00

Whereas, Appropriations within chapter two, acts of the Legislature, regular session, one thousand nine hundred sixty, are based upon estimated consumers sales tax receipts in the amount of thirty-one million five hundred thousand dollars ($31,500,000.00); and, whereas, this supplementary appropriation is based on an additional four million five hundred thousand dollars ($4,500,000.00), thereby totaling thirty-six million dollars ($36,000,000.00); therefore, in the event that actual receipts from consumers sales tax (as imposed under sections three and three-a of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one) are under said thirty-six million dollars ($36,000,000.00);

and, further, if it becomes necessary for the board of public works, pursuant to chapter five of the West Virginia code, to reduce appropriations, the board of public works shall reduce expenditures, pursuant to this supplementary appropriation bill, in an amount equal to the aforesaid reduction below thirty-six million dollars ($36,000,000.00).

Sec. 2. *Imposition of Additional Consumers Sales Tax.*—That, pursuant to article six, section fifty-one, subsection C (2) of the state constitution, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section designated section three-a to provide as follows:

"Sec. 3-a. *Additional Consumers Sales Tax.*—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of article fifteen, chapter eleven of the code, the vendor, in addition to the tax imposed by section three of said article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of said article.

"The amount of the tax shall be computed as follows:

"On each sale, the additional sum of one cent ($.01) on each one dollar ($1.00) of monetary consideration, or fraction thereof, in excess of one dollar ($1.00).

"Except as otherwise provided in this section, all provisions of article fifteen, chapter eleven of the code, relating to the levy, imposition, payment, collection, remission, and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission, and assessment of such additional tax.

"Notwithstanding the provisions of section thirty of said article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

"The provisions of this section shall expire June thirty, one thousand nine hundred sixty-one."

Sec. 3. *Purpose of This Supplementary Appropriation.* —It is the purpose of this supplementary appropriation to provide emergency relief of unemployment throughout the state of West Virginia and, to this end, employment on projects covered by this appropriation shall be given to unemployed persons who are not eligible to receive unemployment benefits and who receive no aid from the department of public assistance or other agencies.

# CHAPTER 10

**(House Bill No. 85—By Mr. Brotherton)**

[Passed March 9, 1961; in effect July 1, 1961. 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 thirteen, to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state tax commissioner and on persons, as defined herein, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

WHEREAS, The advertising, offering for sale, or sale of cigarettes below cost in the retail or wholesale trade with intent of injuring competitors or destroying or substantially lessening competition, is an unfair and deceptive business practice; and

WHEREAS, Such practices adversely affect the collection of taxes from the sale of cigarettes and license fees imposed on distributors, wholesalers, retailers and others engaged in the sale of cigarettes; and

WHEREAS, It is hereby declared to be the policy of this state

to promote the public welfare by prohibiting such sales, and it is the purpose of this bill to carry out that policy in the public interest; therefore,

## Article 13. Cigarette Sales Act.

Section

1. Title.
2. Definitions.
3. Violations and penalties.
4. Sales from wholesaler to wholesaler, and to certain retailers.
5. Combination sales.
6. Exemptions.
7. Sales to meet competition.
8. Contracts in violation void.
9. Evidence to be considered as bearing on bona fides of cost.
10. Cigarettes purchased outside ordinary trade channels.
11. Cost survey.
12. Remedies.
13. Powers and duties of state tax commissioner; rules and regulations; suspension and revocation of license; reinstatement of license; review of commissioners determinations.
14. Provisions of article severable.
15. Repealing clause.

*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 thirteen, to read as follows:

Section 1. *Title.*—This article shall be known, designated and cited as "The Cigarette Sales Act".

Sec. 2. *Definitions.*—When used in this article, the following words and phrases shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) Purchases cigarettes directly from the manufacturer; or

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to re-

tail dealers or to other persons for the purposes of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth, concession or vending machine for the purpose of making sales of cigarettes at retail.

(4) "Commissioner" shall mean the state tax commissioner of the state of West Virginia and where the meaning of the context so requires, all deputies and employees duly authorized by him.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatsoever.

(7) "Sell at wholesale", "sale at wholesale" and "wholesale sales" shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail", "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the

retailer or wholesaler, as the case may be in the quantity last purchased, whichever is lower, less all trade discounts, except the customary discounts for cash, to which shall be added the full face value of any stamps which may be required by the cigarette tax act of this state and by ordinance of any municipality thereof, now in effect or hereafter enacted, if not already included by the manufacturer in his list price.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler", as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, all types of licenses, taxes, insurance, maintenance of equipment, delivery costs and advertising.

(b) In the absence of the filing with the commissioner of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be two per centum of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the commissioner of satisfactory proof of a lesser or higher cost, shall be deemed to be three fourths of one per centum of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer", as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising: *Provided,* That any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a wholesaler but also shall, in determining "costs to the retailer",

pursuant to this subsection, add the "cost of doing business by the wholesaler", as defined in section two, subparagraph ten of this section, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer".

(b) In the absence of the filing with the commissioner of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be eight per centum of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the commissioner of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer", who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or in part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

(12) "Business day" shall mean any day other than Sunday or a legal holiday.

Sec. 3. *Violations and Penalties.*—It shall be unlawful and a violation of this article:

(a) For any retailer or wholesaler with intent to injure competitors or destroy or substantially lessen competition:

(1) To advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(2) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or give a concession of any kind or nature whatsoever in connection with the sale of cigarettes, which, when the amount of such rebate or value of such concession is deducted from the total price at which the cigarettes are sold, would have the result of reducing the price to less than cost to such retailer or wholesaler.

(b) For any retailer:

(1) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price

less than "cost to wholesaler" as defined in this article.

(2) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

(c) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars for each such offense. Any individual who as a director, officer, partner, member or agent of any person violating the provisions of this article assists or aids, directly or indirectly in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(d) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer, or wholesaler at less than cost to him, or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatsoever in connection with the sale of cigarettes or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

Sec. 4. *Sales from Wholesaler to Wholesaler, and to Certain Retailers.*—When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter, "cost to the wholesaler", as provided by section two, subparagraph ten of this article, except that no such sale shall be made at a price less than the "basic cost of cigarettes" as defined in said section two, subparagraph nine of this article, but the latter wholesaler upon resale to a retailer, shall be deemed to be the wholesaler governed by the provisions of said section two, subparagraph ten of this article.

Sec. 5. *Combination Sales.*—In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and

in all advertisements, offers for sale or sales involving the giving of any concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or wholesaler's selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler", respectively, of the cigarettes included in such transactions, and the invoice cost, whether the same be paid by the retailer, the wholesaler or any other person, of all articles, products, commodities and concessions included in such transactions, to which invoice cost shall be added, the cost of doing business in the case of the wholesaler and the retailer, respectively, as such is defined in section two hereof.

Sec. 6. *Exemptions.*—The provisions of this article shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are advertised for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (d) where cigarettes are sold upon the final liquidation of a business; or (e) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

Sec. 7. *Sales to Meet Competition.*—(a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this article. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this article. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section six shall not be considered the price of a competitor and

shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer", or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey", made pursuant to section eleven of this article, may be deemed the "price of a competitor", within the meaning of this section.

Sec. 8. *Contracts in Violation Void.*—Any contract, express or implied, made by any person in violation of any of the provisions of this article, is declared to be an illegal and void contract and no recovery thereon shall be had.

Sec. 9. *Evidence to Be Considered as Bearing on Bona Fides of Cost.*—(a) In determining "cost to the retailer" and "cost to the wholesaler" the commissioner or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this article purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

Sec. 10. *Cigarettes Purchased Outside Ordinary Trade Channels.*—In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the re-

tailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

Sec. 11. *Cost Survey.*—Where a cost survey, pursuant to recognized statistical and cost accounting practices, has been made for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler", said cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of this article.

Sec. 12. *Remedies.*—(a) In addition to penalties provided by section three of this article, any person injured by any violation of this article, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this article shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and in addition thereto shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorneys' fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this article may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

Sec. 13. *Powers and Duties of State Tax Commissioner; Rules and Regulations; Suspension and Revocation of License; Reinstatement of License; Review of Commissioners Determinations.*—(a) The state tax commissioner shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this article. The commissioner is given full power and authority to revoke or suspend the license or

permit of any wholesale or retail dealer in the state of West Virginia upon sufficient cause appearing of the violation of this article or upon the failure of such licensee or permittee to comply with any of the provisions of this article.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by said commissioner. The said commissioner, upon a finding by him that the licensee has failed to comply with any provision of this article or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five nor more than twenty consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty consecutive business days nor more than twelve months and, in the event the said commissioner finds the offender has been guilty of willful and persistent violations, he may revoke said person's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the commissioner at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the commissioner if it shall appear to the satisfaction of said commissioner that the licensee will comply with the provisions of this article and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the cigarette tax law.

(e) Any determination by the commissioner and any order of suspension or revocation of a license or licenses thereunder or refusal to reinstate a license or licenses after revocation shall be reviewable by the court in a

proper case and in proceedings as provided by procedural law of this jurisdiction.

Sec. 14. *Provisions of Article Severable.*—The provisions of this article shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this article shall continue in full force and effect.

Sec. 15. *Repealing Clause.*—All laws and parts of laws in conflict herewith are hereby repealed.

# CHAPTER 11

**(Senate Bill No. 250—By Mr. Martin)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

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

**Claims Against the State.**

**Section**

1. Finding and declaring certain claims against the adjutant general; department of agriculture; department of mental health; treasurer; department of public assistance; state road commission; department of public safety; vocational rehabilitation and the state board of education, to be moral obligations of the state, and directing payment thereof.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Finding and Declaring Certain Claims against the Adjutant General; Department of Agriculture; Department of Mental Health; Treasurer; Department of Public Assistance; State Road Commission; Department of Public Safety; Vocational Rehabilitation and the State Board of Education, to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature has considered the findings of fact and recommendations reported to it by the attorney general concerning

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

(a) Claims versus the Adjutant General.

| | |
|---|---|
| P. Marcum | $ 150.14 |
| Betsy Ross Bakeries, Inc. | 239.80 |
| Paul E. Myers | 211.76 |
| W. B. Phillips | 2,252.98 |

(b) Claims versus Department of Agriculture.

| | |
|---|---|
| G. C. Houser, dba Houser's Hatchery | 740.25 |
| R. N. Hewitt Corporation | 4,362.12 |

(c) Claims versus Department of Mental Health.

| | |
|---|---|
| Glenn C. Hancock | 8,525.48 |
| Denton Hall | 308.88 |

(d) Claim versus Treasurer.

| | |
|---|---|
| Guaranty National Bank of Huntington | 1,136.62 |

(e) Claim versus Department of Public Assistance.

| | |
|---|---|
| Margaret G. Lippert | 2,035.75 |

(g) Claims versus State Road Commission.

| | |
|---|---|
| Criss Pauley | 3,095.35 |
| Perdue Transfer and Storage Co. | 1,310.75 |
| R. L. Baumgardner, et al | 2,902.03 |
| Abernethy, dba Abernethy Buick | 230.00 |
| Construction Equipment Co. | 572.82 |
| Stanley Cosner and Susan M., his wife | 795.00 |
| Alice Hartman | 1,105.00 |
| Curtis E. Mullins | 1,000.00 |
| John Falbo | 2,500.00 |
| Nathan Allen | 375.00 |

(i) Claims versus Department of Public Safety.

| | |
|---|---|
| Memorial General Hospital and Golden Clinic | 674.80 |
| Jack Nelson Morrison and Harry Lyons | 8,505.10 |
| Burford L. Snyder | 1,569.27 |

(j) Claims versus Vocational Rehabilitation.

| | |
|---|---|
| The Pullman Company | 11.90 |
| St. Joseph's Hospital | 676.00 |

| | | | |
|---|---|---|---|
| 50 | | St. Mary's Hospital, Huntington, W. Va. | 126.00 |
| 51 | (k) | Claims versus State Board of Education. | |
| 52 | | Medora Mason Wolfe | 2,800.00 |
| 53 | | Potomac Construction Company | 1,807.00 |

# CHAPTER 12

**(House Bill No. 373—By Mr. Ford)**

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the injury, destruction, concealment, removal, encumbrance or sale of goods sold under conditional sales contracts.

**Article 3. Conditional Sales.**

Section

15. Injury, destruction, concealment, removal, encumbrance or sale.

*Be it enacted by the Legislature of West Virginia:*

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

Section 15. *Injury, Destruction, Concealment, Removal, Encumbrance or Sale.*—When, prior to the performance of the condition, the buyer, maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or shall sell, mortgage or otherwise dispose of them under claim of full ownership, or maliciously or with intent to defraud shall remove them to another state or to a county in this state where the contract or a copy thereof is not filed, he shall be guilty of a misdemeanor, if the amount due on the goods so injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is less than fifty dollars, and, upon conviction thereof, shall be

confined in the county jail for not more than one year, or be fined not more than five hundred dollars, or both. Where the amount due on the goods thus injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is fifty dollars or more, the buyer shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year nor more than five years, or both, in the discretion of the court. When, prior to the performance of the condition, the buyer, without having given the notice required by section thirteen of this article, but without malice and without intent to defraud, shall remove such goods to another state or to a county in this state where the contract or a copy thereof is not filed, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not more than one year, or be fined not more than five hundred dollars, or both. Any such removal without such notice having been given shall be deemed prima facie fraudulent.

# CHAPTER 13

**(House Bill No. 472—By Mr. Solomon and Mr. Nuzum)**

[Passed March 11, 1961; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to congressional districts.

**Article 2. Apportionment of Representation.**

Section

3. Congressional districts.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Congressional Districts.*—The number of members to which the state is entitled in the house of representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into five congressional districts, numbered as follows, that is to say:

First District: Braxton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Ohio, Taylor and Wetzel.

Second District: Barbour, Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mineral, Monongalia, Morgan, Pendleton, Pocahontas, Preston, Randolph, Tucker, Upshur and Webster.

Third District: Boone, Clay, Kanawha, Nicholas and Raleigh.

Fourth District: Cabell, Jackson, Lincoln, Logan, Mason, Pleasants, Putnam, Ritchie, Roane, Tyler, Wayne, Wirt and Wood.

Fifth District: Fayette, Mercer, Mingo, Monroe, McDowell, Summers and Wyoming.

# CHAPTER 14

**(House Bill No. 465—Originating in the House Committee on Temperance)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section forty-six, article six thereof, relating to the manufacture and sale of alcoholic liquors.

**Alcoholic Liquor Control Amendment.**

**Section**

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "alcoholic liquor control amendment."
3. Form of ballot; election.

4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Submitting an Amendment to the State Constitution.*—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section forty-six, article six of the constitution of West Virginia be amended to read as follows:

"Section 46. The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this state.

Any law legalizing the sale of intoxicating liquors other than by the state as now provided by law, shall provide:

(a) That intoxicating liquors shall be sold, dispensed and/or served only in licensed, bona fide and legitimate restaurants, hotels, clubs, and also in similar facilities owned, controlled, leased or operated by or on behalf of this state, or any municipality of this state, railroad dining cars, aeroplanes and other conveyances moving in interstate commerce.

(b) That intoxicating liquors shall not be sold, dispensed and/or served between the hours of midnight on Saturday and noon on the following Monday, at any time between the hours of midnight and noon on the following day, nor in a saloon or barroom nor to any person unless such person is seated.

(c) That no advertisement, sign, placard or other device designating or advertising the situs of a licensee describing it as a place wherein intoxicating liquors are sold, dispensed and/or served shall be exhibited thereon, in any newspaper or magazine or in any other manner or place whatsoever.

(d) That only one license for each one thousand persons, in a county, in this state, shall be issued, except, that in counties having less than ten thousand persons, three additional licenses shall be permitted; in counties where facilities described in subsection (a) controlled, owned, leased or operated by or on behalf of this state, or any municipality of this state, are located, additional licenses, equal to the number of such facilities shall be permitted and except, also, in those counties wherein race tracks are located, an additional number of licenses equal to the number of such race tracks shall be permitted.

(e) That no more than one license shall be issued to a person.

(f) For special local option elections by a county, or an incorporated municipality to determine whether such sale other than by the state as now provided by law shall be permitted within such county or municipality. An incorporated municipality through such a local option election shall have the sole power to forbid or permit such sale within its corporate boundaries regardless of any determination through a county-wide local option election conducted in the county in which such municipality is located.

(g) At least fifty per cent of all revenues from excise and license taxes on the sale of intoxicating liquors other than by the state as now provided by law shall be annually appropriated to the support of schools."

Sec. 2. *Amendment to Be Known as the "Alcoholic Liquor Control Amendment".*—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "Alcoholic Liquor Control Amendment".

Sec. 3. *Form of Ballot; Election.*—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the

foot of, the official ballot to be voted at that election, the following:

Ballot on "Alcoholic Liquor Control Amendment".

☐ For ratification of Alcoholic Liquor Control Amendment.

☐ Against ratification of Alcoholic Liquor Control Amendment.

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

Sec. 4. *Certificates of Election Commissioners; Canvass of Vote; Certifying Result.*—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No. ....., in the district of ....., in the county of ....., on the ..... day of ....., one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

"For ratification of Alcoholic Liquor Control Amendment ..... votes.

"Against ratification of Alcoholic Liquor Control Amendment..... votes.

"Given under our hands this ..... day of .....

....., one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books, and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of ..... , having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of November, one thousand nine hundred sixty-two, do certify that the results of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of Alcoholic Liquor Control Amendment ..... votes.

"Against ratification of Alcoholic Liquor Control Amendment ..... votes.

"Given under our hands this ..... day of ..... , one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

Sec. 5. *Proclamation of Result of Election by Governor.* —On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

Sec. 6. *Publication of Proposed Amendment by Governor.*—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

# CHAPTER 15

**(Senate Bill No. 38—By Mr. Riley)**

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to the power of corporations to indemnify present or former directors and officers.

**Article 1. Provisions Relating to Corporations Generally.**

Section

18-a. Indemnification of directors and officers.

*Be it enacted by the Legislature of West Virginia:*

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

Section 18-a. *Indemnification of Directors and Officers.* —Every corporation subject to the provisions of this article shall have power to indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any by-law or resolution adopted by the shareholders after notice.

# CHAPTER 16

**(House Bill No. 274—By Mr. Seibert and Mr. White)**

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding to said chapter a new article, numbered and designated article four-d, relating to fiduciary security transfers, and adopting the Uniform Act for Simplification of Fiduciary Security Transfers.

## Article 4-d. Uniform Act for Simplification of Fiduciary Security Transfers.

Section

1. Definitions.
2. Registration in the name of a fiduciary.
3. Assignment by a fiduciary.
4. Evidence of appointment or incumbency.
5. Adverse claims.
6. Nonliability of corporation and transfer agent.
7. Nonliability of third persons.
8. Law governing registering or transferring securities; application of article.
9. Tax obligations.
10. Uniformity of interpretation.
11. Short title.

*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, numbered and designated article four-d, to read as follows:

Section 1. *Definitions.*—In this article, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or

more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

Sec. 2. *Registration in the Name of a Fiduciary.*—A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

Sec. 3. *Assignment by a Fiduciary.*—Except as otherwise provided in this article, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(a) May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

Sec. 4. *Evidence of Appointment or Incumbency.*—A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (b) except to the extent that the contents relate directly to the appointment or incumbency.

Sec. 5. *Adverse Claims.*—(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this article relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or

certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order.

Sec. 6. *Nonliability of Corporation and Transfer Agent.*—A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this article.

Sec. 7. *Nonliability of Third Persons.*—(a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this article incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

Sec. 8. *Law Governing Registering or Transferring Securities; Application of Article.*—(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This article applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person

who guarantees in this state the signature of a fiduciary in connection with such a transaction.

Sec. 9. *Tax Obligations.*—This article shall not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

Sec. 10. *Uniformity of Interpretation.*—This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 11. *Short Title.*—This article may be cited as the Uniform Act for Simplification of Fiduciary Security Transfers.

# CHAPTER 17

**(Senate Bill No. 168—By Mr. Davis and Mr. Carrigan)**

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reproduction of checks and other banking records, the use as evidence thereof, and the destruction thereof.

**Article 8. Business Operations and Supervision of Banking Institutions, Industrial Loan Companies and Building and Loan Associations.**

Section

8-a. Reproduction of checks and other banking records; introduction into evidence thereof; destruction thereof.

*Be it enacted by the Legislature of West Virginia:*

That section eight-a, article eight, 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:

Section 8-a. *Reproduction of Checks and Other Banking Records; Introduction into Evidence Thereof; Destruction Thereof.*—Any banking institution transacting business in this state may cause to be copied or reproduced by any photographic, photostatic, micro-photographic or other miniature photographic process, all or any number of its checks, and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings, in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the original thereof. Thereafter, such copy or reproduction, in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original: *Provided, however,* That every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including cards used under the card system and deposit tickets for deposits made, for a period of at least six years from the date of the last entry on such books or the date of making of such deposit tickets and card records, or, in the case of a banking institution exercising trust or fiduciary powers, until the expiration of six years from the date of termination of any trust or fiduciary relationship by the allowance of a final accounting, release, court decree or other proper means of termination.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or micro-photographic copies or reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents

and records shall be one which correctly and accurately reproduces the original thereof in all details and film used therein shall be of durable material.

# CHAPTER 18

(House Bill No. 132—By Mr. Kelley)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of county courts with respect to construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.

## Article 1. County Courts Generally.

Section

3-a. Powers with respect to construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3-a. *Powers with Respect to Construction of Waterworks, Sewers, Sewage Disposal Plants, Improvement of Streets, Alleys and Sidewalks and the Assessment of the Cost of Sanitary Sewers and Improved Streets.*—In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains,

sewer lines and sewage disposal plants in connection therewith within their respective counties: *Provided,* That the county court of Webster is authorized to expend county funds in the opening of, and upkeep of, a sulphur well now situate on county property: *Provided,* That such authority and power herein conferred upon county courts shall not extend into the territory within any municipal corporation: *Provided, however,* That any county court is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such court by this section.

In addition to the foregoing, the county court shall have the power to improve streets, sidewalks and alleys and lay sewers as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county court so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, the county court may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: *Provided, however,* That the county court is further authorized, if the said county court so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county court may order such improvements as one single unit and project, upon petition in writing duly verified of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on both sides of all streets

or alleys, or portions thereof included by said county court in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing, improving any such street or alley (including the cost of the intersections) and assessing the cost thereof shall be borne by the owners of the land abutting upon such street or alley when the work is completed and accepted according to the following plan, that is to say, payment is to be made by all landowners on either side of such street or alley so paved or improved, in such proportion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all the land so abutting on such street or alley, so paved or improved as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said court.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on one side of any street between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting the county court so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county court may cause any sidewalk to be improved, or paved, or repaved, substantially with such materials according to such plans and specifications and the total cost including labor and materials, engineering and legal service of improving, grading, paving, or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said court.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on both sides of any

street or alley, in any unincorporated community requesting the county court so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county court may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted, the county engineer or surveyor shall report to the county court, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and laying the sewer including labor, materials, legal and engineering services shall be borne by the owners of the land abutting upon the streets and alleys, in which the sewer is laid according to the following plan: Payment is to be made by each landowner on either side of such portion of a street or alley in which such sewer is laid, in such proportions as the frontage of his land upon said street or alley bears to the total frontage of all lots so abutting on such street or alley. In case of a corner lot, frontage is to be measured along the longest dimensions thereof abutting on such street or alley in which such sewer is laid. Any lot having a depth of two hundred feet or more, and fronting on two streets, or alleys, one in the front and one in the rear of said lot, shall be assessed on both of said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer, and where it has been assessed on the side it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such street, alley or sidewalk in a manner which does not require the permanent paving, or repaving, thereof, the county court shall likewise have authority to improve such street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion

which the frontage of their lots abutting upon such street, alley or sidewalk bears to the total frontage of all lots abutting upon such street, alley or sidewalk, so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county court shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the street, alley or sidewalk affected, and to give notice thereof by publication in a newspaper of general circulation in the county in which the improvement is to be made at least once before said hearing, which hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county court may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving, or sewering, will result in special benefits to all owners of property abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The court shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

Any owner of property abutting upon said street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county court by filing within ten days after the entry of such order, a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county court be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county court.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor,

and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at the rate of six per cent per annum as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county court may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at the rate of six per cent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm, or corporation: *Provided*, That the county court in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repav-

ing, or the laying of sewers under the provisions of this section, the county court shall let the work of grading, paving, curbing or sewering to contract to the lowest responsible bidder. In each such case the county court shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county court of the certificates evidencing the lien, duly cancelled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county court.

The owner of any lot or fractional part of a lot abutting upon such street, alley or sidewalk so improved, paved, repaved or sewered shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county courts of the various counties to acquire any road construction, ditching, or paving equipment. The county courts are hereby authorized to rent from the state road commissioner or any other person, firm or corporation such equipment as may be necessary from time to time, to improve any street or sidewalk which petitioners do not desire to have paved in a permanent manner, and for such purpose to employ such labor as may be necessary but no expense connected therewith shall be charged to any county funds.

No county court shall be under any duty after the paving, repaving or improvement of any street, alley or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, but any such court shall have authority upon petition duly verified, signed by at least sixty per cent of the owners

of property abutting upon any improvement made under this section, to maintain or repair such improvement or sewer and to assess the cost thereof against the owners of such abutting property in the same manner as the cost of the original improvement.

# CHAPTER 19

**(House Bill No. 445—By Mr. Speaker, Mr. Singleton, and Miss Tsapis)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section six, sections six-(one) through six-(fifty-five), inclusive, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to salaries of assistant prosecuting attorneys, stenographers and clerks for prosecuting attorneys.

**Article 7. Salaries; Deputies and Assistants and Their Salaries.**

Section

6. Assistants, stenographers and clerks for prosecuting attorney; salaries; when court may appoint attorney to prosecute.
6-(1) to 6-(55). Salaries of assistants, stenographers and clerks for prosecuting attorneys of the various counties of the state.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6. *Assistants, Stenographers and Clerks for Prosecuting Attorney; Salaries; When Court May Appoint Attorney to Prosecute.*—The prosecuting attorneys of the several counties of the state may, with the assent of the county courts of their respective counties, entered of record, appoint to assist them in the discharge of their offi-

cial duties for and during their respective terms of office, the number of practicing attorneys, stenographers and clerks set forth in sections six-(one) through six-(fifty-five), inclusive, of this article. Each such assistant prosecuting attorney shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will and pleasure of his principal and he may be removed from office by the circuit court of the county in which he is appointed for any cause for which his principal might be removed.

If in any case the prosecuting attorney and his assistant be unable to act, or if in the opinion of the court it would be improper for him or his assistant to act, the court shall appoint some competent practicing attorney to act in such case. The court shall certify to the county court the performance of such service when completed and recommend to the county court a reasonable allowance for such attorney for such service, and such sum, when allowed by the county court, shall be paid out of the county treasury. No provision of this section shall be construed to prohibit the employment by any person of a competent attorney or attorneys to assist in the prosecution of any person or corporation charged with crime.

The county courts of the several counties shall compensate the assistant prosecuting attorneys, stenographers and clerks of their respective counties in accordance with the following annual salary provisions:

(1) In counties for which definite salaries are fixed by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, such definite salaries shall be paid.

(2) In counties for which minimum and maximum salary limits are fixed by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, the salaries shall be fixed and paid within such limits.

(3) In the counties for which salaries are not fixed and limited by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, reasonable salaries shall be fixed and paid by the respective county courts.

Such salaries and compensation shall be paid monthly, semimonthly or otherwise as provided by law. In any

case wherein provision is not made in this article for payment of the salary of an assistant prosecuting attorney, the principal shall pay and compensate such assistant for services rendered. The compensation and salaries to be paid assistant attorneys as provided in this article shall include compensation provided by law for such assistant's services as attorney for the county board of education and other administrative boards and officers of his county.

Sec. 6-(1). *Same—Barbour County.*—For the county of Barbour, one assistant attorney, one thousand dollars; one stenographer, not less than one thousand two hundred nor more than one thousand eight hundred dollars.

Sec. 6-(2). *Same—Berkeley County.*—For the county of Berkeley, one assistant attorney, not more than two thousand four hundred dollars; one stenographer, not more than two thousand four hundred dollars.

Sec. 6-(3). *Same—Boone County.*—For the county of Boone, one assistant attorney, three thousand four hundred dollars; one stenographer at two thousand eight hundred dollars.

Sec. 6-(4). *Same—Braxton County.*—For the county of Braxton, one assistant attorney; one stenographer at one thousand eight hundred dollars.

Sec. 6-(5). *Same—Brooke County.*—For the county of Brooke, one assistant attorney, three thousand dollars; one stenographer, not less than one thousand five hundred nor more than two thousand seven hundred dollars.

Sec. 6-(6). *Same—Cabell County.*—For the county of Cabell, three assistant attorneys, not more than six thousand five hundred dollars each; two stenographers not more than four thousand dollars each.

Sec. 6-(7). *Same—Calhoun County.*—For the county of Calhoun, one assistant attorney, three hundred dollars; one stenographer, at not more than one thousand five hundred dollars.

Sec. 6-(8). *Same—Clay County.*—For the county of Clay, one assistant attorney; one clerk or stenographer or in lieu thereof one practicing attorney, not less than one

thousand nor more than one thousand eight hundred dollars.

Sec. 6-(9). *Same—Doddridge County.*—For the county of Doddridge, one assistant attorney; one stenographer, not more than one thousand eight hundred dollars.

Sec. 6-(10). *Same—Fayette County.*—For the county of Fayette, first assistant attorney, five thousand three hundred dollars; second assistant attorney, four thousand four hundred dollars; one stenographer at a salary to be fixed by the county court.

Sec. 6-(11). *Same—Gilmer County.*—For the county of Gilmer, one assistant attorney; one stenographer, not more than one thousand two hundred dollars.

Sec. 6-(12). *Same—Grant County.*—For the county of Grant, one assistant attorney; one stenographer or clerk, not more than one thousand five hundred dollars.

Sec. 6-(13). *Same—Greenbrier County.*—For the county of Greenbrier, one assistant attorney; one stenographer, not more than two thousand nine hundred forty dollars.

Sec. 6-(14). *Same—Hampshire County.*—For the county of Hampshire, one assistant attorney; one stenographer, not less than one thousand two hundred nor more than two thousand dollars.

Sec. 6-(15). *Same—Hancock County.*—For the county of Hancock, one assistant attorney, not less than three thousand nor more than three thousand nine hundred dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(16). *Same—Hardy County.*—For the county of Hardy, one assistant attorney; one stenographer or one clerk at a salary fixed by the prosecuting attorney, not to exceed one thousand five hundred dollars.

Sec. 6-(17). *Same—Harrison County.*—For the county of Harrison, first assistant attorney, six thousand five hundred dollars; second assistant attorney, five thousand five hundred dollars; two stenographers, not less than nine hundred dollars nor more than three thousand six hundred dollars for each.

Sec. 6-(18). *Same—Jackson County.*—For the county of Jackson, one assistant attorney, not less than six hundred nor more than one thousand two hundred dollars; one stenographer, not less than one thousand six hundred dollars nor more than two thousand two hundred dollars.

Sec. 6-(19). *Same—Jefferson County.*—For the county of Jefferson, the prosecuting attorney may employ a stenographer for his office at a salary of not less than one thousand eight hundred dollars nor more than two thousand eight hundred dollars per annum, payable out of the county treasury to be fixed by the said prosecuting attorney of said county of Jefferson.

Sec. 6-(20). *Same—Kanawha County.*—For the county of Kanawha, first assistant attorney, not less than six thousand nor more than nine thousand six hundred dollars, three assistant attorneys, not less than six thousand nor more than nine thousand dollars each, and stenographers and clerks at a salary to be fixed by the county court payable out of the county treasury of said county of Kanawha.

Sec. 6-(21). *Same—Lewis County.*—For the county of Lewis, one assistant attorney, not more than one thousand eight hundred dollars; one stenographer, not less than six hundred nor more than one thousand eight hundred dollars.

Sec. 6-(22). *Same—Lincoln County.*—For the county of Lincoln, one assistant attorney, not more than three thousand six hundred dollars; one stenographer or clerk, not more than three thousand dollars.

Sec. 6-(23). *Same—Logan County.*—For the county of Logan, one assistant attorney, at six thousand five hundred dollars; one stenographer, not more than three thousand nine hundred dollars; second stenographer, not more than three thousand three hundred dollars.

Sec. 6-(24). *Same—Marion County.*—For the county of Marion, two assistant attorneys, not less than four thousand six hundred nor more than five thousand two hundred dollars for each; one stenographer, not more than three thousand dollars.

Sec. 6-(25). *Same—Marshall County.*—For the county of Marshall, one assistant attorney, at two thousand four hundred dollars; one stenographer or clerk, not less than two thousand eight hundred nor more than three thousand three hundred dollars.

Sec. 6-(26). *Same—Mason County.*—For the county of Mason, one assistant attorney, not less than one thousand five hundred nor more than two thousand dollars; one stenographer, not less than one thousand five hundred nor more than two thousand dollars.

Sec. 6-(27). *Same—McDowell County.*—For the county of McDowell, first assistant attorney, not less than three thousand nor more than five thousand four hundred dollars; second assistant attorney, not less than three thousand nor more than five thousand dollars; one stenographer, not less than three thousand three hundred nor more than three thousand six hundred dollars.

Sec. 6-(28). *Same—Mercer County.*—For the county of Mercer, one assistant attorney, at five thousand five hundred dollars; one stenographer or clerk, not more than three thousand three hundred dollars.

Sec. 6-(29). *Same—Mineral County.*—For the county of Mineral, one assistant attorney, not more than one thousand two hundred dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(30). *Same—Mingo County.*—For the county of Mingo, one assistant attorney, not more than four thousand five hundred dollars; one stenographer, not more than four thousand two hundred dollars.

Sec. 6-(31). *Same—Monongalia County.*—For the county of Monongalia, one assistant attorney, at four thousand dollars; one stenographer, not less than two thousand four hundred nor more than three thousand six hundred dollars.

Sec. 6-(32). *Same—Monroe County.*—For the county of Monroe, one assistant attorney; one stenographer, not more than six hundred dollars.

Sec. 6-(33). *Same—Morgan County.*—For the county of Morgan, one assistant attorney.

Sec. 6-(34). *Same—Nicholas County.*—For the county of Nicholas, one assistant attorney, not more than one thousand two hundred dollars; one stenographer or clerk, at a salary to be fixed by the county court.

Sec. 6-(35). *Same—Ohio County.*—For the county of Ohio, first assistant attorney, at five thousand dollars; second assistant attorney, at four thousand dollars; third assistant attorney, at four thousand dollars; one stenographer, not more than three thousand three hundred dollars; second stenographer, not more than one thousand two hundred dollars.

Sec. 6-(36). *Same—Pendleton County.*—For the county of Pendleton, one assistant attorney; one stenographer or clerk, not more than one thousand five hundred dollars.

Sec. 6-(37). *Same—Pleasants County.*—For the county of Pleasants, one stenographer, not more than two thousand four hundred dollars.

Sec. 6-(38). *Same—Pocahontas County.*—For the county of Pocahontas, one assistant attorney; one stenographer, not more than two thousand one hundred dollars.

Sec. 6-(39). *Same—Preston County.*—For the county of Preston, one assistant attorney at a salary not exceeding three thousand dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(40). *Same—Putnam County.*—For the county of Putnam, one assistant attorney, not more than three thousand dollars; one stenographer, not more than three thousand dollars.

Sec. 6-(41). *Same—Raleigh County.*—For the county of Raleigh, one assistant attorney, at five thousand four hundred dollars; one stenographer, not more than three thousand six hundred dollars.

Sec. 6-(42). *Same—Randolph County.*—For the county of Randolph, one assistant attorney, not more than three

thousand six hundred dollars; one stenographer, not less than two thousand seven hundred nor more than three thousand six hundred dollars.

Sec. 6-(43). *Same—Ritchie County.*—For the county of Ritchie, one assistant attorney; one stenographer, not less than one thousand two hundred dollars nor more than one thousand eight hundred dollars.

Sec. 6-(44). *Same—Roane County.*—For the county of Roane, one assistant attorney; one stenographer, not less than one thousand five hundred nor more than two thousand four hundred dollars.

Sec. 6-(45). *Same—Summers County.*—For the county of Summers, one assistant attorney, not less than one thousand nor more than two thousand dollars; one stenographer, not less than one thousand five hundred nor more than three thousand dollars.

Sec. 6-(46). *Same—Taylor County.*—For the county of Taylor, one assistant attorney; one stenographer, not less than one thousand two hundred nor more than three thousand dollars.

Sec. 6-(47). *Same—Tucker County.*—For the county of Tucker, one assistant attorney.

Sec. 6-(48). *Same—Tyler County.*—For the county of Tyler, one assistant attorney; one stenographer, not more than one thousand eight hundred dollars.

Sec. 6-(49). *Same—Upshur County.*—For the county of Upshur, one assistant attorney, not more than one thousand two hundred dollars; one stenographer, not more than one thousand two hundred dollars.

Sec. 6-(50). *Same—Wayne County.*—For the county of Wayne, one assistant attorney, at four thousand two hundred dollars; one stenographer, three thousand three hundred dollars.

Sec. 6-(51). *Same—Webster County.*—For the county of Webster, one assistant attorney, not less than six hundred nor more than nine hundred dollars; one stenographer, one thousand eight hundred dollars.

Sec. 6-(52). *Same—Wetzel County.*—For the county of Wetzel, one assistant attorney, not less than nine hundred dollars nor more than one thousand two hundred dollars; one stenographer, not more than three thousand one hundred dollars.

Sec. 6-(53). *Same—Wirt County.*—For the county of Wirt, one stenographer or clerk at not more than one thousand dollars.

Sec. 6-(54). *Same—Wood County.*—For the county of Wood, one assistant attorney, at four thousand dollars; one stenographer, at three thousand six hundred dollars.

Sec. 6-(55). *Same—Wyoming County.*—For the county of Wyoming, one assistant attorney, not less than two thousand nor more than four thousand two hundred dollars; one stenographer at a salary fixed by the county court.

# CHAPTER 20

**(House Bill No. 79—By Mr. Myles and Mr. Vickers)**

[Passed March 7, 1961; in effect March 31, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one-h, one-l and one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of courts in the eighth, twelfth and twenty-first judicial circuits.

**Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.**

**Section**

1-h. Eighth circuit.
1-l. Twelfth circuit.
1-u. Twenty-first circuit.

*Be it enacted by the Legislature of West Virginia:*

That sections one-h, one-l and one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1-h. *Eighth Circuit.*—For the county of McDowell, on the fourth Monday in February, May, August and November.

Sec. 1-l. *Twelfth Circuit.*—For the county of Fayette, on the second Tuesday in January, May and September.

Sec. 1-u. *Twenty-first Circuit.*—For the county of Grant, on the first Tuesday in April, the second Tuesday in July and the first Tuesday in November.

For the county of Mineral, on the second Tuesday in January, the first Tuesday in May and the first Tuesday in September.

For the county of Tucker, on the second Tuesday in February, the first Tuesday in June and the first Tuesday in October.

# CHAPTER 21

**(Senate Bill No. 172—By Mr. Martin)**

[Passed February 21, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removal of court records and papers out of the county and prescribing penalty for unlawful removal.

**Article 4. General Provisions Relating to Clerks of Courts.**

**Section**

4. Removal of records or papers out of county; penalty.

*Be it enacted by the Legislature of West Virginia:*

That section four, article four, 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:

Section 4. *Removal of Records or Papers Out of County; Penalty.*—None of the records or papers of a court shall be removed by the clerk, nor allowed by him or by the court to be removed, out of the county wherein the clerk's office is kept, except on an occasion of invasion or insurrection, actual or threatened, when, in the opinion of the court, or, in a very sudden case, of the clerk, the same will be endangered, after which they shall be returned as soon as the danger ceases; and except in such other cases as are specifically provided by law, or by general order of the court permitting the removal or transfer thereof to counties within his circuit; or to another circuit in cases being heard by a visiting or special judge. In such cases of removal or transfer the clerk of the court from which such papers and records are removed shall take and preserve an appropriate written receipt therefor. Any clerk violating this section shall forfeit six hundred dollars. However, this section shall not be construed as to prevent a judge of a circuit court from taking files of papers from any county of his circuit, or directing the clerk to send such files to him, when he needs to use the same.

# CHAPTER 22

**(Senate Bill No. 30—By Mr. Kaufman, by request)**

[Passed February 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the librarian of the West Virginia law library, his bond, assistants and compensation.

**Article 8. State Law Libraries.**

**Section**

2. Librarian; bond; assistants; compensation.

*Be it enacted by the Legislature of West Virginia:*

That section two, article eight, 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:

Section 2. *Librarian; Bond; Assistants; Compensation.*— The supreme court of appeals, or the judges thereof in vacation, shall appoint a competent librarian to have immediate custody of the West Virginia law library under the direction of the court. Such librarian shall give bond in a penalty fixed by the court of not less than two nor more than five thousand dollars, with surety thereon, to be approved by the court, and conditioned as provided for official bonds. Such bond shall be deposited for safekeeping with the clerk of the court. The librarian shall be an officer of the court and shall hold his office and be removable at its pleasure. Vacancies in the office of librarian occurring during vacation of the court may be filled by appointment in writing made by the judges of the court, or any three of them. When, in the opinion of the court, other employees are needed for the proper protection and use of the library, it may employ such assistants as may be necessary for that purpose. The salary of the librarian and assistants shall be fixed by the court and shall be payable in monthly installments.

# CHAPTER 23

**(House Bill No. 217—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed February 22, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, six-a and twelve, article nine, chapter fifty-one of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated section six-b, all relating to eligibility for and the payment of benefits under the retirement system for judges of courts of record, service and retirement of judges over sixty-five years of age, eligibility for and the payment of annuities to the widows of judges who qualify for retirement benefits under the retirement system for judges of courts of record, and refunds due judges of courts of record or their widows, as the case may be, from the judges' retirement fund.

**Article 9. Retirement System for Judges of Courts of Record.**

**Section**

6. Eligibility for and payment of benefits.
6-a. Eligibility benefits; service and retirement of judges over sixty-five years of age.
6-b. Annuities for the widows of those judges eligible for retirement benefits; amount and payment of same.
12. Refunds.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6. *Eligibility for and Payment of Benefits.*— Except as otherwise provided in sections five, twelve and thirteen of this article, any person who is now serving, or who shall hereafter serve as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this act shall become effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he shall become eligible to benefits hereunder),

shall, upon a determination and certification of his eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he shall live, in an amount equal to seventy-five per cent of the annual salary of the office from which he has retired based upon such salary of such office as such salary may be changed from time to time during the period of his retirement and the amount of his retirement benefits shall be based upon and be equal to seventy-five per cent of the highest annual salary of such office for any one calendar year during the period of his retirement, and shall be payable in monthly installments: *Provided,* That such retirement benefits shall be paid only after said judge has resigned as such or, for any reason other than his impeachment, his service as such has ended: *And provided further,* That the provisions of this article shall apply to those judges who were in office at the time it originally became effective, those who have since become judges, those who have retired under the provisions thereof, and those who shall hereafter serve as judges of the courts of record of this state.

In determining eligibility for the benefits provided by this section, any portion of the term of office of any judge of a court of record which shall have elapsed while such judge was on active duty (including leaves, furloughs, and time consumed going to his place of duty and returning to his place of residence after discharge or release from active duty) in the armed forces of the United States shall be considered as served: *Provided, however,* That any judge who enters active duty in the armed forces of the United States during his term of office and after the effective date of this article, shall during, or within one year after such military service, pay into the state treasury all contributions required by section four of this article, and, by reason of such military service not deducted from his salary.

Sec. 6-a. *Eligibility Benefits; Service and Retirement of Judges over Sixty-Five Years of Age.*—Any judge of a court of record of this state, who shall have served for a period of not less than eight full years after attaining the age of sixty-five years and who shall have made pay-

ments into the judges' retirement fund as provided in this article for each month during which he served as such judge following the effective date of this section, shall be subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five per cent of the annual salary of the office from which he has retired based upon such salary of such office as such salary may be changed from time to time during the period of his retirement and the amount of his retirement benefits shall be based upon and be equal to seventy-five per cent of the highest annual salary of such office for any one calendar year during the period of his retirement, and shall be payable in monthly installments. If such judge shall become incapacitated to perform his said duties before the expiration of his said term and after serving for six years thereof, and upon the acceptance of his resignation as in this article provided, he shall be paid the annual retirement benefits as herein provided so long as he shall live. The provisions of this section shall prevail over any language to the contrary in this article contained.

Sec. 6-b. *Annuities for the Widows of those Judges Eligible for Retirement Benefits; Amount and Payment of Same.*—There shall be paid, from the fund created by section two of this article, an annuity to the widow of a judge, who, at death, is eligible for the retirement benefits provided by section six or six-a of this article, and who dies, either while in office or after resignation or retirement from office pursuant to the provisions of this article: *Provided, however,* That any annuity accruing under this section shall be paid from, and only from, the fund, and the interest thereon, accumulated through the contributions of judges from whose salary deductions have been made, as herein provided, and no annuity accruing hereunder shall be paid from any public moneys contributed to the Judges' Retirement Fund by the State of West Virginia.

Said annuity shall amount to forty per cent of the annual salary of the office which said judge held at his death or from which he resigned or retired. In the event

said salary is increased or decreased while an annuitant is receiving the benefits hereunder, her annuity shall amount to forty per cent of the new salary. The annuity granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which said judge dies and shall terminate upon the death or remarriage of the annuitant.

Sec. 12. *Refunds.*—Any judge of a court of record of this state whose services have terminated, otherwise than by retirement under provisions of this article, shall, upon his written demand, or the written demand of his personal representative, filed with the state auditor, by a proper warrant of the state auditor drawn on the fund, be refunded, without interest, any and all money paid by or for said judge into the fund. Such repayment shall terminate all rights of said judge to participate thereafter at any time in the benefits and pay of the retirement system, without prejudice, however, to his right to re-enter the system after a subsequent appointment or election to a qualified judgeship, but without credit for any prior years of service: *Provided, however,* That should a retired judge die, without leaving a widow surviving, while receiving retirement benefits under the provisions of this article, and before he has received from the Judges' Retirement Fund an amount equal to, or in excess of, sums paid by him into such fund, or should the widow, as defined by section six-b of this article, who is entitled to an annuity under the provisions of section six-b die or remarry while receiving annuity benefits, and before she and her husband have received from the Judges' Retirement Fund an amount equal to, or in excess of, sums contributed by him to such fund, then, and in either of these events, the state auditor shall, upon the written demand of the personal representative of the judge or widow, as the case may be, filed with the state auditor, by a proper warrant drawn on the fund, refund, without interest, to the estate of such judge or such widow, as the case may be, an amount equal to the difference between

the sums contributed to the fund by or for such judge and the amount of such retirement benefits and annuities paid to him and his widow.

# CHAPTER 24

**(Senate Bill No. 86—By Mr. Johnson)**

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation officers of courts and their salary and expenses.

**Article 12. Probation and Parole.**

Section

5-a. Probation officers of second judicial circuit, third judicial circuit, fifth judicial circuit, twelfth judicial circuit, fourteenth judicial circuit, twenty-ninth judicial circuit and of Wayne county; salary and expenses.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5-a. *Probation Officers of Second Judicial Circuit, Third Judicial Circuit, Fifth Judicial Circuit, Twelfth Judicial Circuit, Fourteenth Judicial Circuit, Twenty-ninth Judicial Circuit and of Wayne County; Salary and Expenses.*—The judge of the circuit courts of the second judicial circuit, third judicial circuit, fifth judicial circuit, twelfth judicial circuit, fourteenth judicial circuit, twenty-ninth judicial circuit and of the circuit court of Wayne county in the twenty-fourth judicial circuit each is authorized to appoint a court probation officer to serve dur-

ing the pleasure of the appointing judge, without first obtaining approval of the county courts of the counties of said judicial circuits and of Wayne county, respectively, as provided in section five of this article. Such appointment shall be effective upon the entry of the appointment order in the court order book. A certified copy of said order shall be delivered to the county court of each of the counties concerned and said county courts, respectively, shall arrange for and appropriate funds for payment of, and shall pay the salary and expenses of such probation officer in a manner consistent with contribution provisions of said section five. The probation officers so appointed shall have and may exercise all of the powers and perform all of the duties and services of probation officers as provided in this article.

# CHAPTER 25

**(House Bill No. 213—By Mr. Brotherton)**

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to robbery, attempted robbery, bank robbery, assaults in committing or attempting to commit bank robbery and the penalties for such offenses.

**Article 2. Crimes against the Person.**

**Section**

12. Robbery or attempted robbery; penalties; bank robbery and assaults in committing or attempting; penalties.

*Be it enacted by the Legislature of West Virginia:*

That section twelve, article two, chapter sixty-one of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 12. *Robbery or Attempted Robbery; Penalties; Bank Robbery and Assaults in Committing or Attempting; Penalties.*—If any person commit, or attempt to commit, robbery by partial strangulation or suffocation, or by striking or beating, or by other violence to the person, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than ten years. If any person commit, or attempt to commit, a robbery in any other mode or by any other means, except as provided for in the succeeding paragraph of this section, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than five nor more than eighteen years.

If any person (a) by force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than ten nor more than twenty years; and if any person (b), in committing, or in attempting to commit, any offense defined in the preceding clause (a) of this paragraph, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than ten years nor more than twenty-five years.

# CHAPTER 26

**(Senate Bill No. 133—By Mr. Gainer)**

[Passed February 22, 1961; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section twenty-four-a, relating to obtaining goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

**Article 3. Crimes against Property.**

**Section**

24-a. Obtaining or attempting to obtain goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

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

Section 24-a. *Obtaining or Attempting to Obtain Goods, Property or Service by False or Fraudulent Use of Credit Cards or Other False or Fraudulent Means, and Providing Penalties Therefor.*—It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

It shall be unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

The word "notice" as used in the first paragraph of this section shall be construed to include either notice given in person or notice given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, shall be prima facie evidence that such notice was duly received.

Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or imprisonment for not more than one year, or by both such fine and imprisonment.

# CHAPTER 27

**(House Bill No. 215—By Mr. Brotherton)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for forgery.

**Article 4. Forgery and Crimes against the Currency.**

Section

5. Forging or uttering other writing; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Forging or Uttering Other Writing; Penalty.* —If any person forge any writing, other than such as is mentioned in the first and third sections of this article, to

the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not exceeding five hundred dollars.

# CHAPTER 28

**(House Bill No. 268—By Mr. Floyd and Mr. Wilson)**

[Passed March 4, 1961: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and prohibiting pecuniary interest of certain county officers and employees in certain contracts and services and providing penalties therefor.

**Article 10. Crimes against Public Policy.**

Section

15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exception; offering or giving compensation; penalties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 15. *Pecuniary Interest of County and District Officers, Teachers and School Officials in Contracts; Exception; Offering or Giving Compensation; Penalties.*— It shall be unlawful for any member of a county court, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any

other county or district board, or for any county or district officer to be or become directly or indirectly, pecuniarly interested in the proceeds of any contract or service, or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member, officer, secretary, supervisor, superintendent, principal, or teacher, he may have any voice, influence or control: *Provided, however,* That nothing herein shall be construed to prevent or make unlawful the employment of the spouse of any such member, officer, secretary, supervisor, superintendent, principal or teacher as principal or teacher in the public schools of any county. Any person or officer named who shall violate any of the foregoing provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be imprisoned for a period not to exceed one year. In addition to the foregoing penalties, any such officer shall be removed from his office and the certificate or certificates of any teacher, principal, supervisor or superintendent who violates any provision of this section shall upon conviction thereof, be revoked immediately. Any person, firm or corporation that offers or gives any compensation whatever to any of the officers or persons hereinbefore named or to any other person with the intent to secure the influence, support or vote of such officer or person for any contract, service, award or other matter as to which any county or school district shall become the paymaster, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than five hundred, nor more than twenty-five hundred dollars, and, at the discretion of the court, such person or any member of such firm, or, if it be a corporation, any agent or officer thereof, so offering or giving such compensation, may, in addition to such fine, be imprisoned for a period not to exceed one year.

The provisions of this section shall not apply to publications in newspapers required to be made by law.

# CHAPTER 29

(House Bill No. 287—By Mr. Brotherton)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nine and eleven of said article; and to further amend said article by adding thereto four new sections, designated sections twelve, twelve-a, twelve-b and twelve-c, relating to the form of marriage license, register of marriages, persons authorized to celebrate marriages, qualifications of a minister, priest and rabbi for celebrating marriages, judge's ritual for ceremony of marriage, minister's, priest's or rabbi's ritual for ceremony of marriage and record of marriage.

## Article 1. Marriage.

Section

9. Form of marriage license.
11. Register of marriages.
12. Persons authorized to celebrate marriages.
12-a. Qualifications of minister, priest or rabbi for celebrating marriages.
12-b. Ritual for ceremony of marriage by judges.
12-c. Ritual for ceremony of marriage by minister, rabbi or priest; record of marriage.

*Be it enacted by the Legislature of West Virginia:*

That section twelve, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine and eleven of said article be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections twelve, twelve-a, twelve-b and twelve-c, all to read as follows:

Section 9. *Form of Marriage License.*—The marriage license shall be in form substantially as follows:

Marriage License.

State of West Virginia, County of ....., to-wit:

To any person authorized to celebrate marriages:

You are hereby authorized to join together in matrimony ..... and .....

Given under my hand, as clerk of the county court of the county of ....., this .... day of ....., 19.....

.....

Clerk as aforesaid.

Sec. 11. *Register of Marriages.*—The county court of each county shall furnish to the clerk of such county court a suitable book to be used as a register of marriages, which such clerk shall keep in his office among his records, and in which he shall promptly enter a complete record of all matters which he is required by this article to ascertain relative to the right of any person to obtain a marriage license, of each marriage license issued by him, and of the minister's, priest's, rabbi's, or judge's endorsement certifying that such marriage was solemnized. Such register of marriages shall be properly indexed by the clerk in the names of both parties to the marriage.

Sec. 12. *Persons Authorized to Celebrate Marriages.*—Any minister, priest or rabbi, who has complied with the provisions of section twelve-a of this article, or a judge of any court of record in this state, is authorized to celebrate the rites of marriage in all the counties of the state. No person, other than a minister, priest or rabbi, who has complied with the provisions of section twelve-a of this article, or a judge of any court of record in this state, shall hereafter celebrate the rites of marriage in this state, anything in any act of the Legislature or of any court to the contrary, notwithstanding.

Sec. 12-a. *Qualifications of Minister, Priest or Rabbi for Celebrating Marriages.*—When any minister, priest or rabbi shall, before the circuit or county court of any county in this state, or the clerk of any county court therein when neither of such courts shall be in session, produce proof that he is duly licensed as such, and of his being in regular communion with the religious society of which he is a member, and give bond in the penalty of fifteen hundred dollars, such court or clerk may make an order authorizing him to celebrate the rites of marriage in all

the counties of the state: *Provided, however,* That any minister, priest or rabbi who gives proof before the circuit or county court of any county in this state, or the clerk of any county court therein, when neither of such courts shall be in session, of his ordination by his respective church, denomination or synagogue, shall be exempted from the giving of such bond.

Sec. 12-b. *Ritual for Ceremony of Marriage by Judges.*— The ritual for the ceremony of marriages by judges of courts of record in this state may be as follows: At the time appointed, the persons to be married, being qualified according to the law of the state of West Virginia, standing together facing the judge, the man at the judge's left hand and the woman at the right, the judge shall say:

"We are gathered here, in the presence of these witnesses, to join together this man and this woman in matrimony. It is not to be entered into unadvisedly but discreetly, sincerely, and in dedication of life.

(Then shall the judge say to the man, using his christian name:)

"N., wilt thou have this woman to be thy wedded wife, to live together in the bonds of matrimony? Wilt thou love her, comfort her, honor and keep her in sickness and in health?

(Then the man shall answer:)

"I will.

(Then the judge shall say to the woman, using her christian name:)

"N., wilt thou have this man to be thy wedded husband, to live together in the bonds of matrimony? Wilt thou love him, comfort him, honor and keep him in sickness and in health?

(The woman shall answer:)

"I will.

(Then may the judge say:)

"Who giveth this woman to be married to this man?

(The father of the woman, or whoever giveth her in marriage, shall answer:)

"I do.

(Then the judge shall ask the man to say after him:)

"I, N., take thee, N., to be my wedded wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love, and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then the judge shall ask the woman to repeat after him:)

"I, N., take thee, N., to be my wedded husband, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then, if there be a ring, the judge shall say:)

"The wedding ring is an outward and visible sign—signifying unto all, the uniting of this man and this woman in matrimony.

(The judge then shall deliver the ring to the man to put on the third finger of the woman's left hand. The man shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed.

(Then, if there be a second ring, the judge shall deliver it to the woman to put upon the third finger of the man's left hand; and the woman shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed.

(Then shall the judge say:)

"Forasmuch as N. and N. have consented together in wedlock, and have witnessed the same each to the other and before these witnesses, and thereto have pledged their faith each to the other, and have declared the same by giving (and receiving) a ring, by virtue of the authority vested in me as judge of this court, I pronounce that they are husband and wife together."

Sec. 12-c. *Ritual for Ceremony of Marriage by Minister, Rabbi or Priest; Record of Marriage.*—A minister, priest or rabbi authorized to celebrate the rites of marriage shall perform the ceremony of marriage according to the rites and ceremonies of his religious denomination, church, or synagogue and the laws of the state of West Virginia.

A record of each marriage performed, with the names

of the parties, their respective places of residence prior to marriage, and the date of marriage, shall be kept by the officiating minister, priest or rabbi in the permanent record of the church or synagogue which he serves.

# CHAPTER 30

**(House Bill No. 362—By Mr. Watson)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

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

**Article 4. Adoption.**

Section

2. Contents of petition; age of petitioners.

*Be it enacted by the Legislature of West Virginia:*

That section two, 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:

Section 2. *Contents of Petition; Age of Petitioners.*—Such petition shall set forth the name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known; whether such child be possessed of any property, and a full description of the same, if any; whether such child has either father or mother, or both, and if he, she or they are alive, then the name or names, and place of residence of such father or mother, or if such be the fact, that the same are unknown to the petitioner or petitioners.

The persons petitioning as aforesaid shall be at least fifteen years older than the child sought to be adopted, and the petition shall be duly verified according to law:

*Provided, however,* That when the petitioner seeks to adopt a child of his or her spouse, the requirement that the person petitioning be fifteen years older than the child sought to be adopted shall not apply.

# CHAPTER 31

**(Senate Bill No. 222—Originating in the Senate Committee on the Judiciary)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the adoption of children and adults.

**Article 4. Adoption.**

Section
9. Contracts limiting or restraining adoptions.

*Be it enacted by the Legislature of West Virginia:*

That article four, chapter forty-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 nine, to read as follows:

Section 9. *Contracts Limiting or Restraining Adoptions.* —Any contract, agreement or stipulation which endeavors to deny to any person or persons the right to petition for adoption of any person, or which endeavors to alter the time or manner of adoption as provided in this article, is contrary to the public policy of the state and such portion of any contract, agreement or stipulation is null and void and of no effect.

# CHAPTER 32

**(Senate Bill No. 17—By Mr. Carson, Mr. President)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to desertion or nonsupport of wife or child.

## Article 8. Desertion or Nonsupport of Wife or Child.

Section

1. Offense; penalty.
3. Order for support; release on bond; forfeiture; failure to furnish bond.

*Be it enacted by the Legislature of West Virginia:*

That sections one and three, article eight, 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:

Section 1. *Offense; Penalty.*—Any husband who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife, in destitute and necessitous circumstances, or any parent who shall, without lawful excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her legitimate or illegitimate child or children, under the age of eighteen years, in destitute and necessitous circumstances, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding one year, with hard labor, or both, and the court may also direct that the husband or parent work on the public highways of this state or where he may obtain employment, and the court may order such payments to be made to the wife, guardian, custodian or trustee of such minor child or children as he may deem

necessary for their maintenance, taking into consideration the station in life of such husband or parent and any other circumstances surrounding the case: *Provided, however,* That if such husband or parent be regularly employed or obtain regular employment, the court in its discretion may order such husband or parent to remain in such employment, and it shall be the duty of the sheriff to arrange for a continuation of said employment without interruption, and whenever such husband or parent is not employed, and between the hours or periods of employment, he or she shall be confined in jail unless the court shall otherwise direct. The earnings of such husband or parent shall be collected by the sheriff, and from such earnings the sheriff shall pay the board and reasonably necessary personal expenses of such husband or parent, both inside and outside the jail, and, to the extent directed by the court, pay the balance to the wife, guardian, custodian or trustee of such minor child or children, as the court may order.

Sec. 3. *Order for Support; Release on Bond; Forfeiture; Failure to Furnish Bond.*—The justice of the peace or other court before whom such conviction is had may, in lieu of the penalty herein provided, or in addition thereto, having regard to the circumstances and financial ability or earning capacity of the defendant, require the defendant to pay a certain sum periodically to the wife or to the guardian, curator, custodian or trustee of such wife, child or children, which shall be subject to change from time to time as circumstances may require, and may release the defendant upon his or her entering into a bond with good surety in the penalty of not less than five hundred dollars. The condition of the bond shall be to make payments as aforesaid to the wife, guardian, curator, custodian or trustee of such wife, child or children until the further order of the court or until the child or children arrive at the age of eighteen years, and to appear before the court in case default be made in the payment of such sums; and in case the defendant fails to make such payments, the justice or other court may order the rearrest of the defendant, and proceed with the trial under the original

charge, or sentence him or her under the original charge, as the case may be, and in the case of forfeiture of the bond herein provided for, and enforcement thereof, the sum recovered may, in the discretion of the court wherein the forfeiture is enforced, be paid in whole or in part to the wife or to the guardian, curator, custodian or trustee of such wife or minor child or children, as the court may order; and in event the accused is unable to furnish bond as set out in this article, then the judge of the circuit court may direct that the defendant work on the public highways of this state or where he may obtain employment, and the judge of such court may order such payments to be made to the wife, guardian, custodian or trustee of such minor child or children as he may deem necessary for their maintenance, taking into consideration the station in life of the defendant and any other circumstances surrounding the case.

# CHAPTER 33

**(House Bill No. 159—By Mr. Bias and Mr. Harmon)**

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-d, relating to changing the name of Marshall College to Marshall University.

**Article 2. State Board of Education.**

Section

13-d. Marshall University.

*Be it enacted by the Legislature of West Virginia:*

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section thirteen-d, to read as follows:

Section 13-d. *Marshall University.*—Notwithstanding any other provision of law, the state educational institution located at Huntington, West Virginia, previously known as Marshall College shall, after the effective date of this section, be known as Marshall University, and any reference to said Marshall College contained in law shall be construed to apply to Marshall University; and this university shall remain under the supervision and control of the state board of education.

# CHAPTER 34

**(Com. Sub. for House Bill No. 469—Originating in the House Committee on Humane Institutions)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-e; and to repeal article four, chapter twenty-six of said code, all relating to the home for aged and infirm colored men and women and the real property used for such purpose.

**Article 2. State Board of Education.**

Section

13-e. Transfer of property for the use of Marshall University.

*Be it enacted by the Legislature of West Virginia:*

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-e; and that article four, chapter twenty-six of said code be repealed, to read as follows:

Section 13-e. *Transfer of Property for the Use of Marshall University.*—On and after the first day of July, one thousand nine hundred sixty-one, supervision and

control of all of the real property, heretofore administered by the commissioner of public institutions containing one hundred eighty-four and one-half acres, more or less, located in Guyandotte district, Cabell county, and known as the "West Virginia Home for Aged and Infirm Colored Men and Women" shall be transferred to the supervision and control of the state board of education. The state board of education shall be authorized to use the property for any purpose it may deem advisable in connection with the educational program of Marshall University.

# CHAPTER 35

**(Senate Bill No. 59—By Mr. Moreland)**

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-f, relating to the establishment of a supplemental retirement plan for persons employed by the state board of education at institutions of higher education under its control.

**Article 2. State Board of Education.**

Section

13-f. Payroll deductions for employees participating in supplemental retirement plan; authority to match employee contributions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13-f. *Payroll Deductions for Employees Participating in Supplemental Retirement Plan; Authority to Match Employee Contributions.*—The state board of edu-

cation shall have the authority to contract for retirement benefits for any or all persons employed by the board at institutions of higher education under its control to supplement the benefits such employees will receive under the state teachers' retirement system. The board shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five per cent of the salary of employees thirty through thirty-four years of age, six per cent of the salary of those thirty-five through forty-four years of age, and seven and one-half per cent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers' retirement system or the United States social security act, as amended. The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into such retirement plan from funds appropriated for personal services at the several institutions of higher education under its control. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the board's matching funds.

# CHAPTER 36

**(Senate Bill No. 26—By Mr. McKown)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the qualifications and compensation of county superintendents of schools.

**Article 4. County Superintendent of Schools.**

**Section**

4. Compensation.

*Be it enacted by the Legislature of West Virginia:*

That section four, article 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:

Section 4. *Compensation.*—On or before the first day of May of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the first day of July following. The annual salary of such superintendent shall not be less than five thousand dollars nor more than ten thousand dollars, both exclusive of state aid: *Provided, however,* That in counties having a population in excess of sixty-five thousand, the board may pay salaries in excess of ten thousand dollars. The board shall pay the salary from the general current expense fund of the district.

# CHAPTER 37

**(Senate Bill No. 45—By Mr. McKown)**

[Passed February 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings,

quorum, employment and assignment of teachers, compensation of members and affiliation with state and national organizations by the county board of education.

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## Article 5. District Board of Education.

Section

4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations.

*Be it enacted by the Legislature of West Virginia:*

That section four, 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:

Section 4. *Meetings; Quorum; Employment and Assignment of Teachers; Compensation of Members; Affiliation with State and National Associations.*—The board shall meet on the first Monday of July and the first and third Tuesdays in August 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. On or before the first Monday in May the superintendent shall furnish to the board a list of those probationary and continuing contract teachers to be considered for transfer and subsequent assignment for the next ensuing school year.

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.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members shall receive compensation at the rate of twenty dollars per meeting attended. But they shall not receive pay for more than twenty-four meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an

itemized sworn statement, for all necessary traveling expenses 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 expense 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.

# CHAPTER 38

**(House Bill No. 404—By Mr. Frazer)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, 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-b, relating to sick-leave compensation for school bus drivers.

**Article 7. Teachers.**

Section

2-b. Sick leave for school bus drivers.

*Be it enacted by the Legislature of West Virginia:*

That article seven, 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-b, to read as follows:

Section 2-b. *Sick Leave for School Bus Drivers.*—The county board of education may establish and maintain

in its annual budget a separate fund to be known as the "bus drivers' sick-leave fund." In allocating money to this fund, the board shall provide and maintain a reasonable reserve to meet the cost of any accumulated sick leave.

Any county board of education establishing such a fund shall provide that any full-time school bus driver employed by such board shall be entitled to at least five days of sick leave per year, accumulative to a total of twenty school days. Money allocated to the sick-leave fund shall be used to pay the salary of any full-time bus driver who loses time from assigned duties due to personal accident, sickness, death in the immediate family, or any other emergency cause that may be authorized or approved by the board.

All sick-leave benefits shall be paid at the end of the school year. If funds budgeted for sick-leave benefits are insufficient to pay the amount due, the per diem salaries for all bus drivers claiming sick-leave benefits shall be reduced proportionately. The board is authorized to prescribe such other regulations as it may deem necessary.

# CHAPTER 39

**(Senate Bill No. 27—By Mr. Carson, Mr. President, and Mr. McKown)**

[Passed February 14, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of teachers and other employees.

## Article 7. Teachers.

Section

5. Payment of teachers and other employees.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Payment of Teachers and Other Employees.*—All teachers and employees whose salaries are payable out of the school current fund shall be paid for their services by orders drawn upon the sheriff or treasurer and duly signed by the president and secretary of the board in accordance with the following provisions:

Notwithstanding any other provisions of this chapter, all teachers duly contracted shall be paid in not fewer than nine nor more than twelve monthly pays, beginning after the fifteenth day of September of each fiscal year, and on a fixed and regularly designated date for the calendar month. In the event a teacher is not paid the full salary earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year. Adjustments for time loss due to absence may be made in the next pay check following such time loss.

The board may withhold the monthly salary of any teacher or employee until he has made the reports required by the board or the state superintendent.

# CHAPTER 40

**(Senate Bill No. 48—By Mr. McKown)**

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirty-three, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirement of state superintendent to keep master file of qualified teachers.

**Article 7. Teachers.**

**Section**

1. Master file of qualified teachers; repeal of statute.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Master File of Qualified Teachers; Repeal of Statute.*—Section thirty-three, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter seventy, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, requiring the state superintendent of schools to keep a master file of qualified teachers, is hereby repealed.

# CHAPTER 41

**(Com. Sub. for House Bill No. 75—Originating in the House Committee on Finance)**

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, three, four, eleven and twelve, relating to public school support.

**Article 9-a. State and County Support of Schools.**

Section

1. Determination of a school support program.
3. Total state foundation program.
4. Computation of local share; appraisal and assessment of property.
11. County basic foundation program; total amount of state aid.
12. Supplemental instructional support.

*Be it enacted by the Legislature of West Virginia:*

That article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, three, four, eleven and twelve to read as follows:

Section 1. *Determination of a School Support Program.*—The intent of this article is to provide a plan of financial support for the public schools of the state to be

known as the West Virginia public school support program, and to fix statutorily both state and county responsibility for the financing of the same. The said school support program shall be comprised of three parts; namely, basic foundation support, supplemental instructional support, and general matching support as funds and provisions are established for such. In enacting this plan, the Legislature has in mind the following purposes:

(1) To provide a basic foundation support for the free schools of the state that will assure a minimum educational base for all children and youth irrespective of where they may live.

(2) To provide, through state funds, a supplement to the instructional program that will aid in getting and keeping competent teachers, that will assure a standard term of nine and one-half months, such to be used for increasing classroom instruction time, for inservice improvement of teacher competency, and for meeting other school needs.

(3) To provide a state-county matching plan that will encourage counties to increase and to maintain their local support over and beyond that required for basic foundation needs.

Sec. 3. *Total State Foundation Program.*—The total basic foundation school support program for any year shall be the appropriation for state aid to schools available for distribution during that year, plus the total local share for all counties in the state, determined for that year as provided in this article, after providing for those allocations established in section twelve of this article. The amount of the total state foundation program so determined shall be used to meet the requirements of each successive division or step of the allocation formula provided for in this article, in the order of priority stated in the following sections. Whenever the amount applicable to any division or step is insufficient to meet fully the stated requirement, the amount for each unit of cost in such division or step shall be reduced proportionately, and the remaining divisions or steps of the formula shall necessarily be disregarded.

Sec. 4. *Computation of Local Share; Appraisal and Assessment of Property.*—On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred per cent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half per cent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner, and shall deduct therefrom five per cent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty per cent of the amount so determined shall be added to the ninety-seven and one-half per cent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal property which shall be based upon true and actual value as set forth in article three, chapter eleven of this code.

In determining the value of personal property—other than all machinery, equipment, furniture and fixtures of any industrial plant, mine, quarry or installation and of any commercial, industrial, or professional establishment —the tax commissioner shall prescribe accepted methods of determining such values. The tax commissioner shall in accordance with such methods determine the value of such property.

For the purpose of appraising commercial, industrial, and professional properties the tax commissioner after

consultation with the county court shall employ a competent property appraisal firm or firms which appraisals shall be under his supervision and direction.

In making or causing to be made such appraisal, the tax commissioner shall employ such assistants as available appropriations will permit and shall prescribe and use such accepted methods and procedures for checking property values and determining the amount of property in the several classes of property provided by law as are customarily employed for appraisal purposes.

Such appraisal of all said property in the several counties shall be completed prior to the first day of January, one thousand nine hundred sixty-four. Each year after the completion of the property appraisal in a county the tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications, and shall determine the appraised value thereof. On the basis of information so ascertained, the tax commissioner shall annually revise his reports to the Legislature and to the state board concerning such appraisals, such reports to be made not later than the first day of January of each year.

As information from such appraisal of property in a county under the provisions of this section becomes available for a district, municipality and county, the tax commissioner shall notify the county court and the assessor of said county that such information is available and shall make available to said county court and assessor all data, records, and reports or other information relating to said work, along with a list of any properties in said district, municipality, and county which are entered on the assessment rolls but for which no appraisal has been made, a list of any properties which were appraised but which can not be found on the assessment rolls and a list of all properties carried on the assessment rolls which have not been identified on the maps. Said lists shall set forth the name of the owner and a description of the property and the reason, if known, for its failure to have been

entered on the assessment rolls or to have been appraised or to have been identified on the map, as the case may be.

As such appraisal of property in a county, under this section, is completed to the extent that a total valuation for each class of property can be determined, such appraisal shall be delivered to the assessor and the county court, and in each assessment year commencing after such appraisal is so delivered and received, the county assessor and the county court, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. The total assessed valuation in each of the four classes of property shall be not less than fifty per cent nor more than one hundred per cent of the appraised valuation of each said class of property.

The determination of appraised values in those counties where the full appraisal has not been completed as defined above and delivered to the assessor and the county court prior to the first day of the assessment year shall be continued by the tax commissioner on the annual spot survey basis. Beginning with the fiscal year one thousand nine hundred sixty and for each year thereafter until the full survey is so completed and delivered in a county, the assessed value in each of the four classes of property in such county shall be not less than fifty per cent nor more than one hundred per cent of the appraised valuation of each said class of property as determined by the last previous statewide report of the tax commissioner: *Provided, however*, That in those counties where the full appraisal has not been completed and delivered, as aforesaid, to the county assessor and the county court prior to the first day of the assessment year, the requirements of this paragraph shall be satisfied if:

(1) The total tax yield from the four classes of property based upon the allowable school levy rates defined in section two of this article equals or exceeds the amount required to meet the local share as provided in this section; or

(2) For the assessment year one thousand nine hundred sixty-one, the assessor has increased the total valua-

tions of property in an amount not less than thirty-three and one-third per cent of the difference between the total assessed valuations for the assessment year one thousand nine hundred sixty and the valuations required by this section; or

(3) For the assessment year one thousand nine hundred sixty-two, the assessor has increased the total valuations of property in an amount not less than fifty per cent of the difference between the total assessed valuations of property for the assessment year one thousand nine hundred sixty-one and the total valuations for such class required by this section; or

(4) For the assessment year one thousand nine hundred sixty-three, the assessor has increased the total valuation of property so that the same meet the requirements of this section.

Whenever in any year a county assessor and/or county court shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county court and shall direct the county assessor and county court to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of chapter eleven and of this section, and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor and/or the county court to make such corrections shall constitute grounds for removal from office.

In any year in which the total assessed valuation of a county shall fail to meet the minimum requirements above set forth, the county court of such county shall allocate for such year to the county board of education from the tax levies allowed to the county court a sufficient portion of its levies as will, when applied to the valuations for assessment purposes of such property in the county, provide a sum of money equal to the differences between the amount of revenue which will be produced by application of the allowable school levy rates defined in section two of this article upon the valuations for assessment pur-

poses of such property and the amount of revenue which would be yielded by the application of such levies to fifty per cent of the total of appraised valuations of such property. In the event the county court shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board of school finance, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

In conjunction with and as a result of the appraisal herein set forth the tax commissioner shall have the power and it shall be his duty, to establish a permanent records system for each county in the state, consisting of:

(1) Tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels or lots by a system of numbers, or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the property record cards and property owners' index;

(2) Property record cards arranged geographically according to the location of property on the tax maps, which cards shall set forth the location and description thereof, the acreage or dimensions, description of improvements, if any, the owner's name, address and date of acquisition, the purchase price, if any, set forth in the deed of acquisition, the amount of tax stamps, if any, on the deed, the assessed valuation, and the identifying number or symbol and number, shown on the tax map;

(3) Property owners' index consisting of an alphabetical listing of all property owners, setting forth brief descriptions of each parcel or lot owned, and cross-indexed with the property record cards and the tax map.

The tax commissioner is hereby authorized and empowered to enter into such contracts as may be necessary, and for which funds may be available, to establish the permanent records system herein provided for, or may through his staff and employees, prepare and complete such system.

The cost of conducting the appraisal herein provided for shall be borne jointly by the state and the several

counties in the following manner and terms: There shall be appropriated from the general revenue fund not less than one million five hundred thousand dollars for each fiscal year until sufficient funds have been appropriated to complete the appraisal in all counties of the state.

Each county shall furnish, through its county court, not more than ten per cent of the cost of such appraisal or reappraisal and permanent records system for such county. Such county costs may be paid over a period of three years with the approval of the tax commissioner. If a county has employed a professional appraisal firm to conduct an appraisal or reappraisal of all or a part of nonutility property within the past five years, and such appraisal, or any other appraisal or reappraisal has been or shall have been accepted by the tax commissioner, credit shall be allowed to such county for its portion of the statewide appraisal costs and any contract with appraisal firm or firms shall not be made for appraisal or reappraisal of such property except and unless requested by such county, or shown to be necessary by the tax commissioner: *Provided,* That until the completion of the appraisal herein provided for in all of the fifty-five counties of the state, the local share for each county shall be determined on the basis of the annual spot survey of property valuations by the tax commissioner in this state, as heretofore provided, but in no way shall this be interpreted as affecting the assessment provisions set forth above; however, in any county having accepted and used appraised valuations developed by an appraisal made by the tax commissioner or accepted by him as a basis in determining the true and actual valuation for assessment purposes, the county board of education may annually request that the local share shall be that which was in effect under the last applicable spot survey preceding such acceptance and usage and until the full reappraisal has been completed in all counties the board of school finance shall comply with such request: *Provided further,* That the sample pieces of property employed in making the annual spot survey shall be used by the tax commissioner for this purpose only and shall be open to none other than the Legislature by its request through a resolution approved

by both the senate and the house of delegates and as otherwise provided in this section; however, if on the basis of the current statewide report of the tax commissioner available the first day of January of each year, it apppears that any county shall not have complied with the requirements regarding the ratio of assessed valuations, the tax commissioner shall notify the assessor and the county court of each such county and, if they file a request for review of the appraisals which they believe to be in error, he shall review the appraisal of such properties and shall correct such errors as he may discover in such individual appraisal and/or in the preparation or recording of the report by the tax commissioner. The corrected figures shall be reported to the board of school finance prior to the first day of June and shall be used in determining the allocations of state aid to the county boards of education for the subsequent fiscal year.

The county assessor and the county court shall comply with the provisions of chapter eleven of this code in determining the true and actual value of property for assessment purposes and shall not arbitrarily use a direct percentage application to the appraised valuations (whether complete appraisal or spot survey) of any class of property or property within a class for such purpose.

The provisions of this section shall not be construed to alter or repeal in any manner the provisions of chapter eleven of this code, but shall be construed in pari materia therewith, and compliance with this section by the assessor and county court shall be considered, pro tanto, as compliance with said chapter eleven.

Sec. 11. *County Basic Foundation Program; Total Amount of State Aid.*—The basic foundation school program for each county for the fiscal year shall be the sum of the amounts allowed the county under the formula provisions of sections four to ten, inclusive, of this article. Prior to the first day of July in each year, the state board shall determine the basic foundation program for each county for the next fiscal year. The state share of the basic foundation program of the county shall be the difference between the total cost of said basic foundation and the computed local share for said county; ex-

cept, however, that no county shall receive less than fifty per cent of the computed cost of the foundation program of such county.

The total state aid to the county shall be the sum of (1) the computed state share of basic foundation support, (2) the state share under the provisions of supplemental instructional support, and (3) the state share for general matching provisions when such are established. After such computation is completed, the state board shall immediately certify to each county board the amount of state aid allocated to the county for the next fiscal year, subject to any qualifying provisions of this article.

Sec. 12. *Supplemental Instructional Support.*—The provisions of this section are designed to strengthen the instructional program by attracting to and keeping qualified teachers in the public school classrooms, by extending the employment term of teachers so as to provide time for more class instruction, time for inservice improvement in teacher competency, time for teacher-pupil-parent conferences. This phase of the school support program shall be computed on a teacher-unit basis.

Beginning with the fiscal year one thousand nine hundred sixty-one, the allocation of state funds for supplemental instructional support shall be the sum of (a) an amount as is necessary to meet the instructional requirements established by the fifty-second Legislature; (b) one hundred eighty dollars times the number of teachers employed in the county for the preceding year for the purpose of providing a base-pay increase of twenty dollars per month for such teachers; and (c) one eighteenth of the total teacher cost, based on the legal minimum salary scale plus the salary supplement provided for in item (b) of this paragraph, of all employed teachers for the purpose of extending the employment of such teachers by adding two weeks employment.

# CHAPTER 42

**(Senate Bill No. 63—By Mr. Moreland)**

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-d, relating to the disposition of tuition fees and charges collected at the university medical center.

**Article 11. West Virginia University.**

Section

4-d. Disposition of tuition fees collected at West Virginia University medical center.

*Be it enacted by the Legislature of West Virginia:*

That article eleven, 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 four-d, to read as follows:

Section 4-d. *Disposition of Tuition Fees Collected at West Virginia University Medical Center.*—All tuition fees collected at West Virginia university medical center from students in the schools of medicine, medical technology, dentistry, dental technology, nursing, and pharmacy, together with all special tuition and registration fees charged for postgraduate short courses, institutes, and seminars conducted by the medical center, shall be paid into the special medical school fund heretofore created in the state treasury under the provisions of section two, article nineteen, chapter eleven of this code, and shall be used solely for the construction, maintenance, and operation of the schools of medicine, medical technology, dentistry, dental technology, nursing, and pharmacy.

# CHAPTER 43

**(Senate Bill No. 60—By Mr. Moreland)**

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section five-c, relating to the establishment of a supplemental retirement plan for employees of the board of governors of West Virginia University.

## Article 11. West Virginia University.

Section

5-c. Payroll deductions for employees participating in supplemental retirement plan; authority to match employee contributions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5-c. *Payroll Deductions for Employees Participating in Supplemental Retirement Plan; Authority to Match Employee Contributions.*—The board of governors of West Virginia University shall have the authority to contract for retirement benefits for any or all of its employees to supplement the benefits such employees will receive under the state teachers' retirement system. The board shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five per cent of the salary of employees thirty through thirty-four years of age, six per cent of the salary of those thirty-five through forty-four years of age, and seven and one-half per cent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers' retirement system or the United States social security act, as amended. The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into such retirement plan from funds appropriated for personal services at the

university and at Potomac State College. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the board's matching funds.

# CHAPTER 44

**(Senate Bill No. 69—By Mr. Moreland)**

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the board of governors of West Virginia University to establish, operate, and maintain graduate centers.

**Article 11. West Virginia University.**

**Section**

10-a. Establishment and operation of graduate centers.

*Be it enacted by the Legislature of West Virginia:*

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

Section 10-a. *Establishment and Operation of Graduate Centers.*—The board of governors is hereby authorized and empowered to establish, maintain and operate one or more graduate centers of science, engineering, commerce or business administration at such place or places within

the state as may be deemed advisable. For these purposes it is hereby authorized and empowered to enter into written contracts or agreements with any person for support of such graduate centers, and to accept gifts, donations, other contributions, facilities and aid in establishing and operating the same. The board shall provide for the charging and collection at each graduate center of such enrollment, tuition, registration and other fees or charges as the board may deem necessary to provide for the maintenance and operation of the center on a self-supporting basis.

All such fees, charges, contributions, gifts and donations paid or collected at any graduate center shall be paid into a special fund and shall be used solely for the maintenance and operation of the graduate center at which they were collected.

No such graduate center shall be established unless and until the board of governors shall determine that all facilities, fees, contributions, charges, gifts and donations paid, collected or available shall be sufficient to meet and discharge all costs of the establishment, operation and maintenance of such center. In the event the fees, charges, gifts, donations, contributions, facilities and other aid will not be sufficient to provide for the continued operation and maintenance of such center on a self-supporting basis, as hereinbefore set forth, the board of governors shall close the same at the end of the semester in which such determination shall be made.

# CHAPTER 45

**(Senate Bill No. 64—By Mr. Moreland)**

[Passed February 28, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-b, relating to the employment of security of-

ficers and to their powers and duties on premises under the jurisdiction of the board of governors.

## Article 11. West Virginia University.

Section
10-b. Security officers; powers and duties.

*Be it enacted by the Legislature of West Virginia:*

That article eleven, 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 ten-b, to read as follows:

Section 10-b. *Security Officers; Powers and Duties.*— The board of governors is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased by the state of West Virginia and under the jurisdiction of the board, subject to the conditions and restrictions hereinafter imposed. Before entering upon the performance of his duties as such security officer in any county, each person so appointed shall qualify therefor in the same manner as is required of constables by the taking and filing of an oath of office as required by article one, chapter six of this code, and by the posting of an official bond as required by article two, chapter six of this code. No such person shall have authority to carry a gun or any other dangerous weapon until he shall have obtained a license therefor in the manner prescribed by section two, article seven, chapter sixty-one of this code: *Provided, however,* That no enrolled student of West Virginia University shall be appointed as a security officer.

It shall be the duty of any person so appointed and qualified to preserve law and order on any premises under the jurisdiction of the board to which he may be assigned by the president of the university. For this purpose he shall as to offenses committed on such premises have and may exercise all the powers and authority and shall be subject to all the responsibilities of regularly elected constables of the county. The assignment of security

officers to any premises under the jurisdiction of the board shall not be deemed to supersede in any way the authority or duty of other peace officers to preserve law and order on such premises.

The salary of all such security officers shall be paid by the board. The board may also furnish such security officers with an official uniform and shall furnish and require each such officer while on duty to wear a metallic shield with an appropriate inscription and to carry credentials certifying to his identity and to his authority as a security officer.

The board of governors may at its pleasure revoke the authority of any such officer by filing a notice to that effect in the office of the clerk of each county in which his oath of office was filed, and in the case of officers licensed to carry a gun or other dangerous weapons by notifying the clerk of the circuit court of the county in which the license therefor was granted.

# CHAPTER 46

**(House Bill No. 124—By Mr. Speaker, Mr. Singleton)**

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section twenty-five, relating to the authority of the board of governors to acquire, by lease or purchase, construct, maintain, operate and finance automobile parking facilities.

**Article 11. West Virginia University.**

**Section**

25. Acquisition and operation of parking facilities.

*Be it enacted by the Legislature of West Virginia:*

That article eleven, chapter eighteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section twenty-five, to read as follows:

Section 25. *Acquisition and Operation of Parking Facilities.*—The board of governors is hereby authorized to construct, maintain and operate automobile parking facilities on the campus or other areas under its jurisdiction for use by students, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable regulations as may be prescribed by the board. A summary of the regulations shall be posted conspicuously in each parking area.

The board shall have authority to charge fees for use of the parking facilities. All moneys collected for such use shall be paid into a special fund. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereon of additional parking facilities. Any money in the fund not needed immediately for the acquisition, construction, maintenance, or operation of such facilities may be temporarily invested by the board in the state sinking fund.

Whenever a vehicle is parked on any university parking facility in violation of the posted regulations, the board shall have authority to remove the vehicle, by towing or otherwise, to an established garage or parking lot for storage until called for by the owner or his agent. The owner shall be liable for the reasonable cost of such removal and storage, and until payment of such cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. Notice to this effect shall be posted conspicuously in each parking area. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

# CHAPTER 47

(Senate Bill No. 66—By Mr. Moreland)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, 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 one-aa, relating to the award of graduate scholarships by the board of governors.

## Article 1-a. Fees and Other Money Collected at State Institutions.

Section

1-aa. Professional school scholarships entitling recipients to waiver of fees; conditions and limitations.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, 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 one-aa, to read as follows:

Section 1-aa. *Professional School Scholarships Entitling Recipients to Waiver of Fees; Conditions and Limitations.* —In addition to the scholarships heretofore authorized for undergraduate study by the provisions of section one-a of this article, the board of governors is hereby authorized and empowered to establish from time to time scholarships for study in the school of medicine, the school of dentistry, the college of law, and the graduate school, entitling the recipients to waiver of enrollment, tuition, registration, and other fees, subject to the following conditions and limitations:

(1) The number of such scholarships in effect at any one time shall not exceed six for each class in the school of medicine, five for each class in the school of dentistry,

four for each class in the college of law, and four for graduate students in social work. Such scholarships may be for a period of time not to exceed eight semesters of study in medicine and dentistry, six semesters of study in law, and five semesters of study in graduate social work.

(2) Each such scholarship shall entitle the recipient to waiver of such enrollment, tuition, registration and other fees as may be prescribed by the board.

(3) The board shall make rules governing the award of such scholarships, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of such scholarships by the recipients, and the rights and duties of the recipients in respect to such scholarships. Such rules shall not be inconsistent with the provisions of this section.

(4) The awarding of such scholarships shall be entered in the minutes of the meeting of the board, and the board shall file with the state auditor and the director of the budget division a certified copy of the rules governing the award of such scholarships and a list of the names of the recipients thereof.

# CHAPTER 48

**(House Bill No. 123—By Mr. Speaker, Mr. Singleton)**

[Passed March 6, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section one-c, authorizing the governing boards of state educational institutions to excuse students from the payment of tuition, registration, and other fees, whenever such students are enrolled in an educational program, the cost of which is wholly financed from nonstate funds except for indirect costs of administration and other overhead expenses.

**Article 1-a. Fees and Other Money Collected at State Institutions.**

**Section**

1-c. Authority to excuse students in certain educational programs from payment of tuition, registration, and other enrollment fees.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, 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, to be designated section one-c, to read as follows:

Section 1-c. *Authority to Excuse Students in Certain Educational Programs from Payment of Tuition, Registration and Other Enrollment Fees.*—Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal agency or from any foundation, corporation, or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state educational institution administering such program shall have the authority to excuse all students enrolled in such program from the payment of tuition, registration and other enrollment fees.

# CHAPTER 49

**(House Bill No. 189—By Mr. Floyd and Mr. Wilson)**

[Passed March 3, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six-a and six-b, relating to the retention and expenditure of tuition and fees by the governing board of each state educational institution and establishing

joint agreements and financial support of community branch colleges.

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## Article 1-a. Fees and Other Money Collected at State Institutions.

Section

6-a. Fees and money derived from two-year branches of state supported institutions of higher education; expenditure of same.
6-b. Joint establishment and administration of two-year branch colleges by two or more governmental divisions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6-a. *Fees and Money Derived from Two-Year Branches of State Supported Institutions of Higher Education; Expenditure of Same.*—The governing board of each state educational institution may fix fees to be charged students enrolling in approved branches of state supported institutions of higher education, retaining same in a revolving account for the full and complete support of all costs of said branch or branches. Such branches shall be approved by the governing board and shall not exceed two-year liberal arts and terminal education and adult education programs approved by the board and shall be wholly self-supporting; admission, grades, and general operation of said branch shall be in accordance with rules and regulations of the governing board. A memorandum of agreement may be entered into between the governing board and the county board of education and other local governmental bodies for use of local plant facilities and/or local contributions toward the cost and maintenance of said approved branch.

Sec. 6-b. *Joint Establishment and Administration of Two-year Branch Colleges by Two or More Governmental Divisions.*—Any county board of education, county court, municipal corporation, or any two of them, may jointly establish with an approved educational institution, an

approved two-year branch college offering transfer, terminal, technical and adult vocational programs. The respective governmental bodies operating such a two-year terminal branch and community college may provide by agreement among themselves all matters connected with such programs, subject to the approval of the state board of education, and determine what items of cost and expense shall be paid by each.

# CHAPTER 50

**(Senate Bill No. 68—By Mr. Moreland)**

[Passed February 23, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, 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 six-c, relating to the imposition, collection, and expenditure of fees or charges for special services and special programs provided by educational institutions.

## Article 1-a. Fees and Other Money Collected at State Institutions.

Section

6-c. Fees or charges for special services and programs provided by educational institutions; collection and expenditure thereof.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, 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 six-c, to read as follows:

Section 6-c. *Fees or Charges for Special Services and Programs Provided by Educational Institutions; Collection and Expenditure Thereof.*—The governing board of each state educational institution shall have authority to provide special services and special programs at such institutions and may fix and collect special fees or charges

therefor. Such special services and special programs may include any one or more of the following:

(1) The conduct of music camps and band, orchestra, or voice clinics for secondary school students or other youth groups, summer tutoring programs for primary and secondary school students, speech therapy clinics and services, education and psychological testing programs, student guidance programs, and statistical studies and calculations by electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff, and visitors.

(3) Rental of musical recordings, educational films, slides, and other audio-visual aids.

(4) Microfilming or other mechanical reproduction of records and non-copyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses, and any other special program or special service customarily provided by institutions of higher education.

All fees or charges collected for any such special services or programs shall be paid into a special fund and shall be expended solely for the maintenance, operation, and support of such services and programs.

Whenever any such special service is provided by one school, division or department of an educational institution for the benefit of any other school, division or department in the same institution, the cost shall be paid by the school, division or department requesting the service and shall be deposited and expended as provided above.

# CHAPTER 51

**(House Bill No. 382—By Mr. Speaker, Mr. Singleton)**

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the board of governors of West Virginia University to pay into a special fund the proceeds of any

sale by the board to the city of Morgantown of the university hangar site and the hangar and other buildings thereon at the Morgantown airport, and specifying the purposes for which such proceeds may be used by the board.

**West Virginia University.**

Section

1. Use and disposition of proceeds of sale of university hangar site and buildings.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Use and Disposition of Proceeds of Sale of University Hangar Site and Buildings.*—In the event of the sale by the board of governors of West Virginia University to the city of Morgantown of the university hangar site and the hangar and other buildings thereon, being part of the university agronomy farm adjacent to the Morgantown airport, the board shall have the authority to deposit the proceeds of such sale in a special fund in the state treasury and to use such fund only for the purpose of defraying the cost of constructing new facilities on another site to be provided at the airport by the city of Morgantown.

# CHAPTER 52

**(Com. Sub. for Senate Bill No. 115—Originating in the Senate Committee on the Judiciary)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and thirteen, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to publication, printing and delivery of ballots, and delivery of election supplies to election commissioners.

**Article 4. Nomination or Election of Candidates at Primaries.**

**Section**

9. Publication and printing of ballots; delivery of ballots to election commissioners.
13. Procuring ballots and other primary supplies.

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*Be it enacted by the Legislature of West Virginia:*

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

Section 9. *Publication and Printing of Ballots; Delivery of Ballots to Election Commissioners.*—At least twenty-five days before the holding of any primary election, the ballot commissioners of each county shall prepare from the lists and certificates of announcements, as provided in this article, a sample official primary ballot for each party, placing thereon the names of all the candidates of the respective political party, and, as the case may be, the nonpartisan candidates to be voted for at such primary election. They shall publish the same in two issues of a newspaper of general circulation published in such county and representing such party, if one there be; if not, then in some other newspaper published in such county in two issues of such newspaper.

The ballot commissioners shall cause official ballots, to not more than one and one-fifth times the number of registered voters in each election precinct of each political party, to be printed and delivered to them for holding the primary election, and the ballot commissioners shall deliver to the election commissioner ballots for each party to the number of one and one-twentieth times the number of registered voters of such party in the election precinct.

Sec. 13. *Procuring Ballots and Other Primary Supplies.*—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 and county courts, as the case may be, at least three days before each primary election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials

for conducting the election at the respective precincts. The commissioner or commissioners shall be given ballots for each party to the number of one and one-twentieth times the number of registered voters of such party in the election precinct, and shall be given ballot boxes, election booths, and other supplies required to be furnished for conducting the election at such precinct. The respective clerk shall take from the election commissioner or commissioners receipts for supplies and materials received, which receipts shall be filed in the office of the clerk of the county court or circuit court, as the case may be. It shall be the duty of such commissioner or commissioners to attend at such clerk's office and to receive such ballots and all other election supplies to be used in conducting the election at the respective precinct and to deliver the same, with the seal of all sealed packages unbroken, at his 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. At the same time there shall be delivered to an election commissioner designated by the ballot commissioners the proper poll books bearing on each page the following headings: "Names of Persons Voting for Candidates at Precinct No. ..... in the district of ..... in the county of ..... on this the ..... day of ....., 19...; of the ..... party." Such poll books shall have columns headed respectively: "Number of Voters", "Signature of Voters" and "Challenge of Voter", and shall have under the heading "Number of Voters" numbers, in consecutive order, to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books, and one copy of such poll books shall be supplied at each voting precinct for each political party appearing on the primary ballot.

In case any commissioner of election so appointed shall fail to appear at the offices of the clerks of such county and circuit courts, by the close of the second day prior to any election, as required by this 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, poll books and other supplies for such precinct. Such messenger shall be allowed two dollars for his time, and five cents a mile for the distance necessary to be traveled by him, and shall promptly report to the clerks of the circuit and county courts, 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.

# CHAPTER 53

**(Senate Bill No. 116—By Mr. Gainer)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of ballots and packages of ballots to be printed and delivered for use in a general election.

**Article 5. Conducting Election; Ascertaining and Certifying the Result.**

Section

5. Number of ballots; packages.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Number of Ballots; Packages.*—The board of ballot commissioners shall, for each general election to be held in their county, cause to be printed official ballots to not more than one and one-fifth times the number of reg-

istered voters in the county. 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.

# CHAPTER 54

**(Senate Bill No. 94—By Mr. Hedrick)**

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-one, twenty-two and twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conducting of elections and particularly to the giving of assistance to blind voters.

**Article 5. Conducting Election; Ascertaining and Certifying the Result.**

Section

21. Assistance to voter unable to write; blindness of voter.
22. Number of persons in booths; time for voting.
23. Number of voters allowed in election room; persons not permitted within five feet of booth or ballot box.

*Be it enacted by the Legislature of West Virginia:*

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

Section 21. *Assistance to Voter Unable to Write; Blindness of Voter.*—Any person whose registration record in-

dicates his inability to write may declare his choice of candidates to the poll clerks 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 such voter may require the poll clerks to indicate to him 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 may request the poll clerks to mark the ballot as he directs.

If the voter is unable to mark his ballot because of blindness and the voter presents a doctor's certificate as to such blindness, and if he shall so elect, said poll clerks shall both withdraw, and permit the voter to be assisted by any person designated by such voter.

Sec. 22. *Number of Persons in Booth; Time for Voting.*—Not more than one person shall be permitted to occupy any booth or compartment at one time; and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes. No voter, or person offering to vote, shall hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room. This section shall not apply to persons rendering assistance to blind voters as provided in section twenty-one of this article.

Sec. 23. *Number of Voters Allowed in Election Room; Persons Not Permitted within Five Feet of Booth or Ballot Box.*—Not more than one voter for each compartment or booth at the precinct shall be allowed in the election room at one time, and no person shall approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, shall be permitted to be within five feet of any ballot box, except by authority of

the board of election commissioners, and then only for the purpose of keeping order and enforcing the law. This section shall not apply to persons rendering assistance to blind voters as provided in section twenty-one of this article.

# CHAPTER 55

**(Senate Bill No. 211—By Mr. Carson, Mr. President)**

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal section twenty-one, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section three, article one; sections two, seven, ten and sixteen, article five; sections four, ten and eleven, article six; and section eight, article seven, all of said chapter twenty-one-a, and to further amend article six of said chapter by adding thereto a new section, designated section four-a, all relating to unemployment compensation.

**Article**

1. **Department of Employment Security.**
5. **Employer Coverage and Responsibility.**
6. **Employee Eligibility; Benefits.**
7. **Claim Procedure.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 1. Department of Employment Security.

Section

3. Definitions.

Section 3. *Definitions.*—As used in this chapter, unless the context clearly requires otherwise:

"Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

"Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

"Average annual payroll" means the average of the last three annual payrolls of an employer.

"Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

"Base period wages" means wages paid to an individual during the base period by all his base period employers.

"Benefit year" with respect to an individual means the one-year period beginning with the day on which he filed a valid claim for benefits, and thereafter the one-year period beginning with the day on 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 director may by regulation prescribe.

"Computation date" means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

"Director" means the employment security director.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, corporation (domestic or foreign), 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 an 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, or who or which is or becomes a liable employer under any federal unemployment tax act, or who or which has acquired 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.

"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) The term "employment" shall include 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.

(3) Service not covered under paragraph two of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the director 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.

(4) 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 or without such state, but the service performed without such state is incidental to the individual's service within this state. For example, is temporary or transitory in nature or consists of isolated transactions.

(5) 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 director 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.

(6) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled "Social Security Act Amendment of 1946", approved August tenth, one thousand nine hundred forty-six) on or in

connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

Included and Excluded Service. If the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Services performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions.

(2) Service performed directly in the employ of another state, or its political subdivisions.

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States, shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services: *Provided,* That if this state shall not be certified for any year by the secretary of labor under section one thousand six hundred three (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the director from the fund in the same manner and within the same period as is provided in section

nineteen, article five of this chapter, with respect to payments erroneously collected.

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094), and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The director may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreements shall become effective ten days after such publications as comply with the general rules of the department.

(5) Agricultural Labor. For the purposes of this chapter, the term "agricultural labor" includes all services performed—

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;

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;

In connection with the production or harvesting of maple syrup or maple sugar or any agricultural commodity, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connec-

tion with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

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, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph 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.

As used in this definition, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farm, plantations, ranches, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodity, and orchards, but the term "farm" does not include greenhouses and nurseries.

(6) Domestic service in a private home.

(7) Service performed by an individual in the employ of his son, daughter, or spouse.

(8) Service performed by a child under the age of twenty-one years in the employ of his father or mother.

(9) Service performed in the employ of an employing unit organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(10) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable water within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"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 and the District of Columbia.

"Total and partial unemployment":

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus ten dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value

of all remuneration in any medium other than cash: *Provided,* That the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: *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, except that for the purposes of sections one, ten, eleven and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: *And provided further,* That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand dollars or three thousand six

hundred dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: *Provided, however,* That if the definition of the term "wages" as contained in section 3306 (b) of the Internal Revenue Code of 1954 is amended (a) effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, 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 hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust exempt from tax under section 165 (a) of the Federal Internal Revenue Code at the time of such payment unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165 (a) (3), (4), (5) and (6) of the Federal Internal Revenue Code;

(6) The payment by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 1400 of the Federal Internal Revenue Code;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the director.

"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 director.

**Article 5. Employer Coverage and Responsibility.**

**Section**

2. Duration.
7. Joint and separate accounts.
10. Experience ratings; decreased rates.
16. Collection of payments.

Section 2. *Duration.*—Except as otherwise provided in section three of this article, an employing unit shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the director not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the director finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: *Provided, however,* That the director may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

Sec. 7. *Joint and Separate Accounts.*—(1) The director shall maintain a separate account for each employer, and

shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the director shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one per cent of taxable wages: *Provided,* That any adjustment made in an employer's account after the computation date shall not be used in the computation of the credit balance of an employer until the next following computation date: *Provided further,* That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for total unemployment beginning after the effective date of this act shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: *Provided,* That no employer's account shall be charged with benefits paid to any individual who has been separated from a non-covered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: *And provided further,* That benefits paid to an eligible individual for partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant's current employer.

(3) The director shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions there-

after paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: *Provided, however,* That if an employer has failed to furnish to the director on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than two and seven-tenths per cent, increased to two and seven-tenths per cent, and if such employer's rate immediately prior to such July thirty-one is more than two and seven-tenths per cent and he fails to furnish such wage information, his rate shall be increased to three and three-tenths per cent: *Provided further,* That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of such information granted pursuant to a regulation of the director authorizing such extension, shall be taken into account for the purposes of fixing contribution rates: *Provided further,* That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date shall be deemed to be the next succeeding business day: *Provided further,* That whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against the reserve account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered; but payments made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

(4) The director may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account.

maintain such joint account as if it constituted a single employer's account.

Sec. 10. *Experience Ratings; Decreased Rates.*—On and after January one, one thousand nine hundred fifty-four, after the requirements of section nine have been complied with, an employer's payment shall remain two and seven-tenths per cent until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the per cent of his average annual pay roll as shown in column B of Table I. His rate shall be the amount appearing in column C of Table I on line with the percentage in column B.

The director shall determine an employer's compliance with these requirements.

**TABLE I**

| Col. A. Rate Class | Col. B. Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges | Col. C. Employer's Rate |
|---|---|---|
| ( 1) | 5.5 | 2.5 |
| ( 2) | 6.5 | 2.3 |
| ( 3) | 7.0 | 2.1 |
| ( 4) | 7.5 | 1.9 |
| ( 5) | 8.0 | 1.7 |
| ( 6) | 8.5 | 1.5 |
| ( 7) | 9.0 | 1.3 |
| ( 8) | 9.5 | 1.1 |
| ( 9) | 10.0 | 0.9 |
| (10) | 10.5 | 0.7 |
| (11) | 11.0 | 0.5 |
| (12) | 11.5 | 0.3 |
| (13) | 12 and over | 0.0 |

After the director is satisfied that an employer has complied with these requirements he shall decrease the employer's rate to the next lower rate if the fund, including the trust fund, clearing account, and benefit account, is as much as eighty million dollars on the computation date, and shall decrease the employer's rate one additional step if the fund is as much as ninety million dollars on the computation date, and shall decrease the employer's rate one additional step for each five million dollars that the fund is above ninety million dollars up to and including one hundred fifteen million dollars on the computation date: *Provided,* That an employer's rate shall not be reduced below 0.3 per cent until the credits to his account for all past years exceed the benefits charged to his account by an amount equal to at least twelve per cent of his average annual pay roll: *Provided further,* That all required contributions paid on or before July thirty-one immediately following the computation date shall be used in determining the amount in the trust fund and clearing account as of the computation date: *Provided,* That on and after January one, one thousand nine hundred sixty-two, the foregoing provisions of this subsection (2) of section ten, article five, including Table I, shall be void and of no effect, and the following provisions, including Table II, shall, on and after said January one, one thousand nine hundred sixty-two, become effective.

(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 per cent 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.

The director shall determine an employer's compliance with these requirements.

TABLE II

| Col. A. Rate Class | Col. B. Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges | Col. C. Employer's Rate |
|---|---|---|
| ( 1) | 6.0 | 2.5 |
| ( 2) | 7.0 | 2.3 |
| ( 3) | 8.0 | 2.1 |
| ( 4) | 9.0 | 1.9 |
| ( 5) | 10.0 | 1.7 |
| ( 6) | 10.5 | 1.5 |
| ( 7) | 11.0 | 1.3 |
| ( 8) | 11.5 | 1.1 |
| ( 9) | 12.0 | 0.9 |
| (10) | 12.5 | 0.7 |
| (11) | 13.0 | 0.5 |
| (12) | 14.0 | 0.3 |
| (13) | 16.0 | 0.1 |
| (14) | 18.0 and over | 0.0 |

Sec. 16. *Collection of Payments.*—(1) The director in the name of the state shall commence a civil action against an employer who, after due notice, defaults in any payment or interest thereon. If judgment is against the employer he shall pay the costs of the action. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workmen's compensation law.

(2) A payment and interest thereon due and unpaid under this chapter shall be a debt due the state in favor of the director. It shall be a personal obligation of the employer and shall, in addition thereto, be a lien, enforceable by suit in equity, upon all the property of the employer: *Provided, however,* That no such lien shall be enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

(3) In addition to all other civil remedies prescribed herein the director may in the name of the state distrain upon any personal property, including intangibles, of any employer delinquent for any payment and interest thereon. If the director has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise distrain in the name of the state before such delinquency occurs. For such purpose, the director may require the services of a sheriff of any county in the state in levying such distress in the county in which such sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.

(4) In case a business subject to the payments and interest thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

(5) The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until notified by the director that all payments and interest thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the director has been made for payment.

(6) In any case where an employer defaults in payments, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, and the director has been unable to collect such payments by any of the other civil remedies prescribed herein, the director may bring

action in the circuit court of Kanawha county to enjoin such employer from continuing to carry on the business in which such liability was incurred: *Provided, however*, That the director may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the director with satisfactory surety in an amount not less than fifty per cent more than the tax due.

(7) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the director to the effect that all payments and interest thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the director have been made for payment. Any official violating this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail, or shall be subject to both such fine and imprisonment, in the discretion of the court.

**Article 6. Employee Eligibility; Benefits.**

**Section**

4. Disqualification for benefits.
4-a. Individual not disqualified by receiving vocational training.
10. Benefit rate; total unemployment.
11. Benefit rate; partial unemployment.

Sec. 4. *Disqualification for Benefits.*—Upon the determination of the facts by the director, an individual shall be disqualified for benefits:

(1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification. For the purpose of this subsection, the term "work"

means employment with the last employing unit with whom such individual was employed as much as thirty days, whether or not such days are consecutive.

(2) If he were discharged by his last employing unit for misconduct, and such disqualification shall continue until the individual thereafter has worked for at least thirty days in covered employment: *Provided, however,* That notwithstanding any other provision in this chapter, the account of the employer who discharges an individual for misconduct shall not be charged with benefits paid to said individual after such discharge.

(3) For the week in which he failed without good cause, to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director, and for the four weeks which immediately follow and for such an additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the director is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subsection shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in

order to force wage reduction, changes in hours or working conditions.

(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice or payments under any form of a separation wage plan.

(b) Compensation for temporary total disability under the workmen's compensation law of any state or under a similar law of the United States.

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual is not employed because of pregnancy, or has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at least thirty working days; notwithstanding the foregoing provisions, in case of pregnancy, the disqualification shall last no longer than six weeks prior to and six weeks subsequent to the date of birth of the child, provided that the individual furnishes the employer a certificate from a physician that she is physically able to work.

(7) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(8) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(9) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such

remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: *Provided,* That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: *Provided further,* That there shall be no disqualification if in the individual's base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(10) For each week in which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: *Provided,* That an individual shall not be disqualified under this subsection for a period of more than fifty-two consecutive weeks: *Provided further,* That disqualification under this subsection shall not preclude prosecution under article ten, section seven.

(11) For the purposes of this section an employer's account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b)

failing without good cause to apply for available suitable work, accept suitable work, when offered, or return to his customary self-employment when directed to do so by the director.

Sec. 4-a. *Individual Not Disqualified by Receiving Vocational Training.*—Notwithstanding any other provision in this act, no individual shall be disqualified from obtaining unemployment compensation benefits because of his receiving training as part of an area vocational program, or similar program, which has as its object the training of unemployed individuals in new occupational skills.

Sec. 10. *Benefit Rate; Total Unemployment.*—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of ten 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 provisions of this section shall apply to all benefit weeks occurring in benefit years beginning after the effective date of this act; for benefit weeks occurring in benefit years beginning prior thereto the provisions then in effect shall apply.

TABLE A

| Wage Class (Col. A) | Wages in Base Period (Col. B) | Weekly Benefit Rate (Col. C) | Maximum Benefit in Benefit Year for Total and/or Partial Unempl. (Col. D) |
|---|---|---|---|
| | Under $ 500.00 | Ineligible | Amount |
| 1 | $500.00- 599.99 | $ 10.00 | $260.00 |
| 2 | 600.00- 699.99 | 11.00 | 286.00 |
| 3 | 700.00- 799.99 | 12.00 | 312.00 |
| 4 | 800.00- 899.99 | 13.00 | 338.00 |
| 5 | 900.00- 999.99 | 14.00 | 364.00 |
| 6 | 1000.00- 1149.99 | 15.00 | 390.00 |
| 7 | 1150.00- 1299.99 | 16.00 | 416.00 |
| 8 | 1300.00- 1449.99 | 17.00 | 442.00 |
| 9 | 1450.00- 1599.99 | 18.00 | 468.00 |
| 10 | 1600.00- 1749.99 | 19.00 | 494.00 |
| 11 | 1750.00- 1899.99 | 20.00 | 520.00 |
| 12 | 1900.00- 2049.99 | 21.00 | 546.00 |
| 13 | 2050.00- 2199.99 | 22.00 | 572.00 |
| 14 | 2200.00- 2349.99 | 23.00 | 598.00 |
| 15 | 2350.00- 2499.99 | 24.00 | 624.00 |
| 16 | 2500.00- 2599.99 | 25.00 | 650.00 |
| 17 | 2600.00- 2699.99 | 26.00 | 676.00 |
| 18 | 2700.00- 2799.99 | 27.00 | 702.00 |
| 19 | 2800.00- 2899.99 | 28.00 | 728.00 |
| 20 | 2900.00- 2999.99 | 29.00 | 754.00 |
| 21 | 3000.00- 3099.99 | 30.00 | 780.00 |
| 22 | 3100.00- 3199.99 | 31.00 | 806.00 |
| 23 | 3200.00 and over | 32.00 | 832.00 |

Sec. 11. *Benefit Rate; Partial Unemployment.*—An eligible individual who is partially unemployed in any week shall upon claim therefor filed within such time and in such manner as the director may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of ten dollars: *Provided,* That such amount of benefits if not a multiple of one dollar shall be computed to the next higher multiple

of one dollar. Such partial benefits shall be paid to such individual for the week for which he is claiming benefits without regard to the provisions of subsections one and four of section one of this article.

**Article 7. Claim Procedure.**

Section
8. Appeal from deputy's decision.

Section 8. *Appeal from Deputy's Decision.*—A claimant, last employer, or other interested party, may file an appeal from the decision of the deputy within eight calendar days after notice of the decision has been delivered or mailed by certified mail to the claimant and last employer as provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. The decision of the deputy shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the director, ten days in advance of the date set for hearing.

Upon consideration of all evidence the appeal tribunal shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the director of its findings and decision.

# CHAPTER 56

**(Senate Bill No. 206—By Mr. Carson, Mr. President)**

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amend-

ed, by adding thereto a new article, designated article two-a, authorizing and directing the director of the West Virginia department of employment security to establish a retirement system for the employees thereof, subject to certain conditions.

## Article 2-a. Departmental Retirement System.

Section

1. Establishment of retirement system.
2. Terms, conditions and administration generally; when operative; retirement board; custodian.
3. Covered employees.
4. Payroll deductions.
5. Exemption from levy, garnishment, and other process.
6. Protection against fraud, penalties.
7. Inconsistent acts repealed.
8. Constitutionality.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Establishment of Retirement System.*—The director of the West Virginia department of employment security is hereby authorized, empowered, and directed to establish a retirement system for the employees thereof, effective July one, one thousand nine hundred sixty-one, to be known and designated as the West Virginia department of employment security retirement system, but subject to the terms and conditions of this article.

Sec. 2. *Terms, Conditions and Administration Generally; when Operative; Retirement Board; Custodian.*—The retirement system so authorized and directed to be established shall be subject to the following terms and conditions:

(a) The funds for the operation of such system shall be provided from contributions of the employees who become members thereof, and from funds provided by the United States department of labor, bureau of employment security. The state of West Virginia shall not be liable for any of the benefits set forth in said retirement system nor for any funds required to provide such benefits.

(b) The provisions of the retirement system shall comply with all the conditions and requirements of the bureau of employment security, United States department of labor.

(c) Said retirement system shall commence operation on July one, one thousand nine hundred sixty-one, or thereafter: *Provided, however,* That the bureau of employment security, United States department of labor, shall prior to the date of commencement have approved the provisions of said system and shall have agreed to provide such funds as may be required of it for the said system under the terms and provisions thereof. For the purpose of computing benefits payable under said system, credit may be granted on account of service rendered to the West Virginia department of employment security prior to July one, one thousand nine hundred sixty-one, in addition to credit allowed for such service rendered thereafter.

(d) The general administration and the management of said system shall be invested in a retirement board, to be composed of five members as follows: The governor of the state of West Virginia, who shall be ex officio chairman; the state auditor; the state treasurer; the director of the West Virginia department of employment security; and one member of the state advisory council of the department of employment security, who shall be designated by the governor. The retirement board shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and shall make all necessary rules, consistent with this article and the provisions of the said retirement system, for the proper administration thereof.

(e) The state treasurer shall be the custodian of the funds and securities of said system. The members of the retirement board, or one or more members thereof, if authorized to do so by resolution of said board, shall have authority to requisition for disbursements from said funds. Disbursements from the funds of said system shall be made by the custodian only upon warrants signed by the state auditor and the state treasurer. The state treasurer shall give a separate and additional bond in such

amount as may be fixed by the governor for the faithful performance of the duties as custodian of the retirement system. Such bond shall be approved by the governor and filed in the same office as are the bonds of other state officers. The custodian shall furnish annually to the retirement board a sworn statement of the funds in his custody belonging to said retirement system.

(f) The members of the retirement board shall be the trustees of the funds of said retirement system, and shall determine from time to time what part of said funds shall be invested, but such investments shall be made only in those securities which are legal for investments by life insurance companies domiciled in West Virginia.

(g) The state auditor shall periodically review the records maintained by said retirement system, and shall submit to the retirement board a written report setting forth the results of such review.

(h) The retirement board shall employ a competent actuary to prepare annual actuarial valuations of the contingent assets and liabilities of said system and to certify the contributions he would recommend be made in order that said system shall at all times be on a sound actuarial basis.

(i) The funds of said retirement system shall be used only for the benefit of employees who are members thereof, and their beneficiaries, in accordance with the terms and provisions of said system.

Sec. 3. *Covered Employees.*—Employees covered by the retirement system shall include all employees (other than provisional, temporary, emergency, and intermittent employees) who are in employee status with the West Virginia department of employment security on or after the effective date of the retirement system.

Sec. 4. *Payroll Deductions.*—Whenever any employee of the West Virginia department of employment security shall become eligible to participate in the retirement system, the director shall have power and authority to authorize participation in such plan and the director

shall make periodic deductions from salary payments due such employee of the amount of the contributions such employee is required to make for his participation in the retirement system. Upon proper requisition of the director, the auditor shall periodically issue a warrant payable as specified in the requisition, for the total contributions so withheld from the salaries of the employees participating in said retirement system. To promote efficiency and economy in making deductions and issuing warrants as provided herein, the auditor is authorized to promulgate rules and regulations specifying the form and the time and manner of presentation of requisitions issued pursuant to this section.

Sec. 5. *Exemption from Levy, Garnishment, and Other Process.*—The moneys in the retirement fund and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, shall not be subject to execution, garnishment attachment or any other process whatsoever.

Sec. 6. *Protection against Fraud; Penalties.*—Any person who knowingly makes any false statement or who shall falsify or permit to be falsified any record or records of said retirement system in any attempt to defraud said system shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not exceeding one thousand dollars, or imprisonment not exceeding one year, or both.

Sec. 7. *Inconsistent Acts Repealed.*—All previous acts or parts of acts inconsistent with this article are hereby repealed.

Sec. 8. *Constitutionality.*—If any part of this article is declared unconstitutional, it shall not affect any portion which remains, but the remaining parts of the article shall be in full force and effect as if the parts declared unconstitutional had never been a part of this article.

# CHAPTER 57

**(House Bill No. 52—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed March 3, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter six-a, relating to emergency interim executive and judicial succession.

## CHAPTER 6A. EXECUTIVE AND JUDICIAL SUCCESSION

### Article 1. Executive and Judicial Succession.

Section

1. Short title.
2. Statement of policy.
3. Definitions.
4. Additional successors to office of governor.
5. Emergency interim successors for state officers.
6. Enabling authority for emergency interim successors for local offices.
7. Emergency interim successors for local officers.
8. Special emergency judges.
9. Formalities of taking office.
10. Period in which authority may be exercised.
11. Removal of designees.
12. Disputes.
13. Separability.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Short Title.*—This article shall be known and may be cited as the "Emergency Interim Executive and Judicial Succession Act."

Sec. 2. *Statement of Policy.*—Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority

and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of government during such an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices of this state and its political subdivisions in the event of the incumbents thereof and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices hereinafter referred to as deputies, assistants, or otherwise, are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.

Sec. 3. *Definitions.*—Unless otherwise clearly required by the context, as used in this article:

(a) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy and his duly authorized deputy, are absent or unable to exercise the powers and discharge the duties of the office.

(b) "Emergency interim successor" means a person designated pursuant to this article, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the constitution, statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) "Office" includes all state and local offices, the powers and duties of which are defined by the constitution, statutes, charters, and ordinances, except the office of governor, and except those in the Legislature and the judiciary.

(d) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

(e) "Political subdivision" includes counties, cities, towns, districts, authorities, and other public corporations and entities, whether organized and existing under charter or general law.

Sec. 4. *Additional Successors to Office of Governor.*—In the event that the governor, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of his office, or is unavailable, then the president of the senate shall act as governor, and if the president of the senate, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of the office of governor, or is unavailable, then the speaker of the house of delegates shall act as governor, and if the speaker of the house of delegates, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of the office of governor, or is unavailable, then the attorney general, the state auditor, and resident ex-governors of this state, in inverse order of service, shall, in the order named, if the preceding named officers be unavailable, exercise the powers and discharge the duties of the office of governor until a new governor is elected and qualified, or until a preceding named officer becomes available.

Sec. 5. *Emergency Interim Successors for State Officers.*—All state officers, subject to such regulations as the governor may issue, shall, upon approval of this article, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this article to insure their current status. The officer will designate a sufficient number of such emer-

gency interim successors so that there will be not less than three nor more than seven such deputies or emergency interim successors or any combination thereof at any time. In the event of an attack, and in the event that any state officer or his deputy, if any, is unavailable following such an attack, the said powers of his office shall be exercised and said duties of his office shall be discharged by his designated emergency interim successors in the order specified. Such emergency interim successors shall exercise said powers and discharge said duties only until such time as the governor under the constitution or authority other than this article or other official authorized under the constitution or this article to exercise the powers and discharge the duties of the office of governor may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed, or elected, and qualified as provided by law; or an officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

Sec. 6. *Enabling Authority for Emergency Interim Successors for Local Offices.*—With respect to local offices for which the governing bodies of cities, towns, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this article or any other statute of this state.

Sec. 7. *Emergency Interim Successors for Local Officers.*—The provisions of this section shall be applicable to officers of political subdivisions, including, but not limited to, cities, towns, and counties, as well as fire, power and drainage and other types of districts not included in section six. Such officers, subject to such regulations as the governing body may issue, shall, upon approval of this article, designate by title, if feasible, or by named person, emergency interim successors and specify their order of

succession. The officer shall review and revise, as necessary, designations made pursuant to this article to insure their current status. The officer will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or any combination thereof at any time. In the event of an attack, and in the event that any officer of any political subdivision or his deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the constitution or statutes; or until the officer or his deputy or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of his office.

Sec. 8. *Special Emergency Judges.*—In the event of an attack and in the event that any judge of any court of record is unavailable to exercise the powers and discharge the duties of his office, and in the event no other judge authorized to act in the event of absence, disability or vacancy or no special judge appointed in accordance with the provisions of the constitution or statutes is available to exercise the powers and discharge the duties of such office, the duties of the office shall be discharged and the powers exercised by the special emergency judges hereinafter provided for:

(a) Each member of the state supreme court of appeals shall designate special emergency judges in the number of not less than three nor more than seven to serve in the event that he becomes unavailable, and shall specify the order of their succession by order duly entered in the supreme court of appeals.

(b) The special emergency interim judges of all other courts of record shall be elected by the attorneys practicing within the jurisdiction of said courts.

Such special emergency judges of the supreme court of appeals shall, in the order specified, exercise the powers and discharge the duties of such office in case of the un-

availability of the regular judge or judges or persons immediately preceding them in the designation. The designating authority shall review and revise, as necessary, designations made pursuant to this article to insure their current status.

Said special emergency judges shall discharge the duties and exercise the powers of such office until such time as a vacancy which may exist shall be filled in accordance with the constitution and statutes or until the regular judge or one preceding the designee in the order of succession becomes available to exercise the powers and discharge the duties of the office.

Sec. 9. *Formalities of Taking Office.*—At the time of their designation, emergency interim successors and special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

Sec. 10. *Period in Which Authority May Be Exercised.*—Officials authorized to act as governor pursuant to this article, emergency interim successors and special emergency judges are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as defined herein, has occurred. The Legislature, by concurrent resolution, may at any time terminate the authority of said emergency interim successors and special emergency judges to exercise the powers and discharge the duties of office as herein provided.

Sec. 11. *Removal of Designees.*—Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with this article, including section ten hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or re-

placed by said designating authority at any time, with or without cause.

Sec. 12. *Disputes.*—Any dispute concerning a question of fact arising under this article with respect to an office in the executive branch of the state government except a dispute of fact relative to the office of governor shall be adjudicated by the governor or other official authorized under the constitution and this article to exercise the powers and discharge the duties of the office of governor and his decision shall be final.

Sec. 13. *Separability.*—The various provisions of this article shall be construed as separable and severable, and should any of the provisions 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.

# CHAPTER 58

**(House Bill No. 63—By Mrs. Drewry and Mr. Casey)**

[Passed February 15, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications, appointment, removal, and compensation of members of the state board of health.

**Article 1. State Department of Health.**

Section

2. Board of health; membership.

*Be it enacted by the Legislature of West Virginia:*

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

Section 2. *Board of Health; Membership.*—There shall be a state board of health, to be known as the West Virginia board of health, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board of health shall consist of nine members, who shall be appointed by the governor, by and with the advice and consent of the senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a pharmacist, one shall be chosen as the representative of the hospitals licensed in the state of West Virginia and two shall be representative citizens, neither of which said representative citizens shall be an employee of, or connected in any way with, any hospital licensed in this state, and neither of whom shall be a member of any of the professions named above.

All persons appointed to membership on the state board of health shall be citizens of this state and shall have been such citizens and residents of the state for at least five years prior to the date of their appointment. Every professional member of the said board shall be duly licensed to practice his profession in this state on the date of his appointment and shall have been so licensed and have been actively practicing his profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request the state professional society of the profession practiced by any proposed appointee to furnish to the governor a full and complete report concerning the qualifications and suitability of the proposed appointee. All members of the board shall be appointed for terms of nine years each, except that the persons originally appointed, shall be appointed to serve for designated terms beginning on the first day of July, one thousand nine hundred forty-nine, and continuing for one, two, three, four, five, six, seven, eight and nine years respectively. Upon the expiration of such initial appointments the terms of each new appointee shall be nine years. Any vacancy on the board shall be filled by the governor by appointment for the unexpired term.

No more than five of the members of the board shall belong to the same political party. Not less than one nor more than two members shall be appointed from the same congressional district. No person shall be eligible for appointment to membership on the state board who is a member of any political party executive committee, or who holds any public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or who is an appointee or employee of the board. All members shall be eligible for reappointment.

No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers: *Provided, however,* That the expiration or revocation of the professional license of any professional member of the board shall be cause for his removal.

The members of the board shall be paid the sum of twenty-five dollars for each day actually served in attendance at official meetings of the board. The total of such compensation paid to each member during any one fiscal year shall not exceed three hundred dollars. Each member shall also be paid mileage at the rate of ten cents per mile in the performance of his duties as a member of the board.

# CHAPTER 59

**(House Bill No. 180—By Mr. Poindexter and Mr. Giffin)**

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seven-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section seven of said article, all relating to divisions and bureaus within the state department of health.

**Article 1. State Department of Health.**

Section
7. Divisions of department; directors of divisions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 7. *Divisions of Department; Directors of Divisions.*—There shall be included in the state department of health the following divisions:

Division of communicable diseases,
Division of cancer control,
Division of vital statistics,
Division of sanitary engineering,
Division of maternal and child health,
Division of barbers and beauticians,
Division of dental health.

The state board of health shall appoint, with the advice of the director of health, a director for each division, and shall prescribe, with the advice of the director of health, the qualifications of each such division director, the duties pertaining to each division, and the arrangement of the subdivisions, if any, thereof.

The state board shall have authority to establish such additional administrative sections or groupings within the department of health as it may consider necessary or advisable for the efficient administration of its powers and duties.

# CHAPTER 60

(House Bill No. 64—By Mrs. Drewry and Mr. Casey)

[Passed February 14, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation,

organization, powers and duties of, and funds for, combined local boards of health.

## Article 2. Local Health Officers.

Section

3. Counties, or counties and municipalities, may combine in employment of officers and installation and maintenance of equipment; combined local boards of health.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Counties, or Counties and Municipalities, May Combine in Employment of Officers and Installation and Maintenance of Equipment; Combined Local Boards of Health.*—Any two or more counties, or any county or counties and any one or more municipalities within the said county or counties, may combine to cooperate with the state department of health, by vote of the county court in the case of a county and by vote of the council or other governing body in the case of a municipality, and may participate in the employment of trained health officers and other agents and employees, or in the installation and maintenance of a common laboratory and other equipment. Whenever any such units shall decide so to cooperate and shall appropriate a sum or sums of money for such joint or cooperative action, the state department of health is authorized and empowered to pay over and contribute to such cooperating units, and the cooperating units are authorized and empowered to receive and expend for public health purposes, such sum or sums of money as may be available from funds included in appropriations made for the state department of health for such purpose: *Provided,* That the general plan of cooperation, as well as the principal health officer, executive agent or laboratory director employed by the cooperating units, shall first have been approved by the state board of health. The amount of any such payment or contribution by the state department of health to such

cooperating units shall be determined in accordance with regulations established by the state board of health. Such regulations shall provide a method for determining the amount of any payment or contribution, and this method shall be uniformly applied in determining the amount of any payment or contribution to any such local governmental unit or units.

Each county or municipality participating in any such cooperative action shall select and appoint by vote of the county court in the case of a county, and by vote of the council or other governing body in the case of a municipality, not less than one nor more than three persons to be members of a combined board of health. No such person shall be selected by, nor represent on, any such combined board, more than one such county or municipality. The number of persons to be selected by each participating county or municipality as members of such board, subject to the limitation contained in the two preceding sentences, shall be agreed upon by the several counties or municipalities participating.

All members of such combined board of health shall be appointed for terms of five years each, except that the persons first appointed pursuant to the provisions of this section, if more than one such person is appointed at the same time by any one county court or municipal governing body, shall be individually designated to serve for terms of one, two, and three years, respectively, and if only one such person is appointed at such time by each participating county or municipality, the several participating counties or municipalities shall initially appoint such persons to serve for individually designated terms, which shall be agreed upon by the several appointing authorities, of one, two, three, four and five years, respectively. Upon the expiration of the term of such initial appointments, the term of each new appointee shall be five years. Any vacancy on such board shall be filled by appointment, by the original appointing authority, for the unexpired term. All members shall serve until their duly qualified successors have been appointed. The number of members of such board belonging to one political party shall not exceed by more than one the

number of members of such board belonging to any other political party.

All members of any such board shall be citizens and residents of the county or municipality they are appointed to represent. All members shall be eligible for reappointment.

No member of such board may be removed from office during the term for which he is appointed, except for official misconduct, incompetence, neglect of duty or gross immorality.

No member of such board shall receive any compensation for his services, but each may be reimbursed for actual and necessary travel and other expenses necessarily incurred by him in the performance of his duties as a member of such board.

Any such combined board of health shall consist of the several members so selected. Such board shall organize by electing a chairman from among its members. It shall have the power to adopt, and from time to time amend, such rules and regulations as it may deem necessary concerning the time and place of its meetings, the procedure and method of conducting its meetings or business, and any other matters affecting, or necessary to, the orderly and efficient discharge of its duties or exercise of its powers. All powers and duties belonging to or vested in county boards of health or municipal boards of health under any provisions of this code are hereby vested in, conferred upon, and declared to be, the powers and duties of any combined board of health created pursuant to the provisions of this section. All powers and duties belonging to or vested in county or municipal health officers, so far as they are applicable and not in conflict with the provisions of this section, are hereby vested in, conferred upon, and declared to be, the powers and duties of any health officer appointed and employed by any combined board of health. Any health officer or other employee appointed or employed by any combined board of health shall be employed and serve, and may be discharged, at the will and pleasure of such board. The territorial jurisdiction of any such combined board of health shall be coextensive with the boundaries of all of the counties and

municipalities which have been combined to cooperate as herein provided.

Upon the formation of a combined local board of health as herein provided, and during the period that it continues to exist, there shall be no separate county board of health or municipal board of health in any county or municipality represented on the combined board of health.

# CHAPTER 61

**(Senate Bill No. 55—By Mr. Wylie)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eighteen and twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation of local registrars and fees to be paid state registrar for certified copy of a birth or death record.

**Article 5. Vital Statistics.**

Section

18. Compensation of local registrars.
21. Certified copies from birth and death records; fees.

*Be it enacted by the Legislature of West Virginia:*

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

Section 18. *Compensation of Local Registrars.*—Each local registrar shall be paid the sum of one dollar for each birth certificate and each death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the state registrar, as required by this article. And in case no births nor deaths were registered during any month, the local

registrar shall be entitled to be paid the sum of one dollar for each report to that effect, but only if such reports be made promptly as required by this article. The state registrar shall annually certify to the county courts of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon the order of the county court of such county issued upon such certification by the state registrar.

Sec. 21. *Certified Copies from Birth and Death Records; Fees.*—The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this article: *Provided, however,* That when a request is made for a birth certificate of any person who has been legally adopted, the state registrar shall, upon special request therefor, issue in lieu of a certified copy of the original record a special birth certificate showing only (a) the name of the proposed adopted person as changed by the decree of adoption, if changed, without any indication that the child was other than natural born to the adopting parent or parents; (b) the date and place of birth, if known; and (c) the names of the adopting parent or parents. Such special certificate shall be accepted by all school authorities as evidence of the child's age for all purposes connected with employment or school attendance. For the making and certification of each certified copy of the record of any birth, death, or of any special birth certificate, the state registrar shall be entitled to a fee of one dollar to be paid by the applicant. Such copy shall not state that any child was either legitimate or illegitimate. Any such copy of the record of a birth or death, or such special birth certificate, when properly certified by the state registrar, shall be prima facie evidence, in all courts and places, of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of one

dollar for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. The state registrar shall keep a true and correct account of all fees by him received under the provisions of this article and turn the same over to the state treasurer: *Provided,* That the state registrar shall, upon request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment: *Provided further,* That the United States bureau of census may obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed: *And provided further,* That the state registrar may furnish certified copies of birth and death records to the state welfare department, to county welfare departments and to organized charities, free of charge, when such certificates are needed in presenting claims to the federal government, or to the West Virginia relief compensation department; and an accurate record shall be made of all such certificates so furnished.

# CHAPTER 62

**(Senate Bill No. 29—By Mr. Kaufman)**

[Passed February 16, 1961; 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 nineteen, relating to the disposition by written instrument of eyes or parts thereof after death for the purpose of medical science or rehabilitation of human beings.

## Article 19. Donation of Eyes.

Section

1. Right of disposition.
2. Manner of disposition; authority of person having right to body for burial.

3. Form for donation; revocation by donor; donees; right to remove eyes from body; remuneration or fees; right to rely upon dispositive instrument.

*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 nineteen, to read as follows:

Section 1. *Right of Disposition.*—The Legislature finds and declares that a person has the right to direct the manner in which his eyes, or any part thereof, shall be disposed of after his death.

Sec. 2. *Manner of Disposition; Authority of Person Having Right to Body for Burial.*—A person twenty-one or more years of age and of sound mind may prescribe by written instrument for the disposition to be made, after his death, of his eyes or any part thereof, if such person shall receive no remuneration or other thing of value for such disposition and it is for the purpose of advancing medical science or for the replacement or rehabilitation of diseased eyes or worn out or injured parts of the eyes of living human beings. The person or persons having the right to a body for burial may likewise so consent to such use of the eyes or parts thereof. Notwithstanding any provision of chapter forty-one of this code, any such donation, authorization or consent may be by dated written instrument signed by the person making or giving the same and witnessed by two persons of legal age.

Sec. 3. *Form for Donation; Revocation by Donor; Donees; Right to Remove Eyes from Body; Remuneration or Fees; Right to Rely upon Dispositive Instrument.*—No particular form or words shall be necessary or required for such donation or authorization: *Provided,* That the instrument conveys the clear intention of the purpose of the person making the same. Any such disposition of his own eyes or parts thereof may be revoked by the donor at any time prior to his death by the execution of a written instrument in the same manner as the original grant.

Each instrument may designate the donee, but such designation shall not be necessary to its validity. A donee

may be an individual, hospital, institution, an agency engaged in sight restoration or a bank maintained for the storage, preservation and use of human eyes or parts thereof. If no specific donee is named in such instrument, then the hospital in which the donor dies shall be considered to be the donee, and if such donor does not die in a hospital, then the attending physician shall be considered to be the donee; such hospital or physician shall have full authority to take and remove said eyes or parts thereof which such donor has designated, and to make the same available to any person or institution in need thereof. Where a donee is named in such instrument, any hospital or physician acquiring possession or custody of the body shall have the authority to remove from the body the eyes or parts thereof which the donor has designated, and to deliver the same to the named donee: *Provided, however,* That no one shall receive any remuneration or other thing of value whatsoever, except the established fees, for the rendition of such services, for any eyes or parts thereof donated under the provisions of this article; and that no claim for services in removing the eyes or parts thereof shall be a claim against the estate of the deceased. No hospital, donee or physician, who reasonably relies upon a dispositive instrument appearing to have been made in conformity with the provisions of this article, shall be liable civilly or criminally for removing eyes or parts thereof from the body of a deceased donor. No court order or appointment of a fiduciary for the estate of the deceased shall be necessary before the removal of said eyes or parts thereof.

# CHAPTER 63

**(Senate Bill No. 76—By Mr. Moreland)**

[Passed March 8, 1961; 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 twenty,

relating to air pollution control; creating an air pollution control commission and defining its powers and duties; defining what shall constitute the pollution of air in violation of the provisions of this article; providing for procedures before the commission; providing penalties and remedies for violations; providing for emergency powers of the commission; and repealing statutes or parts of statutes inconsistent with the provisions of this article.

## Article 20. Air Pollution Control.

**Section**

1. Declaration of policy and purpose.
2. Definitions.
3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.
4. Air pollution control commission created; composition; appointment and terms of members; vacancies; expenses of members; organization and personnel; records; meetings.
5. Same; powers and duties of commission generally; rules and regulations; public hearings.
6. Notice of alleged violations; hearings; factors considered; orders of commission; petitions to modify or vacate order; confirming or modifying order; when order final; record of proceedings.
7. Appeals from orders of commission; procedure; jurisdiction.
8. Penalties.
9. Applications for injunctive relief.
10. Emergencies; powers of commission; procedure.
11. Powers reserved to state board of health, local health boards and political subdivisions; conflicting statutes repealed.
12. Severability.
13. Effective date of rules and regulations.

*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, to read as follows:

Section 1. *Declaration of Policy and Purpose.*—It is hereby determined and declared to be the policy of the state of West Virginia to maintain such a reasonable degree of purity of the air resources of the state as shall be technically feasible, economically reasonable, and necessary for the protection of the normal health, the general welfare and the property of the people of the state. The measures for the accomplishment of this purpose shall not unreasonably obstruct the attraction, development and expansion of business, industry and commerce within

the state. The program for the control of air pollution under this article shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned. All powers herein conferred upon the air pollution control commission shall be exercised solely to effectuate the policy declared in this section.

Sec. 2. *Definitions.*—The terms used in this article are defined as follows:

The term "person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or county, and any firm, partnership or association of whatever nature.

The term "commission" shall mean the air pollution control commission herein created, and the term "commissioner" shall mean a member of said commission.

The term "air pollutants" shall mean solids, liquids or gases which, if discharged into the air, will result in a statutory air pollution.

The term "discharge" shall refer to any continuous or regular release, escape or emission of air pollutants into the air.

The term "statutory air pollution" shall mean and be limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be unreasonably and materially injurious to human, animal or plant life or to property.

Sec. 3. *Causing Statutory Pollution Unlawful; Article Not to Provide Persons with Additional Legal Remedies.* —For the purposes of this article and subject to all of the provisions hereof, it shall be unlawful for any person to cause a statutory air pollution as herein defined: *Provided, however,* That nothing contained in this article shall be construed to provide any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

Sec. 4. *Air Pollution Control Commission Created; Composition; Appointment and Terms of Members; Vacancies;*

*Expenses of Members; Organization and Personnel; Records; Meetings.*—There is hereby created, as an agency of this state, an air pollution control commission which shall consist of five members, including the state director of health and the commissioner of agriculture, who shall be members ex officio, and three other members who shall be appointed by the governor, with the advice and consent of the senate, at least two of whom shall be truly representative of industries engaged in business in this state. The term of office of the three members of the commission to be appointed by the governor shall be four years, except that the first members to be so appointed under the provisions of this article shall take office immediately and their terms shall be two, three and four years, respectively, from July first, one thousand nine hundred sixty-one. All members appointed by the governor shall serve until their respective successors are appointed and shall have qualified, and any vacancy in such membership occurring by expiration of term or otherwise shall be filled by the governor with the advice and consent of the senate.

The members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purposes, for actual and necessary expenses incurred in the performance of their duties as such.

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall appoint a secretary, who need not be a member of the commission. The commission shall employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and

the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it, or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission.

Sec. 5. *Same; Powers and Duties of Commission Generally; Rules and Regulations; Public Hearings.*—The commission is hereby authorized and empowered:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To adopt and to promulgate reasonable regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: *Provided, however,* That no rule or regulation of the commission shall specify the design of equipment, type of construction, or particular method which a person shall use to reduce the discharge of air pollutants, nor shall any such rule or regulation apply to any aspect of an employer-employee relationship;

(5) To enter orders requiring compliance with the provisions of this article and the regulations lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by munici-

palities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this article;

(9) To enter at reasonable times upon any private or public property for the purpose of investigating an alleged statutory air pollution: *Provided, however,* That no such investigation shall extend to information relating to secret processes or methods of manufacturing or production;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution; and

(13) The commission may appoint technical advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members for each area so designated, at least two of whom shall be truly representative of industries operating within such area, and may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area.

No rule or regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published once a week for two successive weeks in at least one daily newspaper of general circulation in the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded

to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule or regulation to the commission within thirty days after such hearing. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party, in which event the prevailing rates for such transcripts will be required from such interested party. The commission may, in its discretion, solicit the comments in writing of any person who may be affected by or interested in such proposed rules and regulations.

Sec. 6. *Notice of Alleged Violations; Hearings; Factors Considered; Orders of Commission; Petitions to Modify or Vacate Order; Confirming or Modifying Order; When Order Final; Record of Proceedings.*—If, from any investigation made by it or from any complaint filed before it, the commission shall be of the opinion that there is sufficient cause to believe that a person may be violating the provisions of this article, the commission may give written notice to such person to appear before the commission at a time and place, within the county wherein the pollution is alleged to have originated, to be specified in such notice, then and there to show cause, if any shall exist, why said commission should not enter an order finding that such person has violated the provisions of this article and regulating or controlling the alleged pollution. The said notice shall with reasonable particularity specify the nature of the alleged air pollution which is to be the subject of inquiry at such hearing. No such hearing shall be held less than thirty days from the date of said notice. Any such notice may be served and returned in the same manner as a summons in a civil action or may be served by sending a copy thereof by registered mail addressed to the person or persons alleged to be causing such pollution at his and/or its usual, or last known, postoffice address. Any person to whom such notice has been given may appear in person or by counsel at the hearing and adduce evidence in answer to the alleged violation.

In any proceeding under this article the commission shall consider all pertinent factors, including a balancing of the conflicting interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of eliminating, controlling or reducing the alleged pollution, the nature of the locality affected by the alleged pollution, the reasonableness of existing conditions and such other factors as may appear to the commission to be consonant with the policy declared in section one of this article.

Consistent with the evidence adduced at the hearing and a consideration of the aforesaid factors, the commission shall enter such order as in its opinion will best promote the declared policy of this article. Such order shall contain specific findings of fact with respect to all factors considered by the commission and shall require that the statutory air pollution, if any be found, be corrected within a reasonable period of time to be fixed therein. A true copy of such order shall be promptly served, either by service as a summons in a civil action or by registered mail as aforesaid, upon all persons substantially affected by such order. Within twenty days after service of such order, any person substantially affected thereby may file with the secretary of the commission a petition in writing requesting the commission to modify or vacate such order. The petition shall assign the grounds relied upon by the petitioner in support of a modification or vacation of such order. The commission shall thereupon reconsider its original order and shall, within twenty days after the filing of the petition, enter of record an order confirming, modifying or vacating the original order. A true copy of such order shall be promptly served upon all persons substantially affected thereby in the same manner as the original order was served. Any order of the commission entered hereunder shall become final and conclusive upon all persons affected thereby unless an appeal therefrom is taken in the manner provided in section seven of this article.

The proceedings at any such hearing shall be recorded by mechanical means or otherwise as may be prescribed by the commission: *Provided, however,* That the proceedings shall be taken by a stenographer appointed by

the commission upon demand of any interested person. A copy of such transcript shall be furnished on demand to any person substantially affected upon payment of the fee prescribed therefor in the rules and regulations of the commission, such fee not to exceed that prescribed for transcripts in the circuit court.

Sec. 7. *Appeals from Orders of Commission; Procedure; Jurisdiction.*—Any person whose interest shall have been substantially affected by an order of the commission may appeal from such order or decision by filing with the commission a written notice of appeal. Such notice shall be filed within thirty days from the date notice of the order or decision of the commission was given to such person, and shall be signed by him or his attorney. Within thirty days from the receipt of the notice of appeal, the commission shall prepare and forward to the appellant or his attorney a copy of a full transcript of the proceedings, together with a copy of the order or decision of the commission and a copy of the notice of appeal, and at the same time shall file a transcript of the proceedings before the commission and the other documents mentioned above with the clerk of the circuit court herein designated. All documents shall be duly certified by the secretary of the commission. The court shall thereafter have complete jurisdiction of the matter.

The appeal shall be taken to the circuit court of the county wherein the alleged statutory air pollution complained of originated. The circuit court to which any such appeal shall have been taken, or the judge thereof, shall fix a time for the hearing of the appeal and shall, after such hearing, without a jury, by order entered of record, affirm, modify or set aside in whole or in part the order of the commission. The said court shall make findings of fact and conclusions of law based upon the transcript of the proceedings before the commission and upon any additional evidence adduced before said court, the right to adduce such additional evidence being hereby reserved to the commission or to any person substantially affected by the order of the commission. In the event the circuit court shall affirm or modify the commission's order that

a statutory air pollution exists under the provisions of this article, the order of the court shall specify that such pollution shall be corrected within a reasonable period of time to be fixed therein. The commission or any person whose interests shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

An appeal to a circuit court or to the supreme court of appeals shall serve to stay the order of the commission or circuit court, as the case may be, pending final determination thereof.

Sec. 8. *Penalties.*—(a) Any person who shall fail or refuse to comply with any lawful order of the commission to correct a statutory air pollution within the time fixed by such order, or any extension of time granted by the commission, shall be subject to a penalty of not more than one hundred dollars for each day that such failure or refusal continues after such time has expired, which penalty may be recovered in a civil action brought by the commission in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of. The amount of the penalty shall be fixed by the court without a jury. The amount of any such penalties collected by the commission shall be deposited in the general fund of the state treasury according to law. Upon a request in writing from the commission, it shall be the duty of the prosecuting attorney of the county in which any such action for penalties accruing under this section may be brought to institute and prosecute all such actions on behalf of the commission.

(b) For the purpose of this section, violations on separate days shall be considered separate offenses.

Sec. 9. *Applications for Injunctive Relief.*—In addition to the remedy provided for in section eight of this article and in the absence of reasonable progress toward correction of the statutory air pollution, the commission may request the prosecuting attorney of the county in which the defendant resides or is engaged in the activity complained of to apply to the circuit court of such county for

an injunction to restrain all violations of any final order of the commission entered pursuant to section six of this article.

Sec. 10. *Emergencies; Powers of Commission; Procedure.*—Whenever air pollution conditions in any area of the state become such as, in the opinion of the commission, to create an emergency and to require immediate action for the protection of the public health, the commission may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the commission shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the commission shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the commission may thereafter apply by petition to the circuit court of the county for a review of the commission's action. The circuit court shall forthwith fix a time for a hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside in whole or in part the order and action of the commission. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law.

Sec. 11. *Powers Reserved to State Board of Health, Local Health Boards and Political Subdivisions; Conflict-*

*ing Statutes Repealed.*—Nothing in this article shall affect or limit the powers or duties heretofore conferred by the provisions of this chapter upon the state board of health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise be hereafter deemed to apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise be deemed to apply to the control, reduction or abatement of air pollution, hereby repealed: *Provided, however,* That no ordinance heretofore adopted by any municipality relating to the control, reduction or abatement of air pollution shall be deemed repealed by this article.

Sec. 12. *Severability.*—The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provision, section or part had not been included therein.

Sec. 13. *Effective Date of Rules and Regulations.*—The rules and regulations promulgated pursuant to the provisions of this article shall be of no effect until one year after the effective date of this article.

# CHAPTER 64

**(House Bill No. 269—By Mr. Poindexter and Mr. Kincaid)**

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter thirty-three of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to capital or surplus required of insurance companies.

## Article 3. Licensing, Fees and Taxation of Insurers.

Section

5. Capital or surplus required.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Capital or Surplus Required.*—To qualify for a license to transact insurance, unless otherwise provided in this chapter, an insurer shall possess paid-in capital stock (if a stock insurer) or surplus (if a mutual insurer) in the amount set forth below opposite the kinds of insurance for which license is requested:

| | |
|---|---|
| (a) Life | $200,000.00 |
| (b) Accident and Sickness | $200,000.00 |
| (c) Life and Accident and Sickness | $300,000.00 |
| (d) Fire and Marine | $100,000.00 |
| (e) Casualty | $100,000.00 |
| (f) Surety | $600,000.00 |
| (g) Accident and Sickness together with any one or more of the following: Fire and Marine, Casualty | $300,000.00 |
| (h) Fire and Marine and Casualty | $200,000.00 |
| (i) Surety together with any one or more of the following: Accident and Sickness, Fire and Marine, Casualty | $600,000.00 |

In addition, every insurer shall maintain additional surplus funds in an amount equal to one half such minimum capital or surplus listed above for the kinds of insurance for which license is requested: *Provided,* That domestic insurers duly licensed to transact insurance in West Virginia on March thirtieth, one thousand nine hundred sixty-one, shall have until March thirty-first, one thousand nine hundred sixty-five, to meet the requirements of the additional surplus funds in the amount herein specified.

# CHAPTER 65

(Senate Bill No. 203—By Mr. McCourt)

[Passed March 1, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional insurance premium tax.

**Article 3. Licensing, Fees and Taxation of Insurers.**

Section

14-a. Additional premium tax.

*Be it enacted by the Legislature of West Virginia:*

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

Section 14-a. *Additional Premium Tax.*—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one per cent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him into the state treasury for the benefit of the state fund.

The provisions of this section shall expire June thirty, one thousand nine hundred sixty-two.

# CHAPTER 66

(House Bill No. 270—By Mr. Poindexter and Mr. Kincaid)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to articles of incorporation of domestic stock or mutual insurance companies.

## Article 5. Organization and Procedures of Domestic Stock and Mutual Insurers.

Section

3. Articles of incorporation.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Articles of Incorporation.*—In addition to the matters and things required generally in articles of incorporation, those of a domestic stock or mutual insurer shall state:

(a) The name of the corporation;

(b) The duration of its existence, which may be perpetual;

(c) The kinds of insurance the corporation is formed to transact according to the definitions thereof in this chapter;

(d) If a stock insurer, its authorized capital, the classes and number of shares into which divided, the par value of each such share, and the respective rights of each such class. Shares without par value shall not be authorized;

(e) If a mutual insurer, the maximum contingent liability of its members (other than as to nonassessable policies) for payment of losses and expenses incurred, which

liability shall be as stated in the articles of incorporation but not less than one nor more than six times the premium for the member's policy at the annual premium rate for a term of one year;

(f) The number of directors, not less than five nor more than twenty, who shall conduct the affairs of the corporation;

(g) The city or town in West Virginia in which is to be located the principal place of business, and states and countries in which business may be transacted;

(h) The limitations, if any, on the corporation's indebtedness;

(i) If a stock insurer, the extent, if any, to which its stock shall be assessable;

(j) Such other provisions, not inconsistent with law, as are deemed appropriate.

# CHAPTER 67

**(House Bill No. 191—By Mr. Board)**

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard valuation law for life policies.

**Article 7. Assets and Liabilities.**

Section

9. Standard valuation law for life policies.

*Be it enacted by the Legislature of West Virginia:*

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

Section 9. *Standard Valuation Law for Life Policies.*—(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting insurance in this state, except that in the case of an alien insurer such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves.

All valuations made by him or by his authority shall be made upon the net premium basis.

In every case the standard of valuation employed shall be stated in his annual report.

In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(2) This subsection shall apply to only those policies and contracts issued prior to the original operative date of the standard nonforfeiture law (now section thirty of article thirteen of this chapter). All valuations shall be according to the standard of valuations adopted by the

insurer for the obligations to be valued. Any insurer may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligations for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the insurer adopts no standard, said legal minimum standard shall be used.

The legal minimum standard for contracts issued before the first day of January, in the year one thousand nine hundred one, shall be actuaries' or combined experience table of mortality with interest at four percent per annum, and for contracts issued on or after said date shall be the "American Experience Table" of mortality with interest at three and one-half percent per annum. Policies issued by insurers doing business in this state may provide for not more than one year preliminary term insurance: *Provided, however,* That if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereof in less than twenty years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and a full reserve at such time of such a limited payment life or endowment policy.

The commissioner may vary the standards of interest and mortality in the case of alien insurers and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any

standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the original operative date of the standard nonforfeiture law (now section thirty of article thirteen of this chapter).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in paragraph (b), three and one-half percent interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection four-a of section thirty, article thirteen of this chapter, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date: *Provided,* That for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of

the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January first, one thousand nine hundred sixty-six, the tables of period two disablement rates and the one thousand nine hundred thirty to one thousand nine hundred fifty termination rates of the one thousand nine hundred fifty-two disability study of the society of actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January first, one thousand nine hundred sixty-one and prior to January first, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January first, one thousand nine hundred sixty-one, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies—for policies issued on or after January first, one thousand nine hundred sixty-six, the 1959 Accidental Death Benefits Table; for policies issued on or after January first, one thousand nine hundred sixty-one and prior to January first, one thousand nine hundred sixty-six, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January first, one thousand nine hundred sixty-one, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(b) Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of

insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided, however,* That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for the first policy year.

Reserves according to the commissioner's reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this paragraph (b), except that any extra premiums charged because of impairments in paragraph (b) and the mortality table or tables and or special hazards shall be disregarded in the determination of modified net premiums.

(c) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and

accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (b) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: *Provided, however,* That reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e) If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

# CHAPTER 68

(House Bill No. 192—By Mr. Board)

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for life insurance.

**Article 13. Life Insurance.**

Section
30. Standard nonforfeiture law.

*Be it enacted by the Legislature of West Virginia:*

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

Section 30. *Standard Nonforfeiture Law.*—(1) In the case of policies issued on or after the original operative date of this provision, no policy of life insurance, except as stated in subsection six, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in de-

fault after premiums have been paid for at least three full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified;

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy;

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value

and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof, not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(2) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection one, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsections four and four-a, corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the insurer on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection one, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions decreased by any indebtedness to the insurer on the policy.

(3) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specific period.

(4) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent of the adjusted premium for the first policy year; (iv) twenty-five per cent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: *Provided, however,* That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by

the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in subsection four-a, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: *Provided,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rate of mortality assumed may be not more than one hundred and thirty per cent of the rates of mortality according to such applicable table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such

adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(4-a) In the case of ordinary policies issued on or after the operative date of this subsection four-a as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding three and one-half per cent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection four-a, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, one thousand nine hundred sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January first, one thousand nine hundred sixty-six.

(5) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event

of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections two, three, four and four-a may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends paid to provide such addition. Notwithstanding the provisions of subsection two, additional benefits payable (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this subsection would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parrent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(6) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections four and four-a, is less than the adjusted premium so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows—for ages at issue fifty and under, the term shall

be fifteen years, thereafter, the terms shall decrease one year for each year of age beyond fifty, nor to any policy for which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy.

# CHAPTER 69

**(House Bill No. 24—By Mr. England)**

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filing insurance rates.

**Article 20. Rates and Rating Organizations.**

Section

4. Rate filings.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Rate Filings.*—(a) (1) Every insurer shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

(2) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating

schedule or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for fire and marine insurance to which this article applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(b) Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this article, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2) its interpretation of any statistical data it relies upon, (3) the experience of other insurers or rating organizations or (4) any other relevant factors. A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or its position concerning the filing. Upon receipt of such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of such statement to the filer, which may file such reply as it may desire to make. This section shall not be applicable to any memorandum or statement of any kind by any employee of the commissioner.

(c) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf: *Provided,* That nothing contained in this article shall be construed as requiring any insurer

to become a member of, or a subscriber to, any rating organization.

(d) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this article.

(e) Subject to the exceptions specified in paragraphs (f) and (g) of this section, each filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(f) Any special filing with respect to a surety bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(g) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(h) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating

organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph (b) of section three of this article.

(i) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(j) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this article or in accordance with paragraphs (h) or (i) of this section. This paragraph shall not apply to contracts or policies for inland marine risks as to which filings are not required.

# CHAPTER 70

**(Com. Sub. for House Bill No. 131—Originating in the House Committee on the Judiciary)**

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and five, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seventeen by adding thereto a new section, designated section twelve-a, all relating to fees of justices of the peace and constables.

**Article 17. Fees, Fines and Costs.**

Section

1. Fees of justices in civil cases.
2. Fees of constables in civil cases.
5. Prepayment of fees.
12-a. Fees of constable for services in connection with vehicular wrecks or collisions upon public highways.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two and five, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that

said article seventeen be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:

Section 1. *Fees of Justices in Civil Cases.*—A justice of the peace shall charge and shall collect in advance from the party or parties requesting such service the following fees:

(1) For entering and trying any civil suit and the issuance of all papers including distress warrant and attachment orders and the performance of all other services in connection with any such civil suit whether the suit be contested or uncontested and whether or not the suit be completed or discontinued but excepting services in connection with executions or garnishments and suggestee executions ..... $5.00

(2) For all services in connection with an execution on judgment, suggestion on judgment, execution and garnishment whether execution be without garnishment or there be both execution and garnishment or suggestee execution ..... 2.50

(3) For each bond filed in a case, appeal bond, stay-of-execution bond, bail bond, civil order of arrest, detenure bond, except bond in attachment case and docketing same ..... 1.00

(4) For taking depositions of witnesses if done in an hour or less ..... 1.00

(5) If not completed in an hour, for additional time at the rate, per hour of ..... 1.00

(6) For taking an inquest on a dead body, to be audited and paid from the treasury of the county ..... 5.00

(7) Order of appraisement, appointing appraisers, swearing of the same and docketing same, to be paid by plaintiff ..... 1.00

(8) For taking and certifying acknowledgment of deed or other instrument of writing ..... .50

Sec. 2. *Fees of Constables in Civil Cases.*—Every constable shall charge and collect in advance from the party or parties requesting such services the following fees in civil cases:

(1) For service and return of summons to commence a suit $2.00, and for every additional sum-

mons in same suit ..... .75

(2) For servicing and returning order of attachment, for each garnishee summoned ..... 1.00

(3) For taking property under order of attachment, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached ..... 2.50

(4) For subpoenas, for each person served therewith ..... .50

(5) For summoning and returning a jury ..... 1.50

(6) For levying an execution on personal property and return ..... 2.00

(7) For posting notices of sale (3) for suggestee execution, suggestion order, attachment, distress warrant, each ..... .40

(8) For money collected and paid to justice, constable or plaintiff, after levy, under execution, suggestee execution, suggestion order, distress warrant or attachment, sale or no sale ..... 5%

(9) For executing a writ of possession under section ten, article one of this chapter ..... 4.00

(10) For summoning the jury and witnesses for inquest on a dead body, to be audited and paid from the treasury of the county ..... 3.00

(11) *Provided, however,* That in an action brought before a justice to recover a sum of money where an attachment, garnishment or suggestion order is issued against the wages of a defendant, the maximum fee to be charged by the constable for said attachment, garnishment, or suggestion order shall be two dollars and fifty cents ..... 2.50

(12) Second summons in attachment, each ..... 1.00

(13) Extra time necessary in taking and removing property under attachment order, and eviction execution, distress warrant or writ of detinue ..... 1.00

(14) For delivering a temporary or permanent release ..... .50

Sec. 5. *Prepayment of Fees.*—For any service rendered by virtue of his office, for which a fee is allowed by law, except fees chargeable to the state or county, the justice or constable shall require the proper fee to be paid before the service is rendered.

Sec. 12-a. *Fees of Constable for Services in Connection with Vehicular Wrecks or Collisions upon Public Highways.*—In addition to the fees of constables in civil cases and in criminal cases elsewhere provided for, each constable shall be entitled to a fee of one dollar and fifty cents per hour or any part thereof for his time actually spent at the scene of a vehicular wreck or collision upon a public highway in his district and county at the request of a member of the department of public safety in preserving and restoring order and the orderly and safe flow of traffic and caring for the safety of persons or property, in connection with any vehicular wreck or collision upon a public highway of the state in the magisterial district and county from which said constable is elected: *Provided,* That no more than one constable shall be entitled to payment of the fee herein authorized as to any one wreck or collision and that no more than two hours' time shall be claimed for any one such event.

The constable shall submit his claim for such fee with his criminal fee bill, and for it to be a valid claim there must accompany such fee bill the certificate of the appropriate members of the department of public safety who requested the constable to act, that such officer did so request and that the constable did so act in preserving and restoring order, etc., for the time claimed. Such fee shall be charged and paid as provided in section fifteen, article five, chapter seven of the code.

# CHAPTER 71

**(House Bill No. 105—By Mr. Board and Mr. Barker, by request)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the salaries for justices of the peace in lieu of fees in counties of over two hundred thousand population.

## Article 19. Provisions Applicable to Certain Counties.

Section

1. Counties to which article applicable; salaries of justices in lieu of fees; amounts; population figures.
2. Clerk and clerical help for justices; duties of clerk; accounting for and remission of fees; civil fees payable in advance.
3. County court to furnish office space, etc., and pay salaries; additional compensation to circuit clerk.
4. Time courts to remain open.
5. Appointment of special justice; powers and duties; oath; compensation; bond.
6. Payments for services of constables in lieu of fees; itemized statement.
7. Audit of justices' books by tax commissioner; reimbursement for services; disposition of moneys remaining in justices' account.
8. Other provisions of law applicable.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Counties to Which Article Applicable; Salaries of Justices in Lieu of Fees; Amounts; Population Figures.*—The provisions of this article shall be applicable only to counties having a population in excess of two hundred thousand. The salaries of justices of the peace shall be payable solely out of the justices' account in the county general fund which is hereinafter provided, and shall be in the following amounts: (1) In magisterial districts having more than forty thousand population, eight thousand ten dollars; (2) in magisterial districts having more than twenty thousand but not more than forty thousand, seven thousand dollars; (3) in magisterial districts having more than five thousand but not more than twenty thousand population, five thousand dollars; (4) in magisterial districts having five thousand population or less two thousand four hundred dollars.

The population shall be according to the United States census or the estimate of the United States bureau of census as certified to the state auditor by the United States director of the census last preceding the beginning year in which the salary is payable.

The salary herein provided shall be in lieu of all fees

and other compensation, as provided by law, payable to a justice of the peace.

Sec. 2. *Clerk and Clerical Help for Justices; Duties of Clerk; Accounting for and Remission of Fees; Civil Fees Payable in Advance.*—It shall be the duty of the circuit clerk of the county to furnish a deputy clerk and any other necessary assistance and clerical help in each justice court. The deputy shall be present at times when the court is open for business: *Provided, however,* That in districts having five thousand or less population, one deputy clerk may perform the duties for both courts in the district. It shall be the responsibility of the deputy clerk to keep all court records, including a day-to-day docket of all records of the court's work; he shall receive all fines, fees, costs, and other moneys payable to the justice under other provisions of the code, both in criminal and civil cases, and he shall be accountable to the circuit clerk of the county for all such moneys. The circuit clerk shall remit all moneys coming into his hand through the court to the county general fund to be credited to an account therein known as the justices' account. All civil fees provided by law in the justice court shall be payable in advance.

Sec. 3. *County Court to Furnish Office Space, etc., and Pay Salaries; Additional Compensation to Circuit Clerk.*—The county court shall provide solely out of the justices' account in the county general fund, the necessary office space, stationery and supplies for each justice court, shall pay the sum of three thousand dollars to the circuit clerk of the county as further compensation to the salary which he receives as provided by law for the performance of the additional duties imposed upon him by this article, shall pay the annual salary of the justice out of this account, shall pay the deputy clerk and other assistants therefrom, as well as any other necessary expenses of the court.

Sec. 4. *Time Courts to Remain Open.*—The county court shall by order entered on its books, fix a reasonable schedule of hours for each court throughout the county to remain open so that some court in each magisterial district shall be open for business at all times between the hours of nine o'clock a.m. and eight o'clock p.m.,

Monday through Saturday, inclusive, holidays excepted; it shall provide for alternating the hours of two courts in a magisterial district on a monthly basis. The fixing of the hours within which a court shall remain open shall in no way preclude the court from functioning at any other time if the justice deems it necessary.

Sec. 5. *Appointment of Special Justice; Powers and Duties; Oath; Compensation; Bond.*—The judge of any court of record exercising appellate jurisdiction from a justice court, either civil or criminal, or both, may, in the absence, sickness, or inability of a justice to act, appoint a special justice to sit during the absence, sickness or inability to act of the regular justice, who shall have all the powers and duties of the regular justice, but before assuming such powers and duties, he shall take the oath prescribed by the West Virginia constitution for public officials. A special justice shall be paid out of the justices' account of the county general fund, the salary of the regular justice based upon the number of days he serves during the month as a special justice. Any special justice so appointed shall before he acts as said special judge be bonded in the same manner and in the same amount as a regularly elected justice.

Sec. 6. *Payments for Services of Constables in Lieu of Fees; Itemized Statement.*—All fees and compensation provided by law payable to constables shall be paid by the county court at the end of each month out of the county justices' fund, and these payments shall be in lieu of all fees and compensation provided by law payable directly to the constable or otherwise: *Provided, however,* That before such payment is made each constable shall furnish an itemized statement sworn to by the constable and attested by the justice of the peace out of whose court the compensation or fees were earned, showing at whose instance or request the services were rendered and setting fourth the particular amount and nature of each charge in detail.

Sec. 7. *Audit of Justices' Books by Tax Commissioner; Reimbursement for Services; Disposition of Moneys Remaining in Justices' Account.*—The tax commissioner shall

audit annually the books of each justice court within the county, and he shall be reimbursed for his services by the county court out of the justices' account. All other moneys remaining in the county justices' account at the end of the fiscal year, shall become a part of the regular county general fund.

Sec. 8. *Other Provisions of Law Applicable.*—All other provisions of the law relating to justice courts and its officers shall apply insofar as applicable and not inconsistent herewith.

# CHAPTER 72

**(House Bill No. 255—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article five-a, relating to wages for construction of public improvements.

## Article 5-a. Wages for Construction of Public Improvements.

Section

1. Definitions.
2. Policy declared.
3. Fair minimum rate of wages; determination.
4. Minimum wage rate board; appointment; duties; secretary.
5. Prevailing wages established at regular intervals.
6. Contract to contain provisions relative to rate of wages to be paid.
7. Wage rates to be kept posted.
8. Wage record of contractor.
9. Penalties for violation of act.
10. Existing contracts.
11. Provisions of act severable.

*Be it enacted by the Legislature of West Virginia:*

That article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article, designated article five-a, be enacted in lieu thereof, to read as follows:

Section 1. *Definitions.* — (1) The term "public authority," as used in this article, shall mean any officer, board or commission or other agency of the state of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported in whole or in part by public funds of the state of West Virginia or its political subdivisions, and this article shall apply to expenditures of such institutions made in whole or in part from such public funds.

(2) The term "construction," as used in this article, shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. The term "construction" shall not be construed to include temporary or emergency repairs.

(3) The term "locality" means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction efficiently and properly, and may include one or more counties in this state adjacent to the one in which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the state road commission, "locality" may be construed to include one or more counties in this state adjacent to the one in which the construction or public improvement is to be performed and from which skilled laborers, workmen and mechanics may be accessible for work on such construction on public improvements.

(4) The term "public improvement," as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the state of West Virginia or any political subdivision thereof.

(5) The term "construction industry," as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of

buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures or works whether private or public on which construction work as defined in subsection (two) of this section is performed.

(6) The term "board" shall mean the minimum wage board as constituted in this article.

(7) The term "employee", for the purposes of this article, shall not be construed to include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

Sec. 2. *Policy Declared.*—It is hereby declared to be the policy of the state of West Virginia that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in this state in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements.

Sec. 3. *Fair Minimum Rate of Wages; Determination.*—Any public authority authorized to let to contract the construction of a public improvement, shall, before advertising for bids for the construction thereof, ascertain from the state commissioner of labor, the fair minimum rate of wages, including fair minimum overtime and holiday pay, to be paid by the successful bidder to the laborers, workmen or mechanics in the various branches or classes of the construction to be performed; and such schedule of wages shall be attached to and made a part of the specifications for the construction and shall be printed on the bidding blanks when approved by the commissioner of labor where the construction is to be performed by contract. The "fair minimum rate of wages," for the intents and purposes of this article, shall be the rate of wages paid in the locality in this state as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. The commissioner of labor or a member of his department designated by him shall assemble the data as to fair minimum wage rates and shall file wage rates. Rates shall be established and filed as hereinafter provided on January

one of each year. These rates shall prevail as the minimum wage rate on all public improvements on which bids are asked during the year beginning with the date when such new rates are filed and until the new rates are filed, the rates for the preceding year shall remain in effect: *Provided, however,* That such rates shall not remain in effect for a period longer than fifteen months from the date they are published, but, this provision shall not affect construction of a public improvement then underway.

Sec. 4. *Minimum Wage Rate Board; Appointment; Duties; Secretary.*—A minimum wage rate board shall consist of five members to be appointed by the governor with the advice and consent of the state senate to serve at the will and pleasure of the governor. The governor, in making his appointments, shall name one representative from the state road commission, one from organized labor in the building and construction trades, one from the highway and heavy contractors, one from the building contractors and one from a municipality in this state. The term of each member shall be for a period of four years.

The members of the board shall serve without compensation.

The wage rate board shall annually elect a chairman from its membership, and shall sit at the call of the chairman to hear and decide appeals from determinations of the commissioner of labor of fair minimum wages. The wage rate board shall be empowered to establish rules for the conduct of its proceedings.

The commissioner of labor shall designate an employee of the department of labor to be the permanent secretary to the minimum wage rate board who shall maintain a record of all proceedings of the board. The commissioner is empowered to employ any clerical or other employees necessary to carry out the functions of the board.

Sec. 5. *Prevailing Wages Established at Regular Intervals; How Determined; Hearings on Objections; Judicial Review.*—(1) The department of labor, from time to time, shall investigate and determine the prevailing hourly rate of wages in the localities in this state. Determinations

thereof shall be made annually on January one of each year and shall remain in effect during the successive year: *Provided, however,* That such rates shall not remain in effect for a period longer than fifteen months from the date they are published.

In determining such prevailing rates, the department of labor may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality in this state where the construction of the public improvement is to be performed.

(2) A copy of the determination so made, certified by the secretary of the board, shall be filed immediately with the secretary of state and with the department of labor. Copies shall be supplied to all persons requesting same within ten days after such filing.

(3) At any time within fifteen days after the certified copies of the determination have been filed with the secretary of state and the department of labor, any person who may be affected thereby may object in writing to the determination or such part thereof as he deems objectionable by filing a written notice with the department of labor stating the specific grounds of the objection.

(4) Within ten days of the receipt of the objection, the department of labor shall set a date for a hearing on the objection. The date for the hearing shall be within thirty days after the receipt of the objection. Written notice of the time and place of the hearing shall be given to the objectors at least ten days prior to the date set for the hearing and at a time so as to enable the objectors to be present.

(5) The department of labor at its discretion may hear such written objection separately or consolidate for hearing any two or more written objections. At the hearing the department of labor shall introduce into evidence the results of the investigation it instituted and such other facts which were considered at the time of the original determination of the fair minimum prevailing hourly rate including the sources which formed the basis for its determination. The department of labor or any objectors

thereafter may introduce such further evidence as may be material to the issues.

(6) Within ten days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as shall be established by a preponderance of the evidence. Immediately upon such final determination, the department of labor shall file a certified copy of its final determination with the secretary of state and with the department of labor and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(7) Any person affected by the final determination of the department of labor, whether or not such person participated in the proceedings resulting in such final determination, may appeal to the board from the final determination of the department of labor within ten days from the filing of the copy of the final determination with the secretary of state. The board shall hear the appeal within twenty days from the receipt of notice of appeal. The hearing by the board shall be held in Charleston. The hearing by the board shall be upon the record compiled in the hearing before the department of labor and the board shall have the authority to affirm, reverse, amend, or remand for further evidence, the final determination of the department of labor. The board shall render its decision within ten days after the conclusion of its hearing.

(8) Any party to the proceeding before the board or any person affected thereby may within thirty days after receipt of the notice of its decision, appeal the board's decision to the circuit court of the county wherever the construction of a public improvement is to be performed, which shall consider the case on the record made before the commissioner of labor and before the board. The decision of such circuit court may be appealed to the supreme court of appeals of West Virginia by any party to the proceedings or by any person affected thereby in the manner provided by law for appeals in civil actions.

(9) Pending the decision on appeal, the rates for the preceding year shall remain in effect.

Sec. 6. *Contract to Contain Provisions Relative to Rate of Wages to Be Paid.*—In all cases where any public authority has ascertained a fair minimum rate or rates of wages as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided by this article.

Sec. 7. *Wage Rates to Be Kept Posted.*—A clearly legible statement of all fair minimum wage rates to be paid the several classes of skilled laborers, workmen and mechanics employed on the construction on the public improvement shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor subject to the provisions of this article.

Sec. 8. *Wage Record of Contractor.*—The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record showing the names and occupation of all such skilled laborers, workmen and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the skilled laborers, workmen and mechanics, which record shall be open at all reasonable hours to the inspection of the department of labor and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than three years after the termination of the contract.

Sec. 9. *Penalties for Violation of Article.*—(a) Any contractor or subcontractor who wilfully and knowingly violates any provision of this article shall be fined not less than fifty nor more than two hundred and fifty dollars.

(b) Any skilled laborer, workman or mechanic who is engaged in construction on a public improvement let to contract, who is paid less than the posted fair minimum rate of wages applicable thereto, may recover from such contrac-

tor or subcontractor the difference between the same and the posted fair minimum rate of wages, and in addition thereto, a penalty equal in amount to such difference, and reasonable attorney fees. The venue of said action shall be in the county where the work is performed: *Provided, however,* That an honest mistake or error shall not be construed as a basis for recovery under this subsection.

(c) Where skilled laborers, workmen and mechanics are employed in construction on a public improvement and their posted rate of wages has been determined as provided by this article, it shall be unlawful for any person, for himself or another, to request, demand or receive, either before or after such skilled laborers, workmen and mechanics are employed in construction on a public improvement, that they or any one of them pay over money or other thing of value or pay back, return, donate, contribute or give any part or all of their said wages, or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment; and any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars and not more than two hundred fifty dollars.

Sec. 10. *Existing Contracts.*—This article shall apply only to contracts for construction on public improvements let after the effective date of this article, and to construction on public improvements for which there has been determined the fair minimum wage rates as provided in this article, and such determination has not been appealed from as may be provided by this article.

Sec. 11 *Provisions of Article Severable.*—Each section of this article and every part thereof is hereby declared to be an independent section or part of a section, and if any section, subsection, sentence, clause or phrase of this article shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections, and sections of this article shall not be affected thereby.

# CHAPTER 73

(House Bill No. 50—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, nine, ten and eleven, article two, chapter 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 a new section, to be designated section twelve, all relating to the legislative auditor.

**Article 2. Legislative Auditor; Powers; Functions; Duties; Compensation.**

Section

2. Definitions.
4. Duties.
9. Offices; working space.
10. Expenses.
11. Statutory references; transfer of post-audit functions.
12. Severability.

*Be it enacted by the Legislature of West Virginia:*

That sections two, four, nine, ten and eleven, article two, chapter 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 a new section, designated section twelve, all to read as follows:

Section 2. *Definitions.*—For the purposes of this article:

"Committee" means the joint committee on government and finance of the senate and house of delegates.

"Spending unit" means any department, agency, board, commission, officer, authority, subdivision or institution of the state government for or to which an appropriation has been made, or is to be made by the Legislature.

"Post audit" is the audit or review of governmental finances after they have been completed. The scope of a post audit includes audit or review of transactions per-

taining to the financial operations of the various agencies of government on the state level, with verification of state revenues at the source and audit of expenditures all the way through the work to the recipient or beneficiary of the service.

Sec. 4. *Duties.*—It shall be the duty of the legislative auditor to compile fiscal information for the senate and the house of delegates, to make a continuous audit and analysis of the state budget, revenues and expenditures, during and between sessions of the Legislature, to make post audits of the revenues and expenditures of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units.

A copy of each such report of audit when completed and certified shall be filed in the office of the department of finance and administration as a public record and a copy shall be filed with the attorney general for any action he may deem necessary.

Sec. 9. *Offices; Working Space.*—The office of the legislative auditor shall be located at the state capitol and shall be open at all reasonable times for the transaction of business.

All state departments, institutions or other agencies of the state government shall provide necessary comfortable space for the purpose of occupancy by the post auditors in making audits in the various departments, institutions or other agencies of the state, located conveniently at the state capitol and at the several institutions or other agencies throughout the state.

Sec. 10. *Expenses.*—All compensation and expenses of the legislative auditor and his assistants and employees shall be paid out of the funds of the committee, or out of such other appropriations as may be made by the Legislature therefor.

Sec. 11. *Statutory References; Transfer of Post-Audit Functions.*—Whenever any statute of the state refers to an officer or agency of the state whose functions and duties are by this article transferred to another officer or agency of the state, the reference shall be understood to be made to the officer or agency, as the case may be, to which the functions and duties have been transferred.

Sec. 12. *Severability.*—If any provision hereof or the application thereof to any person, department or circumstance is held invalid, such invalidation shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

# CHAPTER 74

**(House Bill No. 53—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the examination and listing of securities in the custody of the state treasurer.

**Article 5. Public Securities.**

Section

3. Legislative auditor to examine and list securities.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Legislative Auditor to Examine and List Securities.*—The legislative auditor annually shall, ex-

amine and list all of the securities in the custody of the state treasurer. A copy of the list so examined and certified shall be transmitted to the state treasurer and the department of finance and administration.

# CHAPTER 75

**(House Bill No. 252—By Mr. Davis, of Kanawha)**

[Passed March 3, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter thirty-eight, and sections two and three, article five-b, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suggestions of salary and wages of private and public employees, and providing for an increase in the amount of salary and wages exempted from such suggestions.

**Article**

**5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.**
**5-b. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

**Section**

3. General provisions.

Section 3. *General Provisions.*—Upon the return of an execution wholly or partly unsatisfied a judgment creditor may apply to the court in which the judgment was re-

covered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages exceeds twenty dollars per week, the court, if not a court of record, or if a court of record, the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty per centum thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to less than twenty dollars per week. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount or the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

## Article 5-b. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

Section

2. General provisions.
3. Suggestion of salary or wages.

Section 2. *General Provisions.*—Upon the return of an execution wholly or partly unsatisfied a judgment creditor may apply to the court in which the judgment was re-

covered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of the same to the judgment debtor from the state, a state agency, or any political subdivision of the state. If satisfactory proof shall be made, by affidavit or otherwise, of such facts, and, where the execution is sought against salary or wages, of the fact that the amount due or to become due as salary or wages exceeds twenty dollars per week, the court, if not a court of record, or if a court of record, the clerk thereof, shall issue a suggestee execution against such money due or to become due to the judgment debtor, and there shall be entered on the face thereof the day and hour of issuance.

Such execution and the expenses thereof shall, when served by the officer to whom delivered for collection in the manner hereinafter provided, upon the state, a state agency, or political subdivision from which such money is due or may thereafter become due to the judgment debtor, become a lien and continuing levy upon the sums due or to become due to the judgment debtor within one year after the issuance of the same (but not to exceed the specified amount of salary or wages as hereinafter provided) unless sooner satisfied and paid, vacated or modified as hereinafter provided.

Where more than one suggestee execution shall have been issued pursuant to the provisions of this section against the same judgment debtor, they shall be satisfied in the order of priority in which they are served upon the state, state agency, or political subdivision from which such money is due or shall become due. For purposes of determining such priority the time that an execution served by mail, as hereinafter provided, shall be received, and not the time of admission of service, shall control. In the case of two or more executions received in the same mail delivery priority shall be accorded the one first issued.

Sec. 3. *Suggestion of Salary or Wages.*—A suggestee execution issued under this article against salary or wages shall become a lien and continuing levy upon sums due

or to become due to the judgment debtor as salary or wages to an amount equal to twenty per centum thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to less than twenty dollars per week. A suggestee execution against salary or wages shall contain the name of the judgment debtor and the bureau, office, department, institution or subdivision thereof of the state or political subdivision of the state, as the case may be, of which he is an officer or employee. If a person so employed shall resign or be dismissed while an execution issued hereunder against his salary or wages is wholly or partly unsatisfied, and he shall thereafter be reinstated or reemployed, the execution shall lapse and no further deduction shall be made with respect thereto from his salary or wages unless such reinstatement or reemployment shall occur within ninety days after such resignation or dismissal. A suggestee execution shall not be affected by the transfer of the officer or employee who is the judgment debtor from one bureau, office, department, institution or subdivision thereof of the state or a political subdivision to another if the officer upon whom service of the execution was made would be the proper officer for service of a suggestee execution against salary or wages due or to become due to the judgment debtor in the new employment.

Such an execution shall not become a lien against salary or wages payable by the state or a state agency within ten days after the service thereof or payable by a political subdivision within five days after the service thereof but shall become a lien and continuing levy upon the salary or wages which shall become due or owing to the judgment debtor thereafter during the life of the execution.

Only one suggestee execution against the salary or wages of a judgment debtor shall be satisfied at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such

amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

# CHAPTER 76

(House Bill No. 282—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to trust receipts and trust receipts financing, by adopting the Uniform Trust Receipts Act.

## Article 15. Uniform Trust Receipts Act.

Section

1. Definitions.
2. What constitutes trust receipt transaction and trust receipt.
3. Attempted creation or continuance of pledge without delivery or retention of possession.
4. Contract to give trust receipt.
5. Validity between the parties.
6. Repossession, and entruster's rights on default.
7. General effect of entruster's filing or taking possession.
8. Validity against creditors.
9. Limitations on entruster's protection against purchasers.
10. Entruster's right to proceeds.
11. Liens in course of business good against entruster.
12. Entruster not responsible on sale by trustee.
13. Filing and refiling concerning trust receipt transactions covering documents or goods.
14. Limitations on extent of obligation secured.
15. Act not applicable to certain transactions.
16. Election among filing statutes.
17. Cases not provided for.
18. Uniformity of interpretation.
19. Constitutionality.
20. Short title.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article fifteen, to read as follows:

Section 1. *Definitions.*—In this article, unless the context or subject matter otherwise requires:

"Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, or mortgagee, a lienor, or a transferee in bulk.

"Document" means any document of title to goods.

"Entruster" means the person who has, or directly or by agent takes, a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

"Goods" means any chattels personal other than money, things in action, or things so affixed to land as to become a part thereof.

"Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instrument law and amendment thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

"Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

"New value" includes new advances or loans made, or new obligations incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under section ten; but "new value" shall not be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.

"Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

"Possession", as used in this article with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

"Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

"Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, insofar as concerns his specific security, a purchaser and not a creditor.

"Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

"Transferee in bulk" means a mortgagee or a pledgee or a buyer of the trustee's business substantially as a whole.

"Trustee" means the person having or taking possession

of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this article.

"Value" means any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, and whether against the transferor or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

Sec. 2. *What Constitutes Trust Receipt Transaction and Trust Receipt.*—1. A trust receipt transaction within the meaning of this article is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in subsection three, whereby:

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee: *Provided,* That the delivery under paragraph (a) or the giving of new value under paragraph (b) either (i) be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains in or will remain in, or has passed to or will pass to, the entruster, or (ii) be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's rights in the goods, documents or in-

struments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section nine and section three, respectively, of this article, determine the priorities.

2. A writing such as is described in subsection one, paragraph (i), signed by the trustee, and given in or pursuant to such a transaction, is designated in this article as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

3. A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transshipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for consummation of some transaction involving delivery to a depositary or registrar, or for their presentation, collection or renewal.

Sec. 3. *Attempted Creation or Continuance of Pledge without Delivery or Retention of Possession.*—1. An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who

become such as prescribed in section eight, only as of the time the pledgee takes possession, and without relation back.

2. Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

3. Where, under circumstances not constituting a trust receipt transaction, a person, for a temporary and limited purpose, delivers goods, documents, or instruments, in which he holds a pledgee's or other security interest, to the person holding the beneficial interest therein, the transaction has like effect with a purported pledge for new value under this section.

Sec. 4. *Contract to Give Trust Receipt.*—1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

2. Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this article.

Sec. 5. *Validity Between the Parties.*—Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this article, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subsection five of section six.

Sec. 6. *Repossession and Entruster's Rights on Default.*—1. The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default, and as may be otherwise specified in the trust receipt.

2. An entruster entitled to possession under the terms of the trust receipt or of subsection one may take such possession without legal process, whenever that is possible without breach of the peace.

3. (a) After possession taken, the entruster shall, subject to subdivision (b) and subsection five, hold such goods, documents or instruments with the rights and duties of a pledgee.

(b) An entruster in possession may on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account, at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private, shall be applied (i) to the payment of the expense thereof, (ii) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (iii) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (i) personally served on the trustee, or (ii) sent by postpaid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

4. Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and entruster may, after default, agree.

5. As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness: *Provided,* That in the case of the original maturity of such an indebtedness there must be cancelled not less than eighty per cent of the purchase price to the trustee or of the original indebtedness, whichever is greater; or, in the case of a first renewal, not less than seventy per cent, or, in the case of a second or further renewal, not less than sixty per cent.

Sec. 7. *General Effect of Entruster's Filing or Taking Possession.*—1. (a) If the entruster within the period of

thirty days specified in subsection one of section eight files as in this article provided, such filing shall be effective to preserve his security interest in documents or goods against all persons, save as otherwise provided by sections eight, nine, ten, eleven, fourteen and fifteen of this article.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in subsection two (b) of section nine, the entruster's security interest shall be deemed to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

2. The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons, in the case of instruments.

Sec. 8. *Validity against Creditors.*—1. The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this article otherwise provided.

But where the trustee at the time of the trust receipt transaction has and retains instruments, or documents, the thirty days shall be reckoned from the time such instruments, or documents, are actually shown to the entruster, or from the time that the entruster gives new value under the transaction, whichever is prior.

2. Save as provided in subsection one, the entruster's security interest shall be void as against lien creditors who become such after such thirty-day period and without notice of such interest and before filing.

(a) Where a creditor secures the issuance of process which within a reasonable time after such issuance results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process.

(b) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by

the entruster, (i) an assignee for the benefit of creditors, from the time of assignment, or (ii) a receiver in equity from the time of his appointment, or (iii) a trustee in bankruptcy or judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee, shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

Sec. 9. *Limitations on Entruster's Protection against Purchasers.*—1. [Purchasers of Negotiable Documents or Instruments.] (a) Nothing in this article shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner instruments in such form as are by common practice purchased and sold as if negotiable, shall hold such instruments free of the entruster's interest; and filing under this article shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within section three of this article, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

2. [Purchasers Not Protected Under Subsection 1.] Where a purchaser from the trustee is not protected under subsection one hereof, the following rules shall govern:

(a) [Sales by Trustee in the Ordinary Course of Trade.] (i) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty-day period specified in subsection

one of section eight of this article, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(ii) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) [Purchasers Other than Buyers in the Ordinary Course of Trade.] In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (i) gives new value before the expiration of the thirty-day period specified in subsection one of section eight, or (ii) gives value after said period and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (ii) of this subdivision (b).

(c) [Liberty of Sale.] If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sales or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

3. [Purchase for New Value.] As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

Sec. 10. *Entruster's Right to Proceeds.*—Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty

of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in section nine (three); and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable, unless the provision for accounting has been waived by the entruster by words or conduct; and knowledge by the entruster of the existence of proceeds, without demand for accounting made within ten days from such knowledge, shall be deemed such a waiver.

Sec. 11. *Liens in Course of Business Good against Entruster.*—Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this article; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

Sec. 12. *Entruster Not Responsible on Sale by Trustee.*—An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be respon-

sible as principal or as vendor under any sale or contract to sell made by the trustee.

Sec. 13. *Filing and Refiling Concerning Trust Receipt Transactions Covering Documents or Goods.*—1. Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the secretary of state a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this state, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

2. The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this article:

"Statement of Trust Receipt Financing

"The entruster, ..... whose chief place of business within this state is at ....., (or who has no place of business within this state and whose chief place of business outside this state is at .....,) is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, ..... .....whose chief place of business within this state is at ..... of goods of the following description:

[coffee, silk, automobiles, or the like.]

[Signed] ..... Entruster

[Signed] ..... Trustee."

3. It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement

in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be five dollars.

4. Presentation for filing of the statement described in subsection one, and payment of the filing fee, shall constitute filing under this article, in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject matter of a trust receipt transaction between the entruster and the trustee.

5. At any time before expiration of the validity of the filing, as specified in subsection four, a like statement, or an affidavit by the entruster alone, setting out the information required by subsection one, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

Sec. 14. *Limitations on Extent of Obligation Secured.*— As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transactions; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

Sec. 15. *Act Not Applicable to Certain Transactions.*— This article shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery

and redelivery, actual or contructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

Sec. 16. *Election among Filing Statutes.*—As to any transaction falling within the provisions both of this article and of any other act requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the act complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another act.

Sec. 17. *Cases Not Provided for.*—In any case not provided for in this article the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

Sec. 18. *Uniformity of Interpretation.*—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Sec. 19. *Constitutionality.*—If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Sec. 20. *Short Title.*—This article may be cited as the "Uniform Trust Receipts Act."

# CHAPTER 77

(House Bill No. 298—By Mr. Wells and Mr. Amick)

[Passed March 6, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contracts and deeds invalid as to creditors and purchasers until recorded.

**Article 1. Acts Generally Void as to Creditors and Purchasers.**

Section

9. Contracts and deeds invalid as to creditors and purchasers until recorded.

*Be it enacted by the Legislature of West Virginia:*

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

Section 9. *Contracts and Deeds Invalid as to Creditors and Purchasers until Recorded.*—Every such contract, every deed conveying any such estate or term, and every deed of gift, or trust deed or mortgage, conveying real estate or goods and chattels, shall be void as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, trust deed or mortgage may be: *Provided, however,* That the provisions of this section shall not apply to liens and encumbrances which are the subject of chapter seventeen-a, article four-a, relating to liens and encumbrances on vehicles.

# CHAPTER 78

(House Bill No. 300—By Mr. Wells and Mr. Amick)

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter forty of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to conditional sales void as to certain persons.

**Article 3. Conditional Sales.**

Section

5. Conditional sales void as to certain persons.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Conditional Sales Void as to Certain Persons.* —Every provision in a conditional sale contract reserving an interest in the seller shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy or otherwise a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale: *Provided, however,* That the provisions of this section shall not apply to liens and encumbrances which are the subject of chapter seventeen-a, article four-a, relating to liens and encumbrances on vehicles.

# CHAPTER 79

(House Bill No. 421—By Mr. Speaker, Mr. Singleton)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to blasting in coal mines.

**Article 2. Coal Mines.**

Section

33. Preparation of shots; blasting practices.

*Be it enacted by the Legislature of West Virginia:*

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

Section 33. *Preparation of Shots; Blasting Practices.*— Only competent and experienced persons designated by mine management shall be permitted to handle explosives and to do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Men shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he shall make a careful examination of the working face before leaving the place, or before performing any other work in the place.

Multiple shooting in coal and/or rock is authorized only under permit issued by the director of the department of mines. Permission to shoot more than ten shots simultaneously may be granted by the director only after consultation with interested persons, and such shooting will

be performed by special methods and under precautions prescribed by said director. All multiple shooting in bottom or roof rock shall be performed in intake air, except by special permit from the director of the department of mines after consultation with interested persons 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.

The use of regular or short-interval delay detonators may be used for blasting purposes with written permission from the director of the department of mines. The use of 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 not 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 said director. Misfires must be tested with a blasting galvanometer before removing.

Electrical equipment shall not be operated in the face areas and only work in connection with timbering and general safety shall be performed while boreholes are being charged. Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the department of mines.

Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire.

The cable when new shall be at least one hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

# CHAPTER 80

(Senate Bill No. 24—By Mr. McCourt and Mr. Carrigan)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, ten and eleven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the jurisdiction and control of the state department of mines over surface mining operations.

**Article 2-a. Surface Mining.**

Section

1. Legislative purpose; apportionment of responsibility.
3. Permit required; fees and use of proceeds.
10. Surfacing mining supervisor and inspectors; appointment and qualification; compensation and expenses.
11. Duties of surface mining supervisor and inspectors generally; eligibility for permanent appointment; tenure; interest in mining operation; oath and bond.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Legislative Purpose; Apportionment of Responsibility.*—Since practices and procedures in the surface mining of coal may and commonly do cause soil erosion, stream pollution and the accumulation of stag-

nant waters, increase the likelihood of floods, destroy the value of lands for agricultural purposes, counteract efforts for the conservation of soil, water and other natural resources of the state, the Legislature finds and declares that the department of natural resources shall have jurisdiction and control over land and soil aspects of surface mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby, but that surface mining as an industrial enterprise and occupation shall be under the jurisdiction and control and subject to the regulations of the state department of mines.

Sec. 3. *Permit Required; Fees and Use of Proceeds.*— It shall hereafter be unlawful for any person, firm or corporation to engage in the surface mining of coal without having first obtained from the director of the department of mines a permit therefor as provided in this section. The following information must be stated in the application for such a permit: (1) A description of the location and area of the land to be covered by the permit together with a map or plat of the portion to be surface mined; (2) the owner or owners of the surface of the land; (3) the owner or owners of the coal to be mined; (4) the source of the operator's legal right to enter and mine the coal on the land covered by the permit; (5) the permanent and temporary postoffice addresses of the operator; (6) whether any permits are now held, and if so, how many such permits and the numbers thereof.

Upon payment to the department of mines of a registration fee of one hundred dollars and the certification from the director of the department of natural resources that a bond as required by section three, article six, chapter twenty of the code has been posted, the director of the department of mines shall upon proper application, issue the requested permit. The permit shall be for a period of one year from the date of issuance and shall be extended upon written request and by the payment of fifty dollars for each succeeding year. Permits issued prior to the effective date of this article shall be renewable on the anniversary date of their issuance.

The registration and renewal fees heretofore or hereafter collected as provided in this article shall be deposited

with the state treasurer to the credit of the general revenue fund.

Sec. 10. *Surface Mining Supervisor and Inspectors; Appointment and Qualifications; Compensation and Expenses.*—Five surface mining inspectors and a state surface mining supervisor shall be appointed by the director of the department of mines. All such appointees shall be citizens of West Virginia, in good health, not less than thirty nor more than fifty-five years of age, of good character and reputation, and temperate in habits. Each of them shall have had at least five years' practical experience in strip and surface mining in West Virginia. The surface mining supervisor shall be paid not less than six thousand six hundred dollars and not more than seven thousand five hundred dollars per annum and the surface mining inspectors shall be paid not less than six thousand dollars and not more than six thousand four hundred dollars per annum. Each shall be allowed reasonable traveling expenses when itemized by the claimant who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties for the department of mines. Within the limits provided in this section, the salary of the supervisor and of each inspector shall be fixed by the director of the department of mines, and in fixing such salaries the director shall consider ability, performance of duty, responsibility and experience of each. All such salaries and expenses shall be paid from department of mines funds.

Sec. 11. *Duties of Surface Mining Supervisor and Inspectors Generally; Eligibility for Permanent Appointment; Tenure; Interest in Mining Operation; Oath and Bond.*—The surface mining supervisor and surface mining inspectors shall make such surveys and inspections of surface mining operations, shall effect practical and effective administration and enforcement of all mining laws of the state applicable to surface mining, and shall perform such other duties and services as may be prescribed by the director of the department of mines.

No person shall be eligible for permanent appointment as surface mining supervisor or surface mining inspector

until he has served in a probationary status, to the satisfaction of the director of the department of mines, for a period of one year, but the surface mining supervisor and the surface mining inspectors serving as such on the effective date of this section shall receive permanent appointment after they shall have served in such capacity for a period of one year to the satisfaction of the director. Any person receiving permanent appointment as surface mining supervisor or surface mining inspector shall have permanent tenure until he becomes sixty-five years of age, subject to removal only for physical or mental impairment, neglect of duty, drunkenness, malfeasance in office, or official misconduct. No person serving as surface mining inspector shall be interested, directly or indirectly, as owner, operator, or stockholder of any coal mining operation in the state of West Virginia and the existence or acquisition of such interest on the part of any such inspector shall immediately vacate his position.

Before any such supervisor or inspector shall enter upon the discharge of his duties, he shall take and subscribe to the public official's oath as prescribed by the constitution of West Virginia and shall execute a bond in the penal sum of two thousand dollars, with surety approved by the director of the department of mines, and conditioned upon the faithful discharge of his duties. Premiums on such bonds shall be paid from department of mines funds, and all such executed bonds and oaths shall be filed in the office of the secretary of state.

# CHAPTER 81

(Senate Bill No. 35—By Mr. Nuckols)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to motor vehicle administration; definitions.

**Article 1. Words and Phrases Defined.**

Section
27-a. Resident.

*Be it enacted by the Legislature of West Virginia:*

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

Section 27-a. *Resident.*—Every person who is a legal resident of this state and every nonresident (owner, corporation, manufacturer, dealer, used car dealer) owning, maintaining or operating a place or places of business in this state and using motor vehicles intrastate in connection with such business in this state, or any nonresident who maintains temporary residence in this state and accepts any employment or engages in any trade, profession or occupation in this state, or any nonresident who maintains temporary residence in this state in excess of thirty days during the registration year.

# CHAPTER 82

**(Com. Sub. for House Bill No. 167—Originating in the House Committee on Finance)**

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor and other vehicles and including among other things motor vehicle administration, registration, certificates of title and the fees and taxes imposed in connection therewith.

**Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.**

Section
4. Application for certificate of title; tax.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Application for Certificate of Title; Tax.*— Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the department of motor vehicles or any other officer charged with such duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of such vehicle. Such application shall be upon a blank form to be furnished by the department of motor vehicles and shall contain a full description of the vehicle, which description shall contain the manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon such vehicle, the names and addresses of the holders of such liens and such other information as the department of motor vehicles may require. The application shall be signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to three per cent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the vehicle is a used or second-hand vehicle, the present market value at time of transfer or purchase shall be deemed the value thereof for the purpose of this section: *Provided, however,* That if said motor vehicle is purchased in the state of West Virginia, so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or second-hand; if the vehicle be acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the

vehicle at the time of the gift or transfer shall be deemed the value thereof for purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless such applicant shall have paid to the department of motor vehicles the tax imposed by this section which shall be three per cent of the true and actual value of said vehicle whether the vehicle be acquired through purchase, by gift, or by any other manner whatsoever except gifts between husband and wife or between parents and children; but the tax imposed by this section shall not apply to vehicles to be registered as Class H or Class I vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce, nor shall the tax imposed by this section apply to titling of vehicles by a registered dealer of this state for resale only, nor shall the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department organized and incorporated under the laws of the state of West Virginia for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the state road commissioner for matching federal aid funds allocated for West Virginia. In addition to said tax, there shall be a charge of one dollar for each original certificate of title so issued: *Provided,* That this state or any political subdivision thereof, or any such volunteer fire department, shall be exempted from payment of such charge.

Notwithstanding the provisions of this section, the owners of trailers, semitrailers and other vehicles not subject to the certificate of title tax prior to enactment of this chapter shall not be required to pay the above-mentioned tax upon making application for a certificate of title for such vehicle, but shall be required to pay a fee of one dollar for the issuance of each such certificate of title.

Such certificate shall be good for the life of the vehicle, so long as the same is owned or held by the original holder of such certificate, and need not be renewed annually, or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle upon which the tax herein im-

posed has been paid, he shall not be required to pay such tax.

A person who has paid the tax imposed by this section shall not be required to pay the tax a second time for the same motor vehicle, but he shall be required to pay a charge of one dollar for the certificate of retitle of that motor vehicle, except that such tax shall be paid by such person when the title to such vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

# CHAPTER 83

**(House Bill No. 480—By Mr. Watson)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact an act of the Legislature, regular session, one thousand nine hundred sixty-one, known and designated as House Bill No. 95, which bill amended and reenacted section one, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of the transfer of title to, or interest in, registered motor vehicles upon the registration of, and registration plates for, such motor vehicles.

**Article 4. Transfers of Title or Interest.**

Section

1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

*Be it enacted by the Legislature of West Virginia:*

That an act of the Legislature, regular session, one thousand nine hundred sixty-one, known and designated as House Bill No. 95, which bill amended and reenacted section one, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Registration Expires on Transfer by Owner; Transfer, Surrender or Retention of Plates.*—Whenever the owner of a registered vehicle transfers or assigns his title, or interest thereto, the registration of such vehicle shall expire: *Provided, however*, That such owner, if he has made application to the department to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of fifteen days, but in no event longer than fifteen days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of one dollar, issue a new certificate showing the use to be made of such plates. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the department the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the department the transfer fee of one dollar with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he receives a new registration card from the department.

The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of one dollar as an exchange

fee and upon the payment of such additional fees as are necessary to equalize the value of the plates surrendered with the value of the registration plates desired, receive in exchange a set of plates and registration card for a vehicle of a different class.

# CHAPTER 84

(House Bill No. 32—By Mr. Wells)

[Passed February 28, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to the showing of liens and encumbrances on the certificate of title to vehicles by the department of motor vehicles; notice of the existence of lien; voluntary liens created by owner not endorsed on title void as to subsequent purchasers for value without notice and lien creditors; no cause of action against the lienor created; certain common law and statutory liens not affected; vehicle accessories not affected; effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state; and providing such liens or encumbrances to be void after five years unless refiled.

## Article 4-a. Liens and Encumbrances on Vehicles to Be Shown on Certificate of Title; Notice to Creditors and Purchasers.

Section

1. Certificate to show liens or encumbrances.
2. Liens and encumbrances subsequently created.
3. Certificate as notice of lien; lien created by voluntary act of the owner not shown on certificate of title void as to subsequent purchasers and lien creditors; exception as to deferred purchase money liens; existing liens excepted.
4. Deferred purchase money lien or encumbrance may be filed within ten days after purchase.
5. Priority of liens shown on certificate.
6. Who to hold certificate of title subject to lien; transfer of possession upon satisfaction of lien; assignment of obligation by lien holder.

7. Release of lien or encumbrance shown on certificate of title.
8. Surrender of certificate required when lien paid.
9. Levy of execution, etc.
10. Fee for recording and release of lien.
11. Article to create no cause of action against lienor for damage to property or injury to person.
12. Article not to apply to certain common law and statutory liens.
13. Article not to apply to vehicle accessories.
14. Effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state.
15. Liens or encumbrances void after five years unless refiled; refiling for additional two-year periods; deletion from lien index.

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*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Certificate to Show Liens or Encumbrances.* —The department upon receiving an application for a certificate of title to a vehicle, trailer, semitrailer or pole trailer, for which a certificate of title is required under article three of this chapter, all of which are hereinafter in this article referred to as vehicles, showing liens or encumbrances upon such vehicle, shall, upon issuing to the owner thereof a certificate of title therefor, show upon the face of the certificate of title all liens or encumbrances disclosed by such application. All such liens or encumbrances shall be shown in the order of their priority being according to the information contained in such application. When such an application shows liens and encumbrances, such information and evidence of the lien in connection therewith as the department may deem necessary shall also be furnished. Such information shall include the name and address of the lien holder, the nature and kind of his lien, the date thereof, and the amount thereby secured, all of which information, upon recordation, shall be endorsed upon the title certificate. Upon issuing the certificate, the department shall thereupon send or deliver it to the holder of the first lien.

Sec. 2. *Liens and Encumbrances Subsequently Created.* —Liens or encumbrances placed on vehicles by the voluntary act of the owner (including a registered dealer hold-

ing title by assignment entered upon a certificate of title) after the original issue of title to be properly recorded must be shown on the certificate of title. In such cases, the owner or lien holder shall file application with the department on a blank furnished for that purpose, setting forth the lien or liens and such information and evidence of the lien in connection therewith as the department may deem necessary. Such information shall include the name and address of the lien holder, the nature and kind of his lien, the date thereof, and the amount thereby secured, all of which information, upon recordation, shall be endorsed upon the title certificate with the endorsement of the fact of such lien as hereinafter provided. The department, if satisfied that it is proper that the same be recorded, and upon surrender of the certificate of title covering the vehicle, shall thereupon issue a new certificate of title, showing the liens or encumbrances in the order of their filing being according to the date, hour and minute of receipt by the department of the application for same. For the purpose of recording a subsequent lien on a certificate of title, the subsequent lienor shall make a written request upon the lienor in possession of the certificate of title, accompanied by proof of the existence of his subsequent lien, stating his need to have possession of the certificate of title for the purpose of having his lien recorded thereon by the department of motor vehicles. Thereupon, the lienor in possession of the certificate shall within a reasonable time, not to exceed ten days from the receipt of said written request, deliver the certificate of title to the requesting subsequent lienor.

Upon delivery of the certificate of title, the subsequent lienor shall immediately forward it and his own application to the department of motor vehicles for filing his lien and recording the same on the certificate of title. Upon issuing the new certificate, the department shall thereupon send or deliver it to the holder of the first lien.

Sec. 3. *Certificate as Notice of Lien; Lien Created by Voluntary Act of the Owner Not Shown on Certificate of Title Void as to Subsequent Purchasers and Lien Creditors; Exception as to Deferred Purchase Money Liens; Existing Liens Excepted.* — Such certificate of title,

when issued by the department showing a lien or encumbrance, shall be deemed from and after the filing with the department of the application therefor adequate notice to the state, and its agencies, boards and commissions and the United States government and its agencies, boards and commissions, creditors and purchasers that a lien against the vehicle exists and the recording of such reservation of title, lien or encumbrance in the county wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required or have any effect. The provisions of any other article, chapter or section of this code to the contrary notwithstanding, any lien or encumbrance placed upon a vehicle by the voluntary act of the owner (including a registered dealer holding title thereto by assignment entered upon a certificate of title) but not shown on such certificate of title shall be void as to any purchaser for value or lien creditor, who, in either case, without notice of such lien or encumbrance, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon: *Provided, however,* That a purchase money lien or encumbrance may be filed as hereinafter set forth in section four of this article with the effect therein stated: *Provided further,* That this section shall apply only to liens and encumbrances created on and after the effective date of this article.

Sec. 4. *Deferred Purchase Money Lien or Encumbrance May Be Filed within Ten Days after Purchase.*—If application for a certificate of title showing a deferred purchase money lien or deferred purchase money encumbrance to be placed upon a vehicle be filed in the office of the department within ten days from the date of such applicant's purchase of such vehicle, it shall be as valid as to all persons, whomsoever, including the state, as if such filing had been done on the day such lien or encumbrance was acquired.

Sec. 5. *Priority of Liens Shown on Certificate.*—The liens shown upon such certificate of title issued by the department pursuant to applications for same shall have priority over any other liens against such vehicle, how-

ever created and recorded, except as hereinafter provided in this article.

Sec. 6. *Who to Hold Certificate of Title Subject to Lien; Transfer of Possession upon Satisfaction of Lien; Assignment of Obligation by Lien Holder.*—The certificate of title of such vehicle shall be delivered to the person, firm or corporation holding the first lien or encumbrance upon the vehicle and retained by him or them until the entire amount of his or their lien is fully paid. Thereupon the certificate of title shall be delivered to the next lien holder, and so on, or if none, then to the owner of the vehicle. It shall be the responsibility of each lienor upon the satisfaction of his lien to deliver said certificate of title to the lienor next entitled to the possession thereof and, if none to the owner, which acts of delivery may be accomplished through registered or certified mail addressed to the lienor or the owner entitled to such possession at his address as shown upon said certificate. In the event of assignment of the obligation by a lien holder who lawfully has possession of the certificate of title at the time of assignment, the lien holder shall deliver the certificate of title to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lien holder, or if none, then to the owner of the vehicle. In the event of assignment of the obligation by a lien holder not entitled to possession of the certificate of title at the time of assignment, the lien holder shall immediately upon becoming lawfully entitled to, and obtaining lawful possession of, the certificate of title, deliver the same to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lien holder, or if none, then to the owner of the vehicle.

Sec. 7. *Release of Lien or Encumbrance Shown on Certificate of Title.*—An owner upon securing the release of any lien or encumbrance upon a vehicle shown upon the certificate of title issued therefor may exhibit the document evidencing such release, signed by the person or persons making such release and acknowledged before a

notary public or someone authorized by the laws of this state to take acknowledgments of deeds, and this document together with the certificate of title shall be returned to the department; or the lien holder may release the lien by endorsing across the lien in his favor on the face of the title or closely adjacent thereto the following words or words of similar effect or purport: "This lien, this day fully paid, satisfied and released, this.....day of.....," and duly signing and executing said endorsement and acknowledging the same before a notary public and having said notary public execute a certificate of such acknowledgment in the form required for releasing deeds of trust in this state; or when it is impossible to secure either such release from the beneficiary or holder of the lien, the owner may exhibit to the department whatever evidence may be available showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid and the certificate of title to such vehicle. The department when satisfied as to the genuineness and regularity thereof shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the lien or encumbrance which the department shall attach to the outstanding certificate of title.

Sec. 8. *Surrender of Certificate Required When Lien Paid.*—It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title as provided in this article to refuse or fail to execute a release as provided for in the next preceding section, or to refuse or fail to surrender such certificate of title to the person legally entitled thereto within fifteen days after his lien shall have been paid and satisfied.

Sec. 9. *Levy of Execution, Etc.*—A levy made by virtue of an execution, fieri facias or other proper court order, upon a vehicle for which application for a certificate of title has been filed with the department, shall constitute a recorded lien, with the effect of constructive notice thereof to all persons, subsequent to holders of liens or encumbrances theretofore filed with the department, only from and after the time when the officer making such levy files a report to and with the department of motor vehicles, on

forms provided therefor by the department, that such levy has been made or that the vehicle thus levied upon has been seized by and is in the custody of such officer; and the provisions of any other article, chapter or section of this code to the contrary notwithstanding, the docketing or recording of any such execution, fieri facias or other court order in the office of the clerk of the county court of any county in this state shall not constitute constructive notice thereof as to any such vehicle.

Such report by such officer shall show among other things the full names of the parties to the proceeding upon which the execution, fieri facias or court order is based; the identity of the court, judge or justice of the peace or other judicial officer from which said execution, fieri facias or other court order was issued; the amount required for the satisfaction thereof; the date thereof; the date and hour when received by the officer; the date, hour and minute of levy, seizure, attachment or other execution of said process; the date returnable; the make, year, body style of the vehicle to which the lien of said execution, fieri facias or court order relates as well as the name of the person or persons whose interest or ownership therein is intended to be affected by the lien of such execution, fieri facias or court order. Such report shall also show, if known, the serial number of such vehicle, the current West Virginia registration card number and current West Virginia registered owner thereof and current West Virginia license plate number, and if any item in this sentence enumerated for listing on such report is unknown to the reporting officer the report shall state that such item is unknown to the officer. Such report shall be dated, signed and certified by the reporting officer and such certification shall constitute an official act on his part. The department shall by endorsement upon or attachment to its records note the officer's report and the day and hour and the minute received upon its record copy of the certificate of title thereby affected; should such lien be thereafter satisfied or should the vehicle thus levied upon and seized be thereafter released by such officer, he shall immediately report that fact to the department of motor vehicles and

the department shall in a like manner note such fact. Any owner who after such levy or seizure by an officer and before the report thereof by the officer to the department shall fraudulently assign or transfer his title to or interest in such vehicle or cause the certificate of title thereto to be assigned or transferred or cause a lien or encumbrance to be shown upon such certificate of title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than five hundred dollars, or imprisoned in jail for not less than ten days nor more than twelve months.

The actual possession of the levying or attaching officer of the law or the actual possession of some person, other than the judgment or attachment debtor, holding such property for the officer, shall constitute notice of the lien, if any, of the execution, fieri facias, or other court order under which he levies, seizes or otherwise takes possession.

For any vehicle as to which an involuntary lien has been reported and noted by the department and for which there has been no report of release or satisfaction by the levying or seizing officer, if application be made for the transfer of title thereto or issuance of new certificate of title therefor to the current registered owner or to someone claiming by assignment of title certificate from such registered owner or if application be made pursuant to the provisions of this article for the endorsement upon the certificate of title to such vehicle of a lien or encumbrance created by the voluntary act of the owner and the issuance of a new certificate of title showing the same, such involuntary lien, for which the department's records show no report of satisfaction or release, and the information furnished in the officer's report thereof together with the date, hour and minute of receipt of such report shall be endorsed upon such new certificate of title issued pursuant to any of such applications.

Sec. 10. *Fee for Recording and Release of Lien.*—The department of motor vehicles is hereby authorized to charge a fee of two dollars for the recording of any lien created by voluntary act of the owner and endorsing it

upon such title certificate issued pursuant to this article, and the department of motor vehicles is hereby authorized to charge a fee of fifty cents for recordation of any release of a lien created by the voluntary act of the owner: *Provided, however,* That no charge shall be made for the endorsement and recordation of liens or releases thereof as provided under section nine of this article.

Sec. 11. *Article to Create No Cause of Action against Lienor for Damage to Property or Injury to Person.*—The exercise by the lienor of the rights and privileges in this article given him shall not in and of itself give rise to a cause of action against such lienor for damages resulting from any act or omission of the registered and beneficial owner of the vehicle in said registered owner's dominion, ownership, use, operation or control thereof.

Sec. 12. *Article Not to Apply to Certain Common Law and Statutory Liens.*—The provisions of this article shall not be construed so as to require common law mechanic's liens or repairman's liens, or the lien of an improver or bailee as provided in article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to be shown on the certificate of title in order to preserve such liens against any purchaser for value or lien creditor who, in either case, without notice of such lien or encumbrance, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon.

Sec. 13. *Article Not to Apply to Vehicle Accessories.*—The provisions of this article shall not apply to the recording of a lien or liens which are created only upon tires, radios, heaters, or other vehicle accessories.

Sec. 14. *Effect of Article on Liens and Encumbrances Created in Transactions Consummated before Vehicle Brought into State and Subject to Registration and Titling in State.*—As to bona fide purchasers for value or lien creditors without notice, the provisions of this article shall not be construed so as to invalidate or render void any lien or encumbrance placed upon a vehicle, by the voluntary act of the owner, in a transaction consummated before the vehicle is brought into this state, and before the

same is subject to registration in the state of West Virginia, and before the application for a West Virginia certificate of title is required so long as such a lien or encumbrance has been properly recorded according to the laws of the jurisdiction in which it was created so as to be valid against bona fide purchasers for value or lien creditors without notice and so long as such lien or encumbrance is of such kind, nature and character as the law of this state would otherwise protect against such purchasers and lien creditors: *Provided, however,* That after such vehicle is brought into this state and after it is required to be registered and titled in this state, such lien or encumbrance as in this section described shall be void as to any purchaser for value or lien creditor, who, in either case, without notice of such lien or encumbrances, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon, unless such lien holder, within three months after the removal of such vehicle into this state or within ten days after such lien holder received notice of such removal, which ever period of time is least, shall, in the manner set forth in section two of this article file application with the department in which case the department shall proceed as in section two of this article.

Sec. 15. *Liens or Encumbrances Void after Five Years unless Refiled; Refiling for Additional Two-year Periods; Deletion from Lien Index.*—The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided in this article shall be void for a period of five years only from the date of such filing, unless the lien or encumbrance is refiled in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance shall be valid for successive additional periods of two years from the date of each such refiling.

When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the commissioner of motor vehicles shall not be required to maintain a lien index as to such certificate of title.

# CHAPTER 85

**(Senate Bill No. 32—By Mr. Nuckols)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permits to nonresident owners.

**Article 5. Permits to Nonresident Owners.**

Section

1. Nonresident owners exempt from registration.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Nonresident Owners Exempt from Registration.*—A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner.

Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer, or semitrailer within this state, shall be required to register each such vehicle and pay the same fee therefor as is required with reference to like vehicles owned by residents of this state, except as otherwise provided by reciprocal agreements with other states accomplished pursuant to section ten, article two of this chapter.

# CHAPTER 86

**(House Bill No. 355—By Mr. Watson)**

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration fees for vehicles equipped with pneumatic tires.

**Article 10. Registration, License and other Fees.**

**Section**

3. Registration fees for vehicles equipped with pneumatic tires.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Registration Fees for Vehicles Equipped with Pneumatic Tires.*—The following registration fees for the classes indicated shall be paid annually to the department for the registration of vehicles subject to registration hereunder when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of this class shall be as follows:

(1) For motor vehicles of a weight of three thousand pounds or less—twenty dollars.

(2) For motor vehicles of a weight of three thousand and one pounds to four thousand pounds—twenty-four dollars.

(3) For motor vehicles of a weight in excess of four thousand pounds—thirty dollars.

For the purpose of determining the weight the actual weight of the vehicle shall be taken: *Provided,* That for vehicles owned by churches, or by trustees for churches, which vehicles are regularly used for transporting parish-

ioners to and from church services, no license fee shall be charged, but notwithstanding such exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

Class B, Class I and Class K. The registration fee for all motor vehicles of these three classes shall be as follows:

(1) For declared gross weights of four thousand pounds or less—twenty dollars.

(2) For declared gross weights of four thousand and one pounds to eight thousand pounds—twenty-two dollars and fifty cents.

(3) For declared gross weights of eight thousand and one pounds to sixteen thousand pounds—twenty-two dollars and fifty cents plus forty-five cents for each hundred pounds or fraction thereof that gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(4) For declared gross weights greater than sixteen thousand pounds—sixty-eight dollars and fifty cents plus ninety cents for each one hundred pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

If the declared gross weight of a Class B, Class I or Class K motor vehicle includes the gross weight of a Class C or Class L vehicle used in combination with such Class B, Class I or Class K motor vehicle and the registration fee prescribed hereunder for such Class C or Class L vehicle has been paid, there shall be deducted from the registration fee for such Class B, Class I or Class K motor vehicle the amount of seventeen dollars and fifty cents.

Class C and Class L. The registration fee for all vehicles of these two classes shall be seventeen dollars and fifty cents.

Class G. The registration fee for each motorcycle having two wheels shall be six dollars. The registration fee for each motorcycle having three wheels shall be seven dollars and fifty cents.

Class H. The registration fee for all vehicles for this class operating entirely within the state shall be five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee shall be the fees provided

by this section for Class B, Class I and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the department of motor vehicles.

Class J. The registration fee for all motor vehicles of this class shall be eighty-five dollars. Ambulances and hearses used exclusively as such shall be exempted from the above special fees.

Class R. The registration fee for all vehicles of this class shall be ten dollars.

Class S. The registration fee for all vehicles of this class shall be seventeen dollars and fifty cents.

Class T. The registration fee for all vehicles of this class shall be six dollars.

Class U. The registration fee for all motor vehicles of this class shall be fifty-seven dollars and fifty cents.

Class Farm Truck. The registration fee for all motor vehicles of this class shall be as follows:

(1) For farm trucks of declared gross weights of eight thousand and one pounds to sixteen thousand pounds—thirty dollars.

(2) For farm trucks of declared gross weights of sixteen thousand and one pounds to twenty-two thousand pounds —eighty dollars.

From the revenue provided by this section for the fiscal year one thousand nine hundred fifty-nine—one thousand nine hundred sixty the sum of three million two hundred thousand dollars shall be used for the purpose of matching federal funds allocated for the interstate road system in West Virginia.

# CHAPTER 87

**(House Bill No. 98—By Mr. Watson)**

[Passed February 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance

of permits and licenses, and expiration and renewal thereof.

**Article 2. Issuance of License, Expiration and Renewal.**

Section

11. Duplicate permits and licenses.

*Be it enacted by the Legislature of West Virginia:*

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

Section 11. *Duplicate Permits and Licenses.*—In the event that an instruction permit, operator's license or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom such permit or license was issued may upon making proper application and upon payment of a fee of one dollar, obtain a duplicate thereof upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed.

# CHAPTER 88

**(Senate Bill No. 12—By Mr. Jackson)**

[Passed March 4, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to speed limitations on vehicles.

**Article 6. Speed Restrictions.**

Section

4. Special speed limitations on vehicles not designed for carrying passengers and equipment with pneumatic tires.

*Be it enacted by the Legislature of West Virginia:*

That section four, article six, 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:

Section 4. *Special Speed Limitations on Vehicles Not Designed for Carrying Passengers and Equipment with Pneumatic Tires.*—Subject to all other speed restrictions of this chapter no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:

(1) Twenty miles per hour in any business district;

(2) Twenty-five miles per hour in any residence district;

(3) Forty miles per hour on open country highway;

(4) Trucks licensed at eight thousand pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

# CHAPTER 89

**(House Bill No. 308—By Mr. Morford and Mr. Rife)**

[Passed March 6, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to overtaking and passing school busses, the identification of school busses and the concealment or removal of such identification under certain circumstances.

**Article 12. Special Stops Required.**

Section

7. Overtaking and passing school bus.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article twelve, 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:

Section 7. *Overtaking and Passing School Bus.*—(a) The driver of a vehicle on any street or highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus and shall not proceed until such school bus resumes motion, or until signaled by the driver or other authorized person or persons to proceed.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than six inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency, or individual shall have all lettering removed or permanently obscured before sale or transfer is made.

(c) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

# CHAPTER 90

**(Senate Bill No. 231—By Mr. Smith)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of passengers that may occupy the seat with the operator of motor vehicles.

**Article 14. Miscellaneous Rules.**

**Section**

5. Passengers in seat with operator.

*Be it enacted by the Legislature of West Virginia:*

That section five, article fourteen, 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:

Section 5. *Passengers in Seat with Operator.*—No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated on the streets or highways of this state: *Provided, however,* That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the department of motor vehicles.

# CHAPTER 91

**(House Bill No. 97—By Mr. Watson)**

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle administration; equipment.

**Article 15. Equipment.**

**Section**

15. Lamps on parked vehicles.

*Be it enacted by the Legislature of West Virginia:*

That section fifteen, article fifteen, 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:

Section 15. *Lamps on Parked Vehicles.*—(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

# CHAPTER 92

**(House Bill No. 82—By Mr. Slonaker)**

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to

weighing motor vehicles and removal or rearrangement of excess loads.

## Article 17. Size, Weight and Load.

Section

10. Officers may weigh, measure, etc., vehicles and require removal or rearrangement of excess loads.

*Be it enacted by the Legislature of West Virginia:*

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

Section 10. *Officers May Weigh, Measure, etc., Vehicles and Require Removal or Rearrangement of Excess Loads.* —(a) Any police officer, or employee of the state road commission designated by the state road commissioner as a member of an official weighing crew, may require the driver of any vehicle or combination of vehicles on any highway to stop and submit such vehicle or combination of vehicles to a weighing with portable or stationary weighing devices, or submit such vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if such vehicle or combination of vehicles is in violation of any of the provisions of this article, and may require that such vehicle or combination of vehicles be driven to the nearest weighing device in the event such weighing device is within two miles.

(b) Whenever an officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article, he may require the driver to stop such vehicle or combination of vehicles in a suitable place to remain standing until such vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of such vehicle or combination of vehicles at the risk of such owner, lessee or borrower: *Provided, however,* That

no criminal charge shall be preferred against any driver, operator, or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal therefrom, reduces the axle loads of said vehicle to such limit as is permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor.

# CHAPTER 93

**(Senate Bill No. 170—By Mr. Bowers and Mr. Smith)**

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traffic regulations by the state road commissioner.

**Article 17. Size, Weight and Load.**

Section

11. Permits for excess size and weight.

*Be it enacted by the Legislature of West Virginia:*

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

Section 11. *Permits for Excess Size and Weight.*— (a) The state road commissioner may in his discretion upon application in writing and good cause being shown therefor issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or load exceeding

the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, except that a permit shall not be issued for continuous operation of a vehicle not in conformity with the provisions of this article relating to weight limitations: *Provided, however,* That specially designed vehicles which can only be used to transport and haul specific liquid or semiliquid products and which were registered in this state prior to the first day of July, one thousand nine hundred fifty-one, shall be exempt from the provisions of this chapter relating to weight limitations until the first day of July, one thousand nine hundred sixty-six, and on and after the latter said date said exemptions shall not apply. In order for the exemption to apply during the period of exemption, the owner or operator shall apply for, and the state road commissioner shall issue, a permit for such vehicle allowing such owner or operator to use the same upon the highways of this state during said period.

(b) The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highway for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous operation.

(c) The state road commissioner is authorized to issue or withhold such permit at his discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the state road commissioner granting such permit, and no person shall violate any of the terms or conditions of such special permit.

# CHAPTER 94

**(Com. Sub. for Senate Bill No. 37—Originating in the Senate Committee on Roads and Navigation)**

[Passed February 13, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, 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 eleven-a, relating to authority of the state road commissioner to increase the gross weight limitations of vehicles which may be operated upon certain highways or portions thereof designated by him.

## Article 17. Size, Weight and Load.

Section

11-a. Authority of state road commissioner to increase weight limitations upon highways designated by him.

*Be it enacted by the Legislature of West Virginia:*

That article seventeen, 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 eleven-a, to read as follows:

Section 11-a. *Authority of State Road Commissioner to Increase Weight Limitations upon Highways Designated by Him.*—If, in the opinion of the state road commissioner, the design, construction and safety of any highway, or portion thereof, are such that the gross weight limitations prescribed in section nine of this article can be increased without undue damage to any such highway, the commissioner may, by order, increase the gross weight 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 gross weight limitations which shall thereafter be applicable to the highway or portion thereof so designated by him: *Provided, however,* That the maximum gross weight, including the load

established by the commissioner for any such designated highway or portion thereof, shall not exceed seventy thousand pounds, except as otherwise provided in this article: *And provided further,* That no such order of the commissioner shall establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to federal-aid highway systems.

# CHAPTER 95

**(House Bill No. 104—By Mr. Barker)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article seventeen, and section three, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to penalties for overloading or violating other restrictions on vehicles.

**Article**

**17. Size, Weight and Load.**
**19. Parties, Procedure Upon Arrest, and Reports in Criminal Cases.**

*Be it enacted by the Legislature of West Virginia:*

That section fourteen, article seventeen, and section three, 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 17. Size, Weight and Load.

**Section**

14. Penalties for violation of weight laws; impounding vehicles.

Section 14. *Penalties for Violation of Weight Laws; Impounding Vehicles.*—(a) Any owner, lessee or borrower who permits a vehicle or combination of vehicles owned by him to be operated with any axle load in excess of that permitted by section eight of this article, plus a tolerance of five per cent, or with a total gross weight in excess of that permitted by section nine of

this article, plus a tolerance of five per cent, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in paragraphs (b) and (c) of this section.

(b) Any owner, lessee or borrower of a vehicle who shall be convicted of a first offense for a violation of this section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of one cent per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of one cent per pound for any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater; and any owner, lessee or borrower of a vehicle who shall be convicted of a second offense for a violation of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of two cents per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of two cents per pound for any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater; and any owner, lessee or borrower who shall be convicted of a third or subsequent violation of this section shall be punished by a fine of not less than seventy-five dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of three cents per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of three cents per pound for any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater; and in any case where the gross weight exceeds the statutory limit by five thousand pounds or more, the owner, lessee or borrower of such vehicle shall be fined five cents per pound for each pound of excess gross weight over the said statutory limit, which fine shall be in lieu of the additional fine per pound heretofore in this section provided.

(c) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment of any such fine and costs assessed for such violation, or shall have been acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicle: *Provided, however,* That if the owner of such vehicle is a resident of or has a principal place of business located in this state, and said vehicle has been duly licensed in the state, then said vehicle shall not be impounded but the arresting officer shall deliver to the driver a written notice stating such violation; the place, date and time; the license number of said vehicle; the title number and name and address of the owner; the driver's name, address, and the number of his operator's or chauffeur's card or permit; and the court, place, date and time for hearing, which shall be within five days of such violation (Saturdays, Sundays, and holidays, excluded). A copy of such notice shall within twenty-four hours be mailed to the owner of said vehicle. Upon the failure by such owner or his or its agent to appear at the designated place and time, or upon failure to pay the fine and costs assessed for such violation, unless such owner shall have been acquitted of such charge, the court shall order a bond or the impounding of said vehicle as provided in this section.

## Article 19. Parties, Procedure Upon Arrest, and Reports in Criminal Cases.

Section

3. When person arrested must be taken immediately before a justice of the peace court.

Section 3. *When Person Arrested Must Be Taken Immediately before a Justice of the Peace or Court.*—When-

ever any person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a justice of the peace or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before such justice or court;

(2) When the person is arrested upon a charge of negligent homicide;

(3) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

(4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property;

(5) When the person is arrested upon a charge of violating section fourteen, article seventeen of this chapter relating to weight violations; except as otherwise provided in that section.

In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

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# CHAPTER 96

**(Senate Bill No. 117—By Mr. Nuckols)**

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and eleven, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to security following accident and the duration of suspension of licenses, registrations and operating privileges under the motor vehicles safety responsibility law.

**Article 3. Security Following Accident.**

**Section**

5. Requirements as to policy or bond.
11. Duration of suspension.

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*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Requirements as to Policy or Bond.*— (a) No policy or bond shall be effective under section four of this article unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subdivision (b) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than 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, to a limit of not less than twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under section four of this article with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(c) Upon receipt of notice of such accident from the commissioner, the insurance company or surety company

named in such notice shall notify the commissioner in such manner as he may require in case such a policy or bond was not in effect at the time of such accident.

Sec. 11. *Duration of Suspension.*—Unless a suspension is terminated under other provisions of this article, any order of suspension by the commissioner under this article shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended and no registration shall be renewed for or issued to any person whose vehicle registration is so suspended until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under this article, or

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the commissioner has been filed with him that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

# CHAPTER 97

**(Senate Bill No. 247—By Mr. Davis)**

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a change in the boundary of a city, town or village.

**Article 2. Creation, Alteration, Dissolution and Powers of Municipal Corporations.**

Section
8. Change of boundary of city, town or village.

*Be it enacted by the Legislature of West Virginia:*

That section eight, article 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:

Section 8. *Change of Boundary of City, Town or Village.* —Five per cent or more of the freeholders residing in any city, town or village desiring to change the corporate limits thereof, may file their petition in writing with the council thereof, setting forth the change proposed in the metes and bounds of such corporation, and asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied by an accurate survey showing the territory embraced within the new boundaries. The council, upon bond in penalty prescribed by the council with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters residing in such city, town or village to be taken upon the proposed change at a time and place therein to be named in the order, not less than twenty nor more than thirty days from the date thereof, and if it be proposed to include any additional territory within such corporate limits, the council shall, at the same time order a vote of all the qualified voters residing in such additional territory, and of all persons, firms or corporations owning any part of such territory, whether they reside therein or not, to be taken upon the question on the same day, at some convenient place on or near such additional territory: *Provided,* That the additional territory to be included shall conform to the requirements of section one of this article, and the determination that the additional territory does so conform shall be reviewable by the circuit court on certiorari to the council. The election shall be held, superintended and conducted, and the result thereof ascertained, certified and returned, in the same manner and by the same persons as elections for city, town or village officers. The ballots cast on such question shall have written or printed on them the words:

☐ For change of Corporate Limits
☐ Against change of Corporate Limits

If a majority of all the votes so cast within such cor-

poration be in favor of the proposed change, and no additional territory is proposed to be included therein, the corporate limits of such city, town or village shall thereafter be as proposed by such petition. But, if additional territory is proposed to be included in such corporate limits, such change shall not take effect unless a majority of all the votes cast by persons eligible to vote in such additional territory shall also be cast in favor of such change. Any firm or corporation may vote by its manager, president, or executive officer duly designated in writing by such firm or corporation.

When an election is held in any city, town or village respecting a change in the boundary thereof, another such election relating to the same territory or any part thereof shall not be held for a period of one year.

The provisions of this and the following section shall provide the exclusive procedure for effecting a change in the boundary of every city, town or village except municipalities which have adopted a home rule charter under the provisions of chapter eight-a of the code: *Provided, however,* That any city, town or village, otherwise authorized by said chapter eight-a, or by special charter may utilize the procedures respecting minor boundary adjustments set forth in section twenty-five, article six of said chapter eight-a.

# CHAPTER 98

**(Senate Bill No. 212—By Mr. Handlan)**

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-i, relating to special school zone police officers.

**Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.**

Section

10-i. Special school zone police officers.

*Be it enacted by the Legislature of West Virginia:*

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

Section 10-i. *Special School Zone Police Officers.*—Authority and power is hereby conferred upon any incorporated city or town in this state to provide by ordinance for the appointment of special school zone police officers, who shall have the duty of controlling and directing traffic upon designated parts of streets or roads at or near schools, and who, in the performance of such duty, shall be vested with all the powers of local police officers. Such special police shall be in uniform, shall display a badge or other sign of authority, shall serve at the will and pleasure of the appointing authority, and shall not come within the civil service provisions of article five-a of this chapter or of the pension or relief fund provisions of article six of this chapter, and section eleven, article four, chapter eight-a of the official code, as amended. The council may require such special police officers to give bond, payable to the city or town, in its corporate name, with such sureties and in such penalty as the council may see fit, conditioned for the faithful performance of their duties.

# CHAPTER 99

**(House Bill No. 236—By Mr. Creek and Miss Tsapis)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article four, chapter eight of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to special charges for municipal services.

## Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section

20. Special charges for municipal services.

*Be it enacted by the Legislature of West Virginia:*

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

Section 20. *Special Charges for Municipal Services.*—The governing authority of every municipal corporation that furnishes any essential or special municipal service, including police and fire protection, parking facilities on the streets or otherwise, recreational facilities, street cleaning, street lighting, sewerage and sewage disposal, and the collection and disposal of garbage, ashes or other waste materials, may by ordinance provide for the continuance, maintenance, installation or improvement of such service, may make reasonable regulations with respect thereto, may impose upon the users of such service reasonable rates, fees and charges to be collected in the same manner as municipal taxes are collected or in some other manner specified in the ordinance, and may provide penalties for any violation of such ordinance. The municipal corporation shall not, however, have a lien on any property as security for payments due under such ordinance: *Provided, however,* That any ordinance enacted under the provisions of this section shall be published at least once a week for two successive weeks in two newspapers published in such municipality, or if there be only one newspaper published therein then in that newspaper, or if there be no such newspaper published then by posting copies of such ordinance for a like period in at least ten conspicuous places in such municipality, and in the event thirty per cent of the registered voters by written petition

duly signed by them and filed with the municipal authority within fifteen days after the expiration of such publishing or posting protest against such ordinance, the ordinance shall not become effective until it shall be ratified by a majority of the votes cast by the duly qualified voters of such municipality at an election duly and regularly held as provided by the laws and ordinances of the municipality and the result of such election ascertained and declared. Such election shall be held after notice of such submission shall be given by publication or posting of the same for two successive weeks next prior to the date of such election as above provided for the publication of the ordinance when adopted. The powers hereby given to such municipalities and to the authorities thereof are in addition to and supplemental of the powers named in the respective charters thereof: *Provided,* That in the event fees and charges herein provided for, shall be imposed by the governing body of any municipal corporation for the purpose of, and in amounts approximately sufficient, to replace in its general fund such amounts as shall be appropriated to be paid out of ad valorem taxes upon property within the municipality pursuant to an election duly called and held under the constitution and laws of the state to authorize the issuance and sale of general obligation bonds of the municipality for public improvement purposes, in the call for which election it shall be stated that the governing body of the municipality proposes to impose fees and charges in specified amounts under this section for the use of one or more of the services above specified, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication or posting of notice, or referendum or election or other condition or prerequisite to the imposition of such rates shall be required or necessary, other than the legal requirements for issuance and sale of such general obligation bonds.

# CHAPTER 100

(Senate Bill No. 111—By Mr. Riley)

[Passed February 20, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal public works and control thereof.

## Article 4-a. Municipal Public Works; Bonds.

Section

1. Definitions.
3. Construction, etc., to be under control of municipal authorities or appointed board.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Definitions.*—(a) The term "municipality", as used in this article, shall be construed to mean any city or incorporated town in the state of West Virginia; (b) the term "municipal authorities", as used in this article, shall be construed to mean the mayor and council, or similar governing body, board or commission of any city or incorporated town; (c) the term "municipal public works", as used in this article, shall be construed to mean and include cemeteries, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, the construction, reconstruction and alteration of intracity bridges, including approaches, causeways, viaducts, underpasses and connecting roadways, public markets, automobile parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary or incidental to the regulation,

control and parking of automobiles), stadiums, gymnasiums, sports arenas, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, public buildings, including libraries and museums, common jails, grading and/or paving, and/or repaving streets, avenues and alleys; where such works or projects will be made self-supporting, and the construction and/or acquisition cost thereof, together with interest thereon, will be returned within a reasonable period, not exceeding thirty years, by means of tolls, fees, rents, special assessments or charges other than taxation, and shall mean and include such system, building, plant or project in its entirety, and all integral parts thereof, including all necessary appurtenances and equipment in connection with any one or more of the above: *Provided,* That when such municipal public works consist of grading and/or paving and/or repaving streets, avenues and alleys and the cost of which is to be paid by special assessment against the abutting property, represented by paving certificates which constitute a lien upon such property and said paving certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost of such construction, the payor of such paving certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such paving certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds.

Sec. 3. *Construction, etc., to Be Under Control of Municipal Authorities or Appointed Board.*—The construction, acquisition, improvement, extension, equipment, custody, operation and maintenance of any such works, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the municipal authorities, or of a committee or commission of all or a portion of the council or similar governing body of such municipality, or of a board, com-

mission or committee appointed by such municipal authorities as may be determined by general orders. The term "board" when hereafter used in this article shall be construed to mean the municipal authorities, or such board, commission or committee, as the case may be.

# CHAPTER 101

**(House Bill No. 377—By Mr. Seibert**

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to city-county planning commissions and the powers thereof.

**Article 5. Urban and Rural Planning and Zoning.**

Section

13. City-county commission; powers.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13. *City-County Commission; Powers.*—The governing body of any city located in a county having an established planning commission may, by ordinance, designate such county commission as the city planning commission. The county court of any county within which is located a city having an established planning commission may, by order, designate such city commission as the county planning commission.

A county planning commission designated as a city commission shall have for that city all the powers and duties granted under this article to a city planning com-

mission. A city planning commission designated as a county commission shall have for that county all the powers and duties granted under this article to a county planning commission.

Any city designating a county planning commission as its city planning commission may contract annually to pay the county a proportionate part of the expenses which is properly chargeable to the planning service rendered such city, and any such payments received by the county shall be appropriated by the county to the county planning commission in addition to any funds budgeted for planning purposes. Any county designating a city planning commission as its county planning commission may contract annually to pay the city a proportionate part of the expenses which is properly chargeable to the planning service rendered such county, and any such payments received by the city shall be appropriated by the city to the city planning commission in addition to any funds budgeted for planning purposes.

# CHAPTER 102

**(House Bill No. 219—By Mr. Peters)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of a city or county planning commission to expend funds and participate in planning assistance programs.

**Article 5. Urban and Rural Planning and Zoning.**

Section
15. Appropriations; expenditures; gifts.

*Be it enacted by the Legislature of West Virginia:*

That section fifteen, article five, chapter eight of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 15. *Appropriations; Expenditures; Gifts.*—After a governing body of a city or a county court has passed an ordinance creating a planning commission, the governing body or county court shall appropriate funds to carry out the duties of the commission.

The planning commission shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this article.

A city or county may accept gifts and donations for planning commission purposes. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning commission.

A city or county planning commission is authorized to spend funds made available for the purposes of this article, and to accept and use funds provided for the purposes of this article by the government of the United States and any other agency or group whose interests are in harmony with the purposes of this article, in accordance with federal requirements and under such conditions as the laws of this state may provide. In this connection, the said city or county planning commission is hereby expressly authorized to participate in the federal planning assistance programs as set forth in the "Federal Housing Act of 1954", as amended, and any subsequent acts.

# CHAPTER 103

**(House Bill No. 70—By Mr. Seibert and Miss Tsapis)**

[Passed March 3, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section twenty-two, relating to the maximum work week for policemen and overtime compensation in any and all municipalities now or hereafter operating under police civil service.

## Article 5-a. Civil Service for Police Departments.

Section

22. Maximum work week for policemen; overtime compensation and vacation time.

*Be it enacted by the Legislature of West Virginia:*

That article five-a, 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 twenty-two, to read as follows:

Section 22. *Maximum Work Week for Policemen; Overtime Compensation and Vacation Time.*—In any and all municipalities in the state now or hereafter operated under police civil service as provided in the foregoing sections of this article, members of the police department subject to and under civil service shall not be required to be on duty more than five days in any calendar week, nor more than eight hours in any one day, unless they shall be compensated as hereinafter provided. For any time spent on duty by any member of a police department under civil service in excess of eight hours in any one day or in excess of forty hours in any one week, such member shall be paid, at a rate not less than his regular rate of pay, for each full hour or allowed equal time off: *Provided, however,* That in time of municipal emergency as hereinafter defined, the foregoing provisions with respect to additional pay or time off shall not apply. A municipal emergency for purposes of this section shall mean an unusual or abnormal condition beyond the municipality's control and a condition beyond its reasonable power to remove or overcome.

# CHAPTER 104

(Senate Bill No. 112—By Mr. Riley)

[Passed February 22, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight 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 an alternative procedure for the acquisition, construction, improvement, extension, equipment, operation and maintenance of a waterworks and the rehabilitation, reconstruction, improvement, extension, operation and maintenance of an existing waterworks.

**Article 12. Waterworks.**

Section

13-a. Alternative procedure for acquisition, operation or extension of a waterworks.

*Be it enacted by the Legislature of West Virginia:*

That article twelve, 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 thirteen-a, to read as follows:

Section 13-a. *Alternative Procedure for Acquisition, Operation or Extension of a Waterworks.*—As an alternative to the procedures herein provided, any municipality is hereby empowered to acquire, construct, improve, extend, equip, operate and maintain a waterworks as defined herein or to rehabilitate, reconstruct, improve, extend, operate and maintain an existing waterworks, and to collect the revenues therefrom for the services rendered thereby, through the supervision, operation and control of a board, committee or commission of all or of a portion of the council or similar governing body of such municipality or of a board, commission or committee, the majority of whose members shall be of such council or similar

governing body as may be determined by general orders or ordinances of said council or similar governing body, and, if such alternative procedure is followed, said board, commission or committee shall have and be limited to all the powers, rights and duties possessed by a board, commission or committee established pursuant to article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, except that the right to lease said waterworks shall be strictly limited as provided herein.

# CHAPTER 105

**(House Bill No. 161—By Miss Tsapis)**

[Passed February 13, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section fifteen, relating to municipal waterworks systems and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality of grants, and procurement of loans or temporary advances from and contracts and agreements with, federal agencies, or private parties.

**Article 12. Waterworks.**

**Section**

15. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 15. *Acceptance of Grants, and Procurement of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*— Any municipality is authorized and empowered to accept grants, and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of waterworks systems and the construction of betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any Federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances including the interest thereon shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the municipal waterworks system so recited in each such contract and agreement.

# CHAPTER 106

**(Senate Bill No. 138—By Mr. Handlan)**

[Passed February 21, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to combined municipal waterworks and sewerage systems and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality of grants, and procurement of loans or

temporary advances from, and contracts and agreements with, federal agencies, or private parties.

## Article 13. Combined Waterworks and Sewerage Systems.

Section

13. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13. *Acceptance of Grants, and Procurement of Loans or Temoprary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*— Any municipality is authorized and empowered to accept grants, and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of combined waterworks and sewerage systems and the construction of betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article; and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the combined waterworks and sewerage system so recited in each such contract and agreement.

# CHAPTER 107

(Senate Bill No. 144—By Mr. Handlan)

[Passed February 21, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sewage works of municipal corporations and sanitary districts and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality or sanitary district of grants and procurement of loans or temporary advances from and contracts and agreements with federal agencies or private parties.

## Article 13. Sewage Works of Municipal Corporations and Sanitary Districts.

Section

22-a. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 22-a. *Acceptance of Grants, and Procurement of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*—Any municipality is authorized and empowered to accept grants and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency,

corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article; and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the said sewage works so recited in each such contract and agreement.

# CHAPTER 108

**(House Bill No. 40—By Mr. Poindexter and Mr. Griffin)**

[Passed March 6, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, four-a and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article four by adding thereto a new section, to be designated section two-a, all relating to dentists, dental hygienists, and dental laboratories.

**Article 4. Dentists and Dental Hygienists.**

**Section**

2. Who deemed practitioner of dentistry; limitations of article.
2-a. Dental technological work.
4. Board of dental examiners.
4-a. Powers and duties.
7. Refusal to issue, suspension or revocation of license; grounds.

*Be it enacted by the Legislature of West Virginia:*

That sections two, four, four-a and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended, be amended and reenacted, and that said article four be further amended by adding thereto a new section, to be designated section two-a, all to read as follows:

Section 2. *Who Deemed Practitioner of Dentistry; Limitations of Article.*—Any person shall be regarded as practicing dentistry within the meaning of this article, who shall diagnose or profess to diagnose or treat or profess to treat, any of the diseases or malformations or lesions of the oral cavity, teeth, gums, or maxillary bones, or shall prepare or fill cavities in human teeth, correct malposition of teeth or jaws or supply artificial teeth as substitutes for natural teeth, or administer anaesthetics, general or local, in connection with any of said work, or shall make, produce, reproduce, construct, repair, alter, or restore any prosthetic denture, crown, bridge, or other prosthetic appliance to be used in, upon, in connection with, or as a substitute for, any human tooth, or in, upon, or in connection with the human jaw or associated structure or tissue of the human mouth, or to be used in the treatment of any condition thereof, or perform any other work included in the curricula of recognized dental colleges. To open an office for the practice of dentistry, or to announce to the public in any way a readiness to do any act defined herein as the practice of dentistry, shall be construed as engaging in the practice of dentistry, within the meaning of this article: *Provided, however,* That this section:

(1) Shall not apply to a duly licensed physician or surgeon in the practice of his profession when rendering dental relief in emergency cases, unless he undertakes to reproduce or reproduces lost parts of the human teeth, or to restore or replace lost or missing teeth in the human mouth.

(2) Shall not apply to a dental laboratory in the performance of dental technological work as that term is defined in section two-a of this article so long as the dental laboratory, in the performance of such work, conforms in all respects to the requirements of section two-a of this article, and further shall not apply to persons performing dental technological work, as so defined,

under the direct and personal supervision of a licensed dentist or under the direct and personal supervision of a person authorized under the authority of this article to perform any of the acts in this article defined to constitute the practice of dentistry so long as such work is performed in connection with, and as a part of, the dental practice of such licensed dentist or other authorized person and for his dental patients.

(3) Shall not apply to students enrolled in and regularly attending any dental college recognized by the state board of dental examiners, provided their acts are done in said dental college and under the direct and personal supervision of their instructor.

(4) Shall not apply to licensed or registered dentists of another state temporarily operating a clinic under the auspices of a duly organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists.

(5) Shall not apply to licensed dental hygienists in the performance of their duties as otherwise provided by law.

(6) Shall not apply to the practice of dentistry by dentists whose practice is confined exclusively to the service of the United States army, the United States navy, the United States public health service, or the United States veteran's bureau, or any other authorized United States government agency or bureau.

Sec. 2-a. *Dental Technological Work.*—A. Words and Phrases Defined.—The following words and phrases when used in this section shall, for the purpose of this section, have the meanings respectively ascribed to them in this subsection:

"Dental laboratory" shall mean a person, association of persons, partnership, or corporation performing dental technological work as herein defined or any phase thereof: *Provided,* That there is excluded from such definition licensed dentists and other dental practitioners performing dental technological work, or any phase thereof, and persons performing such work under the direct and personal supervision of a licensed dentist or other dental

practitioner, in cases where such dental technological work is performed in connection with, and as a part of, the dental practice of such licensed dentist or other dental practitioner and for his own dental patients;

"Dental prosthesis" shall mean any prosthetic denture, crown, bridge, or other prosthetic appliance to be used in, upon, in connection with, or as a substitute for, any human tooth, or in, upon, or in connection with, the human jaw or associated structure or tissue of the human mouth, or in the treatment of any condition thereof;

"Dental technological work" or "dental technological service" shall mean the making, production, reproduction, construction, repair, alteration, or restoration of any dental prosthesis as herein defined;

"Other dental practitioner" shall mean and include those persons excluded from the definition of the practice of dentistry under the provisions of subsections three, four and six of section two of this article and also those persons who hold temporary permits to practice dentistry or teaching permits which have been issued to them under the provisions of section five of this article; and

"Work authorization" shall mean a written order for dental technological work, as herein defined, which has been issued by a licensed dentist of this state or other dental practitioner and contains the items of information specified in, and otherwise conforms to the requirements of, subsection "F" of this section.

B. Duty to Issue Work Authorization.—It shall be the duty of every licensed dentist of this state and every other dental practitioner of this state, in ordering the performance by any dental laboratory of any dental technological work, to issue therefor a work authorization in accordance with the requirements of this section.

C. Work Authorization Required; Compliance with Section.—It shall be unlawful for any person, association of persons, partnership, or corporation to perform dental technological work, or any phase thereof, unless such work be performed in pursuance of, and in conformity with, a work authorization as herein defined specifically ordering the same and otherwise be performed in accordance with the requirements of this section, and

unless, at the time of such performance, such person, association of persons, partnership, or corporation, have such work authorization in its place of business where such work is performed: *Provided,* That the requirements of this subsection shall not apply to licensed dentists or other dental practitioners, or to their employees working under their direct and personal supervision, in cases where such licensed dentists or other dental practitioners are performing dental technological work in connection with, and as a part of, their own dental practice and for their own dental patients.

D. Advertising of Dental Technological Work Prohibited.—It shall be unlawful for any person, association of persons, partnership, or corporation, directly or indirectly, by means of newspapers, magazines, publications, directories, pamphlets, radio or television broadcasts or telecasts, loud speaking devices, displays, outside or inside signs, window signs or markings, letters or other materials sent by United States mail, or other commercial method, whether or not herein specifically enumerated, (1) to advertise or announce that he is engaged in the business of the performance of dental technological work, or any phase thereof; (2) to advertise or announce his ability or willingness to perform for members of the public dental technological work, or any phase thereof; (3) to quote any price for the performance of dental technological work, or any phase thereof; or (4) to advertise or announce any services rendered, or techniques or materials employed, by him in the performance of dental technological work, or any phase thereof: *Provided,* That this subsection shall not prevent dental laboratories from advertising in dental journals or in other professional dental publications or by means of communications directed and sent solely to dentists and other dental practitioners, or from announcing their business in business and telephone directories so long as such business and telephone directory announcements are limited to name and address and telephone number and do not occupy more than the number of lines necessary to disclose such information, or from displaying the trade name and address of such dental laboratory on the door of its place of business or on name plates or door plates

exhibited on the interior or exterior of such place of business, but the lettering on such door, name plates, or door plates shall not exceed seven inches in height.

E. Sale or Furnishing of Dental Prosthesis by Person Other Than Licensed Dentist or Other Dental Practitioner Prohibited.—It shall be unlawful for any person, association of persons, partnership, or corporation, other than a licensed dentist or other dental practitioner, to sell, offer for sale, or furnish any dental prosthesis or other dental technological service to any person who is not a licensed dentist or other dental practitioner.

F. Contents of Work Authorization.—Each work authorization issued under the provisions of this section shall contain the following information: (1) The name and address of the dental laboratory to which it is directed; (2) the case identification; (3) a specification of the materials to be used; (4) a description of the work to be done, and, if necessary, diagrams thereof; (5) the date of its issuance; and (6) the signature and address of the licensed dentist or other dental practitioner by whom the work authorization is issued. A separate work authorization shall be issued for each patient of the issuing licensed dentist or other dental practitioner for whom dental technological work is to be performed.

G. Retention of Work Authorization.—Every work authorization issued under this section shall be made in duplicate. The original thereof shall be delivered to the dental laboratory to which it is directed and shall be retained by it in its office or place of business for the period of two years from its date. The copy thereof shall be retained in the office of the licensed dentist or other dental practitioner by whom it was issued for the period of two years from its date.

H. Inspection of Work Authorization.—During the two-year retention period provided in subsection "G" of this section, the dental laboratory by which the original of any work authorization is retained and the licensed dentist or other dental practitioner by whom the copy thereof is retained, shall at any time during customary office hours, permit any member, employee, or agent of the West Virginia board of dental examiners to have access

to, and to make inspection of, any work authorization so retained, and shall provide to such member, employee, or agent of the West Virginia board of dental examiners any information relating to such work authorization and the work performed thereunder which shall be requested by him.

I. Inspection of Dental Technological Work.—Every dental laboratory and every person employed by any dental laboratory shall, upon request from any member, employee, or agent of the West Virginia board of dental examiners, display to such member, employee, or agent, and permit the inspection by him of any items of dental technological work then in the course of performance by such dental laboratory or person employed by it and 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, regardless of whether such making, production, reproduction, construction, repair, alteration, or restoration has been commenced, is in the course of performance, or has been completed, and shall, upon such request, provide to such member, employee, or agent of the West Virginia board of dental examiners all pertinent information relating to any such dental technological work and any such dental prosthesis, and shall, upon such request, permit any such member, employee, or agent of the West Virginia board of dental examiners to have access to, and to make inspection of, the work authorization covering any such dental prosthesis.

J. Offenses; Penalties.—Each act done by any person in violation of any provision of this section shall be deemed, and shall constitute, a separate offense hereunder, and each day that any person shall continue in violation of any provision hereof shall likewise be deemed, and shall constitute, a separate offense hereunder. Any person who shall, within this state, violate any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in section eighteen of this article.

K. Injunction.—Notwithstanding the existence of any

other remedy, the West Virginia board of dental examiners may, in its name as such and without giving bond, institute and prosecute a suit for an injunction against any person, association of persons, partnership, or corporation who has violated any provision of this section to restrain and prohibit the further violation by such person, association of persons, partnership, or corporation of the provisions of this section.

Sec. 4. *Board of Dental Examiners.*—There shall be a state board of dental examiners, known as the "West Virginia Board of Dental Examiners," which shall consist of five practicing dentists, who 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 be both a resident and licensed dentist of this state, and shall have been both such resident and licensed dentist for a period of not less than five years immediately preceding his appointment: *Provided, however,* That no person shall be eligible for appointment to said board who is in any way connected with or interested in any dental college or dental department of any institution of learning or in a dental supply business.

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. On or before the first day of July, after this section takes effect, and on or before the first day of July in each year thereafter, the governor shall appoint one member to serve a term of five years commencing on the said first day of July: *Provided,* That during the five-year period immediately following the effective date of this section, the governor shall make appointments to the board at such times as shall be necessary to replace members whose terms expire during such period: *And provided further,* That during such five-year period, the governor shall appoint members to the board for terms of such respective lengths as shall thereafter permit the term of one member to expire at midnight on the thirtieth day of June of each year. Any member shall be eligi-

ble for reappointment for one additional consecutive term.

Each appointment under this section, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental society. 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 such society. In the event of the failure of the society 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.

Sec. 4-a. *Powers and Duties.*—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 examinations that may be required by statute or by any legally adopted rule or regulation.

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 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, suspension, revocation, or reinstatement of licenses and on charges of unauthorized practice of dentistry or dental hygiene.

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 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, 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 of 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.

Sec. 7. *Refusal to Issue, Suspension or Revocation of License; Grounds.*—The state board of dental examiners may refuse to issue a license to practice dentistry or dental hygiene in this state, or after issuance may suspend or revoke the same, for any of the following causes:

(1) The presentation to the board of any diploma, license or certificate illegally or fraudulently obtained, or one obtained from an institution which is not reputable, or one obtained from an unrecognized or irregular institution or state board.

(2) Be guilty of gross ignorance or gross inefficiency in his profession.

(3) Conviction of a felony; and a certified copy of the record of the court of conviction shall be sufficient proof of such conviction.

(4) Announcing or otherwise holding 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 without first complying with the requirements established by the board of dental examiners for such specialty and having been issued a certificate of qualification in such specialty by the board.

(5) Be guilty of unprofessional conduct. The following acts or any of them shall be conclusively presumed to be unprofessional conduct:

(a) Be guilty of any fraud or deception.

(b) The commission of a criminal operation or conviction of a crime involving moral turpitude.

(c) Chronic or persistent inebriety or addiction to narcotics or drugs.

(d) Be guilty of the violation of any professional confidence or be guilty of disclosing any professional secret.

(e) Be grossly immoral.

(f) Be guilty of employing what are known as "cappers" or "steerers" to obtain business.

(g) The obtaining of any fee by fraud or misrepresentation.

(h) Employ directly or indirectly, or direct or permit any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof.

(i) Practice, or offer or undertake to practice, dentistry under any firm name or trade name or under any name other than his own true name: *Provided,* That any licensee may practice under a firm name or partnership name containing nothing but the surname of every member of such firm or partnership.

(j) Professional connection or association with, or lending his name to another, for the illegal practice of dentistry, or professional connection or association with any

person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this article.

(k) Make use of any advertising relating to the use of any drug or medicine of unknown formula.

(l) Advertise to practice dentistry or perform any operation thereunder without causing pain.

(m) Advertise professional superiority or the performance of professional services in a superior manner.

(n) Advertise prices charged for professional service.

(o) Advertise by means of large display, flickering, or glaring light signs, or contain as a part thereof the representation of a tooth, teeth, or bridge work, or any portion of the human head.

(p) Employ or make use of advertising solicitors or free publicity press agents.

(q) Advertise to guarantee any dental service.

(r) Advertise in any manner calculated to, or tending to, deceive or mislead the public: *Provided*, That such licensee may announce, by way of a professional card containing not more than his name, title, degree, office location, office hours, business telephone number, and residence address and telephone number, if desired, and if he limits his practice to a specialty he may announce it, but such card shall not be greater in any case than five inches by six inches in size, and such information may be inserted in public print when not more than two newspaper columns in width and two inches in depth; and he may announce his change of place of business, absence from, or return to, business in the same manner, and issue appointment cards to his patients, when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on the professional card, and he may display his name, title, and degree upon the windows or doors of his office and by a door plate or name plate or office directory when the information is limited to not more than that contained on the professional card, but the name, title and degree of the licensee shall not be displayed on said doors, windows, door plates, and name plates or office directory in lettering greater in height than seven inches.

The term advertising, as used in this section, shall be

construed to include the use of radio or any loud speaking device or any other similar method or agency.

This entire section is passed in the interest of the public health, safety and welfare, and its provisions shall be liberally construed to carry out its object and purpose. Each and every provision of this section is hereby declared to be independent and severable, and should any portion or provision or provisions of this section be held unconstitutional or for any other reason invalid, the remaining portion or portions, or provision or provisions shall not be thereby affected.

# CHAPTER 109

**(House Bill No. 162—By Mr. Myles)**

[Passed March 9, 1961; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend and reenact section ten, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful practice of optometry and providing penalties therefor.

**Article 8. Optometrists.**

Section

10. Unlawful practice of optometry; penalties; injunctions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 10. *Unlawful Practice of Optometry; Penalties; Injunctions.*—Any corporation or voluntary association shall not practice, or assume to practice, or in any manner to hold itself out to the public as being entitled to practice the profession of optometry, or advertise the title of optometrist in such manner as to convey the impression to

the public that it is entitled to practice optometry, or furnish optometric advice and services, or advertise that, either alone or together with or by or through any person, whether a duly registered and licensed optometrist or not, it has, owns, conducts or maintains an office or place for practice of optometry. Any duly registered and licensed optometrist shall not associate himself with any corporation or voluntary association for the practice of optometry, or in any manner practice such profession, on a salary or commission basis, for any such corporation or voluntary association. Any corporation or voluntary association violating any of the provisions of this section, or any officer, trustee, director, agent, or employee of such corporation or voluntary association who, either directly or indirectly, engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than one thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly registered and licensed optometrist shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons hereinbefore mentioned for a violation of this section. Any duly registered and licensed optometrist who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty-five dollars, and each and every day such violation continues shall constitute a separate offense; and in addition to the foregoing penalties, such offending optometrist shall have his license to practice suspended for a period of one year by the court in which such conviction is had: *Provided,* That this section shall not apply to a partnership of two or more duly registered and licensed optometrists who practice under their own names.

It shall be unlawful for any registered optometrist to practice his profession as an employee, lessee, or sublessee of any commercial or mercantile establishment or to practice his profession in connection therewith, or to advertise

either in person or through any commercial or mercantile establishment that he is a duly registered practitioner, and is practicing or will practice optometry as an employee, lessee, or sublessee of any such commercial or mercantile establishment or in connection therewith. But nothing herein shall be construed to prohibit or prevent the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such services is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and each and every day such violation continues shall constitute a separate offense.

The circuit court of any county in which the violation occurred shall have jurisdiction to restrain by injunction the violation of any of the provisions of this article.

# CHAPTER 110

**(House Bill No. 412—By Mr. Speaker, Mr. Singleton, and Mr. Brotherton)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections one and five, article three of said chapter, all relating to abolishing the department of public assistance and the office of director of public assistance; creating the department of welfare and the office of commissioner of welfare in lieu thereof, and providing compensation therefor.

**Article**

1. **State Department of Welfare.**
3. **State Commissioner of Welfare.**

*Be it enacted by the Legislature of West Virginia:*

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

**Article 1. State Department of Welfare.**

Section

2. State department of welfare.

Section 2. *State Department of Welfare.*—There is hereby created the state department of welfare which shall have and is hereby granted all the powers, authority and duties performed by the department of public assistance which department is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the department of public assistance such reference shall henceforth be construed and understood to mean the state department of welfare.

**Article 3. State Commissioner of Welfare.**

Section

1. Commissioner of welfare.
5. Compensation.

Section 1. *Commissioner of Welfare.*—The office of state commissioner of welfare is hereby created. The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties vested in and performed by the director of public assistance which office is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the director of public assistance such reference shall henceforth be construed and understood to mean the state commissioner of welfare.

The commissioner shall be appointed by the governor, with the advice and consent of the senate, for a term of six years, unless removed by the governor. Any appointment to fill a vacancy shall be for the unexpired term.

Sec. 5. *Compensation.*—The commissioner shall receive an annual salary of eight thousand dollars and, in addition, the necessary traveling expenses incident to the performance of his duties. Requisitions for traveling ex-

penses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor and preserved as a public record.

# CHAPTER 111

**(Senate Bill No. 194—By Mr. McCourt)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section five, article ten, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county funds.

**Article 10. Fiscal Provisions.**

**Section**

5. County funds.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *County Funds.*—The amount of the county fund provided each year by a county court shall not be less than twelve per cent of the total which the county is legally authorized to levy for current purposes by section ten, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended: *Provided, however,* That the said twelve per cent of such total shall not be required to be provided by the county court if it shall be determined, prior to the laying of the county's levies, that an amount less than such per cent will be sufficient to meet the reasonably anticipated general needs of the county. Such a determination shall require the agreement of at least two of the following persons: The tax commissioner, the state director, and the member of the county court who is ex officio member

of the county council at the time such determination is made. Such a determination shall be in writing; shall state the specific amount determined upon as sufficient to meet the reasonably anticipated general relief needs of the county; shall be signed by the three persons designated or by at least two of them; and shall be filed of record in the office of the tax commissioner. Complete duplicates shall be filed in the office of the state director and with the county court, respectively.

The county court shall levy for general relief not less than the amount so determined and agreed: *Provided further,* That if a county court finds that expenditures mandatory under other provisions of law aggregate in excess of eighty-eight per cent of the total amount which the county court is authorized by law to levy for current purposes, the court may petition the tax commissioner for authority to provide an amount less than that required by the first paragraph of this section. If the tax commissioner finds that other mandatory expenditures for the county will exceed eighty-eight per cent of the authorized total levy for current purposes, he may authorize the county court to provide a lesser amount than that required by said first paragraph, but he shall require the maximum amount possible under the circumstances.

# CHAPTER 112

**(Senate Bill No. 99—By Mr. Kaufman and Mr. Riley)**

[Passed February 21, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and eleven-a, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article one by adding thereto two new sections, designated sections three-a and nine-a, all relating to public libraries.

## Article 1. Public Libraries.

**Section**

1. Public library and governing authority defined.
2. Power of governing authority to establish and maintain libraries; levy.
3. Regional library defined; apportionment of regional library expenses.
3-a. Authority of regional library board to disburse funds.
4. Contract with existing public library.
5. Board of library directors; qualifications; term of office; no compensation.
6. Board of library directors; powers and duties.
7. Free use of libraries.
8. Board of library directors; annual report.
9. Library board to be a corporation; vesting of title to bequests or donations.
9-a. Collection of fees and service charges; assessment of fines, etc.; sale of surplus or obsolete materials or equipment; deposit and disbursement of receipts.
11-a. Application of article.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Public Library and Governing Authority Defined.*—The term "public library" as used in this article shall be construed to mean a library maintained wholly or in part by any governing authority from funds derived by taxation and the services of which are free to the public, except for those charges for which provision may be made elsewhere in this article. The term shall not, however, include special libraries, such as law, medical or other professional libraries, or school libraries which are maintained primarily for school purposes. The term "governing authority" shall be construed to mean county court, county board of education or the governing body of any municipality.

Sec. 2. *Power of Governing Authority to Establish and Maintain Libraries; Levy.*—A governing authority, either by itself or in cooperation with one or more other such governing authorities, shall have the power to establish, equip and maintain a public library, or to take over,

maintain or support any public library already established. Any library established, maintained or supported by a governing authority may be financed either (1) by the appropriation from the general funds of the governing authority of a sum sufficient for the purpose, or (2) by the imposition of an excess levy for library purposes, in accordance with the provisions of section sixteen, article eight, chapter eleven of this code.

Such sums as are appropriated hereunder may be transferred to the public library board for deposit and disbursement as the public library board shall direct. By such transfer the governing authority designates the public library board as its disbursing agent.

Sec. 3. *Regional Library Defined; Apportionment of Regional Library Expenses.*—A regional library is a public library established and/or maintained by two or more counties, by action of their governing authorities, under the terms of a contract to which they all agree. The expenses of the regional library shall be apportioned between or among the counties concerned on such a basis as shall be agreed upon in the contract.

Sec. 3-a. *Authority of Regional Library Board to Disburse Funds.*—The governing authorities which maintain a regional library may contribute the apportioned sum to the regional library board, such contributions to be deposited as the regional library board shall direct and to be disbursed by the officer designated by that board. By such contribution the governing authority designates the regional library board as its disbursing agent.

Sec. 4. *Contract with Existing Public Library.*—The governing authority may, in lieu of supporting and maintaining its own public library, enter into a contract with an existing public library and make annual payments of money to such library, whose library materials and services shall be available without charge to all persons living within the area represented by such governing authority. Any school board may contract for school library service from an existing public library which shall agree to furnish books to a school or schools under the terms of the contract.

All money paid to a library under such a contract shall be expended solely for the maintenance and support of the library.

Sec. 5. *Board of Library Directors; Qualifications; Term of Office; No Compensation.*—Whenever a public library is established under this article the governing authority or authorities, shall appoint a board of five directors, chosen from the citizens at large of such governmental division or divisions, with reference to their fitness for such office, except that in a regional library the board of directors shall consist of not less than five nor more than ten members, with a minimum of one member from each county in the region, the total number of directors and the apportionment of directors by county to be determined by joint action of the governing authorities concerned. In either case directors shall hold office for five years from the first day of July following their appointment, and until their successors are appointed and qualified: *Provided,* That upon their first appointment under this article a proportionate number shall be appointed for one year, for two years, for three years, for four years and for five years; and thereafter all appointments shall be for terms of five years. Vacancies in the board shall be immediately reported by the board to the governing authority and filled by appointment in like manner, and, if an unexpired term, for the remainder of the term only. A director may be removed for just cause in the manner provided by the by-laws of the library board. No compensation shall be paid or allowed any director.

Sec. 6. *Board of Library Directors; Powers and Duties.*—The board of directors of each public library established or maintained under this article shall: (a) Immediately after appointment, meet and organize by electing one member as president and one as secretary, and such other officers as may be necessary. All officers shall hold office for one year and shall be eligible for reelection. (b) Adopt such by-laws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all property belonging thereto as may not be inconsistent with the provisions of

this article. (c) Supervise the expenditure of all money credited to the library fund. All money appropriated or collected for public library purposes shall be deposited in the treasury of the governing authority to the credit of the library fund, to be paid out on the certified requisition of the library board, in the manner provided by law for the disbursement of other funds of such governing authority, or shall be deposited as the library's board of directors shall direct and be disbursed by the officer designated by that board, such officer before entering upon his duties to give bond payable to and in an amount fixed by the board of directors of the library, conditioned for the faithful discharge of his official fiscal duties. The cost of such bond shall be paid from the library fund. The books, records and accounts of the library board shall be subject to audit and examination by the office of the state tax commissioner of West Virginia. (d) Lease or purchase and occupy suitable quarters, or erect upon ground secured through gift or purchase, an appropriate building for the use of such library; and have supervision, care, and custody of the grounds, rooms or buildings constructed, leased, or set apart for library purposes. (e) Employ a head librarian, and upon his recommendation employ such other assistants as may be necessary for the efficient operation of the library.

Sec. 7. *Free Use of Libraries.*—Each library established or maintained by any governing authority shall be free for the use of all persons living within the area represented by such governing authority, except for those charges for which provision may be made elsewhere in this article. The use of the library is subject to reasonable rules and regulations adopted by the library board. The board may extend the privilege and use of the library to nonresidents upon such terms and conditions as it may prescribe.

The board may exclude from the use of the library under its charge any person who wilfully and persistently violates any rule or regulation prescribed for the use of the library or its facilities.

Sec. 8. *Board of Library Directors; Annual Report.*—

The board of directors shall make an annual report for the fiscal year ending June thirtieth to the governing authority or authorities appointing it, stating the conditions of the library property, the various sums of money received from the library fund, and all other sources, and how such money was expended, the number of books and periodicals on hand, the number added and withdrawn during the year, the number of books lent, the number of registered users of such library, with such other statistics, information and suggestions as may be deemed of general interest. A copy of this report shall be sent to the West Virginia library commission.

Sec. 9. *Library Board to Be a Corporation; Vesting of Title to Bequests or Donations.*—The board of directors of each public library shall be a corporation; and as such it may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.

The title to all bequests or donations of cash or other personal property or real estate for the benefit of such library shall be vested in the board of directors to be held in trust and controlled by such board according to the terms and for the purposes set forth in the deed, gift, devise or bequest: *Provided, however,* That the person making the bequest or donation of cash or other personal property or real estate for the benefit of such library shall have the right and privilege to vest the title thereto in a trustee, or trustees, of his own selection, and to provide for the selection of successor trustees, and to designate the manner in which said fund or property shall be invested and used.

Sec. 9-a. *Collection of Fees and Service Charges; Assessment of Fines, etc.; Sale of Surplus or Obsolete Materials or Equipment; Deposit and Disbursement of Receipts.*—The board of directors of a library established or maintained under this article may fix, establish, and collect such reasonable fees, service and rental charges as may be appropriate; may assess fines, penalties, damages, or replacement costs for the loss of, injury to, or failure to return any library property or material; and may sell

surplus, duplicated, obsolete, or other unwanted materials or equipment belonging to the library. All moneys received from these or other sources in the course of the administration and operation of the library shall be deposited in the library fund and shall be disbursed by the board of directors in the manner prescribed elsewhere in this article.

Sec. 11-a. *Application of Article.*—Nothing in this article shall be construed to abolish or abridge any power or duty conferred upon any public library already established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. Any library now operating under any city or town charter or other special act has, however, the privilege of reorganizing under the provisions of this article.

All powers granted herein shall be considered to be conferred upon public libraries existing at the time of the passage of this act.

Any provision concerning the disbursement of funds, including the designation of the depository of the library funds or of the library board's disbursing officer contained in this article, may be adopted by a library board organized under the provisions of this article, notwithstanding any other provisions of law.

# CHAPTER 113

**(House Bill No. 409—By Mr. Speaker, Mr. Singleton)**

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a thereof as article one-g and adding to said article one-g a new section, designated section

eleven, all relating to the government and administration of the military forces of the state.

**Article**

**1. Military Forces of the State.**
**1-a. Adjutant General.**
**1-b. National Guard.**
**1-c. State Retired List and Honorary Militia.**
**1-d. Active State Service.**
**1-e. Code of Military Justice.**
**1-f. Privileges and Prohibitions.**
**1-g. Service Medals.**

*Be it enacted by the Legislature of West Virginia:*

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a as article one-g and adding to said article one-g a new section, designated section eleven, all to read as follows:

## Article 1. Military Forces of the State.

**Section**

1. Definitions.
2. Commander-in-chief.
3. Regulations.
4. Services of the state; state duty.
5. Service of the United States.
6. Federal law and regulations.

Section 1. *Definitions.*—When used in this chapter, unless a different meaning is plainly required by the context:

a. The term "military forces of the state" shall mean the organized militia, the state retired list, the honorary militia and the state guard, and all other components of the militia of the state which may hereafter be organized.

b. The term "organized militia" shall mean the West Virginia national guard, including the army national guard, the air national guard and the inactive national guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members.

c. "Military personnel of the national guard" shall mean all the members of the organized militia.

d. "Military" shall mean army or land, air or air force, navy or naval.

e. The term "service of the state" or "active service of the state" shall mean active military duty in other than a training status in or with a force of the organized militia or with the adjutant general's department, upon orders of the governor.

f. The term "state duty" shall mean duty in a training status or other duty in the interest of the state and the organized militia.

g. The term "service of the United States" or "active service of the United States" shall mean active military duty in the armed forces of the United States except active duty for training purposes.

h. The term "officer" or "commissioned officer" shall be deemed to include warrant officers.

Sec. 2. *Commander-in-Chief.*—The governor shall be commander-in-chief of the military forces of the state, except those which are in the service of the United States.

Sec. 3. *Regulations.*—The governor shall issue regulations for the governance of the military forces of the state which shall have the force and effect of law. Such regulations shall conform to the provisions of this chapter, and as nearly as practicable to the laws and regulations of the United States governing the armed forces of the United States and relating to the organization, discipline and training of the organized militia. Regulations in force at the time of the passage of article one, one-a to one-g of this chapter, not inconsistent with its provisions, shall remain in force until superseded by new regulations issued hereunder.

Sec. 4. *Services of the State; State Duty.*—a. The governor may order all or any part of the organized militia and the state guard or any other person with their consent to active service of the state and all members of the organized militia and the state guard shall be liable for such service.

b. The governor may order the organized militia or any part thereof to serve outside the borders of the state and of the United States in order to perform military duty and to participate in parades, review, conferences, encampments, maneuvers, and other training, to participate in military competitions and to attend service schools.

c. The adjutant general, may order the organized militia or any part thereof or any military personnel of the national guard or any other person with his consent to state duty within or without the state and with or without compensation.

Sec. 5. *Service of the United States.*—When the organized militia, or any part thereof, is called for active service of the United States under the constitution and laws of the United States, the governor shall order the same to service, and if the number available is insufficient, the governor may call for and accept as many volunteers as are required for service in the organized militia and state guard. During the absence of units and organizations of the organized militia in the service of the United States, their state designations shall not be given to new organizations, and all organizations and officers on return from such service shall be given their former standing and rank.

Sec. 6. *Federal Law and Regulations.*—a. The duty of maintaining and governing the military forces of the state not in the service of the United States rests upon the state, subject to constitutional authority. The purpose of such forces are two-fold; national defense and service of the state. Their efficiency for both purposes necessarily depends upon systematic uniformity in organization, composition, arms, equipment, training and discipline with the armed forces of the United States and the military forces of other states. Therefore, the governor shall cause the military forces of the state to conform to all federal laws and regulations applicable to the same, unless the same shall be incompatible with the state purpose of such forces.

b. All matters relating to the organizations, discipline and government of the military forces of the state, not

otherwise provided for in this chapter or in regulations, shall be decided by custom, usage and regulations of the armed forces of the United States.

## Article 1-a. Adjutant General.

Section

1. Adjutant general's department.
2. The adjutant general.
3. Duties of the adjutant general.
4. Assistant adjutants general.

Section 1. *Adjutant General's Department.*—The adjutant general's department shall be a part of the executive branch of the government charged with the organization, administration, operation and training, supply and discipline of the military forces of the state. The adjutant general shall be the executive head of the adjutant general's department, and shall employ such clerical force and assistants as may be required for the fulfillment of his duties.

Sec. 2. *The Adjutant General.*—The adjutant general shall be appointed by the governor for a term of four years. He shall have the rank of major general, or such other rank as shall be recognized by federal authority. No person shall be appointed adjutant general unless he has had at least six years' commissioned service and attained field grade or higher rank in the organized militia of this or some other state or in the armed forces of the United States, or in all combined. The governor shall require the adjutant general to furnish bond as required by law, which bond shall be filed with the auditor of the state.

Sec. 3. *Duties of the Adjutant General.*—a. The adjutant general shall be chief of staff to the governor and commanding general of the organized militia. He shall direct the planning and employment of the military forces of the state in carrying out their state mission, establish unified command of state forces whenever jointly engaged, coordinate the military affairs with the civil defense of the state and organize and coordinate the activities of all civil agencies including local and state police in event of declaration of a limited emergency by the governor pursuant to article one-d of this chapter. The adjutant

general shall direct and control the activities of the civil defense agency provided for by article five of this chapter in time of emergency or disaster. He shall be custodian of all military records of the state and shall keep the same indexed and available for ready reference. He shall keep an itemized account of all moneys received and dispensed from all sources and shall make an annual report to the governor on the condition of the organized militia, receipts and expenditures, and such other matters relating to the military forces of the state and the adjutant general's department as he shall deem expedient.

b. The adjutant general shall be responsible for the organization, administration, training and supply of the organized militia and shall cause to be procured, prepared and issued to the organizations of the organized militia all necessary books and blanks for reports, records, returns and general administration, and shall, at the expense of the state, cause the military laws, military code, and rules and regulations in force to be printed, bound in proper form, and distributed, one copy to each commissioned officer, and one each to all the circuit, intermediate and criminal court judges, sheriffs and justices of the peace in the state requiring them; and shall procure and supply all necessary textbooks of drill and instruction. He shall keep in his office an accurate account of all state and United States property issued to the state. He shall keep on file in his office, all official bonds required by this chapter; the reports and returns of troops and military forces of the state; and all other writings and papers which are required to be transmitted to and preserved at the general headquarters of the organized militia.

c. The adjutant general shall keep records of all service personnel from the state of West Virginia, commissioned or enlisted, in any of the wars of the United States, and of individual claims of citizens of West Virginia for service rendered in such wars. He shall assist all persons residing in this state having claims against the United States for pension, bounty or back pay, or such claims as have arisen out of, or by reason of, service in any of said wars. To this end he shall cooperate with the agents or attor-

neys of such claimants, furnish to claimants only all necessary certificates or certified abstracts from, or copies of, records or documents in his office, and shall in all practicable ways seek to secure speedy and just action in all claims now pending or which may hereafter be filed: *Provided,* That any and all of the above services shall be rendered without charge to the claimant. He shall establish and maintain as a part of his office, a bureau of records of the services of the West Virginia troops during such wars, and shall keep arranged in proper and convenient form all records and papers pertaining thereto.

Sec. 4. *Assistant Adjutants General.*—The governor shall appoint an assistant adjutant general for air, with the rank of brigadier general, or such other rank as shall be recognized by federal authority, who shall be deputy commander of the air national guard. The governor may also appoint two assistant adjutants general with the rank of colonel or such other rank as shall be recognized by federal authority, one of whom shall be executive officer and administrative assistant to assist the adjutant general in the administration of the adjutant general's department, and the other to be deputy commander of the army national guard. The assistant adjutants general shall be upon appointment, federally recognized officers of the air national guard and army national guard, respectively.

## Article 1-b. National Guard.

**Section**

1. Organization of the national guard.
2. Army national guard.
3. Air national guard.
4. Appointment and promotion of officers; oath.
5. Surplus officers; resignations.
6. Dismissal of officers.
7. Noncommissioned officers; appointment, promotion and reduction.
8. Enlistment; qualification; oath.
9. Discharge of enlisted personnel.
10. Inactive national guard.
11. Uniforms, arms, equipment and supplies.
12. Responsibility for military property and funds; bonds; action by attorney general.
13. Assemblies, annual training and other duty.
14. Annual inspection and muster.
15. Absence from drill, parade or other duty; penalty.
16. Pay and allowances.

17. Command pay; inspection, compensation for clerical services and care of property.
18. Injury or death while in service of state.
19. Military fund.
20. Military expenses.

Section 1. *Organization of the National Guard.*—The national guard shall be organized, equipped, disciplined, governed, administered and trained in accordance with the laws and regulations of the federal government for the purpose of organization and governance of the same, and for that purpose, the governor is authorized to organize, reorganize or disband any unit, headquarters or staff therein, to increase or decrease the number of officers and noncommissioned officers and the strength of the national guard or any unit thereof: *Provided, however,* That the governor shall not be required to consent to the organization of any forces required or withdrawal of units organized in the state unless he deems the same in the best interest of the state. The governor, in case of war, insurrection, invasion or imminent danger thereof, shall have the power to increase the national guard and organize additional units thereof, though the same are not authorized or provided for by federal laws or regulations.

Sec. 2. *Army National Guard.*—The army national guard shall comprise the army units including army aviation units, which are a part of the West Virginia national guard and the personnel enlisted, appointed, or commissioned therein. All members of the army national guard shall be federally recognized as such.

Sec. 3. *Air National Guard.*—The air national guard shall comprise the air units of the West Virginia national guard, except army aviation units, and the personnel enlisted, appointed or commissioned therein. All personnel of the air national guard shall be federally recognized as such.

Sec. 4. *Appointment and Promotion of Officers; Oath.*—a. Oath, appointment and promotion of officers shall be made in conformity with applicable rules and regulations of the federal government.

b. Every officer duly commissioned shall, within ten days, after his commission is tendered to him, or within

ten days after he shall be personally notified that the same is held in readiness for him by any superior officer, take and subscribe to the oath of office prescribed by the constitution of this state. In case of neglect or refusal to take and subscribe to such oath within the time mentioned, he shall be deemed to have resigned such office. Such oath shall be taken and subscribed before any officer authorized to take acknowledgments of deeds in this state, or some officer who has taken it himself and who is hereby authorized to administer the same.

Sec. 5. *Surplus Officers; Resignations.*—a. Commissioned officers who shall be rendered surplus by reduction, consolidation, or disbandment of organizations, or in any manner provided by law, may be transferred to the inactive national guard in conformity with applicable rules and regulations prescribed by federal authority, or may be discharged.

b. An officer may tender his resignation or request transfer from the national guard at any time: *Provided,* That no such resignation shall be accepted unless the officer tendering the same shall furnish the adjutant general from each property accounting officer concerned a certificate that he has delivered all books and other property of the state and federal government in his possession to the person authorized to receive the same, and that his accounts for money or public property are correct, and that he is not indebted to the state or federal military authorities.

Sec. 6. *Dismissal of Officers.*—a. No officer of the national guard shall be dismissed unless by reason of resignation, approval of findings of an efficiency or medical examining board, withdrawal of federal recognition, the sentence of a court-martial, or for cause as provided in subsection d of this section.

b. The efficiency, moral character, incompetency, inability to properly perform his duty, and general fitness for retention in the national guard of any officer may be investigated and determined by an efficiency examining board.

c. The physical fitness for further service of any officer

of the national guard may be investigated by a medical examining board of officers.

d. Efficiency and medical examining boards consisting of three or more officers shall be appointed by the adjutant general upon recommendation of the commanding officer of the officer under investigation. All members of such boards shall be senior in grade to the officer under investigation, unless unavailable. Such boards shall be vested with the powers of courts of inquiry and courts-martial. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine and to call the witnesses in his behalf. He shall at all stages of the proceedings be allowed full access to records pertinent to his case and be furnished copies of the same. If the officer shall fail to appear at the time and place set for the hearing by the board, the board shall proceed to consider the evidence presented to it and make such findings as shall be warranted. If the findings of the board are unfavorable to an officer and are approved by the governor, the governor shall dismiss the officer, transfer him to the state retired list or the honorary militia, or make such other order as may be appropriate.

e. Any officer who permanently moves from the state or who is absent without leave from drill, training and other duty for two months, or whose federal recognition is withdrawn may be dismissed automatically.

f. In any case in which the adjutant general shall have ground to believe an officer unfit, incompetent, or incapable of performing his duties, he may be dismissed or transferred to the reserve list or honorary national guard, if appropriate, without reference to an efficiency or medical examining board, unless the officer so dismissed or transferred shall, within thirty days after being notified thereof, serve upon the adjutant general notice in writing demanding a hearing and examination before an appropriate board.

Sec. 7. *Noncommissioned Officers; Appointment, Promotion and Reduction.*—Noncommissioned officers shall be appointed and promoted and may be reduced in accordance with applicable federal laws and regulations:

*Provided, however,* That in active service of the state, in cases requiring immediate example, a noncommissioned officer may be reduced to the ranks by his immediate commander, subject to appeal to, and review and approval by, the appointing officer.

Sec. 8. *Enlistment; Qualification; Oath.*—a. The qualification for enlistment and re-enlistment, the period of enlistment, re-enlistment and voluntary extension of enlistment, the period of service and the manner and form of transfer and discharge of enlisted personnel of the national guard shall be as prescribed by applicable federal law and regulations: *Provided,* That the governor may extend the period of any enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the national guard for a period not exceeding the duration of an emergency declared by him pursuant to article one-c of this chapter.

b. Any person who has been discharged under other than honorable conditions from the national guard of this or any other state or from any component of the armed forces of the United States and has not been restored to duty shall not be eligible for enlistment in the national guard.

c. Every person enlisted for the national guard shall sign an enlistment paper, which shall be forwarded to the adjutant general, on such form as may be prescribed, which shall contain an oath of allegiance to the state and the United States. Such an oath of allegiance may be taken before any commissioned officer of the national guard, who is hereby authorized to administer the same, or before any civil officer fully authorized to administer oaths.

Sec. 9. *Discharge of Enlisted Personnel.*—a. Enlisted men may be honorably discharged, discharged, or discharged dishonorably; but in no case may an enlisted man be dishonorably discharged unless by sentence of a general court-martial, except as hereinafter provided. No enlisted man shall be honorably discharged from service unless he produces the certificate of his immediate com-

manding officer that he has turned over or satisfactorily accounted for all property issued to him.

b. Whenever any enlisted man of the national guard shall have performed service therein for the term of his enlistment or re-enlistment, and has turned in to the proper officer all state or military property for which he is responsible, his commanding officer shall grant him a full and honorable discharge, except in time of insurrection or invasion or other emergency declared by the governor, when his enlistment shall be automatically extended for the period he shall be in the active service of the state, and until released therefrom by proper order. Discharge for physical disability shall be granted pursuant to applicable rules and regulations. The governor may authorize for sufficient reason, and in his discretion, the discharge of enlisted men, with or without their consent, at any time, upon the recommendation of the commanding officer of the unit or organization to which they belong. An enlisted man who cannot, after due diligence, be found, or who shall remove his residence from the state, or to such a distance from the armory of his organization, as to render it impracticable for him to perform properly military duties, or who shall be convicted of a felony, may be discharged by order of the governor.

c. A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general at the time of such discharge, and in two newspapers of opposite politics and general circulation, if such there be, in the locality in which such dishonorably discharged person resides. No person so discharged shall be admitted to any armory or other meeting place of the national guard or to the immediate vicinity of any encampment, drill or parade of troops. All commanding officers are hereby required to enforce these prohibitions.

Sec. 10. *Inactive National Guard.*—The inactive national guard shall consist of the persons commissioned, ap-

pointed or enlisted therein at the effective date of this article, such officers and enlisted personnel as may hereafter be transferred thereto from the army national guard and the air national guard, and such persons as may be enlisted therein, under applicable regulations.

Sec. 11. *Uniforms, Arms, Equipment and Supplies.*—The uniforms, arms, equipment and supplies necessary for performance of duties shall be those prescribed by applicable federal laws and regulations. Officers shall provide themselves with uniforms and equipment prescribed, and there shall be annually allowed, to aid them in procuring and maintaining the same in condition for service, the sum of one hundred dollars each. Such sum shall be paid during the last month of each fiscal year for such year. In the event of service for less than the full fiscal year one twelfth of such sum shall be allowed for each month of service during such year.

Sec. 12. *Responsibility for Military Property and Funds; Bonds; Action by Attorney General.* — a. Military property of the state and of the United States shall be issued, safeguarded, maintained, accounted for, inventoried, inspected, surveyed and disposed of as provided in applicable laws and regulations of the United States and regulations issued by the adjutant general pursuant to this chapter.

b. Every officer of the national guard responsible for military property or funds of the state or of the United States shall give bond to the state in such amount as shall be determined by the adjutant general, with good and sufficient security, to be approved by him, conditioned upon the safekeeping, proper use and care and prompt surrender of such property or funds for which he may be properly responsible.

c. When military property is lost, damaged, or destroyed through the negligence or fault of a member of the national guard, the amount determined as the value of such property or the cost of repairing the same may be collected from any pay or allowance due or to become due him from the state.

d. An action may be maintained in the name of the

state in any court having jurisdiction thereof by the attorney general upon the request of the adjutant general to recover from a member or former member of the organized militia found responsible for military property lost, damaged or destroyed through his negligence or fault, the amount determined as the value of such property or the cost of repairing the same.

Sec. 13. *Assemblies, Annual Training and Other Duty.*—a. Members and units of the organized militia shall assemble for drill, or other equivalent training, instruction or duties during each year and shall participate in field training, encampments, maneuvers, schools, conferences, cruises or other similar duties each year as may be prescribed by the applicable laws and regulations of the United States and of this state.

b. Members of the organized militia may be ordered by the governor or under his authority to perform special duty, including but not limited to duty in a judicial proceeding, as a member of or in any other capacity with any military board, or as an investigating officer or as a medical examiner.

c. Organization and unit commanders may in their discretion order drills of such portion of their command as may be deemed necessary, and may in their discretion order target practice for their command: *Provided,* That if any expense is to be incurred, written authority must be obtained from the adjutant general.

Sec. 14. *Annual Inspection and Muster.*—An annual inspection and muster of each organization of the national guard shall be made by an inspector at such time and place as the adjutant general shall order and direct.

Sec. 15. *Absence from Drill, Parade or Other Duty; Penalty.*—a. Organization and unit commanders of the national guard, upon receiving information as to the whereabouts of any officer or enlisted man of their organization who is absent from any drill, parade or other prescribed duty without having been properly excused, may cause such officer or enlisted man to be taken into custody and forthwith conveyed to the organization or unit to be there kept until such duty is completed or until

relieved by the organization or unit commander; and said organization or unit commander is hereby authorized to direct any or all members of his command at his discretion to apprehend such officer or enlisted man and convey him to the organization or unit.

b. Enlisted men who shall, without proper excuse, be absent from or in any other respect be delinquent, at any drill, parade, encampment, or other duty ordered by competent authority, may be fined by a summary court not more than five dollars, and imprisoned not more than five days in jail for each offense or delinquency; jail referenced, county jail: *Provided,* That the aggregate punishment under this section shall not exceed thirty days' jail sentence at any one time.

Sec. 16. *Pay and Allowances.*—a. Pay and allowances for officers and men of the national guard for drill, encampment or other duty for training prescribed or ordered by the federal government, shall be such as are provided by the laws of the United States.

b. Officers and men of the national guard in active service of the state shall receive the same pay and allowances, in accordance with their rank and service, as are prescribed for the armed forces of the United States. Transportation for all personnel and subsistence for enlisted personnel when in active service of the state shall be provided by the state.

c. Notwithstanding any of the provisions of this article, members of the national guard, may, with their consent, perform without pay, or without pay and allowances any duties prescribed by section thirteen of this article pursuant to competent orders therefor: *Provided,* That necessary expenses may be furnished such personnel within the discretion of the adjutant general.

Sec. 17. *Command Pay; Inspection, Compensation for Clerical Services and Care of Property.*—a. There shall be paid to each commander of a regiment, group or other corresponding type organization, one hundred dollars per month and to each commander of a battalion, squadron or other equivalent type organization, fifty dollars per month, payable quarterly, to be known as command pay.

The governor may, by order, direct such organization commanders to make inspections of the organizations and units in their command, and file reports thereon, not exceeding four visits to each of such organizations and units in any one year, and for which such commanding officer shall receive no other compensation than that mentioned herein, but may be reimbursed his actual traveling expenses.

b. There shall be allowed to each headquarters of a regiment, group or equivalent type organization the sum of one hundred dollars per month and each headquarters of a battalion, squadron or corresponding type organization, the sum of fifty dollars per month for clerical services; and to each company or corresponding type unit, the sum of twenty dollars per month for like services, payable quarterly. The commandant of the West Virginia military academy shall be allowed the sum of twenty-five dollars a month, payable quarterly, for like services.

c. At the discretion of the adjutant general, there may be paid to the enlisted man who is directly responsible for the care and custody of the federal and state property of each organization or unit, the sum of ten dollars per month, payable quarterly, upon the certificate of his commanding officer, that he has faithfully and satisfactorily performed the duties assigned him and accounted for all property entrusted to his care.

Sec. 18. *Injury or Death While in Service of State.*— A member of the organized militia who, (1) while in active service of the state, shall receive an injury, or incur or contract any disability or disease, by reason of such duty, or (2) while performing any lawfully ordered state duty, shall without fault or neglect on his part be injured or disabled, and shall be incapacitated from pursuing his usual business or occupation, shall, during the period of such incapacity, receive the pay provided by this article and actual necessary expenses for care and medical attendance, including burial and funeral expenses in case of death resulting therefrom. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical officer, to be appointed, upon the application of the member claiming to be so in-

capacitated, or his personal representatives, by the commanding officer of the organization or unit to which such member is attached or assigned. Such board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. The findings of the board shall be subject to the approval of the officer convening it, and also to the approval of the governor, either of whom may return the proceedings of the board for revision and for the taking of further testimony. The amount found due such member by such board, to the extent that its findings are approved by the reviewing officers thereof, shall be paid by the treasurer of the state out of any moneys in the military fund unexpended. The widow and children of every officer or soldier killed, while in the service of the state or performing lawfully ordered state duty, shall be suitably provided for by the Legislature.

Sec. 19. *Military Fund.*—The sums of money which may be appropriated by the Legislature for carrying into effect any provisions of this article, and the penalties and collections required thereby to be paid to the treasurer of the state, shall constitute the military fund of the state for the uses and purposes set forth in this article. The state treasurer shall, at the end of each quarter, render to the adjutant general a statement of the condition of the military fund, showing the amount on hand at the beginning of the quarter, the amount received and expended during the quarter, and the balance on hand at the end of the quarter. The adjutant general shall furnish the governor a copy of this quarterly report.

Sec. 20. *Military Expenses.*—All payments made under the provisions of this article, except pay and allowances for active service of the state, shall be paid out of the military fund. All pay and allowances and other expenses incurred in active service of the state shall be paid out of any moneys in the treasury not otherwise appropriated. The military fund shall be disbursed on warrant of the adjutant general, properly drawn and in such manner as the governor may order, or as may be required by law,

but no warrant for funds signed by him shall be honored by the auditor until such adjutant general shall have executed and filed such bond as may be required by the governor. Payments shall be made on proper vouchers, which vouchers shall show the authority under which the expenditures are made, contain an itemized statement of the transaction, and be filed for record in the office of the adjutant general. All claims for services rendered or material furnished shall be approved by the officer ordering the work or material, and shall be over his certificate to the effect that the amount is just and reasonable, and that it has not been previously paid. No expenditures shall be made by any officer until an estimate of the amount and a statement of the necessity therefor shall have been laid before the adjutant general and his approval received.

## Article 1-c. State Retired List and Honorary Militia.

Section

1. State retired list.
2. Duty with the national guard.
4. Honorary militia.

Section 1. *State Retired List.*—a. Any member of the national guard who has reached the age of sixty-four years, or shall be retired from service under applicable laws and regulations of the United States, shall be transferred to the state retired list by order of the governor.

b. Any officer who has served for at least twenty years in the national guard, or in the national guard and the armed forces of the United States combined, upon his request, may be transferred to the state retired list in a grade one grade higher than the highest grade previously held by him during such service. In computing such twenty-year period, service as an enlisted man shall be counted.

c. Any enlisted man who has served at least twenty years in the national guard, or in the national guard and the armed forces of the United States combined, upon his request may be transferred to the state retired list by the governor in a grade equivalent to the highest grade held by him during such service. If said grade was of officer grade, the provisions of subsection b of this section will govern.

d. Any officer of the national guard may be transferred to the state retired list on his own request, approved by the adjutant general.

e. Any officer of the national guard who has been rendered surplus by reduction, disbandment, or reorganization of a unit or for any other reason, unless transferred to the inactive national guard, may be relieved from duty and command and may be transferred to the state retired or reserve list.

f. Any person who has served as an officer in the national guard or in the armed forces of the United States and has been honorably discharged therefrom, may be commissioned and placed on the state retired list in the highest grade previously held by him after complying with such conditions as may be prescribed by regulations issued pursuant to this chapter.

Sec. 2. *Duty with the National Guard.*—Upon recommendation of the adjutant general with the consent of the person concerned, the governor may order any person on the state retired list to state duty in or with the national guard for a period not to exceed three months, in which case such person shall rank in his grade from the date of such order.

Sec. 3. *Seniority, Resignation, Discharge, Etc.*—Time spent on the state retired list shall not be credited in the computation of seniority, pay, length of service, or any of the privileges and exemptions pertaining thereto, except that the time during which he served on active duty by order of the governor shall be so credited. The provisions of this article relative to resignation, court-martial, dismissal or discharge, including dismissal or discharge on the finding of an efficiency or medical examining board shall be applicable to persons on the state retired list.

Sec. 4. *Honorary Militia.*—The governor may appoint and commission any person, with such rank as he may fix, to serve in the honorary militia and may appoint and commission an honorary staff of such number and rank as he may deem advisable to serve during his term of office.

Members of the honorary militia shall not be held to be a part of the organized militia.

## Article 1-d. Active State Service.

**Section**

1. Calling out national guard by governor.
2. Limited emergency.
3. Command to assembly or mob to disperse.
4. Penalty for failure to disperse.
5. Power of officers.
6. Assaults on national guard or persons aiding them; penalty.
7. Repelling assault.
8. Failure to retire from unlawful assembly; penalty.
9. National guard to have right of way.
10. Regulation of occupancy of streets for passage of national guard.
11. Transportation of officers and men.
12. Arrest of trespassers and disturbers; prohibition of sales, gambling, spirituous beverages and disorderly places.
13. Regulations while military forces on duty.
14. Martial law.

Section 1. *Calling Out National Guard by Governor.*—In event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster or emergency, the governor shall have power to order the West Virginia national guard, or any part thereof, into the active service of the state, and to cause them to perform such duty as he shall deem proper.

Sec. 2. *Limited Emergency.*—In time of public disaster or emergency, the governor may declare a limited emergency in the affected area and designate the commander of the national guard units called to duty to coordinate and direct the activities of all persons, organizations and agencies participating in the evacuation, safeguarding, relief and rehabilitation of the affected area, delegating to such commander such authority as he deems necessary and expedient in the circumstances. The commander so designated by the governor shall act for and on behalf of the governor and take all actions in his name. Nothing contained in this section shall be construed to limit or deny the authority of the governor to declare martial law.

Sec. 3. *Command to Assembly or Mob to Disperse.*—Before using any military force in the dispersion of any riot, rout, tumult, mob or unlawful assembly, or combination mentioned in this article, it shall be the duty of the civil authorities present, or if none be present, then of the officer in command of the troops, or some person by him deputed, to command the persons composing such riotous, tumultuous or unlawful assembly or mob to disperse and retire peaceably to their respective abodes and business; but in no case shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultous or unlawful assembly; nor shall any such command be necessary where the officer or person, in order to give it, would necessarily be put in imminent danger of loss of life or great bodily harm, or where such unlawful assembly or mob is engaged in the commission or perpetration of any forcible or atrocious felony, or in assaulting or attacking any civil officer or person lawfully called to aid in the preservation of the peace, or is otherwise engaged in actual violence to persons and property.

Sec. 4. *Penalty for Failure to Disperse.*—Any person or persons composing or taking part in any riot, rout, tumult, mob or lawless combination or assembly mentioned in this article, who, after being duly commanded to disperse, as provided in the preceding section, willfully and intentionally fails to do so as soon as practicable, shall be guilty of a felony, and, on conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years.

Sec. 5. *Power of Officers.*—After any person or persons, composing or taking part, or about to take part, in any riot, rout, mob, tumult, or unlawful combination or assembly mentioned in this article shall have been duly commanded to disperse, or when the circumstances are such that no such command is requisite under the provisions of this article, and the civil authority to whom such military force is ordered to report, or if there be no civil authority present, then such military officer acting within the limits provided in his orders shall take such steps for the arrest, dispersion, or quelling of the persons

composing or taking part in any such mob, riot, tumult, outbreak, or unlawful combination or assembly mentioned in this article, as may be required, and if, in doing so, any person is killed, wounded, or otherwise injured, or any property injured or destroyed, by the civil authority or officer or member of the national guard, or other persons lawfully aiding them, such officer, member or person shall be held guiltless.

Sec. 6. *Assaults on National Guard or Persons Aiding Them; Penalty.*—It shall be unlawful for any person to assault, fire upon, or throw any missile at, against or upon any member or body of the national guard, or civil officer, or other person lawfully aiding them, when going to, returning from, or assembled for performing any duty under the provisions of this article; and any person so offending shall be guilty of a felony, and, on conviction, shall be imprisoned in the penitentiary for not less than two nor more than five years.

Sec. 7. *Repelling Assault.*—If any portion of the national guard, or any person lawfully aiding them in the performance of any duty, under the provisions of this article, is assaulted, attacked or in imminent danger thereof, the commanding officer of such national guard need not await any orders from any civil authority but may at once proceed to quell such attack and disperse the attacking parties, and take all other needful steps for the safety of his command.

Sec. 8. *Failure to Retire from Unlawful Assembly; Penalty.*—Whenever any shot is fired or missile thrown at, against or upon any body of the national guard, or upon any officer or member thereof, assembling or assembled for the performance of any duty under the provisions of this article, it shall forthwith be the duty of every person in the assembly from which such shot is fired, or missile thrown, to immediately disperse and retire therefrom, without awaiting any order to do so; and any person knowing or having reason to believe that a shot has been so fired, or missile thrown from any assembly of which such person forms a part or with which he is present, and failing without lawful excuse to retire immediately from

such assembly, shall be guilty of a misdemeanor; and any person so remaining in such assembly, after being duly commanded to disperse, shall be guilty of a felony, and on conviction shall be imprisoned in the penitentiary not less than one nor more than two years.

Sec. 9. *National Guard to Have Right of Way.*—Any portion of the national guard parading or performing any duty according to law shall have the right of way in any street or highway through which they may pass: *Provided,* That the carriage of United States mails and operations of fire engines and fire departments shall not be interfered with thereby.

Sec. 10. *Regulation of Occupancy of Streets for Passage of National Guard.*—Whenever any portion of the national guard is or has been called out for the performance of any duty under the provisions of this article, it shall be lawful for the commanding officer of such national guard, if it be deemed advisable in the circumstances of the emergency, to prohibit all persons from occupying or passing on any street, road, or place, or where the national guard may be for the time being, and otherwise to regulate the passage and occupancy of such streets and places. Any person, after being duly informed of such regulations, who willfully and intentionally without any lawful excuse, attempts to go or remain on such street, road, or place, and fails to depart after being warned to do so, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned in the county jail not less than ten nor more than sixty days, or both; and in such case the officer in command of the national guard may forthwith arrest persons so offending and turn them over to some civil authority.

Sec. 11. *Transportation of Officers and Men.*—The several railroads and other transportation companies in this state shall furnish transportation for all officers and enlisted men in the national guard, together with the stores, ammunition and equipment, when traveling on duty under orders from competent authority, on request of the officer desiring transportation, which request shall state

the number of persons to be carried, and their destination, and for such transportation said companies shall be entitled to receive compensation from the state at the rate specified.

Sec. 12. *Arrest of Trespassers and Disturbers; Prohibition of Sales, Gambling, Spirituous Beverages and Disorderly Places.*—a. Any person who shall, after due warning, trespass upon any armory, camp, range, or other facility of the national guard or other place where any force of the national guard is performing military duty, or who shall in any manner interrupt or molest the discharge of military duties by any member or force of the national guard, or who shall interrupt or prevent the passage of troops of the national guard, or who shall insult, by jeer or otherwise, any member of the national guard, or refuse to obey any lawful order of the military commander, may be placed in arrest by any officer of the force performing such military duty at the place where the offense is committed and delivered to the proper civil authorities.

b. The commanding officer of any force of the national guard performing military duty in or at any armory, arsenal, camp, range, base or other facility of the national guard or other place or area where such force is performing duty in the service of the state may prohibit persons from hawking, peddling, vending, selling, or auctioning goods, wares, merchandise, food products or beverages, and may prohibit all gambling, or the sale or use of spirituous beverages, or the establishment or maintenance of a disorderly place, within the limits of such armory, arsenal, camp, range, base or other facility of the national guard or other place or area where such force is performing duty, or within such limits not exceeding one mile therefrom as he may prescribe.

Sec. 13. *Regulations while Military Forces on Duty.*—When any portion of the military forces of this state shall be in active service of the state, pursuant to this article, the code of military justice and the general regulations for the government of the armed forces of the United States shall be considered in force and regarded as a part of this article until such forces shall be duly relieved from such

duty. No punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist and then only after the approval of the governor of the sentence inflicting such punishment.

Sec. 14. *Martial Law.*—In the event of invasion, insurrection, rebellion or riot, flood or other public disaster or emergency, the governor, in his discretion, may by proclamation containing such powers as would meet the exigencies of the situation, declare a state of martial law or rule in the towns, cities, districts or counties where such disturbances or emergencies exist.

## Article 1-e. Code of Military Justice.

Section

1. Military courts; jurisdiction.
2. Courts-martial generally.
3. Appointment and composition of military courts.
4. Forms; practice; procedure.
5. Personnel of courts-martial.
6. Secrecy of proceedings.
7. Powers of president; witnesses; oaths.
8. Charges; trial.
9. General court-martial; offenses by commissioned officers; penalties.
10. Special court-martial; offenses by commissioned officers; penalties.
11. General court-martial; offenses by enlisted men; penalties.
12. Special court-martial; summary court-martial; offenses by enlisted men; penalties.
13. Form of summons.
14. Service of summons; penalty for failure.
15. Trial; judgment; duties of sheriff; penalty.
16. Form of execution.
17. Courts of inquiry.
18. Disorderly conduct before military court; penalty.
19. Record and approval of court-martial sentence.
20. Reconvening court-martial.
21. Collection and disposition of fines.
22. Execution in aid of collection of fines and penalties.
23. Failure of sheriff to execute process or return fines.
24. Actions against members of military courts.
25. Trial by civil authorities.

Section 1. *Military Courts; Jurisdiction.* — Military courts of this state shall be: (a) General courts-martial; (b) special courts-martial; (c) summary courts-martial; (d) courts of inquiry; and shall have jurisdiction over any officer, warrant officer, or enlisted man of the military forces of the state and other persons subject to military law for any crime made punishable by this article. The

jurisdiction of the courts established by this article shall be presumed and the burden of proof shall rest with the person seeking to oust any such court of jurisdiction in any matter or proceeding.

Sec. 2. *Courts-Martial Generally.*—Officers shall be triable only by general courts-martial and special courts-martial, and in no case, whether officer or enlisted man, shall a person be tried by persons inferior in rank or grade when it can feasibly be avoided. An enlisted man may request that at least one third of a general or special courts-martial total membership consist of enlisted men.

Sec. 3. *Appointment and Composition of Military Courts.*—(a) General courts-martial shall be appointed by the governor, and shall consist of not less than five members. (b) Special courts-martial may be appointed by the governor, or as provided in the manual for courts-martial, United States army, and shall consist of not less than three members. (c) Summary courts-martial may be appointed by the governor, or as provided in the manual for courts-martial, United States army, and shall consist of one officer. (d) Courts of inquiry may be appointed by the governor, or as provided in the manual for courts-martial, United States army, and shall consist of from one to three officers.

Sec. 4. *Forms; Practice; Procedure.*—The practice and procedure of courts-martial and courts of inquiry shall conform to the procedure of similar courts in the army of the United States, except as otherwise specially provided herein. Such forms as are necessary for carrying into effect the provisions of this article shall be prescribed by the governor. The president of any military court authorized herein shall have authority to appoint and dismiss required clerks and reporters and the compensation therefor shall be taxed as costs in such case. The clerk of a summary court shall receive a reasonable compensation to be fixed by the court, not to exceed one dollar for each man tried.

Sec. 5. *Personnel of Courts-Martial.*—The senior in rank among the members present is the president and pre-

siding officer of the court. The person ordering a general court-martial may appoint a law officer for the same.

Sec. 6. *Secrecy of Proceedings.*—The proceedings and sentence of a courts-martial shall be kept secret until the same shall have been approved by proper authority. In any event, the vote and opinion of any member of a court shall be kept secret unless such is required to be revealed in a court of record.

Sec. 7. *Powers of President; Witnesses; Oaths.*—The president of a court-martial shall have power to issue subpoenas for the arrest of accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such a court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. All military courts shall have power to administer oaths as required by the manual for courts-martial, United States army.

Sec. 8. *Charges; Trial.*—When an officer or enlisted man is put under arrest for the purpose of trial, a copy of the charges and specifications upon which he is to be tried shall be delivered to him or left at his last known place of abode or business, within twenty days after arrest, and a court shall be ordered for his trial within thirty days after the notice of arrest is received by the officer authorized to order the court. He may be held in any jail or other place of detention or released upon his own recognizance or upon such bail as is deemed necessary by the circuit court of the county in which he is detained. If a copy of the charges and specifications be not served, or a court be not ordered within the time herein limited, then arrest shall cease; but such charges and specifications may be served, a court ordered and the officer or enlisted man brought to trial within twelve months after such release from arrest. The appearance of the accused, without objection, and pleading to the charges, shall be deemed a

waiver of any defect or irregularity of such service of any of the papers mentioned in this section. If an officer or enlisted man who has been ordered or duly summoned to appear before a military court for trial fails to appear, the court may enter a plea of not guilty for him and proceed to trial in his absence.

Sec. 9. *General Court-Martial; Offenses by Commissioned Officers; Penalties.*—Commissioned officers may be tried by a general court-martial for the following reasons and offenses:

(a) For unmilitary or unofficer-like conduct;

(b) For drunkenness on duty;

(c) For neglect of duty;

(d) For disobedience of orders or any act contrary to the provisions of this article, or to the provisions of the regulations for the government of the national guard;

(e) For refusing to grant a discharge to an enlisted man when entitled to the same;

(f) For oppression or injury of anyone under his command;

(g) For a combination or attempt to break, resist or evade the laws or lawful orders, given to a person, or advising any person so to do;

(h) For insult to a superior officer;

(i) For presuming to exercise his command while under arrest or suspension;

(j) For neglect or refusal when commanding officer to order out the troops under his command when required by law or lawfully ordered by his superior officer;

(k) For neglect or refusal to make a draft or detachment when lawfully ordered to do so;

(l) For parading the troops under his command on days of election contrary to law;

(m) For receiving any fee or gratuity for any certificate;

(n) For neglect, when detailed to drill or instruct a command, to make complaint for neglect or violation of duty as provided by law, or for any other neglect for which a commanding officer would be liable;

(o) For making a false certificate, account or muster or parade or property return;

(p) For conduct unbecoming an officer or a gentleman, or for conduct to the prejudice of good order and military discipline.

On conviction of any of the above-named offenses, officers may be sentenced to be dismissed, and shall thereby become incapacitated from holding any military commission, may be fined to any amount not exceeding two hundred dollars, and in addition, may be confined for a period not exceeding sixty days in the county jail of any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. The order of the general court-martial directed to the jailer of such jail shall be sufficient authority for said jailer to receive and confine said prisoner.

Sec. 10. *Special Court-Martial; Offenses by Commissioned Officers; Penalties.*—Commissioned officers may be tried by a special court-martial for the same offenses listed under section nine, except that upon conviction of any of the named offenses, officers may be fined to any amount not exceeding one hundred dollars, and in addition, may be confined for a period not exceeding thirty days in the county jail of any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. The order of the special court-martial directed to the jailer of such jail shall be sufficient authority for said jailer to receive and confine said prisoner.

Sec. 11. *General Court-Martial; Offenses by Enlisted Men; Penalties.*—Enlisted men, in time of peace, may be tried by a general court-martial:

(a) For disobedience of orders;

(b) For disrespect to his superior;

(c) For mutiny;

(d) For desertion;

(e) For drunkenness on duty;

(f) For conduct prejudicial to good order and military discipline;

(g) For any act contrary to the military code, or to the provisions of the regulations for the government of the national guard.

On conviction, such enlisted man may be sentenced to be dishonorably discharged with loss of time served, reprimanded, reduced to the ranks, or may be fined not to exceed one hundred dollars, and in addition thereto, may be confined in the county jail for a period of not exceeding sixty days in any county within the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under the other sections of this article. The order of the general court-martial directed to the jailer of such jail shall be sufficient authority to receive and confine such prisoner in such jail.

Sec. 12. *Special Court-Martial; Summary Court-Martial; Offenses by Enlisted Men; Penalties.*—Enlisted men may be tried by a special court-martial or a summary court-martial for the same offenses listed under section eleven, except that on conviction by a special court-martial such enlisted man may be reprimanded, reduced to the ranks, or may be fined not to exceed fifty dollars, and in addition thereto may be confined in the county jail for a period of not exceeding thirty days in any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. In the case of a summary court-martial, on conviction, such enlisted man may be reprimanded, fined not to exceed twenty-five dollars, and in addition thereto may be confined to the county jail for a period of not exceeding fifteen days in any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. The order of the court-martial directed to the jailer of such jail shall be sufficient authority for said jailer to receive and confine said prisoner.

Sec. 13. *Form of Summons.*—The form of summons issued by summary courts provided by this article shall be substantially as follows:

SUMMONS

The State of West Virginia:

To....., who is hereby designated and directed to serve this summons:

You are commanded to summon..... to personally appear before the summary court for the trial of himself, which will meet pursuant to the laws of the State of West Virginia, at (address)..... (city)....., West Virginia, on the..... .....day of....., 19....., at .....o'clock.....M., by virtue of.....Orders No.....from Headquarters.....to answer delinquencies for offenses against..... (herein describe briefly the offense charged).....

Given under my hand this the.....day of....., 19.....

(Signed).....

(Signature and rank of presiding officer)
West Virginia National Guard,
President of the Court.

Sec. 14. *Service of Summons; Penalty for Failure.*— The president of a court-martial shall designate and direct a fit person or persons to summon all delinquents to appear before the court. Service of the summons shall be made by the person so designated in the same manner as service of process in civil cases. The person serving the summons shall receive a fee of one dollar for such service, together with five cents per mile in necessary travel, and such fee of one dollar together with mileage, shall be taxed as a part of the costs in such proceeding.

The summons may be directed by the president of the court-martial to the sheriff, or his deputy, or any constable, or member of the department of public safety, or to any individual, in the county where such delinquent resides or may be found for service; and it shall be the duty of such person in whose custody the summons has been placed for service forthwith to serve same, if the delinquent be found, and make due return thereof, before the return day of such summons, to the president of the court-martial. The return of service of such summons

shall be in form and effect the same as is customarily used by officers in making returns of civil process. Any member of the department of public safety, sheriff, or his deputy, constable or individual who shall refuse, fail or neglect to serve such summons and make his return thereon to the president of the court-martial before the return day thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not to exceed fifty dollars.

Sec. 15. *Trial; Judgment; Duties of Sheriff; Penalty.*—On the return day of the summons the court shall hear the evidence and render judgment thereon as the case may be. If, however, on the return day of the summons the accused shall fail to appear, after having been duly served with summons, the court shall proceed to hear the evidence and try the accused in his absence and render judgment thereon as the case may be and the facts warrant. If such judgment be for a fine and costs solely, the court shall forthwith issue an execution in form and effect as hereafter set forth, and place it in the hands of the sheriff of the county wherein the accused may be found. If, however, the judgment of the court against the accused is for confinement in the county jail, the court shall forthwith issue an order directed to the sheriff of the county, wherein the accused may be found, directing said sheriff to take into custody the body of the accused and confine him in the county jail. Such order so delivered by the court shall be coextensive with the state, and shall be sufficient evidence and authority for the jailer of such county jail to receive the body of such accused and confine him therein pursuant to said judgment. No prescribed form of order for confinement of the accused shall be required.

Any sheriff who fails, neglects or refuses to perform any duty required of him by this section, by reason of any order of confinement directed by any court, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than one hundred dollars for each offense.

Sec. 16. *Form of Execution.*—Execution for the purpose of either collecting the fine and costs or imprisoning the

delinquent for failure to pay the same shall be substantially in the following form, blanks being properly filled in:

The State of West Virginia:

To the Sheriff of _____ County, greetings:

Whereas, pursuant to the laws of the State of West Virginia, by an order duly issued by (name and rank of officer ordering court) _____, of the West Virginia National Guard, and dated on the _____ day of _____, 19____, a court was duly appointed, for (state object of court) _____; and,

Whereas, the said court was duly and regularly convened and from time to time duly adjourned; and,

Whereas, (name and rank of accused) _____ in (organization) _____ of the West Virginia National Guard, was duly and regularly returned to said court, as required by law, charged with (state whether accused was charged with delinquencies of offenses against the military code, without specifying character thereof) as appears by (either summons or charges and specifications, as the case may be) to be duly filed with said court, and was duly summoned and notified to appear before said court; and it satisfactorily appearing to the court that such _____ was and is a _____ of the West Virginia National Guard and subject to the jurisdiction of the court; and after due deliberation of the evidence offered by the State and the accused, the court did find and adjudge the said _____ (state finding) _____ and did sentence him to pay a fine of _____ dollars, and did also sentence him to pay costs of _____ dollars, making a total fine of _____ dollars; and,

Whereas, the proceedings, findings and sentences of such court were thereafter duly approved by _____, the officer ordering said court.

These are therefore in the name of the State of West Virginia to command you to levy and collect said fines, together with your costs, according to law, of the goods and chattels of _____, and in default

of sufficient goods and chattels of such....., to satisfy the same; then, within five days, to take the body of such delinquent to the common jail of..... .....County, and deliver him to the jailer thereof; and the said jailer is hereby directed and requested to receive the body of such.....conveyed to the jail aforesaid, and to keep such..... closely confined in the manner and during the time required by law, and until discharged according to law, for which this shall be his warrant; and of your doings by virtue thereof to make return to me within forty days after the execution of these presents.

Given under my hand at....., and State of West Virginia, on the.....day of....., 19.....

(Signed).....

(Rank and organization of presiding officer.)

West Virginia National Guard,

President of the Court.

Sec. 17. *Courts of Inquiry.*—Courts of inquiry shall be ordered for the same purposes as provided in the manual for courts-martial, United States army, which are applicable to this state. Such courts of inquiry shall, without delay, report the evidence adduced, a statement of the facts, and, when required, an opinion thereof, to the appointing authority.

Sec. 18. *Disorderly Conduct before Military Court; Penalty.*—Any person other than a member of the national guard who shall resort to disorderly, contemptuous or insolent behavior in, or use any insulting or indecorous language or expressions to or before, any military court, or any member of either of such courts, in open court, to interrupt the proceedings or to impair the authority of such courts, shall be guilty of a misdemeanor and may be arrested by the order of the president of the court, and at once delivered to the civil authorities; and such person, if found guilty, shall be fined not less than five nor more than fifty dollars, or imprisoned in the county jail not exceeding thirty days, or both fined and imprisoned.

Sec. 19. *Record and Approval of Court-Martial Sentence.*—The record of the proceedings and sentence of every court-martial shall, without delay, be delivered to the appointing authority, who shall approve or disapprove thereof. A court may proceed with the execution of a sentence pending approval by the appointing authority.

Sec. 20. *Reconvening Court-Martial.*—A court-martial appointing authority is authorized to direct a court-martial to reconvene, and send back its proceedings for revision, and to remit, commute, or investigate any punishment awarded by the court.

Sec. 21. *Collection and Disposition of Fines.*—All fines under the provisions of this article not collectible by the court may be levied or collected by the sheriff of any county of the state, and shall be transmitted to the adjutant general of the state, who shall deposit the same to the military fund of the state. Whenever process of law is necessary for collection of fines, the sheriff shall collect in addition thereto his usual fee.

Sec. 22. *Execution in Aid of Collection of Fines and Penalties.*—For the purpose of collecting any fines or penalties imposed by any courts-martial, the president of the court shall issue execution, or executions, for the collection thereof, and deliver the same to the sheriff of any county for levy on the goods and chattels of the delinquent, and, in addition to such fine, shall collect the necessary costs of such proceedings, as provided in civil cases. On failure, within fifteen days from the time of delivery of such execution into his hands, to satisfy such execution from the goods and chattels of the delinquent, the sheriff shall forthwith take the body of the delinquent to the county jail and therein confine him to serve the execution at a space and rate of one day's confinement for each two dollars of fine and the costs: *Provided, however,* That the delinquent may furnish a bond with good and sufficient surety to the sheriff to stay such execution and costs for a period of thirty days, either before confinement or during confinement; and if at the expiration of said thirty days such delinquent fails to pay the execution and costs, the

sheriff may apprehend the delinquent and confine him in the county jail, as in the original proceeding; and if the accused be not found, the sureties on such bond shall be liable to the state of West Virginia for the amount of said execution and costs thereof.

The sheriff shall be entitled to such commissions and fees as provided in civil cases.

Sec. 23. *Failure of Sheriff to Execute Process or Return Fines.*—Any sheriff failing to execute any process, or to make proper return of all fines and penalties collected, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars for each offense.

Sec. 24. *Actions against Members of Military Courts.*—No action shall be maintained against any member of a military court, or officer or agent acting under its authority, on account of the imposition of a fine or penalty or for the execution of a sentence on any person.

Sec. 25. *Trial by Civil Authorities.*—For any offense enumerated in this article which is also cognizable under civil law, the offender may, in the discretion of his superior officer, be delivered over to the civil authorities for such action and disposition as may be warranted.

## Article 1-f. Privileges and Prohibitions.

Section

1. Leave of absence for public officials and employees.
2. Suits against officers or persons acting under military authority; security for costs.
3. Change of venue of prosecutions or suits against members of national guard.
4. Exemption from arrest.
5. Unlawful conversion of military property.
6. Unlawful wearing of uniforms; penalty.
7. Unlawful military organizations; penalty.
8. Reemployment rights.
9. General penalty; jurisdiction.

Section 1. *Leave of Absence for Public Officials and Employees.*—All officers and employees of the state, or subdivisions or municipalities thereof, who shall be members of the national guard, shall be entitled to leave of absence from their respective offices or employments without loss of pay, status, or efficiency rating, on the days during

which they shall be engaged in drills, parades, or other duty, during business hours ordered by proper authority, or for field training or active service of the state for a maximum period of thirty days in any one calendar year. The term "without loss of pay" shall mean that the officer or employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or state sources during the same period. Benefits of this section shall not accrue to individuals ordered or called to active duty by the president.

Sec. 2. *Suits against Officers or Persons Acting under Military Authority; Security for Costs.*—When a suit or proceeding shall be commenced in any court by any person, against any military officer of the state, for any act done by such officer in his official capacity in the discharge of any duty under this article, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the court shall, upon motion of the defendant, when it has been made to appear to the court by affidavit, or otherwise, that the act done is such as hereinbefore set forth, require the person prosecuting or instituting the suit or proceeding to file security for the payment of costs that may be incurred by the defendant therein. This security shall be by bond payable to the state, with surety to be approved by the clerk of the court, in a penalty equal to six times the costs incurred and likely to be incurred by the defendant, but in no case shall such bond be for a penalty less than five hundred dollars. The court before whose clerk such bond is given, may, on motion by a defendant, give judgment for so much as he is entitled to by virtue of such bond under the provisions of this section. If such security for costs be not given within sixty days from the time the same is required by the court to be given, the suit or proceeding shall, by order of the court, be dismissed. In case any suit or proceeding shall be dismissed for failure to give security for costs, then the defendant shall recover three times the amount of the costs incurred by him. In all such cases as are referred to in this section

the defendant may make a general denial and give the special matter in evidence.

Sec. 3. *Change of Venue of Prosecutions or Suits against Members of National Guard.*—Any civil or military officer or member of the national guard, or any person lawfully aiding them in the performance of any duty required under the provisions of this article, who is indicted or sued for any injury to person or property in endeavoring to perform such duty, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of any person so indicted or sued, to remove the trial of the indictment or suit to some county free from exception.

Sec. 4. *Exemption from Arrest.*—No person belonging to the military forces of the state, while performing military duty under proper orders, shall be arrested on civil process, nor shall any person belonging to the military forces of the state, while performing military duty under proper orders, be arrested on criminal process, except upon process from a circuit or criminal court or a judge thereof in vacation.

Sec. 5. *Unlawful Conversion of Military Property.*—Whoever shall secrete, sell or dispose of, or offer for sale, or purchase, knowing the same to be such, retain after proper demand is made, or in any manner pawn or pledge, any military property, which shall have been issued under the provisions of this article, shall be guilty of a misdemeanor, and, in addition to the punishment provided for misdemeanors in this article, shall forfeit to the state twice the amount or cost of the property so secreted, sold, disposed of, offered for sale, or purchased, retained after proper demand has been made, pawned or pledged.

Sec. 6. *Unlawful Wearing of Uniforms; Penalty.*—Any person who shall wear any uniform or any device, strap, knot, or insignia of any design or character, used as a designation of grade, rank or office, such as are by law or regulations, duly promulgated, prescribed for the use of the national guard, or similar thereto, except members of the army or navy of the United States or the national

guard of this or any other state, members of associations wholly composed of soldiers honorably discharged from the service of the United States, or the members of the order of sons of veterans, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars; and any member of the national guard who shall, when not on duty, wear any such uniform or equipment issued by the state without the permission of his commanding officer, shall be subject to a fine of not more than fifty dollars.

Sec. 7. *Unlawful Military Organizations; Penalty.*—It shall be unlawful for any body of men whatever, other than the regularly organized national guard or the troops of the United States, to associate themselves together as a military company or organization in this state: *Provided,* That the governor may grant permission to public or private schools of the state to organize themselves into companies of cadets, and may furnish such cadets, under proper restrictions, such obsolete ordnance stores and equipment owned by the state as are not in use by the national guard. Whosoever offends against the provisions of this section, or belongs to or parades with any such unauthorized body of men with arms, shall be punished with a fine of not exceeding one hundred dollars or imprisoned for a term not exceeding six months.

Sec. 8. *Reemployment Rights.*—Members of the organized militia in the active service of the state for thirty consecutive days or longer shall be entitled to the same reemployment rights granted to members of the reserve components of the armed forces of the United States by applicable federal law.

Sec. 9. *General Penalty; Jurisdiction.*—A person convicted of a crime declared by this article to be a misdemeanor shall, unless otherwise provided, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both. Any circuit, intermediate, criminal court, or justice of the peace shall have jurisdiction over offenses enumerated in this article.

**Article 1-g. Service Medals.**

**Section**

11. State service ribbon.

Section 11. *State Service Ribbon.*—A decoration to be known as the "State Service Ribbon" shall be presented by the adjutant general to all members of the national guard ordered to active service of the state pursuant to article one-d of this chapter. Bronze stars shall be affixed on the ribbon for each occasion upon which the recipient of the ribbon shall be ordered to such duty, and a larger silver star shall be worn in lieu of five bronze stars: *Provided, however,* That a separate distinctive ribbon may be designed and presented for any period of active service of the state involving extraordinary duties for a period of not less than one week's duration. Award of the "State Service Ribbon" shall be made retroactively for all periods of duty in the service of the state subsequent to January one, one thousand nine hundred fifty-six. Design of the "State Service Ribbon" and separate distinctive ribbon for extraordinary periods of service shall be the responsibility of the military board of the state of West Virginia.

# CHAPTER 114

**(House Bill No. 415—By Mr. Speaker, Mr. Singleton)**

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to companies and platoons and how constituted; training of members and other peace officers; and salaries and bonds of members of the department of public safety.

**Article 2. Department of Public Safety.**

**Section**

3. Companies and platoons and how constituted; training of members and other peace officers; salaries and bonds of members.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Companies and Platoons and How Constituted; Training of Members and Other Peace Officers; Salaries and Bonds of Members.*—The superintendent shall create, appoint and equip a department of public safety, which shall, in addition to the personnel provided for in section two of this article, consist of four companies or platoons. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, five sergeants, ten corporals and such number of troopers as the superintendent may decide best, but such number of troopers in any company or platoon shall not at any time be less than twenty-five nor more than sixty-five.

The superintendent shall provide adequate facilities for the training of all members of the department and shall prescribe a basic training course for newly enlisted members. He shall also provide advanced or inservice training from time to time for all members of the department. The superintendent may, in his discretion, hold training classes for other peace officers in the state without cost to such officers, except actual expenses for food, lodging and school supplies.

Members of the department shall receive salaries, as follows:

The inspector shall receive an annual salary of six thousand one hundred twenty dollars; captains shall each receive an annual salary of five thousand three hundred forty dollars; lieutenants shall each receive an annual salary of five thousand forty dollars; the master sergeants and first sergeants shall each receive an annual salary of four thousand six hundred eighty dollars; sergeants shall each receive an annual salary of four thousand five hundred dollars; corporals shall each receive an annual salary of four thousand three hundred eighty dollars; and each newly enlisted trooper shall receive a salary of two hundred seventy-five dollars during the period of his basic training, and upon the satisfactory completion of such

training and assignment to active duty each such trooper shall receive, during the remainder of his first year's service, a salary of three hundred twenty-five dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of four thousand twenty dollars; during the third year of his service each trooper shall receive an annual salary of four thousand one hundred forty dollars; and during the fourth and fifth years of his service each trooper shall receive an annual salary of four thousand two hundred sixty dollars. Each member of the department entitled thereto by the provisions hereof shall receive an increase in salary over that hereinbefore set forth in this section, for grade and rank, based on length of service, including that heretofore and hereafter served, with the department, as follows: For each five-year period of service with the department from the date of first enlistment, each member of the department shall receive a salary increase of one hundred twenty dollars per year to be effective during his next five years of service, which increases shall be successive and cumulative until a total of five such increases shall be received.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

Each member of the department of public safety, except the superintendent and civilian employees, shall before entering upon the discharge of his duties, execute a bond with security in the sum of three thousand five hundred dollars payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the board of public works, and the same shall be filed with the secretary of state and preserved in his office.

# CHAPTER 115

(House Bill No. 401—By Mr. White)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to leave time for members of the department of public safety called to active or inactive duty in the national guard or armed forces of the United States.

**Article 2. Department of Public Safety.**

Section

7-a. Leave time for members called to duty in national guard or reserve component of armed forces.

*Be it enacted by the Legislature of West Virginia:*

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

Section 7-a. *Leave Time for Members Called to Duty in National Guard or Reserve Component of Armed Forces.*—Any member of the department of public safety who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted upon request leave time not to exceed thirty days for the purpose of performing such active duty for training or inactive duty training, and the time so granted shall not be deducted from any leave accumulated as a member of the department.

# CHAPTER 116

(Senate Bill No. 244—By Mr. Carson, Mr. President and Mr. Carrigan)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to creating a West Virginia sheriffs' bureau; providing powers and duties therefor, and providing penalties.

## Article 8. West Virginia Sheriffs' Bureau.

Section

1. Creation; purpose; composition.
2. General powers and duties.
3. Executive secretary; clerical and technical personnel.
4. Training of peace officers approved by the bureau.
5. Purchase of equipment and supplies; use of facilities of department of purchases.
6. Standard color for motor vehicles used by sheriff; standard badges and uniforms; wearing other than standard uniform or badge; unauthorized wearing of official uniforms or badges; simulation; penalties.
7. Sheriffs' bureau special fund generally.
8. Payments into sheriffs' bureau fund.
9. Payments from sheriffs' bureau fund.
10. Misuse of the fund; penalties.
11. County courts' contributed to fund.
12. Tax exemption.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Creation; Purpose; Composition.*—For the purpose of providing better law enforcement for our counties and state and to effectuate better law enforcement on our highways, there is hereby created the West Virginia sheriffs' bureau. Said bureau shall be constituted by the governor, as chairman, the attorney general

and five sheriffs of the counties of West Virginia, to be selected by the governor, each for a term of two years, commencing July first, one thousand nine hundred sixty-one; except that three of the first five sheriffs designated July first, one thousand nine hundred sixty-one, shall serve terms expiring July first, one thousand nine hundred sixty-two, at which time new selections for a regular two-year term shall be made. Any vacancy on the bureau shall be filled for the remainder of the unexpired term by selection of the governor.

Sec. 2. *General Powers and Duties.*—The bureau shall have the power to contract and be contracted with, to recommend cooperative policies for the coordination of the law enforcement work of county agencies and county officials having law enforcement duties, in seeking to promote cooperation between all state and local law officers, in securing efficient and effective law enforcement, in eliminating duplication of work, and in promoting economy of operation in such agencies through the central purchase of supplies and equipment for all local law enforcement agencies. The bureau is authorized to accept contributions from counties but it shall neither solicit nor accept contributions from persons, firms or corporations.

Sec. 3. *Executive Secretary; Clerical and Technical Personnel.*—The bureau shall employ an executive secretary, and such other clerical and technical personnel as are required, at salaries to be fixed within available funds by the bureau, to perform such duties as the bureau may prescribe.

Sec. 4. *Training of Peace Officers Approved by the Bureau.*—The bureau may contract or agree with any state university or college in West Virginia or any other organization for such university, college or other organization to provide training for peace officers, which training shall embrace police techniques in detecting crime, apprehending criminals, securing and preserving evidence. All law enforcement officers selected by the various law enforcement agencies, if their selection is approved by the bu-

reau, shall receive such training free with the exception of actual cost of housing and meals.

The county courts are authorized to pay the necessary travel and living expenses of sheriffs and deputies of their respective counties while receiving training.

Sec. 5. *Purchase of Equipment and Supplies; Use of Facilities of Department of Purchases.*—The bureau shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies, and may enter into contracts with other state agencies. The bureau may use the facilities of the state department of purchases and avail itself of the benefits of any general contract held by said department for the purchase of any equipment or supplies for state agencies.

All equipment purchased through the bureau shall be in the name of the bureau and the bureau is authorized to contract with counties, sheriffs or deputy sheriffs for the return of any supplies or equipment purchased from funds contributed to the fund by each such county, sheriff or deputy sheriff upon request.

Sec. 6. *Standard Color for Motor Vehicles Used by Sheriff; Standard Badges and Uniforms; Wearing Other Than Standard Uniform or Badge; Unauthorized Wearing of Official Uniforms or Badges; Simulation; Penalties.*—(1) The bureau may by proper rules and regulations adopt a standard color for use on the motor vehicles used by the various sheriffs and deputy sheriffs of West Virginia.

(2) For purposes of uniformity the bureau may establish a standard badge and uniform to be worn by all sheriffs and deputy sheriffs.

(3) On and after the first day of January, one thousand nine hundred sixty-five, it shall be unlawful for any sheriff or deputy sheriff to wear other than the standard uniform and badge as provided by the preceding paragraph, except when engaged in undercover work or other similar duties wherein the identity of the officer should be undisclosed. When so adopted by the bureau it shall be unlawful for any person other than sheriffs and deputy sheriffs to wear an official sheriff's badge or uniform as prescribed by the

bureau, or to wear a badge or insignia of such similarity to the official sheriff's badge as to be indistinguishable therefrom at a distance of twenty feet: *Provided,* That nothing herein shall be construed to prevent members of any military, fraternal, or similar organization or any other law enforcement officer from wearing any insignia officially adopted or worn prior to the effective date of this section.

(4) Violation of any of the provisions of this section shall be a misdemeanor and subject to a fine of not more than five hundred dollars or imprisonment in the county jail not to exceed six months, or both such fine and imprisonment.

Sec. 7. *Sheriffs' Bureau Special Fund Generally.*—The West Virginia sheriffs' bureau is authorized, empowered, and directed to establish in the state treasury a special fund to be known as "the West Virginia sheriffs' bureau special fund", hereinafter referred to as "the fund". The fund shall be only for the purpose of purchasing equipment and supplies at the request of the various sheriffs' departments of the state of West Virginia, or the counties of the state of West Virginia, and any balance in the fund at the end of any fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made out of the fund upon requisition of the secretary of the bureau by means of a warrant signed by the auditor and treasurer.

Sec. 8. *Payments into Sheriffs' Bureau Fund.* — The fund shall consist of payments made into the fund by any county of the state of West Virginia, by any sheriff or deputy sheriff of any county in the state of West Virginia, for the purchase of equipment or supplies for any county, sheriff or deputy sheriff in the state of West Virginia: *Provided, however,* That when the use of the fund is requested by a county, sheriff or deputy sheriff, satisfactory proof must be supplied to and required by the bureau that such supplies and equipment are to be used primarily for a public purpose.

Sec. 9. *Payments from Sheriffs' Bureau Fund.* — On proper authorization by the secretary of the bureau and

under proper rules and regulations of the bureau, payments shall be made from the fund to cover the cost of any supplies or equipment requested by any county, sheriff, or deputy sheriff to be purchased for said county, sheriff or deputy sheriff by the bureau: *Provided, however,* That the secretary shall not be authorized to purchase or contract for purchase any supplies or equipment for any county, sheriff or deputy sheriff until that county, sheriff or deputy sheriff has a sufficient balance in the fund to fully cover the cost of such purchase.

Sec. 10. *Misuse of the Fund; Penalties.*—It shall be unlawful for any person authorized to purchase through the fund to use any equipment or supplies primarily for his personal use and, upon conviction shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

Sec. 11. *County Courts' Contribution to Fund.*—In addition to the provisions of chapter seven, article seven, section seven of this code, the county court may pay on requisition of the sheriff of the county, at the first of each month, a reasonable amount sufficient to cover the cost of purchase of gasoline necessary to meet the needs of the duties of the sheriff and deputies of the county.

Sec. 12. *Tax Exemption.*—Any supplies or equipment purchased by the bureau through its special fund shall be exempt from any taxes of the state of West Virginia.

# CHAPTER 117

**(House Bill No. 203—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed February 23, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal section five, article six; and to amend and reenact section two, article one; section five, article five; and sections four and six, article six, all of chapter twenty-four-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to uniform regulation of public for hire motor vehicles by the public service commission.

**Article**

1. **Purposes, Definitions and Exemptions.**
5. **Powers and Duties of Commission.**
6. **Duties and Privileges of Motor Carriers Subject to Regulations of the Commission.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 1. Purposes, Definitions and Exemptions.

Section

2. Definitions.

Section 2. *Definitions.*—When used in this chapter: (a) the term "motor vehicle" means, and includes, any automobile, truck, tractor, truck tractor, trailer, semi-trailer, motor bus, taxicab, any self-propelling motor-driven motor vehicle, or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property; (b) the term "public highway" means any public street, alley, road, or highway, or thoroughfare of any kind in this state used by the public; (c) the term "commission" means the public service commission of West Virginia; (d) the term "person" means and includes any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee or personal representative thereof; (e) the term "common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or

forwarding agencies, and leased or rented motor vehicles, with or without drivers; (f) the term "contract carrier by motor vehicle" means any person not included in subsection (e) of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire; (g) the term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle; (h) the term "exempt carrier" means any person operating a motor vehicle exempt from the provisions of this chapter under section three thereof; (i) the term "power unit" means any vehicle which contains within itself the engine, motor, or other source of power by which said vehicle is propelled.

## Article 5. Powers and Duties of Commission.

Section

5. Further regulatory powers of the commission.

Section 5. *Further Regulatory Powers of the Commission.*—The commission shall:

(a) Prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations, and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matters before it.

(b) Appoint such employees as may be necessary to carry out the provisions of this chapter, and shall fix their respective salaries or compensation. Such employees shall hold office during the pleasure of the commission. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter, which employees are hereby empowered to administer oaths in all parts of the state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this chapter.

(c) Prescribe a schedule of fees to accompany applications for certificates of convenience and necessity and permits and for the filing and recordation of other papers with the commission. The commission shall likewise prescribe a schedule of fees to be charged for the certification of all records and papers and sums to be paid witnesses and other costs necessary and incident to hearings before it or its employees and order the same paid by the unsuccessful party. Sums collected in this manner, except witness fees, shall be paid into the state treasury and be credited to the public service commission motor carrier fund provided for in section six of article six of this chapter. The witness fees shall be paid to the persons who are entitled thereto.

(d) Establish a system of accounts to be kept by motor carriers or classify motor carriers and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the form of accounts, records, and memoranda to be kept by such motor carriers, including the accounts, records, and memoranda for the movement of traffic as well as the receipts and expenditures of money, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter.

(e) Require persons subject to the provisions of this chapter, to furnish any information which may be in their possession, or obtainable from their accounting or other records, respecting rates, charges, classifications, or practices in conducting their business, and to furnish the commission at all times for inspection any books or papers or reports and statements, which reports and statements shall be under oath, when so required by the commission, and the form of all reports required under this chapter shall be prescribed by the commission.

(f) Either as a commission or by any of its members, or by designated employees, subpoena witnesses and take testimony, and administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the commission or its designated employees the evidence of

witnesses and the production of documentary evidence may be required at any designated place of hearing within the state; and in the case of disobedience to a subpoena or other process the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in the state in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. And such court, in case of refusal to obey the subpoena issued to any person or to any motor carrier subject to the provisions of this chapter, shall issue an order requiring such motor carrier or any person to appear before the commission or designated employees and produce all books and papers, 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 such testimony or evidence may tend to incriminate 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.

(g) Require common carriers by motor vehicle and contract carriers by motor vehicle subject to the provisions of this chapter either to procure insurance from a company authorized to write such insurance in West Virginia, or to qualify as a self-insurer, or to deposit such security, upon such terms and conditions and for such limits of liability as the commission shall determine to be necessary for the reasonable protection of the traveling, shipping, and general public against injury, loss, damage or default for which such carrier may be liable, and prescribe rules and regulations governing the filing of evidence of such insurance and such security with the commission. In fixing the amount of such insurance policy or policies, the qualifications as a self-insurer, or the deposit of security, the commission shall give due consideration to the character and amount of traffic, the value of the property transported, the number of persons affected, and the degree of danger involved in any such motor carrier operation.

(h) Cooperate with the federal government and the interstate commerce commission of the United States or

any other commission or organized delegated authority to regulate interstate or foreign commerce by motor vehicles, and it shall be its duty so to do, to the end that the transportation of persons and property by motor vehicles in interstate and foreign commerce into and through the state of West Virginia may be regulated and the laws of the United States and of the state of West Virginia enforced and administered cooperatively in the public interest.

(i) Make agreements on behalf of the state of West Virginia with any other state or states providing for reciprocal rights, privileges, and courtesies between the licensees or holders of certificates and permits of the said state or states and the state of West Virginia respecting certificates and permits, fees, assessments, and uniform vehicle identification cards, and the transportation of either persons or property into or through the respective state or states and the state of West Virginia, and all existing agreements between a state or states and the state of West Virginia for reciprocal rights, privileges, and courtesies may, provided constitutional and contractual rights are not violated, be declared void by the commission, and new agreements negotiated.

(j) Promulgate safety rules and regulations applicable to motor vehicles subject to the provisions of this chapter and promulgate regulations governing the qualifications and maximum hours of service of drivers and chauffeurs of common and contract carriers by motor vehicle of passengers and property subject to the provisions of this chapter, and promulgate any other rules and regulations which the commission may deem proper to carry out the provisions and intent of this chapter.

## Article 6. Duties and Privileges of Motor Carriers Subject to Regulations of the Commission.

**Section**

4. Uniform vehicle identification card.
6. Motor carrier fund; assessment; collection; appropriation.

Section 4. *Uniform Vehicle Identification Card.*—The commission shall prescribe a uniform vehicle identification card which shall be displayed within the cab of each power unit operated by any motor carrier, showing

thereon the description and serial number of the vehicle for which it is issued and the number given to the vehicle by the commission, and may contain such other information as may be required by the commission. Such cards shall be issued annually and displayed in each such power unit not later than July first of each year. It shall be unlawful for any motor carrier to operate any power unit within this state unless said identification card is displayed within such vehicle. It shall be unlawful for the motor carrier, his agent, servant, or employee, or any other person to use or display said identification card or other insignia of authority from the commission at any time after the certificate or permit issued to said motor carrier has expired or has been cancelled, suspended, revoked, or otherwise disposed of.

Sec. 6. *Motor Carrier Fund; Assessment; Collection; Appropriation.*—In addition to the license fees, registration fees, or any other taxes required by law to be collected from motor carriers subject to this chapter, each such motor carrier shall be subject to, and shall pay to the public service commission, a special annual assessment for the purpose of paying the salaries, compensation, costs and expenses of administering and enforcing this chapter. All proceeds or funds derived from such assessment shall be paid into the state treasury and credited to a special fund designated public service commission motor carrier fund, to be appropriated as provided by law for the purposes herein stated. Each member of the commission shall receive a salary of two thousand dollars per annum as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided by law, to be paid in monthly installments from said fund. The special assessment against each motor carrier shall be apportioned upon the number and capacity of motor vehicles used by said carrier, computed as hereinafter provided.

(a) For each uniform vehicle identification card $3.00

(b) Upon each power unit of such carriers of property, in accordance with its capacity as rated by its manufacturer, in addition to amount of subsection (a):

| | |
|---|---|
| Of one ton or less capacity | $9.00 |
| Of over one to one and one-half tons capacity | 13.50 |
| Of over one and one-half tons to two tons capacity | 18.00 |
| Of over two tons to three tons capacity | 22.50 |
| Of over three tons to four tons capacity | 27.00 |
| Of over four tons to five tons capacity | 31.50 |
| Of over five tons to six tons capacity | 36.00 |
| Of over six tons to seven tons capacity | 40.50 |
| Of over seven tons to eight tons capacity | 45.00 |
| Of over eight tons to nine tons capacity | 49.50 |
| Of over nine tons to ten tons capacity | 54.00 |

Of over ten tons capacity, $54.00 plus $4.50 for each additional ton of capacity in excess of ten tons.

(c) Upon each trailer and semi-trailer of such carriers of property, in accordance with its capacity as rated by its manufacturer, in an amount of two thirds of the amount provided for vehicles of its capacity in subsection (b) of this section.

(d) Upon each power unit of such carriers of passengers, in accordance with the seating capacity thereof, in addition to amount in subsection (a):

| | |
|---|---|
| Of ten passengers or less | $13.50 |
| Of eleven to twenty passengers, inclusive | 22.50 |
| Of twenty-one to thirty passengers, inclusive | 31.50 |
| Of thirty-one to forty passengers, inclusive | 45.00 |
| Of over forty passengers | 54.00 |

(e) The annual assessment of each motor carrier shall be paid on or before the first day of July of each year. Additional assessments shall be collected upon the placing in use of any additional motor vehicle: *Provided,* That such additional assessments shall be subject to a reduction in the amounts shown in subsections (b), (c), and (d) corresponding to the unexpired quarterly periods of the fiscal year, but shall not in any event be less than one fourth of such amount plus the sum of three dollars provided in subsection (a).

(f) Upon payment by any motor carrier of the assessment provided for, the public service commission shall advise the department of motor vehicles by notice in writing that such assessment has been paid, whereupon the department of motor vehicles may issue motor vehicle license for the vehicles described in said notice.

(g) Prior to the beginning of any fiscal year the public service commission, after taking into consideration any unexpended balance in the motor carrier fund, the probable receipts to be received in the ensuing fiscal year, and the probable costs of administering and enforcing the motor carrier act for the ensuing fiscal year, may fix the assessments provided for in this section for the ensuing fiscal year in amounts which, in the commission's judgment, will produce sufficient revenue to administer and enforce the motor carrier act for said fiscal year: *Provided,* That in no event shall such assessments exceed the amounts set up in this section.

# CHAPTER 118

**(Senate Bill No. 22—By Mr. Carson, Mr. President)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to a contributing retirement system for persons in the employ of the state and affiliated political subdivisions of the state.

## Article 10. West Virginia Public Employees Retirement Act.

**Section**

1. Short title.
2. Definitions.
3. Retirement system created and established; body corporate.
3-a. Liberal construction; retirement plan not a substitute for federal social security.
4. Effective date of system.
5. Board of trustees created; powers and duties generally; composition.
6. Trustees' terms of office.
7. Vacancy on board; how filled.
8. Trustees' compensation.
9. Chairman; executive secretary; treasurer; legal advisor; actuary.
10. Board meetings; quorum; vote; proceedings.
11. Reports required of board.
12. Officer and employee bonds.
13. Actuarial investigations; valuations.
14. Service credit.
15. Military service credit.
16. Political subdivision becomes participating public employer.
17. Retirement system membership.
18. Termination of membership.

19. Membership forms.
20. Voluntary retirement.
21. Deferred retirement.
22. Retirement annuity.
23. Terminal payment.
24. Annuity options.
25. Disability retirement.
26. Re-examination of disability retirants.
27. Nonduty death annuities.
28. Funds of retirement system.
29. Members deposit fund.
30. Refund of accumulated contributions.
31. Employers accumulation fund.
32. State contributions to retirement system.
33. Contributions by other participating public employers.
34. Transfers from employers accumulation fund.
35. Retirement reserve fund.
36. Income fund.
37. Expense fund.
38. Investment of moneys.
39. No trustee shall gain from investments of system.
40. Restricted use of retirement system moneys.
41. Allowance of regular interest.
42. Fiscal year.
43. Pro rata reduction of annuities.
44. Errors.
45. Fraud; penalty.
46. Right to benefits not subject to execution, etc.; assignments prohibited.
47. Tax exemptions.
48. Validity.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Short Title.*—The short title by which this article may be referred to is "West Virginia Public Employees Retirement Act."

Sec. 2. *Definitions.*—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:

(1) "State" means the state of West Virginia;

(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

(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;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit; 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 and members of the legislative body of any political subdivision 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 the average of the highest annual compensations received by a member during any period of five 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. If he has less than five years of credited service, his final average salary shall be the average of the annual rate of compensations received by him during his total years of credited service;

(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 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;

(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.

Sec. 3. *Retirement System Created and Established; Body Corporate.*—The West Virginia public employees retirement system is hereby created and established to provide for the orderly retirements of employees, of the state and the other participating public employers, who become superannuated because of age or total and permanent disability, and to provide certain survivor benefits. The retirement system shall constitute a body corporate. All business of the system shall be transacted in the name of West Virginia public employees retirement system.

Sec. 3-a. *Liberal Construction; Retirement Plan Not a Substitute for Federal Social Security.*—The provisions of this article shall be liberally construed so as to provide a general retirement system for the employees of the state herein made eligible for such retirement: *Provided, however,* That nothing in this article shall be construed as permitting any governmental unit, its officers or employees, to substitute the retirement plan herein authorized for federal social security, now in force in West Virginia.

The purpose of this article is to provide a state pension plan which supplements the federal social security pension plan now in force and heretofore authorized by law for all officers and employees of the state.

Sec. 4. *Effective Date of System.*—The effective date of the West Virginia public employees retirement system shall be July one, one thousand nine hundred sixty-one: *Provided, however,* That for any participating public employer which cannot make its contribution as provided by this article from its one thousand nine hundred sixty-one—one thousand nine hundred sixty-two current funds, the effective date as to such participating public employer shall be July one, one thousand nine hundred sixty-two.

Sec. 5. *Board of Trustees Created; Powers and Duties Generally; Composition.*—The board of trustees of the West Virginia public employees retirement system is hereby created. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor, are hereby vested in the said board of trustees, except as is otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

(a) The auditor of the state, by virtue of his office;

(b) The commissioner of finance and administration, by virtue of his office;

(c) A resident of the state, who is not a member, retirant, or beneficiary of the retirement system, to be appointed by the governor with confirmation by the senate;

(d) Two members of the retirement system to be appointed by the governor.

Sec. 6. *Trustees' Terms of Office.*—The first terms of office for the trustees provided for in section five (c) and (d) hereof shall expire June thirty, one thousand nine hundred sixty-five, June thirty, one thousand nine hundred sixty-four, and June thirty, one thousand nine hundred sixty-three, respectively, as the governor shall designate at the time of the appointments. Thereafter, the terms of office for the said trustees shall be five years. Each trustee shall serve as trustee until his successor is appointed and has qualified. In order to make the preliminary arrangements for the operation of the retirement system as of its effective date, the governor shall make

the appointments provided for in section five hereof as soon as practicable after the passage of this article.

Sec. 7. *Vacancy on Board; How Filled.*—In the event any trustee, provided for in section five (c) and (d) hereof, leaves the employ of a participating public employer, or fails to attend three consecutive meetings of the board of trustees, unless in each case excused for cause by the remaining trustees attending such meeting or meetings, he shall be considered to have resigned from the board and the board shall, by resolution, declare his office of trustee vacated. If a vacancy occurs in the office of such trustee, the governor shall, within thirty days from and after the date of the vacancy, fill the vacancy, by appointment, for the unexpired term.

Sec. 8. *Trustees' Compensation.*—The trustees shall serve as trustees without compensation for their services as such: *Provided,* That each trustee shall be reimbursed, upon approval of the board of trustees, for any necessary expenses incurred by him in carrying out his duties of trustee. No trustee shall suffer any loss of salary or wages on account of his service as trustee.

Sec. 9. *Chairman; Executive Secretary; Treasurer; Legal Advisor; Actuary.*—(a) The board of trustees shall elect from its own number a chairman and a vice chairman.

(b) The board of trustees shall appoint an executive secretary of the retirement system. The executive secretary shall be the chief administrative officer of the system; and he shall not be a member of the board. He shall perform such duties as are required of him in this article and as the board shall from time to time delegate to him. The compensation of the executive secretary shall be fixed by the board subject to the approval of the board of public works. He shall, with the approval of the board of trustees, employ such administrative, technical, and clerical employees as shall be required in the proper operation of the system.

(c) The state treasurer shall be treasurer of the retirement system and the custodian of its funds. All bonds

and other investments purchased according to the provisions of this article shall forthwith be deposited with the state treasurer. It shall be his duty to collect the principal thereof and the interest and dividends thereon as the same become due and payable, and when so collected deposit same to the credit of the retirement system. All disbursements from the funds of the system shall be made by the state treasurer only upon written certification duly authorized by a continuing or specific resolution adopted by the board of trustees. He shall furnish the board with a statement of the retirement system securities in his safekeeping as the board shall from time to time request.

(d) The attorney general shall be the legal advisor to the board of trustees.

(e) The board of trustees shall appoint an actuary who shall be the technical advisor to the board regarding the operation of the retirement system on an actuarial basis.

Sec. 10. *Board Meetings; Quorum; Vote; Proceedings.*—The board of trustees shall hold a meeting at least once each three months, and shall designate the time and place thereof. Three trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote on each question before the board and at least three concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

Sec. 11. *Reports Required of Board.*—The board of trustees shall submit to the governor for transmittal to the Legislature, on or before the first day of December in each year, a report showing the fiscal affairs and transactions of the retirement system for the preceding fiscal year. The said report shall contain, but shall not be limited to, a financial balance sheet, a statement of income and disbursements, an actuarial balance sheet prepared by means of the last actuarial valuation of the system, a detailed statement of investments acquired and disposed of during the said fiscal year, and such other data as shall be deemed necessary for a proper understanding of the

condition of the system. The board shall annually furnish the members and the participating public employers with a summary of the results of the operations of the system.

Sec. 12. *Officer and Employee Bonds.*—The state treasurer shall give a separate and additional bond in such amount as shall from time to time be fixed by the board of trustees. The said bond shall be approved by the attorney general and shall be conditioned for the faithful performance of his duties as custodian of the moneys, securities and other investments of the retirement system. The executive secretary, and the employees of the system designated by the board, shall furnish bonds in such form, and in such amounts, as the board shall from time to time determine. The costs of such bonds shall be paid from the expense fund and such bonds shall be filed in the same office as are the bonds of state officers.

Sec. 13. *Actuarial Investigations; Valuations.*—(a) The board of trustees shall keep, or cause to be kept, such data as shall be necessary for the preparation of mortality, service, and retirement tables, and for the compilation of such other data as shall be required for an actuarial valuation of the assets and liabilities of the retirement system.

(b) Beginning in one thousand nine hundred sixty-six, and in each five-year period thereafter, the actuary shall make actuarial investigations into the experiences of the members, retirants and beneficiaries of the retirement system. Based upon such investigations the board of trustees shall adopt for the system rates of mortality, withdrawal from service, superannuation retirement and disability retirement, and salary scales for final average salary.

(c) Beginning in one thousand nine hundred sixty-two, and at least once in each three-year period thereafter, the actuary shall make an actuarial valuation of the assets and liabilities of the retirement system: *Provided,* That until the first actuarial investigations are made, the valuations shall be based upon decrement assumptions which are, in the opinion of the actuary, applicable to the members, retirants and beneficiaries of the system.

(d) Beginning in one thousand nine hundred sixty-two, the actuary shall annually compute the annuity reserve liabilities for annuities being paid retirants and beneficiaries.

Sec. 14. *Service Credit.*—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 five years immediately preceding the date the political subdivision became a participating public employer be credited with prior service.

Sec. 15. *Military Service Credit.*—In the event a member, who, while employed by a participating public employer, entered or enters the armed forces of the United States during any period of compulsory military service and reenters the employ of a participating public employer, such armed service rendered by him, not to exceed five years, shall be credited to him: *Provided,* That (1) his reemployment by a participating public employer occurs within a period of six months from and after the date of termination of such armed service actually required of him, and (2) he pays to the members deposit fund the amount he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of service to be so credited a member, the board of trustees shall have final power to determine such period. During the period of such armed service and until his return to the employ of a participating public employer his contributions to the retirement system shall be suspended and any balance remaining to his credit in

the members deposit fund shall be accumulated at regular interest.

Sec. 16. *Political Subdivision Becomes Participating Public Employer.*—The state of West Virginia shall become a participating public employer effective July one, one thousand nine hundred sixty-one. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action.

Sec. 17. *Retirement System Membership.*—The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two hereof, 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 or 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 paragraphs (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers' retirement system, the judges' retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia department of employment security, by the director of such department, may elect whether its employees will accept coverage under this article or be covered under authorization of a separate enactment: *Provided,* That such exclusions of membership shall not apply

to any member of the state Legislature, or to any member of the legislative body of any political subdivision.

(c) Any member of the state Legislature, or any member of the legislative body of any other political subdivision may exempt himself from membership in the retirement system by filing his written notice with the board of trustees of his desire to be so exempted: *Provided,* That such written notice shall be filed prior to July one, one thousand nine hundred sixty-two, if he was a member of such legislative body June thirty, one thousand nine hundred sixty-one; or prior to the expiration of a period of one year from and after the date he assumes such legislative office, if he was not a member of such legislative body June thirty, one thousand nine hundred sixty-one.

(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

Sec. 18. *Termination of Membership.*—In the event a member leaves the employ of a participating public employer, except to become a retirant or his death, he shall thereupon cease to be a member and his credited service at that time shall be forfeited by him. If he becomes reemployed by a participating public employer he shall again become a member of the retirement system. Should his said reemployment occur within a period of five years from and after the date he last left the employ of a participating public employer his credited service last forfeited by him shall be restored to his credit: *Provided,* That he returns to the members deposit fund the amount, if any, he withdrew therefrom, together with regular interest thereon from the date of withdrawal to the date of repayment. Upon a member's retirement or death he shall thereupon cease to be a member.

Sec. 19. *Membership Forms.*—Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees, and such other

information as the board shall require in the operation of the retirement system.

Sec. 20. *Voluntary Retirement.*—Any member who has attained or attains age sixty years and has ten or more years of credited service in force may retire upon his written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof he desires to be retired. Upon his retirement he shall receive an annuity provided for in section twenty-two hereof.

Sec. 21. *Deferred Retirement.*—If any member, who has twenty or more years of credited service in force, of which at least five years are contributing service, leave the employ of a participating public employer prior to his attainment of age sixty years, for any reason except his disability retirement or death, he shall be entitled to an annuity computed according to section twenty-two hereof, as the said section was in force as of the date of his said separation from the employ of a participating public employer: *Provided,* That he does not withdraw his accumulated contributions from the members deposit fund. His said annuity shall begin the first day of the calendar month next following the month in which his application for same is filed with the board of trustees on or after his attainment of age sixty-five years.

Sec. 22. *Retirement Annuity.*—Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one per cent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. Upon his retirement he shall have the right to elect an option provided for in section twenty-four hereof.

Sec. 23. *Terminal Payment.*—In the event a retirant dies before he has received in straight life annuity payments an aggregate amount equal to his accumulated contributions standing to his credit in the members deposit fund at the time of his retirement, the difference between

his said accumulated contributions and the said aggregate amount of straight life annuity payments received by him shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said retirant such difference, if any, shall be paid to his estate. In no case shall any benefits be paid under this section on account of the death of a retirant if he was receiving an annuity under option A or B provided for in section twenty-four hereof.

Sec. 24. *Annuity Options.*—Prior to the effective date of his retirement, but not thereafter, a member may elect to receive his annuity as a straight life annuity payable throughout his life, or he may elect to receive the actuarial equivalent, at that time, of his straight life annuity in a reduced annuity payable throughout his life, and nominate a beneficiary, in accordance with option A or B set forth below:

Option A—*Joint and Survivor Annuity.*—Upon the death of a retirant, who elected option A, his reduced annuity shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his retirement; or

Option B—*Modified Joint and Survivor Annuity.*—Upon the death of a retirant who elected option B, one half of his reduced annuity shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his retirement.

Sec. 25. *Disability Retirement.*—(a) Upon the application of a member, or his employing authority, a member who (1) is in the employ of a participating public employer, (2) has ten or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of a participating public employer, by

reason of a personal injury or disease, may be retired by the board of trustees: *Provided,* That after a medical examination of the said member, made by or under the direction of a medical committee consisting of three physicians, one of whom shall be named by the board, one by the said member, and the third by the first two physicians so named, the said medical committee reports, in writing, to the board that (1) the said member is physically or mentally totally incapacitated for duty in the employ of a participating public employer, (2) that such incapacity will probably be permanent, and (3) that the said member should be retired.

(b) A member with less than ten years of credited service shall have the service requirement provided for in paragraph (a) above waived in the event (1) the board of trustees finds his total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of a participating public employer, and (2) he is in receipt of workmen's compensation on account of such physical or mental disability.

(c) Upon a member's retirement, as provided in this section, he shall receive a straight life annuity computed according to section twenty-two hereof and he shall have the right to elect an option provided for in section twenty-four hereof: *Provided,* That his straight life annuity payable to his attainment of age sixty-five years shall not be less than twenty-five per cent of his final average salary; and his said straight life annuity payable from and after his attainment of age sixty-five years shall not be less than ten per cent of his final average salary: *Provided further,* That his said annuity shall be subject to section twenty-six hereof.

Sec. 26. *Re-examination of Disability Retirants.*—(a) At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five hereof, and at least once in each three-year period thereafter, the board of trustees may, and upon the retirant's application shall, require a disability retirant, who has not attained age sixty years, to

undergo a medical examination to be made by or under the direction of a physician designated by the board. Should the said retirant refuse to submit to such medical examination in any such period his disability annuity may be discontinued by the board until his withdrawal of such refusal. Should such refusal continue for one year all his rights in and to his annuity may be revoked by the board. If upon such medical examination of a disability retirant, the said physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer he shall be returned to the employ of the participating public employer from whose employment he retired and his disability annuity shall terminate: *Provided,* That the report of the said physician is concurred in by the board.

(b) A disability retirant who is returned to the employ of a participating public employer shall again become a member of the retirement system and his credited service in force at the time of his retirement shall be restored to his credit.

(c) If a disability retirant, who has not attained age sixty years, becomes engaged in a gainful occupation, business or employment, and the sum of his earnings from such occupation, business or employment, and his disability annuity exceeds his annual rate of compensation at the time of his retirement, his disability annuity shall be reduced to an amount which when added to the amount so earned by him shall equal his said annual rate of compensation. If his earnings are later changed, his disability annuity shall be correspondingly adjusted.

Sec. 27. *Nonduty Death Annuities.*—(a) Any member who continues in the employ of a participating public employer on or after the date he either (1) acquires twenty-five years of credited service, or (2) attains age sixty years and has ten or more years of credited service, may at any time prior to the effective date of his retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he were then retiring from the employ of a participating public employer, elect option A provided for in section twenty-four

hereof, and nominate a beneficiary whom the board finds to have been dependent upon the said member for at least fifty per cent of his financial support. Prior to the effective date of his retirement a member may revoke his said election of option A and nomination of beneficiary and he may again prior to his retirement elect the said option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the said member had retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) Any member who continues in the employ of a participating public employer on or after the date he either acquires twenty-five years of credited service, or attains age sixty years and has ten or more years of credited service, and does not have an option A election in force as provided in subsection (a) of this section, and (1) dies while in the employ of a participating public employer, and (2) leaves a widow, or, in the case of a female member, leaves a widower whom the board of trustees finds to be totally and permanently disabled and to have been dependent upon the said female member for at least fifty per cent of his financial support, the said widow or widower, as the case may be, shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, (2) elected option A provided for in section twenty-four hereof, and (3) nominated his said widow or widower, as the case may be, as beneficiary.

Sec. 28. *Funds of Retirement System.*—For financing and accounting purposes the West Virginia public employees retirement system shall consist of two divisions,

namely, the state division for the participation of state employees, and the public employer division for the participation of the public employees who are not state employees. Separate accounting of the retirement system transactions shall be maintained for each division showing the equities of each division in the assets of the system. The retirement system funds shall be (1) the members deposit fund, (2) the employers accumulation fund, (3) the retirement reserve fund, (4) the income fund, and (5) the expense fund. Each such fund shall be maintained by the board of trustees for the state division and the public employer division, respectively. Nothing contained in this section shall be interpreted to mean that the assets of the system are to be segregated between the division or the funds.

Sec. 29. *Members Deposit Fund.*— (a) The members deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system shall be three and five-tenths per cent of his annual compensations. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the pay rolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in paragraph (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every pay-

roll period, from the date the member enters the retirement system to the date his membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system each of said amounts shall be credited to the members deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the compensations of a member, as heretofore provided, a member shall deposit in the members deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he withdrew his contributions or accumulated contributions, as the case may be, until he returns to the members deposit fund all amounts due the said fund by him.

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his death, in either event his accumulated contributions standing to his credit in the members deposit fund shall be transferred to the retirement reserve fund.

(f) In the event an employee's membership in the retirement system terminates and no annuity becomes or will become payable on his account, any accumulated contributions standing to his credit in the members deposit fund, unclaimed by the said employee, or his legal representative, within three years from and after the date his membership terminated, shall be transferred to the income fund.

Sec. 30. *Refund of Accumulated Contributions.*—(a) In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system

he shall be paid, upon his written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs within a period of five years from and after the date he last became a member of the system. If his said separation from the employ of a participating public employer occurs within a period of five years from and after the date he last became a member of the system, he shall be paid his accumulated contributions standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund.

(b) In the event a member dies and does not leave a beneficiary entitled to an annuity payable by the retirement system, his accumulated contributions standing to his credit in the members deposit fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said member, his said accumulated contributions shall be paid to his estate.

(c) Refunds of a member's contributions or accumulated contributions, as the case may be, may be made in equal installments according to such rules and regulations as the board of trustees may from time to time adopt.

Sec. 31. *Employers Accumulation Fund.*—The employers accumulation fund is hereby created. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system shall be determined, according to paragraphs (1), (2), (3) and (4) below, for

the state as the state division, and for the other participating public employers as the public employer division.

(1) The participating public employers' contributions for members' current service shall be a per cent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers during the members' future service will be sufficient to provide, at the time annuities will become payable on their account, the difference between the annuity reserves for the future service portions of the annuities to be paid and the present value of the members' future net contributions.

(2) The participating public employers' contributions for members' accrued service shall be a per cent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for the accrued portions of the annuities to be paid on account of members.

(3) The participating public employers' contributions for annuities being paid retirants and beneficiaries shall be a per cent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfounded annuity reserves for annuities being paid retirants and beneficiaries.

(4) In no year shall the total of the contributions, provided for in paragraphs (1), (2) and (3) above, to be paid by any participating public employer exceed five per cent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.

Sec. 32. *State Contributions to Retirement System.*— (a) At least thirty days prior to each regular session of the Legislature, the board of trustees shall certify to the governor the contributions, determined according to section thirty-one hereof, to be made by the state to the retirement system for the next following fiscal year; the

said contributions to be based upon the state's total payroll for the preceding twelve calendar months. The amounts so ascertained shall be included in the appropriation bill to be submitted to the Legislature. In the event the state's contributions for the fiscal year are less than they would have been based upon the state's actual payroll for the fiscal year, the amount of the insufficiency shall be included in the appropriation bill for the next following fiscal year. The said contributions shall be paid to the retirement system quarterly and when paid shall be credited to the employers accumulation fund.

(b) In the case of any member whose compensation is paid out of moneys derived in whole or in part out of any special fund, or from any source other than the state, then contributions on behalf of such member in any year shall be paid out of such special fund or by such other source in proportion to that part of the member's compensation derived therefrom for that year. The governing body of each participating public employer is hereby authorized to make such contributions from funds of the participating public employer as shall be necessary to pay its proportionate share of contributions on account of each state employee whose compensation is paid by such participating public employer.

Sec. 33. *Contributions by Other Participating Public Employers.*—(a) The board of trustees shall annually certify to each participating public employer, other than the state, the employer contribution rate, determined in section thirty-one hereof, for the public employer division. Each participating public employer shall pay to the state treasurer, for credit to the retirement system, the contributions equal to the said contribution rate applied to each and every payroll of the participating public employer. The said payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall from time to time prescribe. When paid, the said contributions shall be credited to the employers accumulation fund.

(b) If any participating public employer, other than the state, fails to make any payment due the retirement

system for a period of sixty days after the payment is due, the participating public employer shall become delinquent, and such delinquency shall be certified to the state auditor by the board of trustees. If any participating public employer becomes delinquent, as provided herein, the state auditor is authorized and directed to withhold any money due such participating public employer by the state until such delinquency, together with regular interest thereon, from the date due, is satisfied. Such money so withheld by the state auditor shall be paid to the retirement system and credited to the employers accumulation fund.

Sec. 34. *Transfers from Employers Accumulation Fund.*—Upon the retirement of a member, or if an annuity becomes payable on account of the death of a member, the difference between the annuity reserve and the member's accumulated contributions standing to his credit in the members deposit fund at the time of his retirement or death, as the case may be, shall be transferred to the retirement reserve fund.

Sec. 35. *Retirement Reserve Fund.*—The retirement reserve fund is hereby created. It shall be the fund from which shall be paid all annuities payable as provided in this article. If a disability retirant returns to the employ of a participating public employer, his annuity reserve at that time shall be transferred from the retirement reserve fund to the members deposit fund and the employers accumulation fund in the same proportions as the annuity reserve was originally transferred to the retirement reserve fund. The amount so transferred to the members deposit fund shall be credited to his individual account therein.

Sec. 36. *Income Fund.*—The income fund is hereby created. It shall be the fund to which shall be credited all interest, dividends and other income from investments of the retirement system, all transfers from the members deposit fund by reason of lack of claimant or forfeiture of interest credits, and all other moneys received by the retirement system, the disposition of which is not specifically provided for in this article. The board

of trustees may accept gifts and bequests and same shall be credited to the income fund. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the members deposit fund, employers accumulation fund, and the retirement reserve fund, as provided in this article. Whenever the board determines that the balance in the income fund is more than sufficient to cover the current charges to the fund, the board may, by resolution, provide for contingency reserves, or for the transfer of such excess, or portions thereof, to cover the needs of the other funds of the retirement system.

Sec. 37. *Expense Fund.*—The expense fund shall be the fund from which shall be paid the expenses incurred in the administration of the retirement system. The cost of administering the system shall be paid by the state and the other participating public employers on a proportionate basis to be determined by the board of trustees. The board shall annually certify to the governor the state's proportionate share of the cost of administration and to each of the other participating public employers their respective shares, and each of said participating public employers shall pay the amounts due by them to the state treasurer for credit to the expense fund.

Sec. 38. *Investment of Moneys.*—All moneys of the retirement system not currently required for the payment of annuities or other benefits shall be invested by the board of public works in any securities or investments in which the sinking funds of the state may be legally invested, or in any securities or investments in which the deposits in savings banks and participation deposits in banks and trust companies may be legally invested, as provided by the general laws. The board of public works shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the moneys of the retirement system have been invested, as well as the proceeds of such investments. It shall be the duty of every state department or institution issuing any bonds to offer same in writing to the board of public works prior to advertising them for sale.

The said board, within fifteen days from and after receipt of such offer, may accept or reject such offer in whole or in part. Available cash on deposit shall not exceed ten per cent of the total assets of the system.

Sec. 39. *No Trustee Shall Gain from Investments of System.*—Except as otherwise provided in this article, no trustee, no member of the board of public works, and no employee of the board of trustees shall have any interest, direct or indirect, in the gains or profits arising from any investment or reinvestment of retirement system moneys. No trustee, no member of the board of public works, and no employee of the board of trustees shall, directly or indirectly, for himself or as an agent or partner of others, in any manner use the same, except to make current and necessary payments as are authorized by the board of trustees. No trustee, no member of the board of public works, and no employee of the board of trustees shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the retirement system. Nothing contained herein shall be construed to impair the rights of any member of the retirement system to benefits provided by the system.

Sec. 40. *Restricted Use of Retirement System Moneys.*—The moneys, investments and all other assets of the retirement system shall be used for the sole purpose of meeting the disbursements for annuities and other payments authorized by this article, and shall be used for no other purpose whatsoever.

Sec. 41. *Allowance of Regular Interest.*—The board of trustees shall, at the end of each fiscal year, allow and credit regular interest on the balance at the beginning of the said fiscal year in each member's individual account in the members deposit fund, and on the mean balances in the employers accumulation fund and the retirement reserve fund. The interest so allowed and credited shall be charged to the income fund.

Sec. 42. *Fiscal Year.*—The fiscal year of the retirement system shall coincide with the fiscal year of the state.

Sec. 43. *Pro Rata Reduction of Annuities.*—Any provi-

sion in this article to the contrary notwithstanding, if at the end of any fiscal year the total of the annuities paid from the retirement reserve fund during the said fiscal year is more than ten per cent of the sum of the balances in the employers accumulation fund and the retirement reserve fund at the end of the said fiscal year, the said annuities payable in the next ensuing fiscal year shall be reduced, pro rata, so that the sum of the annuities so reduced shall not exceed ten per cent of the sum of the said balances in the employers accumulation fund and the retirement reserve fund. The said pro rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

Sec. 44. *Errors.*—Should any change or error in the records of any participating public employer or the retirement system result in any person receiving from the system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as is practicable shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled shall be paid.

Sec. 45. *Fraud; Penalty.*—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud the system shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly.

Sec. 46. *Right to Benefits Not Subject to Execution, etc.; Assignments Prohibited.*—The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court: *Provided,* That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he be permitted to, and elect to, continue such coverage as a retirant, he may authorize the board of trustees to have deducted from his annuity the payments required of him

to continue coverage under such group insurance or prepayment plan: *Provided further,* That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

Sec. 47. *Tax Exemptions.*—The annuities and other benefits provided by this article, and the assets of the retirement system, are hereby exempt from state, county and municipal taxes.

Sec. 48. *Validity.*—If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

# CHAPTER 119

**(House Bill No. 444—By Mr. Speaker, Mr. Singleton)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the issuance and sale of not exceeding five million dollars of road bonds of the state of West Virginia to raise money for road construction and maintenance purposes under and by virtue of the "Good Roads Amendment" to the constitution adopted at the general election held in November, one thousand nine hundred twenty; to provide for the distribution and expenditure of the proceeds of sale thereof, and to provide for the levy and collection of an annual state tax and other revenues sufficient to pay semiannually the interest on such bonds and the principal thereof within twenty-five years.

**Section**

1. Road bonds; amount; when may issue.
2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
3. Form of bond.
4. Form of coupon.
5. Listing by auditor.
6. State road sinking fund sources used to pay bonds and interest; investment of remainder.
7. Tax levy to pay.
8. Sale by governor; minimum price.

9. Proceeds paid into state road fund.
10. Plates property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

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*Be it enacted by the Legislature of West Virginia:*

Section 1. *Road Bonds; Amount; When May Issue.*—Bonds of the state of West Virginia of the par value of five million dollars are hereby authorized to be issued and sold for the purpose of raising funds for assisting in building, constructing and maintaining the system of roads and highways provided for by the constitution. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such times and bearing such date or dates as the governor may determine, and shall become due and payable serially in equal amounts beginning one year and ending twenty-five years from the date thereof: *Provided, however,* That no bonds may be issued under the provisions of this act until bonds authorized and issued under the provisions of the "Good Roads Amendment" to the constitution of the state, ratified at the general election held in November, one thousand nine hundred twenty, have been retired and canceled out of the state road sinking fund created by section six, chapter one hundred thirteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, in an amount equal to or greater than the amount to be issued hereunder at any one time.

Sec. 2. *Transfer Fee; Registration Fee; Where Payable; Interest Rate; Tax Exempt.*—The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds, and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. Bonds taken in exchange shall be canceled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents shall likewise be charged

by and paid to the state of West Virginia, to the credit of the state road sinking fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at some bank in the city of New York to be designated by the governor. The bonds shall bear interest at a rate not exceeding four and one-half percent per annum, payable semiannually, on the first day of _____, and the first day of _____, of each year, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. In the case of registered bonds the treasurer of the state of West Virginia shall issue his check for the interest then due on the first day of _____, and _____ of each year, and mail it to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

Sec. 3. *Form of Bond.*—The bonds and coupons shall be engraved and the bonds shall be signed on behalf of the state of West Virginia, by the treasurer thereof, under the great seal of the state, and countersigned by the auditor of the state, and shall be in the following form or to the following effect, as nearly as may be, namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA

$_____ No. _____

The state of West Virginia, under and by virtue of authority of an act of the Legislature passed at the regular session of one thousand nine hundred sixty-one, on the _____ day of _____, one thousand

nine hundred sixty-one, and approved by the governor on the ..... day of ....., one thousand nine hundred sixty-one, which is hereby made a part hereof as fully as if set forth at length herein, acknowledges itself to be indebted to and hereby promises to pay to the bearer hereof (in the case of a coupon bond) or to .....or assigns (the owner of record, in case of registered bonds) on the ..... day of ....., 19....., in lawful money of the United States of America at the office of the treasurer of the state of West Virginia at the capitol of said state, or at the option of the holder at ..... bank in the city of New York, the sum of ..... .....dollars, with interest thereon at ..... percentum per annum from date, payable semiannually in like lawful money of the United States of America at the treasurer's office or bank aforesaid, on the first day of ..... and the first day of ..... of each year, (and in the case of coupon bonds) according to the tenor of the annexed coupons bearing the engraved facsimile signature of the treasurer of the state of West Virginia, upon surrender of such coupons. This bond (in case of a coupon bond) may be exchanged for a registered bond of like tenor upon application to the treasurer of the state of West Virginia.

To secure the payment of this bond, principal sum and interest, when other funds and revenues sufficient are not available for that purpose, it is agreed that within the limits prescribed by the constitution, the board of public works of the state of West Virginia shall annually cause to be levied and collected an annual state tax on all property in the state, until this bond is fully paid, sufficient to pay the annual interest on this bond and the principal sum thereof within the time this bond becomes due and payable.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district, or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer of the state of West Virginia, and the countersignature of the auditor of the state, hereto affixed ac-

cording to law, dated the ..... day of ....., one thousand nine hundred ....., and the seal of the state of West Virginia.

(SEAL)

.....

Treasurer of the State of West Virginia

Countersigned:

.....

Auditor of the State of West Virginia

Sec. 4. *Form of Coupon.*—The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No. ..... Coupon No. .....

On the first day of ....., 19....., the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or at the option of the holder at .....bank in the city of New York, the sum of ..... dollars, the same being semiannual interest on Road Bond No. .....

.....

Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall be by his engraved facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

Sec. 5. *Listing by Auditor.*—All coupon and registered bonds issued under this act shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered

bonds, the name and postoffice address of the person, firm or corporation registered as the owner thereof.

Sec. 6. *State Road Sinking Fund Sources Used to Pay Bonds and Interest; Investment of Remainder.*—Into the state road sinking fund there shall be paid all moneys received from the annual state tax levy on the taxable property in the state levied under the provisions of this act, from any and all appropriations made by the state from other sources for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from fines, forfeitures and penalties, if any, made applicable by law for the payment of such bonds or the interest thereon, from transfer fees as herein provided, and from any source whatsoever, which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all money belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in bonds of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: *Provided, however,* That bonds so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

Sec. 7. *Tax Levy to Pay, unless other Funds Available.*—In order to provide the revenue necessary for the pay-

ment of the principal and interest of such bonds, as hereinbefore provided, the board of public works, within the limits prescribed by the constitution, is authorized, empowered and directed to lay annually a tax upon all real and personal property subject to taxation within this state, sufficient to pay interest on the bonds accruing during the current year and one twenty-fifth of the total issue (at par value) of such bonds, for such number of years, not exceeding twenty-five, as may be necessary to pay the interest thereon and to pay off the principal sum of the bonds; and such taxes, when so collected, shall not be liable for or applicable to any other purpose: *Provided, however,* That if there be other funds in the state treasury, or in the state road funds, in any fiscal year, not otherwise appropriated, or if other sources of revenue be hereafter provided by law for the purpose, the board of public works is authorized, empowered and directed to set apart, in any year there be such funds, or other sources of revenue provided for such purpose, a sum sufficient to pay the interest on bonds accruing during the current year, and to pay off, and retire the principal of such bonds, or any part thereof, at maturity.

The authority hereby vested in the board of public works shall be in addition to the authority now vested in it by present law.

Sec. 8. *Sale by Governor; Minimum Price.*—The governor shall sell the bonds herein mentioned at such time or times as he may determine necessary to provide funds for road construction and maintenance purposes, as herein provided, upon recommendation of the state road commissioner. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be canceled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

Sec. 9. *Proceeds Paid into State Road Fund.*—The proceeds of all sales of bonds herein authorized shall be paid into the state road fund created by section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended.

Sec. 10. *Plates Property of State.*—The plates from which the bonds authorized by this act are engraved shall be the property of the state of West Virginia.

Sec. 11. *Auditor to Be Custodian of Unsold Bonds.*—The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

Sec. 12. *Interim Certificates.*—The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of engraved bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the engraved and permanent bonds.

Sec. 13. *Payment of Expenses.*—All necessary expenses incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

# CHAPTER 120

**(House Bill No. 283—By Mr. Poindexter and Mr. Casey)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections nineteen, twenty-two, twenty-three and twenty-three-b, all relating to toll bridges and the powers and duties of the state road commissioner of West Virginia.

## Article 17. Toll Bridges.

Section

19. Bridge revenue bonds; proceeds.
22. Tolls to be charged; intrastate and interstate bridges; purchase of existing bridges; disposition of tolls.
23. When tolls to cease.
23-b. Combining of bridges; imposition or reimposition of tolls upon existing bridges; revenue bonds; disposition of tolls.

*Be it enacted by the Legislature of West Virginia:*

That article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections nineteen, twenty-two, twenty-three and twenty-three-b of said article, all to read as follows:

Section 19. *Bridge Revenue Bonds; Proceeds.*—The commission may pay the cost as defined hereinabove of any one or more such bridges by the issuance of bridge revenue bonds of the state, by a resolution of the commission which shall recite an estimate by the commission of such cost, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. The commission, after any such issue of bonds or simultaneously therewith, may issue further issues of bonds to pay the cost of any other one or more of such bridges, in the manner and subject to all of the provisions herein contained as to the bonds first mentioned in this section. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the law merchant. Such bonds shall bear interest at not more than six percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates and may be made redeemable at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as the commission may fix prior to issuance of such bonds. The commission shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the governor and the chairman of the commission, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chairman of the commission. 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. The commission shall fix the denominations of such bonds, the principal and interest of which

shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of said state, or, at the option of the holder, at some bank or trust company in the city of New York to be named in the bonds, either in lawful money or in gold coin of the United States, of or equal to the then current standard of weight and fineness, as may be determined by the commission. Such bonds shall be exempt from taxation by the state of West Virginia or any county or municipality therein. The commission may provide for the registration of such bonds in the name of the owner as to principal alone and as to both principal and interest under such terms and conditions as the commission may determine, and shall sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the bridges, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of six percent per annum to the purchaser upon the amount paid therefor.

The proceeds of such bonds shall be used solely for the payment of the cost of the bridges, and shall be checked out by the chairman of the commission and the secretary-treasurer thereof and under such further restrictions, if any, as the commission may provide. If the proceeds of such bonds, by error or calculation or otherwise, shall be less than the cost of the bridge or bridges, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided 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 of the bonds first issued for the same bridge or bridges. If the proceeds of bonds issued for any bridge or bridges shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable

from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued.

Prior to the preparation of definitive bonds, the commission 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 by this article or by the constitution of the state.

Sec. 22. *Tolls to Be Charged; Intrastate and Interstate Bridges; Purchase of Existing Bridges; Disposition of Tolls.*—Tolls shall be fixed, charged and collected for transit over such bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided,* That no existing bridge or bridges shall be acquired by purchase, eminent domain, or otherwise, unless the state road commissioner shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in section twenty-three-b following, unless the state road commissioner shall have determined that the income from such combined bridges, based

upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the state sinking fund commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the sinking fund commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the pro-

visions of this article without the approval in writing of the state road commissioner and the governor. If there be in the funds of the state sinking fund commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges, the state road commissioner is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

Sec. 23. *When Tolls to Cease.*—When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, and there are no operating or maintenance expenses outstanding, and any advances made from the state road fund toward the construction, operation and maintenance of such bridge or bridges shall have been repaid, the authority operating such bridge or bridges shall cease the collection of tolls for the use thereof: *Provided, however,* That the commissioner may, in his discretion, continue thereafter tolls for a period sufficient to accumulate sufficient funds to pay for major maintenance and repairs foreseeable as being needed on such bridge or bridges in the immediate future: *And provided further,* That tolls may be imposed or reimposed on any such bridge or bridges in the manner provided in section twenty-three-b following. Thereafter, and as long as the cost of maintaining, repairing and operating such bridge or bridges is being provided for through means other than tolls, no tolls shall be charged for transit thereover and such bridge or bridges shall be free: *Provided, however,* That notwithstanding any other provision of law, if any portion of the cost of construction of a toll bridge is financed, with the aid of federal funds under federal-aid road legislation and the share of the cost of such bridge borne by the state or its subdivisions shall have been repaid from tolls, or a fund sufficient for such repayment shall have been provided or set aside for that purpose,

tolls for the use of such bridge shall cease and such bridge shall thereafter be maintained and operated as a free bridge.

Sec. 23-b. *Combining of Bridges; Imposition or Reimposition of Tolls upon Existing Bridges; Revenue Bonds; Disposition of Tolls.*—The commissioner is hereby authorized and empowered to combine any two or more bridges, including existing bridges and bridges to be constructed or acquired by purchase, eminent domain or otherwise and to pledge all or any part of the revenue derived from such combined bridges to the payment of interest and sinking fund requirements of any bonds issued in respect of said combined bridges, or either of them, pursuant to this section.

The commissioner is hereby authorized to impose or reimpose tolls or other charges on any existing bridge or bridges which shall be combined, pursuant to this section, with any other bridge, either existing or to be constructed or acquired and the tolls and other charges fixed by the commissioner for the bridges so combined, pursuant to this section, shall be fixed and adjusted in respect to the aggregate of tolls from the bridges so combined, so as to be sufficient to pay all expenses of operating, maintaining and repairing the combined bridges and the interest and sinking fund requirements of any bonds issued in respect of said combined bridges, or either of them, pursuant to this section: *Provided, however*, That no such tolls or other charges shall be imposed or reimposed on any existing bridge unless the imposition or reimposition thereof shall have, first, been approved by a resolution duly adopted by the council or other governing body of the municipality in which such existing bridge is situate, or, if such existing bridge is not situate within the limits of a municipality, then the imposition or reimposition of such tolls or other charges shall be first approved by an order duly adopted by the county court of the county or counties in which such existing bridge is situate. In either case, a certified copy of the resolution or order shall be filed with the commissioner.

The tolls and other charges from bridges so combined pursuant to this section, for which bonds are issued pur-

suant to this section, except such part thereof as may be necessary to pay the cost of maintaining, repairing, and operating such bridges during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the state sinking fund commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest and sinking fund requirements, if not used by the sinking fund commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable.

The commission may pay the cost, as hereinbefore in this article defined, of construction or acquisition by purchase, eminent domain or otherwise of any bridge or bridges combined with any other bridge or bridges pursuant to this section and/or the cost of modernization, improvement, repair and reconstruction of any existing bridge so combined with any other bridge or bridges pursuant to this section, including modernization, improvement, repair, reconstruction, construction and acquisition of approaches thereto, by the issuance of bridge revenue bonds of the state. Any such bridge revenue bonds shall be issued in the manner and in accordance with the procedure for the issuance of bridge revenue bonds hereinbefore set forth in this article: *Provided, however,* That nothing in this article shall be construed to permit any combination of an existing toll bridge with any other bridge at any time when there are bonds on such existing toll bridge unpaid or when any such toll bridge bonds, either the principal or interest thereon, are in default.

# CHAPTER 121

(Senate Bill No. 143—By Mr. Smith and Mr. Carrigan)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article nineteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposal of litter and certain other material on and near highways and certain enumerated other locations; issuance of notice to the public, and providing penalties.

## Article 19. General Criminal Provisions.

Section

13-b. Unlawful disposal of litter, etc.; prima facie evidence of violation; notice of section; enforcement; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13-b. *Unlawful Disposal of Litter, etc.; Prima Facie Evidence of Violation; Notice of Section; Enforcement; Penalty.*—It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, cans, bottles, papers, ashes, cigarette or cigar butts, junk, carcass of any dead animal, offal, waste, or any other offensive or unsightly matter in or upon any public or private highway, road, street or alley, or upon the surface of any land within one hundred yards thereof without the consent of the owner, or in or upon any private property into or upon which the public is admitted by easement or license, 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.

If any such material is thrown, cast, dumped or dis-

charged from a motor vehicle in violation of this section, such action shall be deemed prima facie evidence that the owner or driver of such motor vehicle intended to violate this section.

The state commissioner of motor vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall place upon the application for registration or on the license so issued a digest of this section briefly explaining this section.

The state road commissioner shall 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 herein provided for disposing of litter in, upon and near highways and roads in violation of this section.

No portion of this section shall be construed to restrict a private owner or lessee in the use of his own private property or leased property, or to prohibit the disposal of materials designated in this section in any manner authorized by law.

In addition to enforcement by all proper law enforcement agencies, this section shall also be enforced by the state director of conservation, the United States forestry service and all other officers vested with powers and authority of game protectors.

Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than five hundred dollars.

# CHAPTER 122

**(House Bill No. 470—By Mr. Peters)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to outdoor advertising along interstate highways.

## Article 22. Outdoor Advertising.

Section

14-a. Outdoor advertising along interstate highways.

*Be it enacted by the Legislature of West Virginia:*

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

Section 14-a. *Outdoor Advertising Along Interstate Highways.*—Notwithstanding the other provisions of this article, no advertisement, advertising structure, or advertising sign shall be erected or maintained upon or within six hundred and sixty feet of the right of way of any road or highway which is a part of the national system of interstate and defense highways, constructed upon any part of right of way, the entire width of which is acquired subsequent to July one, one thousand nine hundred fifty-six, except that the commissioner shall promulgate rules and regulations permitting the erection of such advertising devices within the protected area of six hundred and sixty feet, which rules and regulations shall be correlated to and conform with the national standards prepared and promulgated by the bureau of public roads of the United States department of commerce. The commissioner is hereby authorized to enter into agreements with the United States secretary of commerce for the purpose of carrying out the national policy of promoting the safety, convenience and enjoyment of public travel and the free flow of interstate commerce and the protection of the public investment in the national system of interstate and defense highways within the state.

All agreements and regulations made pursuant to this section shall not apply to those segments of the interstate system which traverse commercial or industrial zones within boundaries of incorporated municipalities, as such boundaries existed on September twenty-one, one thousand nine hundred fifty-nine, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control, or which traverse other areas

where the land use as of September twenty-one, one thousand nine hundred fifty-nine, was clearly established by state law as industrial or commercial and this section shall not be deemed to prohibit advertisements, advertising structures or advertising signs within such zones or areas.

# CHAPTER 123

**(Senate Bill No. 123—By Mr. Smith)**

[Passed March 2, 1961; 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 twenty-four, relating to the creation of the West Virginia historic commission.

## Article 24. West Virginia Historic Commission.

**Section**

1. Commission created; composition; appointment and terms of members; reimbursement for expenses; secretary and treasurer.
2. West Virginia historic commission created; number of members; how appointed; term.
3. Powers and duties of commission; assistance of state road commission.
4. Special fund created; cooperation with centennial 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 twenty-four, to read as follows:

Section 1. *Commission Created; Composition; Appointment and Terms of Members; Reimbursement for Expenses; Secretary and Treasurer.*—It is hereby declared, as a matter of legislative determination:

(a) That the state of West Virginia, being richly endowed in historic achievement, should erect and preserve adequate markers along its roads and highways pointing

out for future generations the important role played by our state in the dynamic development of our country.

(b) That in the past, some four hundred historic road markers were placed along the highways; however, since no agency was designated to preserve and maintain such markers, they have fallen into a state of disrepair or have been destroyed.

(c) That this article contemplates the creation of a commission, which shall be authorized and empowered to place historic road markers at appropriate places and to preserve and maintain such markers; it is further contemplated that the necessary appropriation shall be made so that the commission may accomplish the purposes herein set out.

Sec. 2. *West Virginia Historic Commission Created; Number of Members; How Appointed; Term.*—There is hereby created the West Virginia historic commission hereinafter referred to as the commission, to consist of five members, one of whom shall be a member of the West Virginia historical society, and all of whom shall be appointed by the governor, by and with the advice and consent of the senate. The term of office for those so appointed shall be four years. All of the members of said commission shall serve without pay, but shall be reimbursed for any and all actual expenses incurred in the performance of their duties hereunder. The director of the department of archives and history shall be the secretary and treasurer of such commission.

Sec. 3. *Powers and Duties of Commission; Assistance of State Road Commission.*—The commission shall be authorized and empowered to purchase new road markers, replace old road markers, protect, preserve and display the Fairfax stones, purchase markers for new highways, and, with the consent of the West Virginia turnpike commission, for the West Virginia turnpike; and formulate and write appropriate copy for such markers. The commission is authorized to purchase markers from any commercial company dealing in or manufacturing such markers. The commission shall choose the location of such historic road markers, and the state road commission shall have the

responsibility for the actual physical placement and repainting thereof. The cost of such placement and repainting shall be paid out of the appropriation of the commission.

Sec. 4. *Special Fund Created; Cooperation with Centennial Commission.*—For the purpose of carrying out provisions of this article, there is hereby created a special revenue fund entitled the West Virginia historic fund. All moneys appropriated by the Legislature for the purposes set out herein shall be deposited in said fund and shall be expended therefrom only for the purposes for which the same are authorized.

The West Virginia historic commission shall advise with the West Virginia centennial commission with respect to the historic aspects of the centennial.

The West Virginia historic commission shall advise in arranging and equipping the railway car pertaining to the history of the state that shall be a part of the West Virginia centennial train.

# CHAPTER 124

**(Senate Bill No. 184—By Mr. Carson, Mr. President)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to appointment of assistant attorney general to perform duties for the governor.

**Article 1. The Governor.**

Section
24. Appointment of assistant attorney general to perform duties for governor.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter 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 twenty-four, to read as follows:

Section 24. *Appointment of Assistant Attorney General to Perform Duties for Governor.* — The governor, if he deem such action necessary, may request the attorney general to appoint an assistant attorney general, who shall perform, under the supervision and direction of the attorney general, such duties as may be required of him by the governor. The attorney general, in pursuance of such request, may select and appoint an assistant attorney general, to serve during the will and pleasure of the attorney general, and the salary of such assistant shall be paid out of any funds made available for that purpose by the Legislature to the office of the governor.

# CHAPTER 125

**(House Bill No. 225—By Mr. Speaker, Mr. Singleton)**

[Passed March 2, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistants to the attorney general.

**Article 3. Attorney General.**

**Section**

**3. Assistants to attorney general.**

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Assistants to Attorney General.*—The attorney general may appoint such assistant attorneys general

as may be necessary to properly perform the duties of his office. The total compensation of all such assistants shall be within the limits of the amounts appropriated by the Legislature for personal services. All assistant attorneys general so appointed shall serve at the pleasure of the attorney general and shall perform such duties as he may require of them.

All laws or parts of laws inconsistent with the provisions hereof are hereby amended to be in harmony with the provisions of this section.

# CHAPTER 126

**(House Bill No. 418—By Mr. Boiarsky)**

[Passed March 6, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT directing the state auditor to transfer certain accrued balance in the county, district, and municipal fund to the general revenue fund.

**Section**

1. Transfer of balance in county, district and municipal fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Transfer of Balance in County, District and Municipal Fund.*—A balance in the county, district, and municipal fund has been carried for several years on the state financial records, and since there is no practical reason for carrying said balance upon the state financial records, effective upon passage of this bill, the state auditor shall transfer from the county, district, and municipal fund, Account 7306, to the general revenue fund, the sum of forty-eight thousand six hundred twenty-two dollars and thirty cents.

# CHAPTER 127

**(House Bill No. 406—By Mr. Speaker, Mr. Singleton)**

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the state auditor to distribute copies of the book entitled "Making a State" to certain libraries and schools in West Virginia.

**Section**

1. Distribution of the book entitled "Making a State" to libraries and schools.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Distribution of the Book Entitled "Making a State" to Libraries and Schools.*—The state auditor is hereby authorized to furnish copies of the book entitled "Making a State", published by the state of West Virginia, to the libraries of each institution of higher education in this state and to high schools, junior high schools, and elementary schools within the state.

# CHAPTER 128

**(Senate Bill No. 281—Originating in the Senate Committee on Finance)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT directing the state auditor to transfer immediately certain accrued amounts from balances now in special revenue accounts of the department of labor, bedding division; real estate commission; insurance commissioner, fees, insurance department; barbers and beauticians, to the general revenue fund.

Section
1. Transfer of sums in special revenue accounts.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Transfer of Sums in Special Revenue Accounts.*—Balances in certain revenue accounts having accumulated on state financial records in excess of appropriations, and there being no practical reason for continuing such large sums upon the state's financial records, the state auditor shall immediately transfer from special revenue funds to the general revenue funds, as follows:

(a) Department of Labor, Bedding Division, Account No. 843, the sum of sixty-five thousand dollars;

(b) Real Estate Commission, Account No. 801, the sum of seventy-five thousand dollars;

(c) Insurance Commissioner, Insurance Department, Account No. 826, the sum of one hundred and thirty-five thousand dollars;

(d) Barbers and Beauticians, Account No. 822, the sum of twenty-five thousand dollars.

# CHAPTER 129

**(Senate Bill No. 19—By Mr. Carson, Mr. President)**

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal sections eleven and twelve, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five, six, seven and eight of said article nine; and to further amend said article nine by adding thereto two new sections, designated sections nine-a and ten, all relating to the supervision of public offices.

**Article 9. Supervision of Public Offices.**

Section
2. How and by whom system of accounting prescribed.
3. Separate accounts for different appropriations.

5. Reports to and by chief inspector.
6. Accounts and reports by local public officers.
7. Examination into affairs of local public officers.
8. Cost of services of chief inspector; revolving fund.
9-a. Public inspection of reports.
10. Statutory references to audits or examinations by tax commissioner, inspector or supervisor of public offices.

*Be it enacted by the Legislature of West Virginia:*

That sections eleven and twelve, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, three, five, six, seven and eight of said article nine be amended and re-enacted; and that said article nine be further amended by adding thereto two new sections, designated sections nine-a and ten, all to read as follows:

Section 2. *How and by Whom System of Accounting Prescribed.*—The chief inspector shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all local governmental offices or agencies (including district offices and justices of the peace and constables), and for all public accounts of the same class, and which shall exhibit true accounts and detailed statements for all public funds collected, received and expended for any purpose whatever by all local governmental officers, employees or other persons. Such accounts shall show the receipt, use and disposition of all public property under their control, and the income (if any) derived therefrom, and of all sources of such public income, and the amounts due and received from each source, all receipts, vouchers and other documents kept or that may be required to be kept and necessary to identify and prove the validity of every transaction, and all statements and reports made or required to be made for the internal administration of the office to which they pertain, and all reports published or that may be required to be published for the information of the people regarding any and all details of the financial administration of such public affairs. The chief inspector shall also formulate, prescribe and install a system of accounting for the civil accounts of the justices of the peace, which shall exhibit true ac-

counts and detailed statements of the services rendered, the name and address of the persons for whom rendered, the charges made and collected therefor and such other information as may be necessary to identify the transaction.

The system of accounting prescribed and formulated by the chief inspector and any changes made therein from time to time shall, before becoming operative, be approved by the board of public works.

Sec. 3. *Separate Accounts for Different Appropriations.*—Separate accounts shall be kept for every appropriation or fund made or levied by a local governing body, showing the date and manner of each payment made out of the funds provided by such appropriation or levy, the name, address and vocation of each person, organization, corporation or association to whom paid, and for what purpose paid. Separate accounts shall be kept for each department, public improvement, undertaking, institution and public service industry under the jurisdiction of every local governing agency; and all service rendered by or property transferred from one department, public improvement, undertaking, institution or public service industry to another shall be paid for at its true and full value by the department, public improvement, undertaking, institution or public service industry receiving the same; and no department, public improvement, undertaking, institution or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another department, public improvement, undertaking, institution or public service industry. All unexpended balances or appropriations shall be transferred to the credit of the fund from which originally appropriated or levied whenever the account with an appropriation is closed.

Sec. 5. *Reports to and by Chief Inspector.*—The chief inspector shall require from every local taxing agency financial reports covering a full period of each fiscal year, in accordance with the forms and methods prescribed by him, which shall be uniform for all accounts of the same class. Such reports shall contain an accurate statement

in summarized form of all collections made by or receipts received by the officers from all sources, all accounts due the public but not collected, and of all expenditures for every purpose, and by what authority authorized, and also: (a) A statement of all costs of ownership and operation and of all income of each and every public service industry owned and operated by a municipality; (b) a statement of the entire public debt of every taxing body to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, the provisions made for the payment of the debt, together with such other information as may be required by the chief inspector. Such reports shall be certified as to their correctness by the chief inspector or by his assistant appointed by him for the purpose. Their substance shall be published in a biennial volume of comparative statistics that shall be issued for each class of accounts at the expense of the state as a public document, and shall be submitted by the chief inspector to the governor for transmittal to the Legislature.

Sec. 6. *Accounts and Reports by Local Public Officers.*—All local governing officers, departments, boards and commissions shall keep their financial accounts in records and forms approved or prescribed by the chief inspector of public offices and shall furnish promptly to the chief inspector of public offices such information and reports as may be requested. Refusal or neglect to comply with the requirements of this section shall subject the person offending to removal from office. In case an officer or employee of a local governing agency collects or receives funds for the account of a local governing agency of which he is not an officer or employee, he shall remit to the proper officer of the local governing agency for whose account the collection was made or payment was received, the full amount collected or received for the account of such local governing agency.

Sec. 7. *Examination into Affairs of Local Public Officers.*—The chief inspector shall have power by himself, or by any person appointed by him to perform the service, to examine into all financial affairs of every local govern-

mental office or agency (including district offices) and shall make such an examination at least once a year, if practicable. On every such examination inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office, whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with, and also inquire into the methods and accuracy of the accounts, and as to such other matters of audit and accounting as the chief inspector may prescribe. He or any of his assistants shall have power and may exercise all the authority to issue subpoenas and compulsory process, and to direct the service thereof by any constable or sheriff, to compel the attendance of witnesses and the production of books and papers before him at any designated time and place, selected in their respective county, and to administer oaths. If any person shall refuse to appear before said chief inspector or his assistants when required so to do, or shall refuse to testify in regard to any matter or refuse to produce any books or papers in his possession or under his control, he shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than one hundred dollars and imprisoned not more than six months. Wilful false swearing in such examinations shall be punishable as such. A report of each examination shall be made in duplicate, one copy to be filed in the office of the state tax commissioner and one in the auditing department of the agency. If any such examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be filed with the proper legal authority of the agency for such legal action as is proper in the premises. Refusal, neglect, or failure on the part of the proper legal authority of the agency to take prompt and efficient legal action to carry into effect the findings of any such examination, or to prosecute the same to a final conclusion, shall give to the chief inspector the right to institute the necessary proceedings, or to participate therein, and to prosecute the same in any of the courts of the state, to a final conclusion.

Sec. 8. *Cost of Services of Chief Inspector; Revolving Fund.*—The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution, shall be paid by the county court of the county; the cost thereof as to any board of education shall be paid by such board; the cost thereof as to any municipal corporation shall be paid by the authorities thereof: *Provided,* That in municipalities in which the total revenue from all taxes does not exceed the sum of two thousand dollars annually, such cost including the per diem and all actual costs and expenses of such services shall not exceed the sum of sixty dollars. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help and such other costs as may be necessary to enable them to perform the services required. The chief inspector shall render to the agency liable for such cost a statement thereof as soon after the same was incurred as practicable, and it shall be the duty of such agency to allow the same, and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid, and such total amount shall constitute a debt against the local agency due the state. Whenever there is in the state treasury a sum of money due any such county court, board of education or municipality from any source, upon the application of the chief inspector, the same shall be at once applied on the debt aforesaid against the county court, board of education or municipality, and the fact of such application of such fund shall be reported by the auditor to the said county court, board of education or municipality, which report shall be a receipt for the amount therein named. All money received by the chief inspector from this source shall be paid into the state treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of such services, unless otherwise directed by the Legislature. The cost of any such examination, service or act by the chief inspector made necessary, or

such part thereof as was made necessary, by the wilful fault of any officer or employee, may be recovered by the chief inspector from such person, on motion, on ten days' notice in any court having jurisdiction.

For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:

(1) There shall be appropriated from the state fund general revenue the sum of twenty-five thousand dollars to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service.

(2) Payments received for the cost of services of the chief inspector's office shall be deposited into this revolving fund, which shall be known as the chief inspector's fund.

(3) Any appropriations made to this fund shall not be deemed to have expired at the end of any fiscal period.

Sec. 9-a. *Public Inspection of Reports.*—All reports of examinations and audits of public offices made in accordance with the provisions of section seven of this article, and the copies thereof, when filed in the office of the chief inspector of public offices or in the office of the state tax commissioner, shall be public documents and shall be available for public inspection.

Sec. 10. *Statutory References to Audits or Examinations by Tax Commissioner, Inspector or Supervisor of Public Offices.*—Whenever any statute refers to an audit or examination of a state department or agency by the tax commissioner or inspector and/or supervisor of public offices, if within the prescribed functions and duties of the legislative auditor in making post audit of such state department or agency, and in order to avoid duplication, the reference shall be deemed to be made to the legislative auditor to whom such functions and duties have been transferred.

# CHAPTER 130

**(House Bill No. 186—By Mr. Peters and Mr. Speaker, Mr. Singleton)**

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thrity-one, as amended, and to enact in lieu thereof a new article six, creating a civil service system for the state of West Virginia.

## Article 6. Civil Service System.

Section

1. General purpose.
2. Classified service; exceptions therefrom.
3. State personnel department generally; transfer of personnel, funds, equipment, etc.
4. Selection and appointment of director of personnel; qualifications and removal.
5. Merit system council transformed into civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.
6. Duties of commission generally.
7. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.
8. Rules of commission.
9. Duty to furnish facilities for department use.
10. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
11. Status of present employees.
12. Certification of pay rolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of pay roll.
13. Appeals by employees to commission; hearings; review by court of appeals.
14. Records of the state personnel department.
15. Services to political subdivisions; cooperation for agencies for other jurisdictions.
16. Retirement system.
17. Oaths, testimony, and the production of records; immunity from suit.
18. Refusal to testify.
19. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.
20. Unlawful acts prohibited.
21. Penalties.
22. Appropriations; cost of administering article; acceptance of grants, contributions, etc.
23. Separability.

*Be it enacted by the Legislature of West Virginia:*

That article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be repealed and a new article six be enacted in lieu thereof to read as follows:

Section 1. *General Purpose.*—The general purpose of this article is to attract to the service of this state personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions in the state service shall be made solely on the basis of merit and fitness, except as hereinafter specified.

Sec. 2. *Classified Service; Exceptions Therefrom.*—(a) The classified service to which this law shall apply shall comprise all positions covered by the present merit system at the effective date of this article and the following positions in the state tax commission and the public service commission: Procurement officer; supervisor of field deputies; supervisor, supervisor I and field auditors of the cigarettes, soft drinks, general license and store license division; supervisor and field auditors of the accounting division; supervisor and research analysts of the public utility division; supervisor of the assessment and levy division; supervisor of the cashier's division; supervisor, senior accountant and auditors of the consumers' sales tax division; the supervisor, assistant supervisor and auditors of the gasoline excise division; supervisor and assistant division director of the inheritance tax division; supervisor, revenue examiners and field auditors of the business and occupation tax division; supervisor and field appraisers of the property evaluation division; the supervisor of the property evaluation assessment and equalization division; supervisor of the tabulation division; chief and assistant chief of the rate and tariff department; chief accountant, assistant chief accountant, and senior accountants of the accounting department; chief engineer, senior engineers, senior gasoline engineers, senior electrical engineers and staff engineers of the engineering department; and assistant director and rate analysts of the motor carrier department.

The governor may, by executive order, with the written consent of the civil service commission and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include the following:

(1) The state Legislature and other officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.

(3) One principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature, other than the civil service commission and the director of personnel.

(4) Not more than fifteen employees in the office of the governor.

(5) Judges, referees, receivers, jurors and notaries public.

(6) The secretaries and clerks of each judge of a court of record.

(7) Patients or inmates employed in state institutions.

(8) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor.

(9) All employees assigned to the executive mansion.

(10) Janitors and laborers employed by any agency.

(11) Managers and clerks of liquor stores.

(12) Superintendent, county maintenance of roads, and all personnel under his supervision.

(13) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety working days a year.

(14) All clerical employees who are not under the present merit system and whose jobs do not require special knowledge or skill and training in the operation of business machines.

All excepted positions to be termed unclassified service. Nothing herein shall be construed as precluding the appointing authorities from filling any position in the manner in which positions in the classified service are filled.

Sec. 3. *State Personnel Department Generally; Transfer of Personnel, Funds, Equipment, etc.*—(a) There shall be in the state government a state personnel department, the executive head of which shall be a director of personnel. The employees of the present merit system office, with the exception of the merit system supervisor, are hereby transferred into the office of the director of personnel. Their services shall be considered continuous. In addition, all funds, equipment, supplies, personnel and property records, or anything of value now in the possession of the merit system council are hereby transferred to the state personnel department.

(b) In the department there shall be a civil service commission of three members, with the powers and duties hereinafter enumerated.

Sec. 4. *Selection and Appointment of Director of Personnel; Qualifications and Removal.*—After selection through open competitive examination, then upon recommendation of the civil service commission, the governor shall appoint a director of personnel, who shall be experienced in the field of personnel administration, and who is in known sympathy with the application of merit principles in public employment. The selection and appointment must be in conformity with civil service rules. The present merit system supervisor may be the appointee. The director of personnel may be removed by the civil service commission for cause only after he has been presented in writing with the reasons for his removal. He shall be given an opportunity, not less than fifteen days, to answer any charges either in writing or upon his request to be heard by the commission. The statement of reasons and answer or transcript of hearing shall be filed with the secretary of state as a public record. The decision of the commission, after a hearing, shall be final and not subject to appeal.

Sec. 5. *Merit System Council Transformed into Civil Service Commission; Qualifications of Members; Vacancies; Appointment and Terms of Members; Removal; Compensation; Chairman; Meetings; Advisory Board.*— (a) The present merit system council shall be transformed into the civil service commission. The members of the commission shall be persons in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization or shall hold, or be a candidate for, any paid public office. Not more than two members of the same political party shall serve on the commission at the same time.

(b) Vacancies in the present merit system council now being transferred by this article into the civil service commission occur June thirtieth, one thousand nine hundred sixty-one, June thirtieth, one thousand nine hundred sixty-two and June thirtieth, one thousand nine hundred sixty-three. The members of the commission shall be appointed by the governor by and with the advice and consent of the senate. On the first vacancy, one member shall be appointed for a term of four years, on the second vacancy, the member shall be appointed for a term of five years, and on the third vacancy, for a term of six years. Thereafter, each member shall be appointed for a term ending six years from the date of expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the commission shall hold office until his successor is appointed and qualified.

(c) A member of the commission may be removed by the governor only for cause, after being given a copy of charges against him and an opportunity to be heard publicly on such charges before the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state. The decision of the

governor, after a hearing, shall be final and not subject to appeal.

(d) Members of the commission shall each be paid twenty-five dollars for each day devoted to the work of the commission, but not more than six hundred dollars in any one year. They shall be entitled to reimbursement for necessary traveling and other expenditures necessitated by their official duties.

(e) The commission shall elect one of its members chairman. It shall meet at such time and place as shall be specified by call of the chairman or the directors. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Two members shall constitute a quorum for the transaction of business.

(f) There is hereby created an advisory board to advise the commission and the director in the administration of this article. The advisory board shall consist of the appointing authorities from all agencies having employees in the classified service.

Sec. 6. *Duties of Commission Generally.*—In addition to the duties expressly set forth elsewhere in this article, the commission shall:

(1) Represent the public interest in the improvement of personnel administration in the state service.

(2) Advise the governor and the director on problems concerning personnel administration.

(3) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the state service.

(4) Make any investigation which it may consider desirable concerning the administration of personnel in the state service, and make recommendations to the director with respect thereto.

(5) Make an annual report and special reports and recommendations to the governor.

(6) Approve the budget as prepared by the director

for administration of this article before submission to the director of the budget.

Sec. 7. *Duties of Director Generally; Designating Employee to Act in Absence of Director, Assistants in Preparation and Rating of Tests.*— (a) The director, as executive head of the department, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this article, it shall be his duty:

(1) To apply and carry out this article and the rules adopted thereunder.

(2) To attend meetings of the commission and to act as its secretary and keep minutes of its proceedings.

(3) To establish and maintain a roster of all employees in the state civil service, in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

(4) To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this law.

(5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling and welfare.

(6) To make available to the public information about vacancies in the classified service and to strive constantly to attract to the career service of this state people of the highest ability.

(7) To investigate from time to time the operation and effect of this law and of the rules made thereunder and to report his findings and recommendations to the commission and to the governor.

(8) To make an annual report regarding the work of the department, and such special reports as he may consider desirable, to the commission.

(9) To prepare the annual budget for the department of personnel and when approved by the commission, submit it to the director of the budget.

(10) To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this article.

(b) In the event of the absence of the director or his inability from any cause to discharge the powers and duties of his office, the commission may from time to time designate in writing an employee of the department to act for him. In such case, the powers and duties of the director shall devolve upon such employee designated by the commission.

(c) The director may designate appropriate persons, including officers and employees in the state service, to assist in the preparation and rating of tests. An appointing authority shall excuse any employee in his division from his regular duties for the time required for his work as an examiner. Such officers and employees shall not be entitled to extra pay for further services as examiners but shall be entitled to reimbursement for necessary traveling and other expenses.

Sec. 8. *Rules of Commission.*—The present merit system council rules shall be transformed into the temporary rules of the civil service commission and shall continue in effect until the director of personnel prepares and submits to the civil service commission new rules for the classified service.

Such new rules shall be filed and made effective in conformity with article two, chapter five of this code after public notice and public hearing. Amendments thereto may be made in the same manner. The new rules shall provide:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification has been approved by the commission, the director shall allocate the position of every employee in the classified service to one of the classes in the plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by

the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the commission. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the commission. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service; and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

Veterans who present proof of at least one year's honorable service to the United States in either of the World Wars or the Korean War shall be entitled to an additional five points on any examination and disabled veterans shall be entitled to an additional ten points: *Provided, however,* That no such additions shall be made where a veteran fails to pass the examination.

(4) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance and his score on written examination, when such examination is practicable. In filling vacancies an effort should be made to achieve a balance between promotion

from within the service and the introduction into the service of qualified new employees. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For the establishment of eligible lists for appointment and promotion, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority must make his selection from the top five names on the appropriate list of eligibles.

(6) For the rejection of candidates or eligibles who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination, or where in the judgment of the commission there is reasonable doubt of the loyalty of the candidate or eligible to the nation.

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete.

(8) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article in order to avoid stoppage of orderly conduct of the business of the state.

(9) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(10) For layoffs by reason of lack of funds or work, or abolition of a position, or material change in duties or organization, and for reemployment of employees so laid off, giving consideration in both layoffs and re-employment to performance record and seniority in service.

(11) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the director.

(12) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The commission and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

Sec. 9. *Duty to Furnish Facilities for Department Use.*—All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

Sec. 10. *Duties of State Officers and Employees; Legal Proceedings to Secure Compliance with Article and Rules.*—All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this law and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the director or the commission may request for any purpose of this article. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or

appropriate to secure compliance with this article and the rules and orders thereunder.

Sec. 11. *Status of Present Employees.*—(a) Employees under the present merit system at the effective date of this article: No employee shall lose any rights gained by appointment under the present merit system now being formulated into the civil service by this article. Employees who have gained permanent status under the present system will not be subject to further examination, except when they wish to qualify for promotion, and will continue in the position they hold. Their rights as permanent employees shall be continuous. Employees holding provisional appointments under the present merit system must qualify for permanent appointments under competitive examination.

(b) Employees holding positions included under classified service by this article or placed under the same by future action shall be required to take qualifying tests prescribed by the director.

Those employees who fail to qualify shall be dismissed from their positions within thirty days after establishment of an eligible list for their respective positions. Nothing in this article shall preclude the reclassification or reallocation as provided by this law of any position.

Sec. 12. *Certification of Pay Rolls; Failure of Appointing Authority to Comply with Order of Commission; Wrongfully Withholding Certification of Pay Roll.*—(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this law and the rules, regulations and orders thereunder. The director may for proper cause withhold certification from an entire pay roll or from any specific item or items thereon. The director may, however, provide that certification of pay rolls may be made once every six months, and such certification shall remain in effect

except in the case of any officer or employee whose status has changed after the last certification of his pay roll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

(b) If an appointing authority fails to comply with an order of the commission after a hearing, he shall be personally liable to the appealing employee for any salary due from the time of the final order of reinstatement by the commission.

(c) If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in the courts to compel the director to certify such payroll voucher or account.

Sec. 13. *Appeals by Employees to Commission; Hearings; Review by Court of Appeals.*—Any employee in the classified service who is dismissed or demoted after completing his probationary period of service or who is suspended for more than thirty days in any one year, may, within thirty days after such dismissal, demotion or suspension, appeal to the commission for review thereof. Upon such review, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply. If the commission finds that the aciton complained of was taken by the appointing authority without good cause, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his suspension. When any employee is dismissed and not reinstated after such appeal, the commission in its discretion may direct that his name be placed on an appropriate re-employment list, for employment in any similar position other than the one from which he has been removed. Any final action or decision taken or made hereunder shall be subject to review by the supreme court of appeals, if appeal is made within sixty days of the action or decision complained of.

Sec. 14. *Records of the State Personnel Department.*—The records of the department, except such records as the

rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the director.

Sec. 15. *Services to Political Subdivisions; Cooperation for Agencies for Other Jurisdictions.*—(a) Subject to the approval of the commission the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements. Subject to the approval of the commission, the director may enter into an agreement with the state department of health for the inclusion of personnel of local health departments under the civil service system established by this article.

(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this article.

Sec. 16. *Retirement System.*—The director will submit to the governor recommendations concerning the advisability and practicability of establishing an actuarially sound retirement and pension system for persons holding positions in the service.

Sec. 17. *Oaths, Testimony and the Production of Records; Immunity from Suit.*—The commission, each member of the commission and the director shall have power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this article. Any person who shall fail to appear in response to a subpoena or to answer

any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor. Immunity from civil suit is hereby granted for all relevant evidence offered at commission hearings.

Sec. 18. *Refusal to Testify.*—If any employee in the state service shall wilfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, he shall forfeit his office or position and shall not be eligible thereafter for appointment to any position in the state service.

Sec. 19. *Favoritism or Discrimination Because of Political or Religious Opinions, Affiliations or Race; Political Activities Prohibited.*— (a) No person shall be appointed or promoted to, or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(d) No employee in the classified service or member of the commission or the director shall, directly or indirectly, pay or promise to pay any assessment, subscription or contribution, or perform any service for any political party, or solicit or take any part in soliciting any such assessment, subscription, contribution or service. No person shall solicit any such assessment, subscription, contribution or service of any employee in the classified service.

(e) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(f) Any officer or employee in the state service who violates any of the foregoing provisions of this section shall forfeit his office or position, and for one year shall be ineligible for any office or position in the state service.

Sec. 20. *Acts Prohibited.*—(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the department, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this law, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

Sec. 21. *Penalties.*—(a) Any person who wilfully vio-

lates any provision of this article or of the rules shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for a period not to exceed one year, or both, in the discretion of the court. Jurisdiction under this section shall be in a court of record exercising criminal jurisdiction within the county wherein the offense is committed.

(b) Any person who is convicted of a misdemeanor under this article shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if he is an officer or employee of the state, shall forfeit his office or position.

Sec. 22. *Appropriations; Cost of Administering Article; Acceptance of Grants, Contributions, etc.*—(a) Appropriations shall be made from the general fund to the state personnel department to meet the estimated pro rata share of the cost of administering the provisions of this article for departments, commissions, boards or agencies which receive their sole support from the general fund or other state funds.

(b) The director shall maintain accurate records reflecting the cost of administering the provisions of this article. At the close of each quarter-year period he shall summarize the cost and shall bill each department, commission, board or agency which receives support from the federal government 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 for the appropriate calendar quarter.

(c) All departments, commissions, boards or agencies which receive support from the federal government shall include in their budgets sufficient amounts to meet their pro rata shares of the cost of administering this article and shall remit such shares quarterly to the state personnel department in the manner provided by law.

(d) The department is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purposes of this article.

Sec. 23. *Separability.*—If any provision of this article or of any rule, regulation or order thereunder or the application of such provision to any person or circumstance shall be held invalid the remainder of this article and the application of such provision of this article or of such rule, regulation or order to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

# CHAPTER 131

**(Com. Sub. for Senate Bill No. 39—Originating in the Senate Committee on the Judiciary)**

[Passed March 7, 1961; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections one through four, article nine, and sections one through eleven, article thirteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the establishment in the state government of a department of commerce and to its powers and duties.

## Article 9. Department of Commerce.

**Section**

1. Department created; appointment, term and compensation of commissioner; divisions of department; powers and duties of commissioner and division directors.
2. Advisory board; composition; appointment, term and qualification of members; authority generally; meetings and expenses.
3. General powers and duties.
4. Authority of governor.
5. West Virginia industrial and publicity commission and economic development agency abolished; records and equipment transferred; existing contracts; funds.
6. Statutory references.

*Be it enacted by the Legislature of West Virginia:*

That sections one through four, article nine, and sections one through eleven, article thirteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

Section 1. *Department Created; Appointment, Term and Compensation of Commissioner; Divisions of Department; Powers and Duties of Commissioner and Division Directors.*—There is hereby created in the state government a department of commerce and the office of commissioner of commerce. The commissioner shall be the chief executive officer of the department and shall be appointed by the governor by and with the advice and consent of the senate for a term of four years, which term shall run concurrently with the term of the governor or until said commissioner's successor is appointed and qualified. The annual compensation of the commissioner shall be fixed by the governor, but not in excess of fourteen thousand dollars. There shall be in the department of commerce a planning and research division, an industrial development division, and a travel development division. Each division shall be headed by a director, who shall be appointed by the commissioner of commerce, to serve at the will and pleasure of the commissioner of commerce. Each division director shall be qualified in his respective field by special training and experience. The director of the planning and research division shall be trained and have experience in the field of state, local or national economic planning. The director of the industrial development division shall be trained and have experience in the field of industrial development. The director of the travel development division shall be trained and have experience in the field of travel development.

The commissioner of commerce shall have control and supervision of the department of commerce and shall be responsible for the work of each of its divisions. Under the control and supervision of the commissioner of com-

merce, each division director shall be responsible for the work of his division. The commissioner of commerce shall have the authority to employ such assistants as may be necessary for the efficient operation of the department.

Sec. 2. *Advisory Board; Composition; Appointment, Term and Qualification of Members; Authority Generally; Meetings and Expenses.*—There is hereby established an advisory board for the department of commerce. The board shall be composed of seven members appointed by the governor for terms of four years and until their successors are appointed and qualified. There shall be at least one member appointed from each congressional district, and not more than four members shall be of the same political party. The first two members appointed shall serve for a period of one year; the second two for a period of two years; the next two for a period of three years; and the remaining member for a period of four years. Thereafter, all such appointments shall be made for a term of four years, except that in case of a vacancy, the appointment shall be made to fill the unexpired term. The members of the board shall be citizens and residents of the state, selected with special reference to their training and experience in relation to the principal activities required of the department of commerce, and for their ability and fitness to perform their duties within the purposes of this article. The board shall serve the department of commerce in an advisory capacity only. It shall have the authority and it shall be its duty:

(1) To advise with the commissioner of commerce concerning all administrative rules and regulations to be issued by the department.

(2) To advise with the commissioner of commerce as to all budget proposals to be submitted to the board of public works.

(3) To advise with the commissioner of commerce concerning such studies of economic conditions, travel promotion and industrial development as it may consider appropriate.

(4) To advise with the commissioner of commerce on any other matters applicable to the department of commerce if requested by the governor.

The board shall meet at the call of the commissioner of commerce, and each member of the board shall receive his actual and necessary traveling expenses incurred in the performance of his duties.

Sec. 3. *General Powers and Duties of Department.*—The department of commerce shall have the authority and, within the limits of available funds, it shall be its duty to:

(1) Investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interests and welfare of West Virginia business, industry and commerce, within and outside the state.

(2) Serve as a clearing house for industrial problems of the state.

(3) Promote and encourage the expansion and development of markets for West Virginia products.

(4) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business.

(5) 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 education activities necessary or useful for the proper execution of the powers and duties of the department.

(6) Plan and develop an effective business information service that will directly assist West Virginia industry and also encourage industries outside the state to use business facilities within the state.

(7) Compile, collect and periodically make available scientific indices and other information relating to current business conditions.

(8) Encourage and develop commerce with other states and devise methods of removing trade barriers that hamper the free flow of commerce between this and other states, and for these purposes cooperate with interstate commissions engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce.

(9) Conduct or encourage research designed to further new and more extensive uses of the natural and other

resources of the state, with a view to the development of new products and industrial processes.

(10) 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.

(10-a) 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.

(11) Study long-range trends and developments in the industries of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation of businesses within the state.

(12) Advertise and publicize the material, economic and other advantages of the state which render it a desirable place for business and residence.

(13) 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.

(14) 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.

(15) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions and industrial advantages of the state.

(16) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any or all of the purposes specified in this section.

(17) Publish information as an aid to planning on both community and state levels, and provide planning assistance and do planning work, including surveys, land use studies, urban renewal plans, technical services and other elements of comprehensive planning programs, in and for any counties, cities, towns and regions; and, for this purpose, to accept and utilize any funds, personnel or other assistance made available by the federal government or

any of its agencies, or made available from any other source, public or private; and, notwithstanding the provisions of any other law and for the purposes of receiving and using federal planning grants for providing urban planning assistance, to serve as the official state planning agency of the state and, to these ends, to enter into agreements or contracts regarding the acceptance or utilization of such funds or assistance for any of the purposes authorized by this article.

(18) Enter into agreements with federal and state departments or agencies, including those of other states, and any other groups which are in harmony with the purposes of this article, as well as with counties or municipalities of this state, for the promotion of and for the rendering of consultive service with respect to the planning of the county or municipality, and the agreement may provide that the county or municipality shall pay part or all of the expense of such service. In this connection, the department of commerce is hereby expressly authorized to participate in the federal planning assistance programs as set forth in the "Federal Housing Act of 1954", as amended, and any subsequent acts, to give planning assistance to municipalities, whatever their size, and metropolitan and regional areas, and any other areas now or hereafter engaged in such activity; and to accept, on behalf of said municipalities, metropolitan and regional areas, funds provided by the government of the United States in accordance with the aforesaid "Federal Housing Act of 1954", as amended. Also, the department of commerce shall be the official state government department to administer and supervise any provisions of a federal area redevelopment act, and is expressly authorized to participate in any federal area redevelopment act within the limits of the funds that are or may be made available for such purposes. The above duties are specifically assigned to the planning and research division within said department of commerce.

(19) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other re-

sources 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, and to expend appropriations to the department for such purposes.

(20) Prepare and maintain a comprehensive plan for the physical, social, and economic development of the state; and the department shall prepare and keep current a proposed long-range program of major state improvements relating to the comprehensive development of natural and artificial resources of this state, and shall cooperate with existing federal and state departments and other agencies or groups in perfecting and promoting the aforesaid comprehensive plan.

(21) Assist voluntary county or regional councils or groups in order to help effectuate the purposes of this article on a local level.

(22) 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.

Sec. 4. *Authority of Governor.*—The governor is hereby authorized to direct by executive order as may be necessary to effectuate the purposes of this article, but not inconsistent with the provisions of this article: The transfer to the department of commerce of such records and equipment, the performance by the department of such additional functions and duties and the discontinuance of such functions of any other state officer or agency as may be necessary to effectuate the purposes of this article.

Sec. 5. *West Virginia Industrial and Publicity Commission and Economic Development Agency Abolished; Records and Equipment Transferred; Existing Contracts; Funds.*—(a) The West Virginia industrial and publicity commission and the economic development agency are hereby abolished, as of the effective date of this article, and the terms of the members of the aforesaid commission

and of the aforesaid agency now holding office, and the employment of all officers and employees of the aforesaid commission and of the aforesaid agency, shall expire and terminate upon that date.

(b) All books, papers, maps, charts, plans, literature and other records, and all equipment in the possession of the West Virginia industrial and publicity commission and of the economic development agency upon the effective date of this article, or of any member, officer or employee thereof, shall be delivered or turned over to the department of commerce.

(c) All existing contracts and obligations of the West Virginia industrial and publicity commission and the economic development agency shall remain in full force and effect and shall be performed by the department of commerce.

(d) The unexpended balance existing on the effective date of this article in any appropriation made to the West Virginia industrial and publicity commission and the economic development agency is hereby transferred and appropriated to the department of commerce, for the fiscal period ending the thirtieth day of June, one thousand nine hundred sixty-one, for the purpose of carrying out the powers and duties of the West Virginia industrial and publicity commission and the economic development agency transferred to the department of commerce by this article, and for the payment of any bills or encumbrances incurred by the West Virginia industrial and publicity commission and the economic development agency prior to, and remaining unpaid on, the effective date of this article.

Sec. 6. *Statutory References.*—Whenever any statute of the state refers to an officer or agency of the state whose functions and duties are by this article transferred to another officer or agency of the state, the reference shall be understood to be made to the officer or agency, as the case may be, to which the functions and duties have been transferred.

# CHAPTER 132

(Senate Bill No. 21—By Mr. Carson, Mr. President)

[Passed March 3, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal articles five and eight, chapter five; section ten, article nine, chapter six; section ten-a, article one, chapter twenty-five; chapter twenty-five-a; and articles eight and eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter five-a, all relating to the administration and financial affairs of the state and to the department of finance and administration, its powers and duties.

## CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION

**Article**

1. **Department of Finance and Administration.**
2. **Budget Division.**
3. **Purchasing Division.**
4. **General Services Division.**

*Be it enacted by the Legislature of West Virginia:*

That articles five and eight, chapter five; section ten, article nine, chapter six; section ten-a, article one, chapter twenty-five; chapter twenty-five-a; and articles eight and eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter five-a, to read as follows:

### Article 1. Department of Finance and Administration.

**Section**

1. Definitions.
2. Department of finance and administration; commissioner; divisions.
2-a. Powers and duties of commissioner.
3. Council of finance and administration.
4. Annual report by commissioner.
5. Oath and bond of commissioner; bonds for directors and employees.
6. Delegation of powers and duties by commissioner and directors.

Section 1. *Definitions.*—For the purpose of this chapter:

"Commissioner" means the commissioner of finance and administration and, as used in article two of this chapter, the director of the budget.

"Board" means the board of public works.

"Director" means the director of the division referred to in the heading of the article in which the word appears.

"Spending unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

"Spending officer" means the executive head of a spending unit, or a person designated by him.

"Commodities" means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of the state government.

"Contractual services" shall include telephone, telegraph, electric light and power, water and similar services.

"Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

"Expendable commodities" means those commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

"Removable property" means any personal property not permanently affixed to or forming a part of real estate.

Sec. 2. *Department of Finance and Administration; Commissioner; Divisions.*—The department of finance and administration and the office of commissioner of finance and administration are hereby created in the state government. The commissioner shall be the chief executive officer of the department and director of the budget and shall be appointed by the governor, by and with the advice and consent of the senate, for a term not exceeding the term of the governor. The annual compensation of the commissioner shall be ten thousand dollars. There shall be in the department of finance and administration a budget division, a purchasing division and a general services division. Each division shall be headed by a director,

who shall be appointed by the commissioner to serve at his will and pleasure.

Sec. 2-a. *Powers and Duties of Commissioner.*—The commissioner shall have control and supervision of the department of finance and administration and shall be responsible for the work of each of its employees. The commissioner shall have the authority to employ such assistants as may be necessary for the efficient operation of the department. The commissioner, the division heads and the employees of the department shall perform the duties herein specified and shall also perform such other duties as the board may prescribe.

Sec. 3. *Council of Finance and Administration.*—The council of finance and administration is hereby created and shall be composed of ten members, four of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the governor, attorney general, the state treasurer and the state auditor. From the membership of the Legislature, the president of the senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the house shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the senate and the speaker of the house shall serve at the will and pleasure of the officer making their appointment. The commissioner of finance and administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof.

The council shall serve the department of finance and administration in an advisory capacity only, and shall have the following duties:

(1) To advise with the commissioner as to all budget proposals to be submitted to the board of public works;

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

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

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

Sec. 4. *Annual Report by Commissioner.*—The commissioner shall make an annual report to the governor and to the board concerning the conduct of the department and the administration of the state finances. He shall also make such other reports as the governor and the board may require.

Sec. 5. *Oath and Bond of Commissioner; Bonds for Directors and Employees.*—The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by section five, article four of the constitution. He shall execute a bond in the penalty of twenty-five thousand dollars, approved by the board, in form prescribed by the attorney general, and conditioned upon the faithful performance of his duties and the accounting for all money and property coming into his hands by virtue of his office. The oath and bond shall be filed with the secretary of state. The division heads and all other employees shall be covered by bonds in cases where the commissioner thinks it necessary, which bonds shall be in the penalty prescribed by the commissioner and shall be filed with the secretary of state.

Sec. 6. *Delegation of Powers and Duties by Commissioner.*—The powers and duties vested in the commissioner by this chapter may be delegated by him to his assistants and employees, but the commissioner shall be responsible for all official acts of the department.

## Article 2. Budget Division.

**Section**

1. Budget division; powers and duties.
2. Director of the budget; powers and duties.
3. Requests for appropriations; copies to legislative auditor.
4. Contents of requests.
5. Forms of requests.
6. Information concerning state finances.

7. Appropriations for the judiciary.
8. Examination of requests for appropriation.
9. Appropriations for other than spending units.
10. Preparation of tentative budget submitted to board.
11. Itemization of tentative budget.
12. Powers of the commissioner in the administration of expenditures.
13. Reports on revenue collections.
14. Expenditure schedules.
15. Examination and approval of expenditure schedules.
16. Reserve for emergencies.
17. Requests for quarterly allotments; approval by board.
18. Limitation on expenditures.
19. Transfers between items of an appropriation; notices to auditor and treasurer.
20. Expenditure of excess in collections; notices to auditor and treasurer.
21. Records by spending units.
22. Reduction of appropriations.
23. General fund; pro rata reductions.
24. Other funds; pro rata reductions.
25. Reduction after classification of appropriations.
26. Approval of commissioner of requests for federal aid.
27. Management accounting.
28. System of accounting to be certified to legislative auditor.
29. Expenditure of appropriations.
30. Expenditure procedure; other than for purchases of commodities.
31. Expenditure procedure for purchase of commodities.
32. Requisition for payment of personal services.
33. Legislative and judicial expenditures.
34. Additional powers and duties of commissioner.
35. Classification of employment and compensation by certain departments.
36. Certification of personnel by spending officer.
37. Personnel, classification and compensation schedules.
38. To whom personnel provisions not to apply.

Section 1. *Budget Division; Powers and Duties.*—The budget division shall act as staff agency for the board of public works in the exercise of its powers and duties under section fifty-one, article six of the state constitution, and shall exercise and perform the other powers and duties conferred upon it by this article.

Sec. 2. *Director of the Budget; Powers and Duties.*—The commissioner, under the immediate supervision of the board, shall have the power and duty to:

(1) Exercise general supervision of, and make rules and regulations for, the government of this division;

(2) Prepare, in accordance with this article, requests for appropriations, estimates of cost and the contents of the state budget into a tentative budget for submission to the board;

(3) Administer the budget in accordance with this article;

(4) Serve as staff agency to the board in the consideration of requests for appropriations and the preparation of the budget document;

(5) Make such investigations and submit such reports as the board may require;

(6) Make a continuous study of state expenditures and make such recommendations to the board for the more economical use of state funds as he shall find practicable;

(7) Render assistance to spending officers with respect to the fiscal affairs of spending units;

(8) Exercise such other powers as are vested in him by this article, or which may be appropriate to the discharge of his duties.

Sec. 3. *Requests for Appropriations; Copies to Legislative Auditor.*—The spending officer of each spending unit, other than the Legislature and the judicial branch of state government, shall on or before the first day of September of each year submit to the commissioner a request for appropriations for the fiscal year next ensuing. Immediately upon receipt of such requests, the commissioner shall transmit two copies thereof to the legislative auditor for the use of the finance committees of the Legislature.

Sec. 4. *Contents of Requests.*—A request for an appropriation for a spending unit shall specify and itemize in written form:

(1) A statement showing the amount and kinds of revenue and receipts collected for use of the spending agency during the next preceding fiscal year and anticipated collections for the fiscal year next ensuing;

(2) A statement by purposes and objects, of the amount of appropriations requested for the spending unit without deducting the amount of anticipated collections of special revenue, special general revenue, federal aid or other receipts;

(3) A statement showing the actual expenditures of the spending unit for the last preceding year and estimated expenditures for the current fiscal year itemized by purposes and objects, including those from regular and supplementary appropriations, federal aid, private contributions, transfers, allotments from an emergency or con-

tingent fund and any other expenditures made by or for the spending unit;

(4) A statement showing the number, classification and compensation of persons employed by the spending unit distinguishing between regular, special and casual employees during the last preceding fiscal year and during the current fiscal year. The statement shall show the personnel requirements in similar form for the ensuing fiscal year for which appropriations are requested;

(5) A statement showing in detail the purposes for which increased amounts of appropriations, if any, are requested; and giving a justification statement for the expenditure of the increased amount. A construction or other improvement request shall show in detail the kind and scope of construction or improvement requested;

(6) A statement of money claims against the state arising out of the activities of the spending unit;

(7) Such other information as the commissioner may request.

Sec. 5. *Forms of Requests.*—The commissioner shall specify the form and the detail of itemization of requests for appropriations and statements to be submitted by a spending unit. He shall furnish blank forms for this purpose.

Sec. 6. *Information Concerning State Finances.*—The commissioner shall ascertain for the last preceding year and as estimated for the current fiscal year:

(1) The condition of each of the funds of the state;

(2) A statement of all revenue collections both general and special;

(3) Such other information relating to the finances of the state as the governor may request.

Sec. 7. *Appropriations for the Judiciary.*—The governor shall transmit to the commissioner the appropriations required by law for the judiciary for the fiscal year next ensuing and which have been certified to the governor by the auditor. The auditor shall certify such appropriations to the governor in accordance with section fifty-one, article six of the state constitution, on or before September first of each year.

Sec. 8. *Examination of Requests for Appropriations.*—The commissioner shall examine the requests of a spending unit with respect to requested appropriations, itemization, sufficiency of justification statements, and accuracy and completeness of all other information which the spending officer is required to submit.

If the commissioner finds a request, report, or statement of a spending unit inaccurate, incomplete or inadequate, he shall consult with the spending officer of the unit and require the submission of the requests in proper form and content. The commissioner shall assist spending officers in the preparation of their requests.

Sec. 9. *Appropriations for Other Than Spending Units.*—A person or organization, other than a spending officer, who desires to request a general appropriation in the state budget, shall submit his request to the commissioner on or before the first day of September of each year. The request shall be in the form prescribed by the commissioner and shall be accompanied by a justification statement.

Sec. 10. *Preparation of Tentative Budget Submitted to Board.*—The commissioner shall prepare for the consideration of the board a tentative budget for the fiscal year next ensuing. The budget shall state, at least, actual receipts and expenditures for the fiscal year next preceding, estimated receipts and expenditures for the current fiscal year, and it shall state also the requested amounts, or estimates, for the fiscal year next ensuing with respect to:

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

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

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

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

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

On or before December first, the commissioner shall submit the tentative budgets to the board. The commissioner shall convey to the board all explanatory and justi-

fication statements and statements of personnel requirements of spending units as reported and filed in his office.

Sec. 11. *Itemization of Tentative Budget.*—The tentative budget submitted by the commissioner shall itemize appropriations separately for:

(1) "Personal services" which shall mean salaries, wages, fees and other compensation for skill, work or employment;

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

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

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

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

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

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

Sec. 12. *Powers of the Commissioner in the Administration of Expenditures.*—The commissioner shall supervise and control the expenditure of appropriations made by the Legislature except those made to the Legislature and those made to the judicial branch of the state government. The expenditure of an appropriation made by the Legislature except that made for the Legislature itself and the judicial branch of the state government shall be conditioned upon compliance by the spending unit with the provisions of this article. An appropriation made by the Legislature except that made for the Legislature itself and

the judicial branch of the state government shall be expended only in accordance with this article.

Sec. 13. *Reports on Revenue Collections.*—The commissioner shall ascertain the collection of the revenue of the state, and shall determine each quarter of the fiscal year the proportion which the amount actually collected bears to the collection estimated for that period. The commissioner shall certify to the board, as soon as possible after the close of each quarter, and at such other times as the board may request, the condition of the state revenues and of the several funds of the state. For the purposes of this section, the commissioner shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

Sec. 14. *Expenditure Schedules.*—Prior to the beginning of each fiscal year, the spending officer of a spending unit shall submit to the commissioner a detailed expenditure schedule for the ensuing fiscal year. The schedule shall be submitted in such form and at such time as the commissioner may require.

The schedule shall show:

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

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

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

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

The commissioner shall consult with and assist spending officers in the preparation of expenditure schedules.

Sec. 15. *Examination and Approval of Expenditure Schedules.*—The commissioner shall examine the expenditure schedule of each spending unit, and if he finds that it conforms to the appropriations made by the Legislature, the requirements of this article, and is in accord-

ance with sound fiscal policy, he shall approve the schedule.

The expenditure of the appropriations made to a spending unit shall be only in accordance with the approved expenditure unless the schedule is amended with the consent of the commissioner, or unless appropriations are reduced in accordance with the provisions of sections twenty-two to twenty-five, inclusive, of this article.

Sec. 16. *Reserve for Emergencies.*—The commissioner, with the approval of the board, may require that an expenditure schedule provide for a reserve for emergencies out of the total amount appropriated to the spending unit. The amount of the reserve shall be determined by the commissioner in consultation with the spending officer.

Sec. 17. *Requests for Quarterly Allotments; Approval by Board.*—At least thirty days prior to the beginning of each quarter of the fiscal year, each spending officer shall submit to the commissioner a request for an allotment of public funds sufficient to operate the unit during the ensuing quarter in accordance with the approved expenditure schedule.

The commissioner shall examine the requests and, if he finds that the amounts requested are in accordance with the approved expenditure schedules and are in accordance with sound fiscal policy, he shall submit the requests to the board. The commissioner shall also submit a summary statement showing the amounts expended under the budget for each preceding quarter of the fiscal year and the total amount requested for allotment during the ensuing quarter.

The board shall consider the amount of requests for allotment and the collection of revenues. If the board finds that the collection of revenue warrants the expenditure of the amount requested in the allotment, it shall approve the allotment of funds for the ensuing quarter. If the board finds that the collection of revenue does not warrant the allotment of the requested amount, it may reduce the amount of allotments pending the collection of sufficient revenue.

Sec. 18. *Limitation on Expenditures.*—The expenditures of a spending unit during a quarter of the fiscal year shall not exceed the amount of the approved allotment, unless the board approves the expenditure of a larger amount. Any amounts remaining unexpended at the close of the quarter shall be available for reallocation and expenditure during any succeeding quarter of the same fiscal year.

Sec. 19. *Transfers Between Items of an Appropriation; Notices to Auditor and Treasurer.*—Upon the written request of a spending officer, the commissioner may, with the approval of the board, transfer amounts between items of the total appropriation for a spending unit in order to protect or increase the efficiency of the service, but a transfer shall not increase the total amount appropriated for personal services. Notices of any such transfer shall be sent to the state auditor and the state treasurer.

Sec. 20. *Expenditure of Excess in Collections; Notices to Auditor and Treasurer.*—If the amount actually collected by a spending unit exceeds the amount which it is authorized to expend from collections, the excess in collections shall be set aside in a special surplus fund for the spending unit. Expenditures from this fund shall be made only in accordance with the following procedure:

The spending officer shall submit to the commissioner:

(1) A plan of expenditure showing the purposes for which the surplus is to be expended, and

(2) A justification statement showing the reasons why the expenditure is necessary and desirable.

The commissioner shall submit the request to the board with his recommendation.

If the board approves the plan of expenditure and justification statement, and is satisfied that the expenditure is required to defray the additional cost of the service or activity of the spending unit, and that the expenditure is in accordance with sound fiscal policy, it may authorize the use of the surplus during the current fiscal year. Notices of such authorization shall be sent to the state auditor and the state treasurer.

An expenditure from a special surplus fund without the

authorization of the board, or other than in accordance with this section, shall be an unlawful use of public funds.

Sec. 21. *Records by Spending Units.*—A spending unit shall submit to the commissioner such reports with respect to the work and expenditures of the unit as the commissioner may request for the purposes of this article.

Sec. 22. *Reduction of Appropriations.*—The board may reduce appropriations according to any of the methods set forth in sections twenty-three, twenty-four and twenty-five of this article.

Sec. 23. *General Fund; Pro Rata Reductions.*—If the board determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or a deficit in the general fund, it may instruct the commissioner to reduce equally and pro rata all appropriations out of general revenue in such a degree as may be necessary to prevent an overdraft or a deficit in the general fund.

Sec. 24. *Other Funds; Pro Rata Reductions.*—The board, in the manner set forth in section twenty-three, may reduce appropriations from:

(1) Funds supported by designated taxes or fees;

(2) Fees or other collections set aside for the support of designated activities or services.

Each fund and each fee or collection account shall be treated separately, but appropriations from the same fund or account shall be treated equally and reduced pro rata.

Sec. 25. *Reduction after Classification of Appropriations.*—If the board determines that the reductions authorized in sections twenty-three and twenty-four will dangerously impair the existence of the essential services of government, it may instruct the commissioner to reduce the amount to be expended from separate appropriations in accordance with the following method:

(1) The commissioner shall first classify appropriations as follows:

Class one: For agencies collecting revenue and administering the fiscal operations of government, including the

offices and departments of the tax commissioner, auditor, treasurer, and sinking fund commission;

Class two: For agencies vested with the supervision, control, and direction of executive policy and law enforcement, including the governor's office, the attorney general's office, the department of finance and administration, and the department of public safety;

Class three: For state institutions, educational, charitable and corrective;

Class four: For other departments and services of the state government;

Class five: For transfers from the general fund.

(2) The commissioner shall first reduce the appropriations from class five and then, if necessary, for the other classes in descending numerical order as follows:

Class four, class three, class two, class one. All reductions shall be in multiples of five per cent, but a fixed relationship shall be maintained between the classes which shall be measured by a difference of five per cent in the rate of reduction. The maximum reduction shall not exceed twenty-five per cent in class five and in the other classes it shall be proportional according to the following table:

| Classes | Five | Four | Three | Two | One |
|---|---|---|---|---|---|
| Per cent | 5% | | | | |
| of reductions | 10% | 5% | | | |
| from | 15% | 10% | 5% | | |
| total | 20% | 15% | 10% | 5% | |
| appropriations | 25% | 20% | 15% | 10% | 5% |

Sec. 26. *Approval of Commissioner of Requests for Federal Aid.*—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. When such federal authority has approved the request or budget, the agency of the state government shall re-submit it to

the commissioner for recording before any allotment or encumbrance of the federal funds can be made. 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 for his information the amount of the federal funds so granted or allocated.

Sec. 27. *Management Accounting.*—The commissioner shall formulate the requirements of a system of management accounting for the planning, management, reporting, and control of state expenditures. The requirements shall include methods for recording the collection of all income, amounts available for expenditure. obligations. encumbrances and disbursements for each spending unit, and publication of a detailed statement of receipts and expenditures of state moneys. The system shall include the accounts to be kept by the commissioner, the auditor, and the treasurer. The commissioner shall, after the system has been approved by the board of public works, require its use by all spending units.

The board is hereby authorized to direct by executive order, not inconsistent with the provisions of this article, the transfer of such records, equipment, personnel, and appropriations between the departments of finance and administration, the auditor, and the treasurer as may be necessary to effectuate the purposes of central accounting and reporting.

Sec. 28. *System of Accounting to Be Certified to Legislative Auditor.*—The commissioner shall certify the system of accounting and reporting installed pursuant to the provisions of this article, and any changes made therein, to the legislative auditor.

Sec. 29. *Expenditure of Appropriations.*—The expenditure of an appropriation made by the Legislature shall be conditioned upon compliance by the spending unit with the following provisions of this article.

Sec. 30. *Expenditure Procedure; Other Than for Purchases of Commodities.*—A requisition for expenditure,

other than an order for the purchase of commodities, shall be submitted as follows:

(1) The spending officer shall prepare and submit to the director a requisition showing the amount, purpose, and appropriation from which the expenditure is requested;

(2) The director shall examine the requisition and determine whether the amount is within the quarterly allotment, is in accordance with the approved expenditure schedule, and otherwise conforms to the provisions of this article;

(3) If the director approves the requisition, he shall encumber the proper account in the amount of the requisition and shall transmit the requisition to the auditor for disbursement in accordance with law;

(4) If the director disapproves the requisition, he shall return it to the spending unit with a statement of his reasons.

Sec. 31. *Expenditure Procedure for Purchase of Commodities.*—If a requisition is a request for a purchase of commodities, the spending unit shall transmit the requisition to the budget division for the purpose of ascertaining whether it conforms to the expenditure schedule. If it does not so conform, the requisition shall be returned by the budget division to the spending unit. If it conforms, the budget division shall transmit the requisition to the purchasing division for purchase in accordance with article three of this chapter. When a copy of the purchase order issued pursuant thereto is received from the purchasing division by the director in accordance with the provisions of section sixteen, article three of this chapter, the director shall ascertain whether the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order, and, if so, shall encumber the proper account and so certify the fact to the purchasing division, and, if not, shall notify the purchasing division which, upon receipt of such notification, shall return the requisition to the spending unit.

Sec. 32. *Requisition for Payment of Personal Services.*—A requisition for the payment of personal services shall upon receipt by the director be checked against the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the director.

Sec. 33. *Legislative and Judicial Expenditures.*—The provisions of sections thirty-two, thirty-three and thirty-four of this article shall not apply to the expenditure of amounts appropriated for the use of the Legislature or for the judiciary. In the case of appropriations made for the Legislature, the clerk of the house of delegates, or the clerk of the senate, as the case may be, shall present his requisition directly to the auditor. In the case of appropriations made for the judiciary, the clerk of the court shall present his requisition or claim directly to the auditor. In the case of appropriations made for criminal charges, the clerk or the proper officer shall present his claim directly to the auditor.

Sec. 34. *Additional Powers and Duties of Commissioner.*—The commissioner shall prepare and recommend a personnel classification which shall classify the offices and employments in the state government and its agencies so as to reflect the differences in training, experience, ability and responsibility required for the different types or kinds of service or employment, and shall recommend uniform salaries and wage scales within each class. The commissioner shall also prepare and recommend uniform hours of work, vacation, sick leave, and notice of termination of employment schedules. The commissioner may from time to time recommend amendments and revisions to the personnel classification, compensation schedule and other schedules. The commissioner shall submit the plan and any amendments or revisions to the board. If the board approves the plan or any revisions thereof, the classification of offices and employment, the uniform salary and wage scales and other schedules shall control the employment and compensation of all persons em-

ployed in the state government unless otherwise provided by law.

The provisions of this section shall not apply to:

(1) Institutions under the control of the state board of education, the board of governors of West Virginia University and the commissioner of public institutions;

(2) The department of public assistance;

(3) The department of employment security;

(4) The department of mental health;

(5) The state department of health;

(6) The conservation commissioner;

(7) State board of vocational education.

Sec. 35. *Classification of Employment and Compensation by Certain Departments.*—The state departments or agencies to which the provisions of the preceding section do not apply shall, as to their respective departments, prepare personnel classification and uniform compensation, hours of work, vacation, sick leave, and notice of termination of employment schedules in the same manner as the director prepares such classifications and uniform schedules for other departments of the state government. Personnel classifications and uniform schedules shall be certified by the board or officer preparing them to the commissioner.

Sec. 36. *Certification of Personnel by Spending Officer.*—The spending officer of each spending unit, within thirty days prior to the beginning of each fiscal year, shall certify to the commissioner a schedule of persons appointed to or employed by the spending unit and showing the personnel classification and compensation approved for each person. Amounts appropriated for personal services shall be expended upon requisition only for the appointees and employees included upon the personnel schedule and only in accordance with the rate of compensation shown by the schedule.

Sec. 37. *Personnel, Classification and Compensation Schedules.*—The commissioner shall prepare schedules of the approved or certified personnel showing the personnel employed in each spending unit of the state government

and the classification and compensation authorized to be paid for each person employed. Such schedules shall be preserved as a public record and shall be open to inspection by any person showing good cause.

Sec. 38. *To Whom Personnel Provisions Not to Apply.*— The provisions of sections thirty-six to thirty-nine, inclusive, shall not apply to personal services paid in the legislative branch of the state government, to salaries of the judiciary and employees of the judiciary, or to salaries of officers of the state government fixed by law.

## Article 3. Purchasing Division.

**Section**

1. Departments to which article applies.
2. Books and records of director.
3. Powers and duties of director.
4. Rules and regulations of director.
5. Standard specifications; promulgation and adoption by director; to apply to all purchases.
6. Commissioner may appoint advisers on standard specifications to act as herein provided.
7. Preference given state products.
8. Director to advise with heads of state institutions.
9. Facilities of department available to local governmental bodies.
10. Examination and testing of purchases.
11. Competitive bids.
12. Publication of solicitation for sealed bids.
13. Purchase in open market on competitive bids.
14. Bids based on standard specifications; awards to lowest responsible bidder; uniform bids; record of bids.
15. Contracts signed by commissioner; form approved; filing.
16. Copies of purchase orders sent to other divisions; when orders for delivery on contracts or on open market not awarded.
17. Emergency purchase in open market.
18. Special fund; purposes; how composed.
19. Void purchase or contract of a department; personal liability.
20. Purchase or substitution of particular trade name or brand.
21. Purchase from federal government.
22. Department heads to submit list of expendable commodities.
23. Disposition by director of commodities; application of proceeds from sale.
24. Contracts for public printing and paper for departments.
25. Director to supply printing; printing plants at institutions.
26. Legislative printing.
27. Publication of reports of supreme court of appeals.
28. Number of copies of departmental reports.
29. Payment from current expense appropriations.
30. Printing paper and stationery issued as needed.
31. Custodian of reports and acts; delivery to state law librarian; sale.
32. Furnishing paper stock to contractor for state printing.
33. Director to establish a central duplicating department; exclusion by director of certain departments from provisions.
34. Conditions affecting application of article.

35. Financial interest of commissioner, etc.; receiving reward from person awarded contract.
36. Penalty for violation of article.
37. Obtaining money and property under false pretenses; defrauding state; penalties.
38. Conspiracy to affect market and prices; penalties.
39. Power of commissioner to suspend right to bid.
40. Review by board.
41. Authority over inventories and property control.
42. Department heads to submit inventory of all property.
43. Powers and duties of director.
44. Creation of surplus property agency as subdivision; its authority.
45. Surplus property agency; authority of director.

Section 1. *Departments to Which Article Applies.*—The provisions of this article for the purchase of commodities and printing shall apply to all of the departments of the state government, except as is otherwise provided by this article or by law: *Provided, however,* That the provisions of this article shall in no wise apply to purchase of commodities of the legislative department unless the Legislature or either house thereof requests the director to render specific services under the provisions of this chapter.

Sec. 2. *Books and Records of Director.*—The director shall keep in his offices accurate books, accounts and records of all transactions of his department, and such books, accounts and records shall be public records, and shall at all proper times be available for inspection by any taxpayer of the state.

Sec. 3. *Powers and Duties of Director.*—The director, under the direction and supervision of the commissioner, shall be the executive officer of the purchasing division and shall have the power and duty to:

(1) Purchase or contract for, in the name of the state, the commodities and printing required by the departments of the state government;

(2) Apply and enforce standard specifications established in accordance with section five of this article, as hereinafter provided;

(3) Negotiate for all grounds, buildings, office or other space required by state departments;

(4) Transfer to or between departments or sell commodities that are surplus, obsolete, or unused, as hereinafter provided;

(5) Have charge of central storerooms for the supply of departments;

(6) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose, as hereinafter provided;

(7) Direct the state agency for surplus property as provided in sections forty-four and forty-five of this article;

(8) Recommend to the commissioner that the right and privilege of a person to bid on state purchases be suspended when the director has evidence that such person has violated any of the provisions of the purchasing law or the rules and regulations of the director.

Sec. 4. *Rules and Regulations of Director.*—The director shall adopt and amend rules and regulations to:

(1) Authorize a department to purchase directly, specified commodities, and prescribe the manner in which such purchases shall be made;

(2) Authorize, in writing, a department to purchase commodities in the open market for immediate delivery in emergencies, define such emergencies, and prescribe the manner in which such purchases shall be made and reported to the director; and for the purposes mentioned in paragraphs (1) and (2) of this section, the head of any department, or the financial governing board of any institution, may, with the approval of the director, make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five per cent of the total of the appropriations for any such department, and the auditor shall draw his warrant upon the treasurer for such accounts. All such advance allowance accounts shall be accounted for by the head of the department or institution once every thirty days or oftener if required by the state auditor or director;

(3) Prescribe the manner in which commodities shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates of commodities, the future period which they are to cover, the form in which they shall be submitted, and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(6) Prescribe the amount of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Provide for such other matters as may be necessary to give effect to the foregoing rules and regulations and the provisions of this article.

Sec. 5. *Standard Specifications; Promulgation and Adoption by Director; to Apply to All Purchases.*—The director shall classify all commodities and shall promulgate and adopt a schedule of standard specifications based on scientific and technical data, which schedule shall establish the quality within each particular classification or subclassification to which all commodities to be purchased and services to be contracted for by the state must conform. After adoption the standard specification shall apply to every future purchase of or contract for the commodities described in the specifications. The purchases of no department may be exempt from compliance with the standard specifications so established, but the director, whenever he deems it necessary and advisable, may exempt therefrom the purchase of particular items.

It shall be the duty of the director to keep such standard specifications up to date and in conformity with all technical and scientific advancements pertaining to commodities and services covered in such schedule and to that end he may, from time to time, revise and amend the standard specifications therein included.

Sec. 6. *Commissioner May Appoint Advisers on Standard Specifications to Act as Herein Provided.*—The commissioner may from time to time request any official or employee of any department to aid and advise the director in formulating, revising or amending the schedule of standard specifications provided for in section five of this article. Such official or employee shall act at the request

of the commissioner and shall be entitled to receive his necessary expenses incurred in compliance therewith, but shall receive no additional compensation therefor.

Sec. 7. *Preference Given State Products.*—The director shall, in the purchases of commodities and printing, give preference, so far as may be practicable and not conflicting with the provisions of this article, to commodities and printing produced in this state.

Sec. 8. *Director to Advise with Heads of State Institutions.*—The director shall advise with the heads of the various state institutions producing commodities, with the view to making these articles suitable for the needs of state departments.

Sec. 9. *Facilities of Department Available to Local Governmental Bodies.*—The director shall make available the facilities and services of his department to county, school, municipal and other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

Sec. 10. *Examination and Testing of Purchases.*—Within the limits of funds available for the purpose, the director, or some person appointed by him for that purpose, shall examine and test upon delivery commodities purchased by the state to determine whether such commodities conform to the standard specifications promulgated pursuant to section five of this article, and whether the commodities delivered conform with the purchase contracts therefor.

Sec. 11. *Competitive Bids.*—A purchase of and contract for commodities and printing shall be based, whenever possible, on competitive bids.

Sec. 12. *Publication of Solicitation for Sealed Bids.*—The director shall solicit sealed bids for the purchase of commodities and printing that is estimated to exceed two thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this two thousand dollar maximum. Bids shall be obtained by public notice inserted at least twice in a newspaper having a general circulation in the county where the department or agency

making the requisition is located and in a daily newspaper of general circulation at least two weeks before the final date of submitting bids and by any other advertising medium the director may deem advisable. The director may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in his office.

Sec. 13. *Purchase in Open Market on Competitive Bids.*—The director may make a purchase of commodities and printing of less than two thousand dollars in amount in the open market, but such purchase shall, wherever possible, be based on at least three competitive bids.

Sec. 14. *Bids Based on Standard Specifications; Awards to Lowest Responsible Bidder; Uniform Bids; Record of Bids.*—Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article. All open market orders, purchases based on advertised bid requests, or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government, and the delivery terms. Any or all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the director shall have authority to reject all bids, and to purchase the required commodities and printing in the open market, if the price paid in the open market does not exceed the bid prices.

Each bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of the order or contract, be open to public inspection.

Sec. 15. *Contracts Signed by Commissioner; Form Approved; Filing.*—Contracts shall be signed by the commissioner in the name of the state. They shall be approved as to form by the attorney general. A contract that requires more than six months for its fulfilment shall be filed with the state auditor.

Sec. 16. *Copies of Purchase Orders Sent to Other Divisions; When Orders for Delivery on Contracts or on Open Market Not Awarded.*—A copy of all purchase orders shall be transmitted to the director of the budget division so that the proper account may be encumbered before they are sent to the vendors. Except in an emergency, an order for delivery on a contract or open market for commodities for a spending unit shall not be awarded until it has been certified to the director by the commissioner as director of the budget that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. An order for equipment shall not be awarded until it has also been certified to the director by the supervisor of inventory control that there is no such equipment in stock and not in use.

Sec. 17. *Emergency Purchase in Open Market.*—The director may authorize, in writing, a state department to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state department concerned, together with a full account of the circumstances of the emergency. Such report shall be entered on a record and shall be open to public inspection.

Sec. 18. *Special Fund; Purposes; How Composed.*—There is hereby created a special revenue fund to be administered by the director to finance and facilitate the following functions of the director:

(1) Purchase in volume and for maintenance of stocks and commodities to supply the needs of state departments;

(2) Performance for state departments of all mimeographing, photostating, microfilming, multilithing, multigraphing, and other work as provided by section thirty-three of this article.

The amount of the fund may be fixed and changed by the board upon the recommendation of the commissioner. If at the end of each fiscal year the cash balance plus value of commodity inventories on hand exceeds the amount so fixed, the excess in cash shall be transferred by the board upon recommendation of the commissioner to the general revenue fund and become a part of the general revenue of the state. The fund shall be composed of the following:

(1) The cash balance and inventories of the fund heretofore established by this section;

(2) Charges made by the director for commodities sold and services rendered to the state departments as herein described: *Provided,* That charges shall not exceed total cost to the fund, which total cost shall include storage, supplies, equipment and salaries and wages of employees necessary to supply commodities and services in addition to purchase price of commodities.

Sec. 19. *Void Purchase or Contract of a Department; Personal Liability.*—If a department purchases or contracts for commodities contrary to the provisions of this article or the rules and regulations made thereunder, such purchase or contract shall be void and of no effect. The head of such department shall be personally liable for the costs of such purchase or contract, and, if already paid out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor.

Sec. 20. *Purchase or Substitution of Particular Trade Name or Brand.*—If a department requests the purchase of a commodity bearing a particular trade name or brand, and if the commodity is covered by standard specifications adopted as provided by section five of this article, the director may substitute a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted standard specifications and can be obtained at a lower price.

Sec. 21. *Purchase from Federal Government.*—Notwithstanding any other provision of this article, the director may, upon the recommendation of a state department,

purchase from the government of the United States, commodities or equipment, by tendering bids therefor.

Sec. 22. *Department Heads to Submit List of Expendable Commodities.*—The head of every department shall submit a list of expendable commodities such department has on hand whenever requested to do so by the director.

Sec. 23. *Disposition by Director of Commodities; Application of Proceeds from Sale.*—The director shall have the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state, when any such commodities are or shall have become obsolete, unusable or are not being used, or need to be replaced, and are so reported in writing by the department owning or having custody or control thereof as available for the director's disposition.

It shall be the duty of the director to determine what commodities or expendable commodities should be disposed of and he shall make such disposition in the manner which in his opinion will be most advantageous to the state, either by transferring the particular commodities or expendable commodities between departments, by trading in such commodities as a part payment on the purchase of new commodities, or by sale thereof to the highest bidder by means of public auctions or sealed bids after having first advertised the time, terms and place of such sale once a week for two successive weeks in some newspaper published or having general circulation in the county wherein the sale is to be conducted and any other advertising medium the director may deem advisable. The director shall have the authority to sell to the highest bidder or to any one or more of the highest bidders, if there be more than one, or, if in his opinion the best interest of the state will be served, to reject all bids. Upon the transfer of commodities or expendable commodities between departments, the director shall set the price to be paid by the receiving department with due consideration given to current market prices. The proceeds of such sales or transfers shall be deposited in the state treasury to the credit on a pro rata basis of the fund or funds out of

which the purchase of the particular commodities or expendable commodities was made.

Sec. 24. *Contracts for Public Printing and Paper for Departments.*—The director shall contract for public printing and for printing paper for the use of departments in the manner provided for contracts under sections eleven through twenty-one of this article, and in accordance with the specifications adopted as provided by section five of this article.

Sec. 25. *Director to Supply Printing; Printing Plants at Institutions.*—The director shall supply the departments with printing in the same manner as provided for commodities under sections eleven through twenty-one of this article. But the provisions of this section shall not be construed to prohibit the state from maintaining at educational, benevolent, penal or correctional institutions printing plants for the purpose of instruction or for printing for a state department.

Sec. 26. *Legislative Printing.*—Notwithstanding any other provision of this article, the letting of all contracts for legislative printing shall be subject only to the provisions of this section.

Upon request of the Legislature, or either house thereof, all contracts for legislative printing shall be let on competitive bids by the director to the lowest responsible bidder. Each such contract shall be subject to the approval of the governor, and in case of his disapproval the contract shall be re-let on competitive bids submitted in the same manner as the original bids on the contract that was disapproved. Each bid on every such contract shall be within the maximum limits that may be fixed from time to time by concurrent resolution of the Legislature. The clerk of the senate and the clerk of the house of delegates shall have exclusive control of all printing authorized by their respective legislative bodies, and shall approve the specifications included in any contract before an invitation for bids is released by the director of purchases. Before presenting for payment any bill for such legislative printing, the printer shall have the same ap-

proved by the purchasing division as correct and according to contract specifications. A copy of all bills for legislative printing shall be furnished the clerk of the house for which such printing was done. When properly approved bills are presented to the clerk of the senate, or to the clerk of the house of delegates, he shall draw his requisition upon the auditor in the amount of the bill, payable from the legislative printing fund, and the auditor shall honor the requisition and issue to the printer a state draft therefor.

Sec. 27. *Publication of Reports of Supreme Court of Appeals.*—Notwithstanding any of the provisions of this article, the official reporter of the supreme court of appeals shall have charge and supervision of the printing and binding of the reports of the decisions of the supreme court of appeals of the state, and shall contract for their publication in the same manner that the director of the purchasing division contracts under sections eleven through twenty-one of this article. Such contract shall provide for the publication of fifteen hundred copies, or such additional number as the reporter and supreme court of appeals may jointly direct, on such paper and to be bound in accordance with directions and specifications as may be specified by the reporter by and with the concurrence of the court. The size of type and page shall be prescribed by the reporter with the concurrence of the court. A volume shall be published according to the terms of the contract whenever ordered by the court. The reporter shall secure the copyright of each volume for the benefit of the state. The reports shall be styled "West Virginia Reports".

The printing and binding of the reports shall be done under the direction of and in the manner prescribed by the reporter, subject to the control of the court. The reporter shall prefix to the printed report of each case the dates when the same was submitted and decided. Each volume shall, if practicable, contain the reports of at least eighty cases decided by the court, and shall contain approximately one thousand pages unless otherwise ordered by the court, exclusive of the index and table of cases reported and cited. Proof sheets shall be furnished

by the printer to the reporter and to each judge of the court, and such corrections and modifications shall be made by the printer as the reporter or any of the judges shall direct. If the work is not done in the manner required by law, the reporter shall not approve the volume and shall not accept it.

The reports of the decisions of the supreme court of appeals may be published in pamphlet form in advance of the publication of the bound volumes of the "West Virginia Reports", periodically, or at such times as may be directed by the reporter and the supreme court of appeals. The reporter shall secure the copyright of each pamphlet of opinions so published in advance. Each pamphlet shall contain the report of such number of cases as the supreme court of appeals and the reporter shall deem advisable.

The contract for the publication of such advance sheets shall be made in the manner provided for the publication of bound volumes of the "West Virginia Reports".

A charge of not less than the actual cost of printing and distribution shall be made for such advance sheets.

Sec. 28. *Number of Copies of Departmental Reports.*—Subject to the approval of the commissioner and the governor, the director shall have the authority to limit the number of copies of annual or biennial reports, bulletins and other publications ordered to be printed by each department.

Sec. 29. *Payment from Current Expense Appropriations.*—Printing, binding and stationery for all departments shall be paid for from the current expense appropriations for such departments.

Sec. 30. *Printing Paper and Stationery Issued as Needed.*—All printing paper and stationery shall be delivered to the director, who shall have charge of the same and issue it as needed.

Sec. 31. *Custodian of Reports and Acts; Delivery to State Law Librarian; Sale.*—The director shall be custodian of the West Virginia Reports after they are printed and bound and approved by the reporter, and of the acts

of the Legislature after they are printed and bound and approved by the clerk of the house of delegates. As soon as practicable after any new volume of such reports or acts has been delivered to the director, not including reprints of former volumes, he shall deliver to the state law librarian sufficient copies to enable him to make distribution thereof in the manner prescribed by sections five and six, article eight, chapter fifty-one of this code.

The director shall sell such copies of the reports and acts as remain after the distribution provided by law has been made at a price to be fixed by him with the approval of the commissioner, but in no case shall such price be less than the actual cost to the state of the publication thereof. The proceeds of such sales shall immediately be paid into the treasury.

Sec. 32. *Furnishing Paper Stock to Contractor for State Printing.*—Paper stock, if furnished by the state to the contractor, shall be billed at the current market price for the grade furnished in the quantity furnished. It shall be unlawful and discriminatory for the director to furnish the contractor with paper for any state work, unless all bidders are notified in advance of placing their bids at the prices at which the state will supply such stock. It shall also be unlawful for the director to furnish the contractor any paper for other than the state work under contract.

Sec. 33. *Director to Establish a Central Duplicating Department; Exclusion by Director of Certain Departments from Provisions.*—All mimeographing, photostating, microfilming, multilithing, multigraphing, and other duplicating work required to be done by or for any department shall be done by a central duplicating department, which department shall be established by and under the supervision of the director.

All mimeographing, photostating, microfilming, multilithing, multigraphing, and other duplicating equipment and supplies shall be transferred to the central duplicating department.

If the director be of the opinion that any department is capable of doing such duplicating work as may be re-

quired by such particular department more efficiently and economically than can the central duplicating department, he may, in his discretion, exempt such particular department from the provisions of this section; or if the director believes economy or efficiency can be effected by letting such work or any part thereof to contract, then he may do so in the manner provided for contracts under sections eleven through twenty-one of this article.

Sec. 34. *Conditions Affecting Application of Article.*—The application of this article shall be subject to the following conditions:

(1) The purchases of stock for state liquor stores shall be made by the West Virginia liquor control commission;

(2) Whenever the authority to acquire property other than commodities and printing, by lease, agreement, condemnation or otherwise, is now specifically vested by law in a department, that authority shall not be affected by the provisions of this article. Whenever this authority is not now specifically vested in a department, such authority shall be exercised by the director of the purchasing division;

(3) In the purchase and contracting for textbooks by the state board of education, the director shall perform only such duties as may be required by law.

Sec. 35. *Financial Interest of Commissioner, etc.; Receiving Reward from Person Awarded Contract.*—Neither the commissioner, nor any employee of the department of finance and administration, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities and printing, nor in any firm, partnership, corporation or association furnishing them. No such person shall accept or receive directly or indirectly from any person, firm or corporation to whom a contract may be awarded, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward, or compensation.

A person who violates this section shall be guilty of a misdemeanor, and, upon conviction, shall be confined in

jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both, in the discretion of the court.

Sec. 36. *Penalty for Violation of Article.*—A person who violates a provision of this article other than the provisions of section thirty-five shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than ten days nor more than one year, or fined not less than ten nor more than five hundred dollars, or both, in the discretion of the court.

Sec. 37. *Obtaining Money and Property under False Pretenses; Defrauding State; Penalties.*—It shall be unlawful for any person to obtain from the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, money, goods or other property, and upon violation thereof, such person shall be guilty of a felony, and, upon conviction therefor, shall be confined in the penitentiary not less than one year nor more than five years, and be fined not exceeding one thousand dollars.

Sec. 38. *Conspiracy to Affect Market and Prices; Penalties.*—It shall be unlawful for any person to jointly combine or collude or conspire in any way to affect the market, or price, or supply of commodities and printing obtained or to be obtained by the state under the provisions of this article, and upon violation thereof such person shall be guilty of a felony, and, upon conviction therefor, shall be confined in the penitentiary not less than one year nor more than five years, and be fined not exceeding one thousand dollars.

Sec. 39. *Power of Commissioner to Suspend Right to Bid.*—The commissioner shall have the power and authority, upon the recommendation of the director, to suspend, for a period not to exceed one year, the right and privilege of a person to bid on state purchases when the commissioner has reason to believe that such person has violated any of the provisions of the purchasing law or the rules and regulations of the director. Every person whose right

to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for such suspension.

Sec. 40. *Review by Board.*—Any person whose right to bid on state purchases has been suspended by the commissioner under the authority of the preceding section shall have the right to have the commissioner's action reviewed by a board composed of the governor, attorney general and auditor of the state, which board shall have the power and authority to set aside such suspension.

Sec. 41. *Authority over Inventories and Property Control.*—The director shall, under the direction and supervision of the commissioner, have full authority over inventories and property control.

Sec. 42. *Department Heads to Submit Inventory of All Property.*—The head of every department of the state government shall, on or before July fifteenth of each year, file with the director an inventory of all real and personal property, and of all equipment, supplies and commodities in its possession as of the close of the last fiscal year.

Sec. 43. *Powers and Duties of Director.*—The director shall have the power and duty to:

(1) Make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of the purchase, the price paid for the property therein described and the disposition thereof;

(2) Provide for the maintenance and repair of all office furniture, machinery and equipment belonging to the state, either by employing personnel and facilities under his direction or by contracting with state agencies or private parties.

Sec. 44. *Creation of Surplus Property Agency as Subdivision; Its Authority.*—There is hereby established as a subdivision of the purchasing division an agency to be known as the "State Agency for Surplus Property". This agency shall have exclusive authority to receive from the

department of defense and any other federal department or agency such equipment, materials, books and other supplies as may be declared excess and surplus property. The agency shall also have exclusive authority to warehouse and distribute all such excess and surplus property so received to all recipients within the state as may now be or hereafter become eligible therefor under federal laws or regulations.

Sec. 45. *Surplus Property Agency; Authority of Director.*—The purchasing division is hereby designated as a sole agency for the purposes of sections forty-four and forty-five of this article, and the director shall be the director of the state agency for surplus property. As such, he shall have sole authority to:

(a) Make such reasonable rules and regulations, require such certifications and agreements by eligible recipients of surplus property, and employ such persons as may be necessary for the accomplishment of the purposes of sections forty-four and forty-five of this article;

(b) Make such certification and enter into such agreements or understandings for and in the name of the state (including cooperative agreements with federal agencies) as may be appropriate or required by federal law or regulations in carrying out the functions hereby authorized;

(c) Require such reports and make such investigations and take such action as may be necessary for the accomplishment of the purposes of this and the preceding section.

## Article 4. General Services Division.

**Section**

1. Care, control and custody of capitol buildings and grounds.
2. Control over central mailing office in capitol building.
3. Commissioner to appoint mail clerk and other necessary employees and fix salaries.
4. Duties of mail clerk.
5. Use of mail office by departments.
6. Right of appeal.

Section 1. *Care, Control and Custody of Capitol Buildings and Grounds.*—The director shall be charged with the full responsibility for the care, control and custody of

the capitol buildings and grounds, and in this connection he shall:

(1) Furnish guards and janitors for the capitol buildings and grounds, together with all the apartments therein, or connected therewith, regardless of the budget or budgets, departmental or otherwise, from which such guards and janitors are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the building. Under the direction of the president of the senate and speaker of the house of delegates, the director shall have charge of the halls and committee rooms of the two houses and any other quarters at the state capitol provided for the use of the Legislature or its staff, and keep the same properly cleaned, warmed and in good order, and shall do and perform such other duties in relation thereto as either house may require;

(2) Furnish part-time messenger service to the various state departments. Department heads shall be consulted with reference to the amount of messenger service required for their departments. Janitor-messengers, or part-time messengers, shall receive from the director compensation for total services in the same manner as other employees are paid. Any state department shall, however, have authority to furnish its own messenger service without using employees of the director;

(3) Have immediate control and direction of the switchboard telephone service for the various departments of the state capitol. Changes in telephone instruments or equipment in the various departments of the state capitol shall be referred to the director, and payment for any such changes will not be honored unless such changes have been approved by the director. A simple accounting system shall be installed and maintained by the director for all telephone service to the state departments;

(4) Landscape and take care of the lawns and gardens;

(5) Direct the making of all minor repairs to and alterations of the capitol buildings and grounds. Major repairs and alterations shall be made under the supervision of the director, subject to the direction of the board.

The offices of the assistants and employees appointed

to perform these duties shall be located where designated by the board, except that they shall not be located in any of the legislative chambers, offices, rooms or halls. Office hours shall be so arranged that emergency or telephone service shall be available at all times. The hours of employment shall be so arranged that janitorial service shall not interfere with other employment during regular office hours.

Sec. 2. *Control over Central Mailing Office in Capitol Building.*—The central mailing office heretofore created in the capitol, hereinafter called the "mailing office", is hereby placed under the control of the director.

Sec. 3. *Commissioner to Appoint Mail Clerk and Other Necessary Employees and Fix Salaries.*—The commissioner shall appoint a mail clerk and appoint such other employees as shall be necessary to carry out the provisions of the following two sections. Such mail clerk and employees shall hold office during the will and pleasure of the commissioner. The mail clerk shall be a capable man, experienced in the handling of United States mail.

Sec. 4. *Duties of Mail Clerk.*—The mail clerk shall have general charge and supervision of the mail office, and shall be responsible for its efficient administration. He shall be required to:

(1) Keep proper books of account of the receipts and disbursements of the mail office;

(2) Render to the director a report each month, showing the expenses of the mail office for the preceding month, and shall render such other reports as the director may require;

(3) Keep the mail office open to receive early mail and to serve state departments;

(4) Provide rules and regulations for the efficient and prompt dispatch of the mail.

Sec. 5. *Use of Mail Office by Departments.*—All state departments, boards, bureaus and commissions having their offices in the capitol, except the legislative department, shall dispatch all mail through the mail office:

*Provided, however,* That mail prepared after gathering time and mail for special handling, within the limits of postage available to the department, may be posted through federal postoffice channels.

Sec. 6. *Right of Appeal.*—Upon occasion of a showing that the application of the authority vested under the provisions of this chapter may interfere with the successful functioning of any department, institution or agency of the government, such department, institution or agency may have the right of appeal to the board for review of the case and the decision or conclusion of the board shall govern in such cases.

# CHAPTER 133

**(Senate Bill No. 23—By Mr. McCourt and Mr. Carrigan)**

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal article eleven, chapter sixteen; section thirteen-b, article nineteen, chapter seventeen; chapter twenty; chapter twenty-a; and sections four, five, six, seven, eight and nine, article two-a, chapter twenty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapter fifty-four, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three; and to enact in lieu thereof a new chapter twenty of said code, relating to the establishment and administration of a comprehensive natural resources department in the state government and providing for its personnel, jurisdiction, powers, functions, services and enforcement processes.

## CHAPTER 20. NATURAL RESOURCES.

**Article**

1. **Organization and Administration.**
2. **Game and Fish.**
3. **Forests and Wildlife Areas.**
4. **Parks and Recreation.**

5. **Water Resources.**
6. **Reclamation.**
7. **Law Enforcement, Procedures and Penalties.**
8. **General and Miscellaneous Provisions.**

*Be it enacted by the Legislature of West Virginia:*

That article eleven, chapter sixteen; section thirteen-b, article nineteen, chapter seventeen; chapter twenty; chapter twenty-a; and sections four, five, six, seven, eight and nine, article two-a, chapter twenty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and chapter fifty-four, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be repealed; and that a new chapter twenty of said code be enacted to read as follows:

## Article 1. Organization and Administration.

**Section**

1. Purposes and objects; how chapter cited.
2. Definitions.
3. Department, office of director and commission established.
4. Director chief executive officer; appointment, term and qualification; vacancy; removal.
5. Salary, expenses, oath and bond of director.
6. Offices and office hours.
7. Additional powers, duties and services of director.
8. Personnel management.
9. Fiscal management.
10. Property management.
11. Public relations.
12. Surveys and planning.
13. Law enforcement and legal services.
14. Divisions within department.
15. Public land corporation.
16. Natural resources commission.
17. Commission organization and services.
18. Government cooperation; projects; finances; properties.

Section 1. *Purposes and Objects; How Chapter Cited.*—This chapter is enacted to provide a comprehensive program for the exploration, conservation, development, protection, enjoyment and use of the natural resources of the state of West Virginia and may be cited as the State Natural Resources Law.

Sec. 2. *Definitions.*—As used in this chapter, unless the context clearly requires a different meaning:

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.

"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

"Board" means the water resources board of the department of natural resources.

"Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the natural resources commission.

"Commissioner" means a member of the advisory commission of the natural resources commission.

"Director" means the director of the department of natural resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs, or other amphibians, aquatic turtles, and other forms of aquatic life used as fish bait.

"Fur-bearing animals" shall include (a) the mink, (b) the weasel, (c) the muskrat, (d) the beaver, (e) the opossum, (f) the skunk, and civet cat, commonly called polecat, (g) the otter, (h) the red fox, (i) the gray fox, (j) the wildcat, bobcat or bay lynx, and (k) the raccoon.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" shall include (a) the elk, (b) the deer, (c) the cottontail rabbits and hares, (d) the fox squirrels, commonly called the red squirrel, gray squirrels and red squirrels, commonly called fairydiddle, and all their color phases — red, gray, black or albino, and (e) the raccoon.

"Game birds" shall include (a) the Anatidae, commonly known as swans, geese, brants and river and sea ducks, (b) the Rallidae, commonly known as rails, sora, coots, mudhens, and gallinales, (c) the Limicolae, commonly

known as shorebirds, plover, snipe, woodcock, sandpipers, yellowlegs, and curlews, (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species), and (e) the Columbidae, commonly known as doves and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" shall include (a) brook trout, (b) brown trout, (c) rainbow trout, (d) Kokanee salmon, (e) large-mouth bass, (f) small-mouth bass, (g) Kentucky or spotted bass, (h) pickerel, (i) muskellunge, (j) walleyed pike, or pike perch, (k) rock bass, (l) white bass, (m) white and black crappie, (n) blue-gill sun-fish and (o) other bream.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters, and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or non-game birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act", for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not resided continuously in the state of West Virginia for a period of six months immediately prior to the date of his application for a license or permit.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person", except as otherwise defined elsewhere in this chapter, means the plural "persons", and shall include individuals, partnerships, corporations, or other legal entity.

"Preserve" means all duly licensed private game farm lands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has resided continuously in the state of West Virginia for a period of six months or more immediately prior to the date of his application for a license or permit: *Provided, however,* That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his entry into such service, shall be considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other than a commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include (a) the English sparrow, (b) the European starling, (c) the sharp-shinned hawk, (d) the Cooper's hawk, (e) the goshawk, (f) the cowbird, and (g) the crow.

"Wild animals" means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice and rats.

"Wild birds" shall include all birds other than (a) domestic poultry—chickens, ducks, geese, guinea fowl, peafowls and turkeys, (b) Psittacidae, commonly called parrots and paraquets, and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All

wild birds, either (a) those occurring in a natural state in West Virginia, or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), frogs and other amphibians, aquatic turtles and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

Sec. 3. *Department, Office of Director and Commission Established.*—A department of natural resources, the office of director of the department of natural resources, and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

Sec. 4. *Director Chief Executive Officer; Appointment, Term and Qualification; Vacancy; Removal.*—The director 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 him necessary and desirable in the orderly, efficient and economical administration of the department for the accomplishment of its objects and purposes.

The director shall be appointed by the governor, by and with the advice and consent of the senate, and shall continue to serve until his successor is appointed and qualified as provided. On or before the first day of July, one thousand nine hundred sixty-one, the governor shall appoint the director for a term ending on the thirty-first day of December, one thousand nine hundred sixty-two. Upon the expiration of such term the governor shall appoint the director for a term of four years commencing on the first day of January, one thousand nine hundred sixty-three, and, upon the expiration thereof, for successive terms of four years each next thereafter. A vacancy occurring in

the office during any term thereof shall be filled by appointment as herein provided for the remainder of such term.

The director may be removed from office by the governor for cause as provided in the constitution. At the time of his initial appointment, he shall be at least thirty years old and shall be selected with special reference and consideration given to his training, experience, capacity and interest in the natural resources program as herein embraced. He shall not be a candidate for or hold any other public office, shall not be a member of any political party committee, and shall immediately forfeit and vacate his office as director in the event he becomes a candidate for or accepts appointment to any other public office or political party committee.

Sec. 5. *Salary, Expenses, Oath and Bond of Director.*—The director shall receive an annual salary of twelve thousand dollars, payable in equal monthly installments, 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, he shall take and subscribe to the oath required of public officers by 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 department funds.

Sec. 6. *Offices and Office Hours.*—The director shall arrange with the general services division of the department of finance and administration for adequate office space, accommodations and facilities for the department of natural resources in the state capitol offices. The department of finance and administration shall make such office accommodations and facilities available and shall provide for orderly servicing and maintenance thereof. The offices of the director and of the department shall be opened and staffed for business transactions and services during regular hours as prescribed by the state board of public works.

Sec. 7. *Additional Powers, Duties and Services of Director.*—In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the "Department of Natural Resources" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which and the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Fix by regulation the open seasons and the bag, creel, size, age, weight and sex limits with respect to wildlife in this state;

(7) Hold at least six meetings each year at such times and at such points within the state, as in the discretion of the director may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open seasons for their respective areas, before such seasons and bag limits are fixed;

(8) Suspend open hunting seasons upon any or all

wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic of disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(9) Supervise the fiscal affairs and responsibilities of the department;

(10) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(11) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(12) Acquire for the state in the name of the "Department of Natural Resources" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, esthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping, or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(13) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(14) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(15) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(16) Report to the governor each year all information relative to the operation and functions of his department and shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the department for each fiscal year, and shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(17) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office, except as otherwise provided by law;

(18) Offer and pay, in his discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators of any of the provisions of this chapter;

(19) Require such reports as he may deem to be neces-

sary from any person issued a license or permit under the provisions of this chapter;

(20) Purchase as provided by law all equipment necessary for the conduct of his department;

(21) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(22) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(23) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any and all purposes specified in this chapter, and shall account for and report on all such receipts and expenditures to the governor;

(24) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he deems advisable;

(25) Maintain in his office at all times, properly indexed by subject matter, and also in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days as prescribed by the state board of public works;

(26) Act promptly and effectively, whenever in the sole discretion of the director the ends of justice and the interests of the state so require, through appropriate court proceedings for citations and for injunctive, remedial, coercive and other means and methods of relief, in the prevention, abatement and correction of the pollution of streams and other water areas prior and supplemental to the effective operation of the procedures and processes of the water resources board under the provisions of article five of this chapter;

(27) Delegate the powers and duties of his office, ex-

cept the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

(28) Conduct schools, institutes and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources program of the state; and

(29) Promulgate rules and regulations to implement and make effective the powers and duties vested in him by provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter.

Sec. 8. *Personnel Management.*—A merit system of personnel management shall be established and maintained for all personnel of the department in order to insure and provide for impartial selection of competent and qualified personnel and to accord to all department employees rights of tenure and advancement during satisfactory discharge of their duties. Employees of any agency or activity absorbed in or transferred to the department by provisions of this chapter or elsewhere by law, who then have and enjoy state merit system status, shall maintain their merit system status for all purposes as employees of the department, but employees of any such agency or activity not so having and enjoying merit system status shall be retained in department employ for a period of time not exceeding twelve months unless during such period of time they qualify for and attain merit system status according to their merit system tenure and advancement rights as other employees of the department.

In lieu of establishment of a merit system of personnel management for the department, the director may resort to and rely upon the state merit system council for personnel and personnel services of the department and for this purpose may contribute from department funds a fair share of the merit system council's expenses.

The director may select a personal secretary and a deputy director of the department to serve at the director's

will and pleasure. The director shall fix the salary or compensation of such secretary and deputy director and shall prescribe their duties and responsibilities. The director, the secretary and deputy director shall not have and enjoy merit system status, as herein provided, except the deputy director, when selected from department personnel ranks, shall retain and be accorded all of the rights of his merit system status regardless of his selection and tenure as deputy director.

The director shall select and designate a competent and qualified person as department personnel officer who shall be responsible for personnel management, personnel records and general personnel services. The personnel officer, under supervision of the director and subject to merit system rules, regulations and requirements, shall prescribe qualifications, classifications and salary scales for department personnel. He shall furnish to the director information and data relating to qualified personnel available for the various offices, positions and places of employment and may make recommendations concerning the selection, retention and advancement of personnel of the department.

Sec. 9. *Fiscal Management.*—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 the fiscal year basis.

The director shall select and designate a competent and qualified person as department fiscal officer who, under the supervision of the director, shall be responsible for all budget, finance and accounting services of the department. All moneys received by the department shall be recorded and shall be paid as general revenue into the state fund, as provided in 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.

Sec. 10. *Property Management.*—The department shall maintain at all times an accurate record of all of its lands, interests in lands, buildings, structures, equipment and other tangible properties and assets. Such record shall reflect the location, utility, condition and estimated value of all such properties and assets. The department shall provide for the maintenance, preservation and custody of all such properties and assets, and when any item or items thereof become obsolete or are no longer needed, the department shall report thereon to the department of finance and administration for disposition thereof.

The director shall select and designate a competent and qualified person as department property officer, who shall be responsible for the department's records relating to its properties and assets and for the maintenance, preservation, custody and disposition of all such properties and assets as herein provided.

Sec. 11. *Public Relations.*—The department shall collect, organize and from time to time distribute to the public, through news media or otherwise, interesting facts, information and data concerning the natural resources of the state and the functions and services of the department. The director may organize and promote lectures, demonstrations, symposiums, schools and other educational programs relating to the state's natural resources. Motion pictures, slide films and other photographic services may be provided for instruction on natural resources for schools, other governmental agencies, and civic organizations under such rules and regulations as may be prescribed by the director.

The director shall select and designate a competent and qualified person as department public relations officer, who shall be responsible for the organization and management of the department's public relations program. He may prepare and distribute from time to time pamphlet materials and other compilations and publications of the department and may cooperate with other governmental

agencies in the publication and distribution of such materials.

Sec. 12. *Surveys and Planning.*—As departmental projects or in cooperation with other governmental or private agencies, the director may organize and promote surveys and explorations relating to the state's natural resources, their utility, development and protection. The state geological and economic survey commission, the department of mines, the department of agriculture, the economic development agency and other governmental agencies and activities shall cooperate, whenever and wherever practicable to do so, with the department in its survey and exploration work.

The director shall select and designate a competent and qualified person as department surveys officer who shall be responsible for the organization, promotion and correlation of the surveys and explorations as herein provided. He shall work closely with other offices and divisions of the department in order to effect maximum development, utilization, protection and enjoyment of the state's natural resources.

Sec. 13. *Law Enforcement and Legal Services.*—The director shall select and designate a competent and qualified person to be department law enforcement officer, who shall have the title of chief conservation officer and who shall be responsible for the prompt, orderly and effective enforcement of all of the provisions of this chapter. Under the supervision of the director and subject to personnel qualifications and requirements otherwise prescribed in this chapter, the chief conservation officer shall be responsible for the selection, training, assignment, distribution and discipline of conservation officers and the effective discharge of their duties in carrying out the law enforcement policies, practices and programs of the department in compliance with the provisions of article seven of this chapter and other controlling laws and regulations. Except as otherwise provided in this chapter, he and his conservation officers are hereby authorized to enter into and upon private lands and waters to investigate com-

plaints and reports of conditions, conduct, practices and activities considered to be adverse to and violative of the provisions of this chapter and to execute writs and warrants and make arrests thereupon.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the director, without additional compensation, such legal services as the director may require of them in the discharge of his duties and the execution of his powers under and his enforcement of the provisions of this chapter. The director, in an emergency and with prior approval of the attorney general, may employ an attorney to act in proceedings wherein criminal charges are brought against personnel of the department because of action in line of duty. For such attorney services, a reasonable sum, not exceeding five hundred dollars, may be expended by the director in any one case.

The director, if he deems such action necessary, may request the attorney general to appoint an assistant attorney general, who shall perform, under the supervision and direction of the attorney general, such duties as may be required of him by the director. The attorney general, in pursuance of such request, may select and appoint an assistant attorney general to serve during the will and pleasure of the attorney general, and such assistant shall receive a salary to be paid out of any funds made available for that purpose by the Legislature to the department.

Sec. 14. *Divisions Within Department.*—Divisions of game and fish, of forestry, of parks and recreation, of water resources, 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 competent and qualified person to be chief of each division. The chief shall be the principal administrative

officer of his division and shall be accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

Sec. 15. *Public Land Corporation.*—The public land corporation of West Virginia, heretofore created and established, shall be continued as an activity of the department of natural resources. The corporation may sue and be sued, contract and be contracted with, plead and be impleaded, and have and use a common seal. It shall be a public benefit corporation composed of the governor as chairman, the director of the department of natural resources as secretary, the commissioner of agriculture, the attorney general, and the director of the engineering experiment station at West Virginia University, none of whom shall receive additional compensation as members of the corporation.

The corporation shall be vested with the title of the state in public lands, the title to which now is or may hereafter become absolutely vested in the state of West Virginia by reason of any law governing the title of lands within the state, except such public lands of the state as may be by law specifically allocated to and used by other state agencies, institutions and departments.

The corporation is hereby authorized and empowered to:

(1) Acquire from any persons or the state commissioner of forfeited lands, by purchase, lease or other agreement, any lands necessary and required for public use;

(2) Acquire by purchase, condemnation, lease or agreement, receive by gifts and devises, or exchange, rights of way, easements, waters and minerals suitable for public use;

(3) Sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under state or federal government administration;

(4) Negotiate and effect loans from the government of the United States or any agency thereof for acquisition and development of such lands as may be authorized by law to be acquired for public use; and

(5) Expend the income from the use and development

of public lands for the purpose of liquidating obligations incurred in the acquisition, development and administration of such lands, until all such obligations have been fully discharged, and thereafter pay such income into the state fund for general revenue purposes and uses.

The corporation shall have the authority to designate lands to which it has title for development and administration for the public use including forestation, recreation, wildlife, stock grazing, agricultural rehabilitation homesteading or other conservation activities and may contract or lease for the proper development of oil, gas or minerals, except that no contract or lease may be entered into for the extraction and removal by stripping or auger mining of coal, and water rights within or upon the lands or property under its control. It shall convey, assign, or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of such departments or other agencies as provided by law. The corporation shall make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship. The corporation shall report biennially to odd-year sessions of the Legislature on its public land holdings, its financial condition and its operations and shall make such recommendations to the Legislature as deemed proper concerning the acquisition, development, disposition and use of public lands.

Sec. 16. *Natural Resources Commission.*—The natural resources commission, created and established by provisions of section three of this article, shall be a public benefit corporation and as such may sue and be sued, plead and be impleaded, contract and be contracted with, and have and use a common seal. It shall be a commission advisory to the director and to the department of natural resources. The commission shall be composed of seven members, known as commissioners, one from each congressional district and the remainder from the state at large, appointed by the governor, by and with the advice and consent of the senate. Their terms of office shall begin on the first day of July and shall be for a period of seven

years, except that the governor in making the initial appointments shall designate and define their respective terms of office so that the term of one member of the commission will expire each year. As initial appointments expire, all subsequent appointments shall be for terms of seven years or for the unexpired term of a member who may have died, resigned or become disqualified.

The members of the commission shall be citizens and residents of the state, selected with special reference to their training and experience in relation to the principal activities required of the commission, and for their ability and fitness to perform their duties within the purposes of this chapter. No member of the commission shall be a candidate for or hold any public office other than that of member of the commission; nor shall he be a member of any committee of a political party. In case a member becomes a candidate for or accepts appointment to any public office or political party committee, his office as member of the commission shall be immediately vacated.

Sec. 17. *Commission Organization and Services.*—Members of the natural resources commission shall take and subscribe to the public officer's oath prescribed by the constitution before entering upon the duties of their office. All such executed oaths shall be filed in the office of the secretary of state. Members of the commission shall receive no compensation as such, but each shall be reimbursed for his actual and necessary traveling expenses incurred in the performance of his official duties.

The director of the department shall be ex officio a member of the commission and its presiding officer. A majority of the commission shall constitute a quorum for transaction of business. Four regular meetings of the commission shall be held each year commencing on the first Monday in the months of July, October, January and April. Special meetings may be convened by the governor, the director or by a majority of the commission. The meetings of the commission shall be regularly held at the office of the director, but may be held at other points within the state when need therefor exists as explained

in the call setting forth the time and place of the meeting. The director shall furnish all articles and supplies required by the commission in the performance of its duties and shall provide necessary stenographic, secretarial and clerical assistance therefor. All such materials and services shall be paid for from department funds.

The director, at any regular or special meeting of the commission, may submit to the commission any program or policy matters on which he wishes to obtain the advice, counsel and opinion of the commission and may consult with members of the commission on functions, services, policies and practices of the department at any time. The commission shall serve as a body advisory to the director and as such shall have the following powers and duties:

(1) To consider and study the entire field of legislation and administrative methods concerning the forests and their maintenance and development, the protection of fish and game, the beautification of the state and its highways, and the development of lands, minerals, waters and other natural resources;

(2) To advise with the director concerning the conservation problems of particular localities or districts of the state;

(3) To recommend policies and practices to the director relative to any duties imposed upon him by law;

(4) To investigate the work of the director, and for this purpose to have access at reasonable times to all official books, papers, documents and records;

(5) To advise or make recommendations to the governor relative to natural resources of the state; and

(6) To keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the director.

Sec. 18. *Government Cooperation; Projects; Finances; Properties.*—In addition to all other powers and authority vested in the director, he is hereby authorized and empowered to represent and advance the interests of the state of West Virginia under provisions of acts of Congress now in force or hereafter enacted providing for coopera-

tion between the governments of the United States and of the several states in the exploration, development, conservation, use and enjoyment of natural resources. He may acquire by purchase or lease, as in this chapter provided, such lands, interests in lands, forests, parks, recreational facilities, wildlife and water areas and such other properties within this state as may be required in cooperative programs with any other government or governments, and, with the approval of the governor, may negotiate and effect self-liquidating loans with the government of the United States or any agency or agencies thereof for the procurement, development and use of all such properties. All such projects shall be in the interest and for the benefit of the state and may be geared and timed to relieve economic hardship and unemployment.

In order to consolidate forest tracts under either state or federal administration, the director may sell, purchase or exchange stumpage or lands within or adjacent to any national forest purchase area.

The director shall study the land and water boundary areas of the state and, where practicable, cooperate with adjacent states in programs for the development, conservation and use of waters, forests, minerals, wildlife and other natural resources.

## Article 2. Game and Fish.

Section

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43. Class E, class F and class G licenses for nonresidents.
44. Class H resident state-wide beaver trapping license.
45. Class K nonresident six-day, state-wide, fishing license.
46. Class L nonresident state-wide bow and arrow hunting and fishing license.
47. License for private game farm for propagating animals and birds for commercial purposes.
48. License for private plant or pond for propagating fish, frogs, turtles and other forms of aquatic life for commercial purposes.
49. License for dealers in furs.
50. Permit for scientific or propagation purposes.
51. Permit for keeping pets.
52. Permits for roadside menageries.
53. License for privately-owned commercial fishing preserve.
54. License for privately-owned commercial shooting preserves.
55. License to catch and sell minnows or other bait fish; fee; duration; renewal.

Section 1. *Game and Fish Division; Organization and Administration.*—The chief of the division of game and fish shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state as defined and constituted in this chapter. He shall organize the division and select competent and qualified per-

sonnel therefor so as to effect an orderly, efficient and economical division organization.

Sec. 2. *Violations; Punishment and Penalties.*—When no specific punishment or penalty is otherwise provided for violations of the provisions of this article, any person violating any provision hereof shall be guilty of a misdemeanor offense, and, upon conviction thereof, shall be subject to the punishment and penalties prescribed in section nine, article seven of this chapter.

## PART I. WILDLIFE MANAGEMENT

Sec. 3. *State Ownership of Wildlife.*—The ownership of and title to all wild animals, wild birds, both migratory and resident, and all fish, amphibians, and all forms of aquatic life in the state of West Virginia is hereby declared to be in the state, as trustee for the people. No such wildlife shall be taken or hunted in any manner, or at any time, unless the person so taking or hunting the same shall consent that the title thereto shall be and remain in the state of West Virginia for the purpose of regulating the taking, hunting, using and disposing of the same. The taking or hunting of wildlife at any time or in any manner by any person shall be deemed such consent: *Provided, however,* That all fish, frogs and other aquatic life in privately-owned ponds are, and shall remain, the private property of the owner or owners of such privately-owned ponds, and that such fish, frogs and other aquatic life in such privately-owned ponds may be caught, taken or killed by such owner or owners at any time.

Sec. 4. *Possession of Wildlife.*—Except as otherwise provided by law, no person shall have in his possession during closed seasons any wildlife. Wildlife which may be lawfully taken may be had in possession during the open season therefor, and for sixty days thereafter: *Provided, however,* That any person upon application to the director may be issued a permit authorizing the possession of the flesh of such wildlife as the director may determine for an additional period not to exceed four months.

Wildlife lawfully taken outside of this state shall be subject to the same laws and regulations as that taken within this state, but may be possessed for a period of

sixty days after the date such wildlife was legally brought into this state, and for an additional period thereafter, not to exceed four months, by securing a permit from the director.

Migratory wild birds shall be possessed only in accordance with the "Migratory Bird Treaty Act" and regulations thereunder.

Possession of any wildlife, or any part thereof, except during their respective open seasons and for sixty days thereafter, shall be presumptive evidence that the same was taken unlawfully by the possessor, unless such person has been issued a permit as authorized by this section.

The restrictions in this section do not apply to the director or his duly authorized agents, who may, in any manner, take or maintain in captivity at any time any wildlife for the purpose of carrying out the provisions of this chapter.

Sec. 5. *Unlawful Methods of Hunting and Fishing.*— Except as authorized by the director, it shall be unlawful at any time for any person to:

(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

(2) Dig out, cut out, or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting for, or taking any wild animals or wild birds, except that artificial lights such as are ordinarily carried in the hand or on the person may be used for the purpose of taking raccoon, opossum or skunk; or to throw or cast the rays of a spotlight, headlight, or other artificial light, from any vehicle, on any animal or game bird, or attempt to do so, while having in his or their possession or under their control, or in any vehicle or conveyance in which they may be traveling, a cased or uncased firearm or other implement whereby any wild animal or wild bird could be killed, even though such animal be not shot at, injured or killed. The provisions of this subdivision shall not apply if it shall be proven that the headlights of a motor vehicle while traveling on a highway in the usual

way, cast a light upon such animal, on or adjacent to such highway, and there was no attempt or intent to locate such animal;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or wilfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for game animals and nonmigratory game birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: *Provided, however,* That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory game birds, during the open season, in the open fields, open waters and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun on Sunday in any woods or on any highway, railroad right of way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trap shooting ground or range;

(10) To have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern stand-

ard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken on Sunday any wild animals or wild birds: *Provided, however,* That traps previously and legally set may be tended on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: *Provided, however,* That snaring of any species of suckers, carp, fallfish and creek chubs through the ice shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed

season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), sharp-shinned hawk (Accipiter striatus), Cooper's hawk (Accipiter cooperii), goshawk (Accipiter gentilis), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosives or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned for not less than six months nor more than three years, and, in the discretion of the court, may be fined not more than five hundred dollars;

(21) Have both a bow and a gun in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft;

(25) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance; and

(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any game animal or game bird, either day or night, between the first day of May and the fifteenth day of August next following: *Provided, however,* That dogs may be trained on game animals and game birds, except deer and wild turkeys, during the closed season on such game animals and game birds (the period from May first to August fifteenth, excepted); provided the person training said dogs does not have firearms or other implements in his possession whereby game animals or game birds could be taken or killed.

Sec. 6. *Carrying Gun on Landowner's Land.*—Notwithstanding any other provisions of this chapter, it shall be lawful for a bona fide resident landowner of this state, any member of said landowner's family and any bona fide tenant of said landowner, to carry an uncased gun at any time, whether accompanied by or without a dog, in their regular pursuits in caring for and looking after such landowner's livestock or poultry on his land and on any lands leased or rented by him for livestock or poultry husbandry purposes.

Sec. 7. *Hunting, Trapping, Fishing on Lands of Another; Damages and Compensation.*—It shall be unlawful for any person to shoot, hunt, fish or trap upon the fenced, enclosed or posted grounds or lands of another person or to peel trees or timber, build fires or do any other act or thing thereon in connection with or auxiliary to shooting, hunting, fishing or trapping on such lands without per-

mission in writing from the owner, tenant or agent of such owner, and every person hunting, fishing, shooting or fowling upon such lands shall have in his possession such written permission when so doing.

Any person who, for the purpose of, or while hunting, trapping or fishing, shall, without the permission of the owner, tenant or agent of the owner, enter upon the land of another and while thereon shall kill or injure any domestic animal or fowl, or shall cut, destroy or damage any bars, gates or fence, or any part thereof, or shall leave open any bars or gates thereon resulting in damage to the owner or occupant thereof, shall be guilty of a misdemeanor, and in addition shall be liable to the owner or person suffering such damage for all costs and damages resulting therefrom. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

Sec. 8. *Posting Unenclosed Lands.*—The owner, lessee or other person entitled to possession of unenclosed lands may have erected and maintained signs or placards legibly printed, easily discernible, conspicuously posted and reasonably spaced, so as to indicate the territory in which hunting, trapping or fishing is prohibited.

Any person who enters upon the unenclosed lands of another which have been lawfully posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

Sec. 9. *Unlawful Posting of Lands.*—It shall be unlawful and shall constitute a misdemeanor offense for any person or his agent or employee wilfully to post any notice or warning or wilfully to ward, drive or attempt to drive any person off, or prevent his hunting or fishing on, any land not owned or lawfully occupied by such person, his agent, or employee, unless such land is a lawfully established game or fish preserve.

Sec. 10. *Unlawful to Deface Signs.*—It shall be unlawful and shall constitute a misdemeanor offense for any person to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted by or under the authority of this chapter: *Provided, however,* That this section shall not apply to the owner, his agents, tenants or lessees, of the lands on which such signs or printed matter are posted. Each such sign so destroyed, torn down, shot at, defaced or erased shall be considered a separate offense under this section.

Sec. 11. *Sale of Wildlife; Transportation of Same.*—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, however,* That raccoon pelts taken during the legal season may be sold: *Provided further,* That hide, head, antlers and feet of a legally killed deer and the hide, head, skull and feet of a legally killed black bear may be sold.

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.

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. 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.

Sec. 12. *Transportation of Wildlife out of State.*—No person shall at any time transport or have in his posses-

sion 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, however,* 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.

Sec. 13. *Importation and Liberation of Wildlife.*—No person shall transport into or have in his possession within this state for purposes of liberation, or liberate within this state, any live wildlife from without the state, except as authorized by permit from the director. The director may issue such permit at his discretion, fix the terms thereof and revoke it at his pleasure.

Sec. 14. *Propagation of Wildlife for Commercial Purposes.*—No person shall propagate wildlife for commercial purposes except when licensed to do so as provided in section forty-seven of this article.

Sec. 15. *Permit to Kill Deer Causing Damage to Cultivated Crops, Fruit Trees or Commercial Nurseries.*—Whenever it shall be found that deer are causing damage to cultivated crops, fruit trees or commercial nurseries, the owner or lessee of the lands on which such damage is done may report such finding to the conservation officer of the county in which such lands are located or to the director. The director shall then investigate the reported damage and if found substantial may issue a permit to the owner or lessee to kill one or more deer in the manner prescribed by the director. No such permit may be issued to an owner or lessee when such lands are posted against public hunting of deer.

The first deer killed under such permit may be retained by the permittee for food. He shall, however, within forty-eight hours after such kill, notify the director or the conservation officer for the county in which such kill was made.

The permittee, upon killing any additional deer under this permit, shall immediately dress the carcass by removing the entrails and shall remove the deer killed to his residence or other specified place of safekeeping. Within twenty-four hours after the kill, he shall give notice thereof to the director or a conservation officer for the county in which such kill was made and thereupon the director or such conservation officer shall see that the carcass is removed.

Sec. 16. *Dogs Chasing Deer; Confiscation and Disposition; Destruction.*—No person shall permit his dogs to hunt or chase deer. A conservation officer shall take into possession any dog known to have hunted or chased deer and the director shall advertise in a newspaper of general circulation in the county that such dog is in his possession, giving a description of the dog and stating the circumstances under which it was taken. He shall hold the dog for a period of ten days. If, within ten days, the owner does not claim the dog, the director shall destroy it. In this event the cost of keeping and advertising shall be paid by the director. If, within ten days, the owner claims the dog, he may repossess it on the payment of costs of advertising and the cost of keep, not exceeding fifty cents per day. A conservation officer, or any officer or employee of the director authorized to enforce the provisions of this section, after a bona fide but unsuccessful effort to capture dogs detected chasing or pursuing deer, may kill such dogs.

Sec. 17. *Hunting Fur-bearing Animals; Possession of Fur; Disturbing Traps of Another.*—No person shall hunt, capture, trap, take or kill fur-bearing animals except as authorized by regulation of the director. Except as authorized by the director, no person shall have in his possession the fresh skin, or part thereof, of any fur-bearing animal, except beaver, within the period beginning ten days after the end of the open season on such fur-bearing animal and ending with the first day of the next succeeding open season. No person shall disturb properly marked traps of another person, kill, remove or take a fur-bearing animal from the trap of another person without spe-

cific authorization of the owner of the trap, except upon land where the owner of such trap may have placed it without right or permission.

Sec. 18. *Number and Types of Traps.*—The director shall have the power and authority to regulate the number, kind and type of traps to be used in the catching or trapping of any game or fur-bearing animals.

Sec. 19. *Marking of Traps.*—All traps used for taking of any game or fur-bearing animal shall be marked with a durable plate or tag, attached to the trap, trap chain, or set, bearing the name and address of the owner of said trap.

Sec. 20. *Trapping Beaver.*—No person shall at any time:

(1) Set or maintain more than the number of beaver traps, or groups of beaver traps, established as the season limit in any one year by the director;

(2) Set any traps for beaver within fifteen feet of the water line on the structure of any beaver house;

(3) Have in his possession an unsealed beaver hide, or part thereof, within the period beginning thirty days after the end of the open season and ending with the first day of the next succeeding open season for beavers; and

(4) Destroy, disturb, or in any manner interfere with dams, houses or burrows of beavers while trapping for or attempting to trap for beavers.

If any person shall unintentionally trap and kill more beavers than fixed by regulation as the season bag limit, he shall, within twenty-four hours thereafter, deliver said beaver or beavers to a conservation officer.

Sec. 21. *Sealing Beaver Pelts or Skins.*—Each licensee holding a resident state-wide beaver trapping license shall present for sealing, within thirty days after the close of a legal open season, all beaver pelts or skins taken under said license to a designated representative of the department. The resident state-wide beaver trapping license, countersigned by the owner, lessee or other person entitled to the possession of such lands, on which beaver were trapped, shall accompany all such pelts or skins. A seal provided by the department shall be affixed to each

beaver pelt or skin and shall remain attached to the skin until such pelt or skin has been tanned and processed into commercial fur. The sealing fee shall be one dollar per pelt.

Sec. 22. *Hunting Deer; Report to Director; Tagging.*—Any person who kills a legal deer during the open season shall deliver same for inspection and tagging to a conservation officer or an official checking station set up for that purpose by the commission during the open season.

Sec. 23. *Outfitter and Guide Services; Definition; Exceptions.*—Services of outfitters and guides for the benefit and convenience of hunters and fishermen in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article.

The word "outfitter", as used herein, shall mean and include any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situate within this state, provides, for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals or game birds or fishing in this state. The term "outfitter" shall not include, however, any person who occasionally, for accommodation or favor rather than profit or gain, rents equipment to hunters or fishermen as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public his offering of such services. The term "guide", as used herein, shall be construed to include and embrace outfitter services and the term "outfitter" shall be construed to include and embrace guide services, but the applicant for any license hereunder may in his application elect whether he wishes to be designated as an outfitter or as a guide.

Sec. 24. *Outfitter and Guide Qualifications; Investigation and Determination Thereof.*—Each outfitter and guide licensed under the provisions hereof shall be a financially responsible citizen of the United States of America and shall have been a resident of the state of West Virginia for

a period of at least one year immediately prior to the date of his license application. He shall possess and inventory proper and adequate materials and equipment to provide for hunters and fishermen the services and conveniences he advertises. All such materials and equipment shall be safe and free of infection and conditions inimical to the health and well-being of hunters, fishermen and their traveling, camping and lodging companions.

The director shall cause all outfitter and guide applicants to be investigated and shall make a determination of their qualifications prior to the issuance or refusal of licenses thereto.

Sec. 25. *Outfitter and Guide License Applications; Contents; National Forest Requirements.*—Each applicant for an outfitter or guide license shall file with the director a verified application setting forth the applicant's name, his address, the property possessed and to be used in the proposed outfitter and guide services, the area within which he proposes to serve, his citizenship, his age and such other data and information as may be prescribed and required by the director on the application forms to be furnished by the department. Each such application, when filed by the applicant, shall be approved and signed by three resident real property owners of the county in which such applicant resides.

Before any outfitter or guide license shall be issued for serving hunters or fishermen in any national forest areas within this state, the applicant shall obtain from the supervisor of such national forest area a designation of the camp site or other site from which the outfitter or guide proposes to operate therein and shall likewise obtain from such supervisor any other authority or permit to so operate in such national forest area, together with copies of any rules and regulations of the forest incident to maintenance of camps, sanitary conditions, and prevention of forest fires and water pollution. The applicant shall satisfy the director that he has obtained such designation, permit, authority and rules and regulations, as may be required, as a prerequisite to the director's consideration of the applicant's license application.

Sec. 26. *Outfitter's or Guide's License and Bond; Revocation of License; Penalties.*—When satisfied as to the applicant's qualifications for an outfitter's or guide's license and upon receipt of a fee of ten dollars therefor, the director shall issue such license which shall be for the calendar year therein designated.

Immediately upon the issuance of an outfitter's or guide's license and before any outfitter's or guide's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of one thousand dollars payable to the state of West Virginia and conditioned upon the faithful and reliable discharge of his services under and pursuant to such license. Such bond shall be approved as to form by the attorney general and as to surety by the director, and when so executed and approved, shall be filed in the office of the director. Such bond shall be for the life of the license.

The director is hereby authorized to revoke and cancel any such license for failure of the licensee to give the bond herein required, for licensee's violation or disregard of any of the provisions of this chapter, upon licensee's conviction of crime, or for any other reason or cause justifying refusal of the license to the licensee upon a new application therefor. The director shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

No person shall act or serve as a guide or outfitter, as defined in this article, without procuring and having on his person at the time a valid license from the director authorizing him so to do. Any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, may be fined not exceeding one hundred dollars or confined in the county jail not exceeding ninety days, or, in the discretion of the court, be both fined and imprisoned within the limits herein prescribed.

## PART II. LICENSES AND PERMITS

Sec. 27. *Necessity for Licensing.*—Except as otherwise provided by law, no resident who has reached his fifteenth birthday, and no nonresident, regardless of age,

shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit, and then only during the respective open seasons. No person under the age of fifteen years shall hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

A resident or nonresident member of any club, organization or association, or persons owning or leasing a game preserve, or fish preserve, plant or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law.

Licenses and permits shall be of the kinds and classes set forth in this article, and shall be conditioned upon the payment of the fees established therefor.

Sec. 28. *When Licenses or Permits Not Required.*—Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or bona fide resident tenants of such land to hunt and fish on their own land during open seasons in accordance with laws and regulations applying to such hunting and fishing unless such lands have been designated as a wildlife refuge or preserve; and

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

Sec. 29. *Licensing Aliens.*—Persons, not citizens of the United States, shall at no time, except when licensed to do so, hunt, trap, pursue, kill, catch or take any wild animals or wild birds, have in their possession firearms of any kind, or fish for, capture, catch, kill or take any fish, amphibians or other forms of aquatic life in this state.

Aliens desiring to procure licenses shall first apply to the director for a permit to secure such license. If the director satisfies himself that the applicant is entitled to such license, and will observe the laws of this state, and particularly the provisions of this chapter, he may issue the permit. Permits once issued remain in force until revoked.

Sec. 30. *Application and Statement of Eligibility for Licenses; Procuring License in Violation of Chapter.*—It shall be the duty of every person who makes application for and procures any class of license for himself or another to inform correctly the issuing authority that the applicant is eligible and fulfills the prerequisites of this chapter in respect to age, citizenship and residence which are necessary to entitle such person to have and hold the class of license applied for. In the case of an alien, the applicant shall produce the permit issued by the director. The possession of any class of license by any licensee shall presume that such licensee or his agent has duly informed the issuing authority that the licensee in question was eligible to have, hold and procure the class of license so issued. It shall be unlawful for any person to procure a license in violation of the provisions of this chapter. It shall not be necessary for the state to prove, in any proceeding for an offense hereunder, that false statements were or were not made, if it be established that the licensee possessed a class of license he was not entitled to possess, or the license procured by the offender for another was of a class the licensee was not entitled to possess.

Sec. 31. *Size and Form of License and Tag; Contents; Unlawful to Alter Licenses or Permits.*—The size, content and form of all licenses, tags, and permits shall be prescribed by the director. The information which a licensee is required to furnish shall be placed upon the license by the license issuing authority before delivery of such license to the licensee.

It shall be unlawful for any person to alter, mutilate, or deface any license, tag, or permit, or the entries thereon, for the purpose of evading the provisions of this chapter.

Sec. 32. *Issuance of Licenses; Duplicate Licenses.*—The clerk of the county court in each county and such other persons as are designated by the director shall be the license issuing authorities hereunder. Each issuing authority shall issue a license to a license applicant if, in the opinion of such authority, the license applicant is legally entitled to obtain the license applied for and pays the proper fee therefor.

All materials and supplies necessary for the issuance of licenses shall be furnished by the director to every person authorized to issue the licenses.

Each license shall bear a serial number and shall be signed by the issuing authority. The issuing authority shall deliver to the licensee any badge, tag, or other container required to be worn by the licensee. The issuing authority shall keep an accurate record, in the form and manner prescribed by the director, of all licenses issued and of all money collected as license fees.

Any license issuing authority may issue a duplicate license, to replace any lost, destroyed or damaged license, upon receipt of a verified application therefor duly executed by the original license holder and the payment by such applicant to the issuing authority of a duplicate license fee of one dollar, which shall be paid to the director as provided in section thirty-four hereof.

Sec. 33. *Authority of Director to Designate Agents to Issue Licenses; Bonds; Fees.*—The director shall have authority to appoint within any county as many persons as his agents, with authority to issue licenses under the provisions of this article, as may, in his opinion, be necessary, in addition to the clerk of the county court of the county, to serve the convenience of the public in procuring such licenses. Each person so appointed as such agent and license issuing authority shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director at not less than one thousand dollars, conditioned upon the faithful performance of his obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him.

The form of such bond shall be prescribed by the attorney general. No person, other than those designated as issuing agents by the director, shall sell licenses, or buy the same for purposes of resale.

Every person making application for any licenses shall pay, in addition to the license fee prescribed therefor in the later sections of this article, an additional fee of twenty-five cents as compensation for the person issuing the license, except when such license is purchased from a state or county official: *Provided, however,* That only one fee of twenty-five cents shall be collected for issuing combination resident state-wide hunting and fishing Class A-B licenses.

Sec. 34. *Disposition of License Fees; Reports of Agents; Special Funds and Uses.*—All persons in this state who receive money for licenses and permits required by this chapter shall, on the first day of each month, pay over to the director all moneys so collected by them during the preceding month. Such payment shall be accompanied by a report showing, in the case of license money, the name of the county, the class of license sold, the names and addresses of the persons paying the same, the date of the receipt thereof, the signature of the person receiving and remitting such funds, and such other information as the director may deem necessary.

Except where other provisions of this chapter specifically require and direct payment of any such moneys into designated funds for specific uses and purposes, all moneys so received by the director hereunder shall be by him promptly paid into the state treasury and shall be credited to the department of natural resources and shall be further credited to and kept in a separate fund designated "License Fund—Game and Fish", which shall be used and paid out, upon order of the director, solely for the conservation, protection, propagation and distribution of fish, frogs, wild game and wild birds and fowls in this state pursuant to the provisions of this chapter.

Sec. 35. *Period during Which License Valid.*—Licenses and permits provided by this chapter shall be valid

through the last day of the calendar year for which they are issued unless otherwise provided by law.

Sec. 36. *When License to Be Carried and Exhibited; Carrying License of Another.*—Except as otherwise provided by law, no person shall hunt, take, pursue, trap for, kill, catch or chase for sport any wild animal or wild bird; or fish for, take, kill or catch any fish or amphibians of any kind whatsoever in this state unless he shall have attached and displayed upon his outer garment a valid license issued to him.

It shall be unlawful for any person to use at any time any license other than those legally issued to him, or transfer a license to another person.

Sec. 37. *Display of Bag and Creel Contents.*—Any person having in his possession in or near the fields or woods, or about streams of this state, any dog, gun, fishing rod or other hunting, fishing or trapping paraphernalia, shall, upon demand of any officer authorized to enforce the provisions of this chapter, state his correct name and address, and shall exhibit for inspection his license, if such license is required by law, and all firearms and wildlife which he may have in his possession.

Sec. 38. *Refusal or Revocation of License or Permit.*—The director may, for cause, refuse a license or permit to any person or revoke a license or permit which had been granted.

In case the director desires to refuse a license to any person, he shall notify personnel authorized to issue licenses, in counties where it is expected such license may be sought, of the name and address of such person and such other information in relation thereto as he may desire to give, and such issuing authority shall not issue a license to such person thereafter, and shall report to the director any application made therefor. In case any issuing authority shall, after receiving such notice, knowingly issue such license, he shall be guilty of a misdemeanor. The director may revoke any such license so wrongfully issued. The violation of any of the provisions of this chapter by any person holding a license shall be

sufficient cause for the director to refuse or revoke a license.

All licenses and permits authorized by this chapter to be granted shall be deemed to have been granted by the director, and the power and authority to revoke such licenses is vested in the director. Upon the revocation of any license, the one to whom the same was issued shall, upon having knowledge of such revocation, forthwith deliver the license and tag so issued to him to the director, his agent, or the clerk of any county court. A clerk shall transmit the same to the director.

The hunting license of any person convicted under section eleven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall be revoked, and such person shall not be issued any other hunting license for a period of five years.

Sec. 39. *Class A Resident State-wide Hunting License.* —A Class A license shall be a resident state-wide hunting license and shall entitle the licensee to hunt all game in all counties of the state. It shall be issued only to citizens of the United States who are residents of this state. The fee therefor shall be three dollars, except that, in any case where a licensee purchases a Class A and a Class B license at the same time, the fee for a Class A license shall be two dollars and fifty cents.

Sec. 40. *Class B Resident State-wide Fishing License.* —A Class B license shall be a resident state-wide fishing license and shall entitle the licensee to fish for all fish in all counties of the state. It shall be issued only to citizens of the United States, and unnaturalized persons possessing the permit mentioned in section twenty-eight of this article, who are residents of this state. The fee therefor shall be three dollars, except that, in any case where a licensee purchases a Class A and a Class B license at the same time, the fee for a Class B license shall be two dollars and fifty cents. For convenience, the commission may provide for the issuance, in those cases where both Class A and Class B licenses are issued to a single licensee at the same time, of both Class

A and Class B licenses upon a single form, but, regardless of such form, each shall be and remain a separate license.

Sec. 41. *Class C Courtesy State-wide Hunting and Fishing License.*—A Class C license shall be a courtesy hunting and fishing license and shall entitle the licensee to hunt and fish in all counties of this state. It shall be issued by the director upon application made to him and without fee to:

(1) Members and agents of the United States fish and wildlife service;

(2) Members of state commissions of other states extending similar courtesies;

(3) Diplomatic and consular representatives of foreign countries; and

(4) Persons engaged in scientific research.

Not more than one hundred courtesy licenses shall be issued in one year.

Sec. 42. *Class D-1 and Class D-2 Ohio River Hunting and Fishing Licenses.*—A Class D-1 license shall be an Ohio river hunting license and a Class D-2 license shall be an Ohio river fishing license. The licenses shall entitle the licensee to hunt and to fish in the Ohio river only. They shall be issued to citizens of the United States who are residents of the state of Ohio. The fee shall be two dollars for the hunting license and two dollars for the fishing license.

Sec. 43. *Class E, Class F and Class G Licenses for Nonresidents.*—A Class E license shall be a nonresident hunting license and shall entitle the licensee to hunt all game in all counties of the state. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be twenty dollars.

A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish in all counties of the state. It shall be issued only to citizens of the United States, and to unnaturalized persons possessing the permit required by section twenty-eight of this

article, who are not residents of this state. The fee therefor shall be ten dollars.

A Class G license shall be a nonresident family fishing license and shall entitle the licensee and members of his family to fish within the territorial limits of state parks and state forests and in the waters of streams bounding same, for a distance of not to exceed one hundred yards from the exterior boundary of any state park or state forest, for a period not to exceed one week. It may be issued to any adult nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be three dollars for the head of the family, plus fifty cents additional for each member of his family to whom the privileges of such license are extended. Class G licenses may be issued in such manner and under such regulations as the director may see fit to prescribe.

Sec. 44. *Class H Resident State-wide Beaver Trapping License.*—A Class H license shall be a state-wide beaver trapping license and shall entitle the licensee to trap beaver only in all counties of the state. It shall be issued only to a citizen of the United States who is a bona fide resident of West Virginia. This license shall become valid only when countersigned, in a space provided on face of license, by landowner, lessee, or person who has legal possession of land upon which the trapper is operating. Setting beaver traps upon the lands of another person without obtaining permission and signature in space provided on license shall be considered an illegal act. The licensee shall not be required to hold any other class of license to trap beaver; nor shall said license be required of any bona fide resident landowner or bona fide resident tenant, or a child of either under the age of fifteen years in those cases where they may trap beavers upon lands belonging to such landowner, or in possession of such tenant. The fee therefor shall be two dollars.

Sec. 45. *Class K Nonresident Six-day, State-wide, Fishing License.*—A Class K license shall be a nonresident fishing license and shall entitle the licensee to fish for all

fish in all counties of the state for a period not to exceed six days. It shall be issued only to citizens of the United States, and to unnaturalized persons possessing the permit required by section twenty-eight of this article, who are not residents of this state. The fee therefor shall be three dollars.

Sec. 46. *Class L Nonresident State-wide Bow and Arrow Hunting and Fishing License.*—A Class L license shall be a nonresident bow and arrow hunting and fishing license and shall entitle the licensee to employ a long bow and arrow in taking game, fish and frogs in all counties of the state. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be five dollars.

Sec. 47. *License for Private Game Farm for Propagating Animals and Birds for Commercial Purposes.*—The director may issue a license for the operation of a private game preserve for propagation of wild animals and wild birds for commercial purposes. The license shall authorize the holder to breed or raise animals and birds as specified by the license, to sell the same dead or alive, or to sell the eggs of birds in accordance with regulations prescribed by the director.

Application for a license under this section shall designate the property whereon the preserve is to be established. Before the license is issued, the director shall determine that the property is properly enclosed, that the provisions for housing and sanitation are proper and adequate, and that the safety of the public is protected.

The annual license fee shall be ten dollars.

Sec. 48. *License for Private Plant or Pond for Propagating Fish, Frogs, Turtles and Other Forms of Aquatic Life for Commercial Purposes.*—The director may issue a license for the operation of a private plant, pond or business for the propagation, sale or purchase of fish, frogs, turtles and other forms of aquatic life for commercial purposes. The license shall authorize the holder to breed or raise fish, frogs, turtles and other forms of aquatic life as specified by the license and to buy and sell

the same dead or alive or the eggs thereof in accordance with regulations prescribed by the director.

Application for a license under this section shall designate the size, character and location of the plant or pond. Before the license is issued, the director shall determine that the pond or plant will not interfere with the free passage of fish; that any water diverted to such plant or pond does not violate the riparian rights of other landowners and that such plant, pond or diversion will not interfere with the public stocking or propagation of fish frequenting such waters.

A licensee selling fish shall furnish the purchaser with a certificate or invoice of sale, bearing date of sale, the number of the license under which sold, the number of fish and number of pounds sold, and such other information which the director may require.

The certificate or invoice shall be shown by the holder on demand of any person authorized under the provisions of this chapter to enforce the provisions hereof.

The annual license fee shall be ten dollars.

Sec. 49. *License for Dealers in Furs.*—The director may issue licenses for buying or dealing in raw furs, pelts or skins of fur-bearing animals as follows:

(1) A resident county license, which shall apply only to the county or counties designated on the license and shall be issued only to persons who have been bona fide residents of this state for a period of at least six months prior to the date of application, and of a county in which the privilege is to be exercised. A license shall apply to the county for which issued and to such adjacent counties as are designated in the license. A fee of one dollar for each county shall accompany the application;

(2) A resident state-wide license, which shall apply to all counties in the state and shall be issued only to persons who have been bona fide residents of this state for a period of at least six months prior to the date of application. A fee of ten dollars shall accompany the application;

(3) A nonresident state-wide license, which shall apply

to all counties in the state and shall be issued only to non-residents. A fee of fifty dollars shall accompany the application; and

(4) An agent's permit, which shall apply to a person employed by a licensee under subsections (1), (2) or (3) above, to buy or deal as an agent of the licensee other than at the place of business of the licensee. A fee of two dollars and fifty cents for each such agent shall accompany the application.

Sec. 50. *Permit for Scientific or Propagation Purposes.*—The director may issue a permit to a person to hunt, kill, take, capture or maintain in captivity wildlife or reptiles exclusively for scientific or propagation purposes, but not for any commercial purposes. A permit may be issued only upon written application to the director setting forth at least:

(1) The number and kind of wildlife or reptiles to be taken;

(2) The purpose and manner of taking; and

(3) The name, residence and profession of the person applying for the permit.

No charge shall be made for this license.

Sec. 51. *Permit for Keeping Pets.*—The director may issue a permit to a person to keep and maintain in captivity as a pet, a wild animal or wild bird that has been acquired from a commercial dealer or during the legal open season. The fee therefor shall be two dollars.

Sec. 52. *Permits for Roadside Menageries.*—The director may issue a permit for the keeping and maintaining in captivity of wild animals, wild birds, amphibians or reptiles as a roadside menagerie. A permit shall not be issued unless:

(1) The animals, birds, amphibians or reptiles have been purchased from a licensed commercial dealer, either within or without the state, or have been taken legally; or

(2) The director is satisfied that provisions for housing and care of wildlife to be kept in captivity and for the protection of the public are proper and adequate.

A fee of twenty-five dollars shall accompany each application for such permit.

Sec. 53. *License for Privately-owned Commercial Fishing Preserve.*—The director may issue a license for the operation of a private pond or privately-owned pond or impoundment to be used as a commercial fishing preserve, provided such impoundments meet the requirements of section twenty-seven of this article: *Provided, however,* That only one license shall be required where more than one private pond or privately-owned pond or impoundment is operated under one ownership and management and on one separate commercial fishing preserve. The licensee shall have the authority to establish the fishing seasons, size and creel limits for such licensed pond or impoundment. A person fishing in such lake shall not be required to possess the same state-wide fishing license as would be required of him if he were fishing in any of the public waters of this state.

The annual fee for the commercial fishing preserve license shall be twenty-five dollars.

Sec. 54. *License for Privately-owned Commercial Shooting Preserves.*—1. The director may issue a license for privately-owned commercial shooting preserves to any person who meets the following requirements:

(a) Each commercial shooting preserve shall contain a minimum of three hundred acres in one tract of leased or owned land (including water area, if any) and shall be restricted to no more than three thousand contiguous acres (including water area, if any), except that preserves confined to the releasing of ducks only shall be authorized to operate with a minimum of fifty contiguous acres (including water area); and

(b) The exterior boundaries of each commercial shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of one hundred fifty yards or less.

2. The director shall designate the game which may be hunted under this section on which a more liberal season may be allowed.

3. The operating licenses or permits issued by the director shall entitle holders thereof, and their guests or customers, to recover not more than eighty per cent of the total number of each species of game bird released on the premises each year, except mallard, black duck, ring-necked pheasant, chukar partridge, and other nonnative game species upon which a one hundred per cent recovery may be allowed.

4. Except for the required compliance with the restriction on the maximum number of released birds that may be recovered from each preserve each year, as provided in subsections three and eight, shooting preserve operators may establish their own shooting limitations and restrictions on the age, sex and number of birds that may be taken by each person.

5. In order to give a reasonable opportunity for a fair return on a sizeable investment, a liberal season shall be designated by the director during the six-month period, beginning October first and ending March thirty-first.

6. All harvested game shall be tagged prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game actually is delivered to the point of consumption. The director shall furnish numbered tags at nominal cost to shooting preserve operators.

7. Each shooting preserve operator shall maintain a registration book listing all names, addresses, and hunting license numbers of all shooters; the date on which they hunted; the amount of game and the species taken; and the tag numbers affixed to each carcass. An accurate record likewise must be maintained of the total number, by species, of game birds and ducks raised and/or purchased, and the date and number of all species released. These records shall be open to inspection by a delegated representative of the director at any reasonable time, and shall be the basis upon which the game recovery limits in subsection three hereof shall be determined.

8. Any wild game found on commercial shooting preserves may be harvested in accordance with applicable game and hunting laws pertaining to open seasons, bag

and possession limits, and so forth, as are established regularly by the director and the United States fish and wildlife service.

9. State hunting licenses shall be required of all persons hunting or shooting on shooting preserves.

10. The fee for such licenses shall be fifty dollars per year for the first three hundred acres of shooting preserve area, plus twenty-five dollars per year for each additional three hundred acres or part thereof.

Sec. 55. *License to Catch and Sell Minnows or Other Bait Fish; Fee; Duration; Renewal.*—The director shall have the power and authority to issue a license to any person to catch and sell minnows or other bait fish upon written application therefor, signed by the applicant. The fee for such license shall be ten dollars. All licenses issued under this section shall expire on the first day of January following the date of issue. Any such license may be renewed from year to year upon paying to the director the sum of one dollar for each such renewal.

## Article 3. Forests and Wildlife Areas.

**Section**

1. Division of forestry; duties and functions.
2. Acquisition of suitable lands by director; maintenance thereof as state forests or wildlife areas.
3. Establishment of wildlife areas; leasing lands therefor.
4. Forest fires; authority and duties of director and others; expenditures for forest fire control.
5. Forest fire seasons; permits; prohibited fires; closure of forests.
6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.
7. Starting fire on lands of another; felony.
8. Duty of railroad company to protect against fires.
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13. Director authorized to secure federal cooperation; annual appropriation.
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20. Southeastern interstate forest fire protection compact; governor's authority to execute.
21. When and how compact becomes operative.

22. Compact administration; committee; terms and removal.
23. Compact committee powers and duties; cooperation therewith.
24. Other powers supplementary.

Section 1. *Division of Forestry; Duties and Functions.* —The division of forestry, herein created and established, shall have within its jurisdiction and supervision the state forests, other forest and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forestry area management and husbandry, and the administration and enforcement of all 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.

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 merit system 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.

The division chief 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 director legislation thereon.

## PART I. FORESTS AND WILDLIFE AREAS

Sec. 2. *Acquisition of Suitable Lands by Director; Maintenance Thereof as State Forests or Wildlife Areas.*— The director may with the consent of the governor purchase, in the name of the state, out of funds set aside for the purpose, or out of any unused funds in his hands, lands suitable for forest culture, state forests, or wildlife refuges. Such funds may also be used for the construction of dams for fish refuges on lands so acquired. Purchase may be made on terms requiring not less than one third of the purchase price to be paid at the time of the con-

veyance with the residue to be paid in not less than one or two years after date. Without the consent of the governor, not more than twenty-five dollars per acre shall be paid for lands to be used for the purpose of this article. The director may also receive the gift of such lands by deed or bequest. In all cases of transfers to the state, the fee simple title shall pass to the state, except minerals and mining rights to remove such minerals may be excepted or reserved.

The director shall protect, preserve and maintain lands so acquired as state forests and wildlife areas for the propagation and distribution of forest trees and for the protection, management, propagation and distribution of the fish, wild animals and birds thereon. He may prescribe and enforce rules and regulations consistent with the laws of the state to carry out that objective. The director may prescribe and enforce rules prohibiting all fishing and hunting, pursuing, catching, trapping, capturing and killing of fish, wild animals and birds upon such state forests and wildlife areas for such length of time as he may deem proper.

The director may provide special regulations and open seasons for the taking of any wild birds, wild animals or fish on such lands in the manner provided in this chapter.

Sec. 3. *Establishment of Wildlife Areas; Leasing Lands Therefor.*—The director shall establish and maintain wildlife areas on lands purchased, leased or given for this purpose. Upon such state-owned or leased lands under its administration, or lands purchased from departmental funds for the establishment of wildlife areas, or upon lands purchased in cooperation with any agency of the federal government or leased therefrom or managed cooperatively therewith, the director shall regulate public hunting, chasing for sport, shooting, and limit the number of wildlife, which may be taken from such areas open to public shooting in any year. The director may establish special open seasons on any such lands, and may close any such areas, or parts thereof, to public shooting.

It shall be unlawful at any time to hunt, pursue or molest in any manner, any animals, birds or fowls on that

section of any wildlife area designated as wildlife refuge, except that any legally constituted enforcement officer, or other person designated by the director, may hunt, pursue, catch and kill in any manner predatory animals and predatory birds thereon.

On the boundary of each state wildlife refuge, there shall be posted in conspicuous places, not more than one hundred and fifty yards apart, notices bearing the following words: "State wildlife refuge—hunting is unlawful", and such other information or rules and regulations as the director may deem advisable. On the boundary line of any such wildlife area which has been established as a public shooting ground, the director shall have posted in conspicuous places, not more than one hundred and fifty yards apart, notices bearing the following words: "Public shooting grounds", together with information as to when hunting is legal on such tract.

The director shall also have the power to lease lands for this purpose for not less than ten-year periods, the rental price thereof not to be more than the amount of the annual property taxes on such land, and in no event to exceed ten cents per acre per annum.

The director may, with the consent of the owner, set apart any tract of land in the state as a wildlife area. When such lands have been set apart, the director shall manage them in the same manner and for the same purpose as wildlife areas owned by the state. Such lands not owned by the state and now operated by the director as wildlife areas shall, at the expiration of the agreement, be reorganized as wildlife areas or be discontinued.

Sec. 4. *Forest Fires; Authority and Duties of Director and Others; Expenditures for Forest Fire Control.*—Upon receiving notice of any fire which is injuring or endangering forest land within the state, the director, or his duly authorized representative, the state forester, or any conservation officer shall employ all necessary means to confine, extinguish or suppress the fire. For these purposes such persons and their employees shall, under the general supervision of the director, have the right and authority to enter upon public or private lands, to destroy fences

thereon, to plow such lands, and in case of extreme emergency, to set backfires thereon. The state forester and any conservation officer may, under the general supervision of the director, or his duly authorized representative, employ persons to detect fires which may injure or endanger forest land, and may likewise summon or employ persons to assist in extinguishing such fires, who shall be paid for the actual time so employed, at a rate per hour to be determined by the director: *Provided, however,* That the rate per hour shall not exceed the rate per hour paid for any comparable labor or skills by the state road commission. Any person so summoned who shall fail or refuse to assist in extinguishing any such fire shall, unless such failure or refusal to assist is due to physical inability, be guilty of a misdemeanor.

Expenditures for detecting, confining, extinguishing or suppressing fires described in this section shall be charged against the state and shall be paid out of the sum of one hundred twenty thousand dollars annually appropriated and made available under provisions of section thirteen of this article. The state forester or his agent shall render to the director, as soon as practicable, a sworn statement with the names of all persons who were summoned or employed and assisted in fighting such fires, the time so spent by each, as well as the names of persons who furnished equipment, subsistence or supplies, or transportation therefor, and the amount of money due each for such services, subsistence, supplies or transportation. Requisitions shall be issued and payment of the sums due shall be made in the same manner as is provided for the making of other expenditures by the director.

Sec. 5. *Forest Fire Seasons; Permits; Prohibited Fires; Closure of Forests.*—The periods of each year between March first and May thirty-first, inclusive, and October first and December thirty-first, inclusive, are hereby designated as forest fire seasons. No person shall during any such fire season, except between the hours of five o'clock p. m. eastern standard time and five o'clock a. m. eastern standard time, set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or

other inflammable material if it is located in a place from which it is reasonable to expect that the fire may spread to any forest land. Any person who sets or causes to be set such a fire during any period of time permitted by this section shall not leave the fire unattended and shall completely extinguish the fire before five o'clock a. m. eastern standard time. If damage to the property of another results from any such fire during a forest fire season, it shall be prima-facie evidence that the person who set such fire or caused it to be set violated the provisions of this paragraph.

The director or his designated appointees or employees may issue permits authorizing fires prohibited by the preceding paragraph. Such permits may be granted on such conditions and for such periods of time as the director deems necessary to prevent danger from fire to life or property, and noncompliance with any term of the permit shall be a violation of this section. Any permit which was obtained through wilful misrepresentation shall be invalid. All permit holders shall take all necessary and adequate precautions to confine and control any fire permitted by the authorization; failure to take such action shall be a violation of this section and shall be justification for the director's obtaining a court order requiring the permit holder to extinguish and cease using fires during the forest fire season.

When the director considers it necessary to prevent danger from fire to life or property, he may, with the prior approval of the governor, prohibit the starting of and require the extinguishment of any fire in any forest area designated by the director, and such action may include any fire for which a permit has been issued under the preceding paragraph. In addition, if so deemed necessary, the director may, with the prior approval of the governor, designate any forest area as a danger area and prohibit entry thereon or use thereof except for the purposes and on the conditions he designates. The director by proclamation shall establish such areas and designate which fires are prohibited therein; and if a danger area is established, he shall announce the purposes for which and conditions under which entry thereon or use thereof may be

made. Action hereunder may be taken by the director at any time during the year. Notice of any proclamation hereunder shall be posted on each primary road at the entrance to the designated areas and copies of the proclamation shall be furnished at the time of posting to newspapers, radio stations and television stations which serve the area designated. The proclamation shall not be effective until twenty-four hours after it is posted as herein provided. Any proclamation hereunder shall remain in force until the director, with the approval of the governor, by order terminates it. The order shall designate the time of termination, and notice of any such order shall be furnished to each newspaper, radio station and television station which received a copy of the proclamation. The posted notices shall be removed as soon as possible after termination of any such proclamation. Any person who starts or fails to extinguish a fire so prohibited or enters or uses a danger area otherwise than permitted shall be guilty of a violation of this section.

Sec. 6. *Failure of Person to Extinguish Fire Started or Used by Him; Throwing Lighted Material on Forest Land.* —Any person who, by himself, or by his servants, agents or guides, or as a servant, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adjacent to or in any forest land in this state, shall, before leaving such fire for any period of time, totally extinguish the same.

A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or other lighted material on any forest land, private road, public highway or railroad right of way within this state.

Any person who violates any provision of this section shall be guilty of a misdemeanor.

Sec. 7. *Starting Fire on Lands of Another; Felony.*— Any person who wilfully sets or causes to be set on fire any forest land, grass, grain, stubble, brush, slash, debris, or any other inflammable substance upon the property of another without his consent, or in a place from which it is reasonable to expect that the fire may spread to the property of another without his consent, and as a result of

either causes damage or destruction to any natural resources in or on the other person's property, shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned for not less than one year nor more than five years, or both, in the discretion of the court.

Sec. 8. *Duty of Railroad Company to Protect against Fires.*—Every railroad company or other company operating a steam, diesel or other type of locomotive shall cut and remove from the part of its road or right of way which passes through forest land or lands subject to fire from any cause, at least once a year, all grass, brush, and other inflammable materials, and employ, at times when such land is in a dry and dangerous fire condition, sufficient trackmen to promptly put out fires on such road or right of way; and shall provide locomotives thereon with netting of steel or iron so constructed as to give the best practical protection against the escape of fire and sparks from the smokestacks or exhausts thereof and against the escape of fire from ash pans and furnaces which are used on such locomotives.

No such company, or any employee thereof, shall deposit, cast, or discharge fire coals or ashes on that part of its road or right of way which passes through forest land, or lands subject to fire from any cause, unless the fire therein is immediately extinguished. No such company, or employee thereof, shall place a lighted fusee along such roads or rights of way in such a manner as will cause the same to ignite inflammable substances which may cause fire to spread to forest land. In case of any uncontrolled or unguarded fire on such part of its road or right of way, the company shall use all practicable means to extinguish it. Engineers, conductors, trainmen, or other persons who, while working for such companies, discover or know of any fire on, along or near such part of the road or right of way of their employer, shall report the same as soon as possible to personnel of the director. A company, or any officer or employee thereof, violating any provision of this section, shall be guilty of a misdemeanor.

Sec. 9. *Right of Railroad Company to Clear Land Adjacent to Right of Way.*—For the purpose of providing increased protection to forest land from fire originating along railroads, any company which operates a railroad shall have the right, subject to the provisions of this section, without liability for trespass, to enter upon forest land for a distance of one hundred feet from its road or right of way and to clear from such a strip any inflammable material such as leaves, grass, dead trees, slash and brush, but shall not remove any valuable timber growth or other thing of value without consent of and recompense to the owner. Not less than fifteen days prior to clearing such lands, the railroad company shall give the owner thereof notice of its intention, together with a transcript of this section, by letter deposited in the United States mail to his last known address. If the owner shall not file an objection to such clearing with the director within ten days of the date of said notice, he shall be deemed to have given consent. Upon the filing by an owner of such objection showing cause why such clearing should not be done, the director shall review the case and may sustain the objection of the owner or permit the clearing in whole or in part.

Sec. 10. *Engines; Escape of Fire from.*—No person, firm or corporation shall use or operate in forest land, or within one eighth of a mile therefrom, a sawmill, a power shovel, or an engine or machine capable of throwing sparks, unless the equipment is provided with an adequate spark arrester. Escape of fire from such equipment shall be prima-facie evidence that such appliance was not maintained properly in compliance with this section. Any person, firm or corporation violating this section shall be guilty of a misdemeanor.

Sec. 11. *Recovery of Expenses Incurred in Fighting Fires.*—The director shall, in the name of the state, recover from the persons, firms or corporations whose negligence or whose violation of any provision of this article caused any fire at any time on grass or forest land, the amount expended by the state in confining, extinguishing or suppressing such fire and the costs thereof. Such re-

covery shall not bar an action for damages by any other person.

Any such fire which was caused by a trespasser or by a person who was upon the property without the consent of the owner shall not be deemed caused by the negligence of the owner; but the owner shall use all practical means to confine, extinguish or suppress any such fire on his land even though it was caused by any such person. If he fails to do so, after becoming aware of such fire, the director shall, in the name of the state, recover from him amounts expended by the state for such purposes and the costs thereof.

Sec. 12. *Timber Land and Forest Land Defined.*—For the purpose of this chapter, any land shall be considered timber land or forest land which has enough timber standing or down to constitute, in the judgment of the commission, a fire menace to itself or adjoining lands: *Provided, however,* That nothing in this section contained shall be construed to include lands under cultivation or in grass: *Provided further,* That nothing contained herein shall be construed so as to include within the provisions of this section any land which is an isolated fire risk, unless a forest fire thereon would imperil the lands of any adjoining landowner or landowners.

Sec. 13. *Director Authorized to Secure Federal Cooperation; Annual Appropriation.*—The director may do all things required to meet the conditions and requirements of the federal government in securing federal cooperation under the provisions of the Weeks Law and the Clarke-McNary Law, and any other law amendatory thereof or supplemental thereto, for the purpose of the prevention and control of forest fires and the advancement of forestry practices. The sum of one hundred twenty thousand dollars is hereby appropriated annually, and the board of public works shall include said sum of one hundred twenty thousand dollars for said purpose in its annual budget to the Legislature as provided in section fifty-one, article six of the constitution of this state and/or in such other budgets as it may present to the Legislature as may be necessary to provide the said sum of one hundred twenty

thousand dollars for the purpose of this section, which sum of one hundred twenty thousand dollars annually shall be paid into the state treasury to the credit of the department of natural resources and be expended and drawn upon by it for the aforesaid purposes, in the manner herein elsewhere provided. Any unexpended balance of this appropriation at the end of any fiscal year shall be reappropriated and retained for forest fire control expenditures: *Provided, however*, That all such balances revert to the general fund.

Sec. 14. *Financial Assistance from Owners of Forest Lands; Expenditures by Director.*—The director may cooperate with the owners of forest lands and receive financial assistance from them for forestry purposes and do any and all things necessary therefor, including the establishment and maintenance of patrol and lookout stations: *Provided, however,* That the director shall expend for forestry purposes, and for no other purpose, such moneys as shall be appropriated therefor by the state, and such moneys as may be recovered from persons giving origin to grass or forest fires, and such moneys as may be received from the federal government by appropriation under the Weeks and Clarke-McNary laws, or otherwise.

Sec. 15. *Owner Not Relieved from Civil Liability for Damage from Fire.*—Nothing in this chapter shall be construed to relieve the owner, lessee or user of any land from civil liability for damage resulting from any fire for which their agents or employees may be responsible.

Sec. 16. *Prima-Facie Evidence of Negligence.*—In all criminal and civil actions for any injury occasioned by fire communicated by burning or clearing land, the fact that such fire was so communicated shall be prima-facie evidence of negligence on the part of the person or agent or employee or any other person who shall at the time of such injury by fire be in the use and occupation of the land on which the burning was done and of those who shall at such time have care and management of such burning.

Sec. 17. *Disposition of Proceeds of National Forests.*—Receipts from any national forest, paid to the state or its

proper officers pursuant to directions of acts of Congress, shall be allocated by the auditor to each county which has acreage located in such national forest, in the proportion which the acreage in such county bears to the total acreage of such national forest in this state. Eighty per cent of the funds so allocated to any county shall be paid to the board of education of the county to be expended by the board for the benefit of the public schools of the county. Twenty per cent of the funds so allocated to any county shall be paid to the state road commission to be expended for secondary road purposes in that county.

Notwithstanding any contrary provision of former law, any sheriff or county court of any county having charge or custody of any unexpended national forest proceeds, received under allocations made pursuant to former provisions of law, shall pay over eighty per cent of such unexpended balance to the county board of education, and twenty per cent thereof to the state road commission, for expenditure as provided herein.

Sec. 18. *Disposition of Flood Control, Navigation and Allied Funds from the Federal Government.*—Receipts from the treasurer of the United States, paid to the state or its proper officers pursuant to direction of an act of Congress relating to disposition of funds received on account of the leasing of lands for flood control, navigation and allied purposes, shall be allocated by the state auditor to each county in accordance with the method of allocation specified by the federal government. The state auditor shall transfer to the road commission fifty per cent of the funds so allocated to each county for the purpose of maintenance of secondary roads in the area or areas of the county in which such flooded lands are located. Fifty per cent of the funds so allocated to any county in which such lands are located shall be paid by the state auditor to the board of education of that county to be expended by the board for the benefit of the public schools of the county.

Sec. 19. *Protection of Forests against Destructive Insects and Diseases; Purposes and Intent of the Section.*—In order to protect and preserve forest resources of the state of West Virginia from ravages of bark beetles, de-

foliators, rusts, blights, wilts and other destructive forest pests and diseases, and thereby enhance the growth and maintenance of forests; promote the stability of forest-using industries and employment associated therewith; reduce the fire risk created by dying and dead trees injured or killed by insects or diseases; conserve forest cover on watersheds and protect recreational and other forest values, it shall be the policy of the state of West Virginia, independently and through cooperation with adjoining states, the federal government, and private timber owners and other private organizations, to prevent, retard, control, suppress, or eradicate incipient, potential or emergency outbreaks of destructive insects and diseases on, or threatening, all forest land irrespective of ownership.

(a) Authority. The director is authorized either directly or in cooperation with other agencies, subject to such conditions as he may deem necessary and using such funds as have been, or may hereafter be made available for those purposes, to conduct surveys on any forest land to detect and appraise infestations of forest insect pests and tree diseases, to determine the measures which should be applied on such lands, in order to prevent, retard, control, suppress or eradicate incipient, threatening, potential or emergency outbreaks of such insect or disease pests, and to plan, organize, direct and carry out such measures as he may deem necessary to accomplish the objectives and provisions of this section: *Provided,* That actual control measures shall be conducted with the cooperation and consent of the quarantine and regulatory official of the department of agriculture.

(b) Establishing Control Zone; Notice to Landowners. Where an insect infestation or disease infection is believed to exist on a forest land within this state, the director shall investigate the condition. Whenever he finds that an infestation or infection exists, he shall request the quarantine officials of the state department of agriculture to declare the same a public nuisance. When same has been declared a public nuisance he shall establish a control zone of the forest land wherein the same is found, and shall give notice in writing by at least two publications in a newspaper of general circulation in the area or areas

where the control zone is established, by mail or otherwise to forest landowners within the control zone, advising them of the nature of the infestation or infection, recommending control measures and offering technical advice on methods of carrying out the control measures.

(c) Institution of Control Measures. If, after notification by the director, any landowner fails, neglects, or is unable to carry out the control measures recommended by the director as set forth in subsection (b), the director may, through his agents, institute and carry out such control measures.

(d) Appeals. Any person damaged or aggrieved by any action of any officer or employee of the department under the provisions of this section shall have the right to appeal from such action to the director and then to the circuit court of the county in which such person resides in which he owns forest land affected by such action. The court, after hearing the evidence in the case, may make such orders as may be appropriate to protect the interests of the appellant, adjacent forest landowners, or the state.

(e) Cooperation with Individuals and Public Agencies. The director is authorized to cooperate with landowners and appropriate authorities of town, city, county, adjoining state and the United States government, and other agencies having jurisdiction of state lands, concerning forest tree insect and disease investigation and control, and to accept money, gifts and donations, and to disburse the same for the purpose of carrying out the provisions of this section.

(f) Annual Appropriation; Forest Pest Control Fund. There is hereby created in the state treasury a special fund to be known as the forest pest control fund. Such fund shall consist of all moneys appropriated thereto by the Legislature and all moneys received and deposited with the state treasurer under the provisions of this section. All such funds are hereby appropriated to the department of natural resources to be used to carry out the purpose of this section.

(g) Definitions. As used in this section, unless the context clearly requires otherwise:

(1) "Forest trees" mean only those trees which are a part of and constitute a stand of potential, immature or mature commercial timber trees: *Provided,* That the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways and within cities and towns if the same constitute an insect or disease menace to nearby timber trees or timber stands;

(2) "Forest land" means land on which forest trees occur;

(3) "Control zone" means an area of potential or actual infestation or infection, the boundaries of which are fixed and clearly described in a manner to definitely identify the zone;

(4) "Infestation" means infestation by means of any insect in any stage of growth which is determined to be dangerously injurious to forest trees; and

(5) "Infection" means infection by any disease affecting forest trees which is determined to be dangerously injurious thereto.

## PART II. SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

Sec. 20. *Southeastern Interstate Forest Fire Protection Compact; Governor's Authority to Execute.*—The governor of West Virginia, on behalf of this state, is hereby authorized to execute a compact in substantially the following form, with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, and the Legislature hereby signifies in advance its approval and ratification of such compact:

### SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

#### Article I.

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire-fighting services by the member states, by pro-

viding for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, which are contiguous, have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact subject to approval by the Legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states, and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives, which shall meet from time to time with the compact administrators. Each member state shall name one member of the senate and one member of the house of delegates who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries, to comprise the

membership of the advisory committee. Action shall be taken by a majority of the compacting states and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put into effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combatting, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith: *Provided,* That nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting

state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, subsistence of employees and maintenance of equipment incurred in connection with such request: *Provided,* That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact, the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

## Article VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement

of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII.

The compact administrators may request the United States forest service to act as a research and coordinating agency of the southeastern interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

Article VIII.

The provisions of articles four and five of this compact which relate to mutual aid in combatting, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: *Provided,* That the Legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

Article IX.

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Sec. 21. *When and How Compact Becomes Operative.*— When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy

thereof to be filed with the secretary of state and when said compact shall have been ratified by one or more of the states named in section nineteen of this article, then said compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying said compact.

Sec. 22. *Compact Administration; Committee; Terms and Removal.*—In pursuance of article three of said compact, the director of the department of natural resources of the state of West Virginia or his designated representative shall act as compact administrator for the state of West Virginia of the southeastern interstate forest fire protection compact during his term of office as director, and his successor as compact administrator shall be his successor as director. As compact administrator he shall be an ex officio member of the advisory committee of the southeastern interstate forest fire protection compact, and chairman ex officio of the West Virginia members of said advisory committee. There shall be four members of the southeastern interstate forest fire protection compact advisory committee from the state of West Virginia. Two of the members from the state of West Virginia shall be members of the Legislature of West Virginia, one from the senate and one from the house of delegates, designated by the state's commission on interstate cooperation, and the terms of any such members shall terminate at the time they cease to hold legislative office, and their successors as members shall be named in like manner. The governor shall appoint the other two members from the state of West Virginia, one of whom shall be associated with forestry or forest products industries. Such members shall hold office until their respective successors shall be appointed and qualified. Vacancies occurring in the office of such members for any reason or cause shall be filled by appointment by the governor for the unexpired term. The director as compact administrator may delegate, from time to time, to any deputy or other sub-

ordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the compact administrators or of the advisory committee. The terms of each of the initial four memberships of the advisory committee, whether appointed at said time or not, shall begin upon the date upon which said compact shall become effective in accordance with article two of said compact. Any member of said advisory committee may be removed from office by the governor upon charges and after a hearing.

Sec. 23. *Compact Committee Powers and Duties; Cooperation Therewith.*—There is hereby granted to the director, as compact administrator and chairman ex officio of the West Virginia members of said advisory committee, and to the members from West Virginia of said advisory committee, all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the state of West Virginia are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of the state of West Virginia to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the state of West Virginia are hereby authorized and directed at convenient times and upon request of said compact administrator, or of said advisory committee, to furnish information and data relating to the purposes of said compact possessed by them or any of them to said compact administrator or said advisory committee. They are further authorized to aid said compact administrator or said advisory committee by loan of personnel, equipment or other means in carrying out the purposes of said compact.

Sec. 24. *Other Powers Supplementary.*—Any powers herein granted to the state forester shall be regarded as in aid of and supplemental to, and in no case a limitation

upon, any of the powers vested in said director by other laws of the state of West Virginia or by the laws of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, or by the Congress or the terms of said compact.

## Article 4. Parks and Recreation.

Section

1. Division of parks and recreation; duties and functions.
2. Definitions.
3. State park and recreation system; purposes; financing; disposition and use of revenues.
4. Restaurants and other facilities on department lands.
5. Authority of director to issue park development revenue bonds; grants and gifts.
6. Trustee for holders of bonds.
7. Proceeds of bonds; grants and gifts.
8. Authority of director to pledge revenue as security.
9. Management and control of project.
10. Provisions of constitution and law observed; what approval required.
11. Highway beautification; unlawful disposal of litter, etc.; notice of section; violations; evidence; enforcement; penalties.
12. Correlation of projects and services.
13. Motorboats and other terms defined.
14. Motorboat identification numbers; applications for numbers; fee, displaying; reciprocity; change of ownership; conformity with U. S. regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.
15. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.
16. Motorboats exempted from numbering.
17. Dealers' and manufacturers' certificates of number; application and fees.
18. Boat liveries.
19. Motorboat muffling.
20. Care in handling watercraft; prohibited operation; collision, accident or casualty; reports.
21. Handling water skis and surfboards.
22. Regattas, races and exhibitions; applications and permits.
23. Incapable operator; owner responsibility.
24. General rules and regulations for motorboating; special rules.
25. Local rules and regulations.

Section 1. *Division of Parks and Recreation; Duties and Functions.*—The division of parks and recreation herein created and established shall 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 and thereat;

(b) Administration of all laws and regulations relating to beautification of state highways and other public areas;

(c) The functions and services of the following com-

missions which are hereby made activities of the department of natural resources:

(1) Point Pleasant battle monument commission, created by joint resolution number twenty-four adopted by the Legislature of West Virginia on the sixth day of December, one thousand eight hundred seventy-five;

(2) The Prickett's Fort state park commission, created by chapter forty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven;

(3) Droop Mountain battlefield commission, created by house joint resolution number eight adopted by the Legislature of West Virginia on the twenty-fifth day of January, one thousand nine hundred twenty-seven;

(4) Philippi battlefield commission, created by house joint resolution number fifteen adopted by the Legislature of West Virginia on the thirtieth day of March, one thousand nine hundred twenty-seven; and

(5) Carnifex Ferry battleground park commission, created by chapter nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one; and

(d) 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 chapter.

The chief of the division shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state and shall organize and staff his division for the orderly, efficient and economical accomplishment of these ends.

## PART I. PARKS AND RECREATIONAL FACILITIES

Sec. 2. *Definitions.*—As used in this article, unless the context clearly requires a different meaning:

"Bonds" shall mean bonds issued by the director pursuant to this article.

"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, fi-

nancing 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 or forest.

"Rent or rental" shall include all moneys received for the use of any recreational facility.

Sec. 3. *State Park and Recreation System; Purposes; Financing; Disposition and Use of Revenues.*—In addition to the powers and duties vested in the director 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 article.

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 director shall, insofar as is practical, maintain in their natural condition lands that are acquired for and designated as state parks, and shall not permit public hunting, the exploitation of the minerals or harvesting of timber thereon for commercial purposes.

All revenue derived from the operation of the state park and public recreation system shall be expended by the director solely for the acquisition of property for the ex-

tension of the system, or for operating, maintaining and improving such system, or for the retirement of park development revenue bonds as provided in this article.

Sec. 4. *Restaurants and Other Facilities on Department Lands.*—The director 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 director may purchase equipment, foodstuffs, supplies and commodities, according to law.

Sec. 5. *Authority of Director to Issue Park Development Revenue Bonds; Grants and Gifts.*—The director, 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 director, approved by the governor, which shall recite an estimate by the director 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 director expected to be received from the United States of America or from any other source. The acceptance by the director 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 law merchant. Such bonds shall bear interest at not more than four per cent per annum, payable semiannually, and shall mature in not more than twenty-five years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the director at such price and under such terms and conditions as the director may fix prior to the issuance of such bonds. The director 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 director, 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 director. 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. The director 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 director. Such bonds shall be exempt from taxation by the state of West Virginia, or any county or municipality therein. The director 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 director 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, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of five per cent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project, and shall be deposited and checked out as provided by section seven of this article, and under such further restrictions, if any, as the director may provide. 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. 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 director 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 by this article, or by the constitution of the state. Revenue bonds issued under the authority herein granted shall be eligible as investments for the workmen's compensation fund and as security for the deposit of all public funds.

Sec. 6. *Trustee for Holders of Bonds.*—The director 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 director 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 purchasers 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.

Sec. 7. *Proceeds of Bonds, Grants and Gifts.*—The proceeds of all bonds sold as provided in this article for any park development project and the proceeds of any grant or gift received by the director 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 director, or of such other person as the director may authorize to make such requisition. All deposits of such moneys shall, if required by the treasurer or the director, be secured by obligation of the United States, of the state of West Virginia, or of the director, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such deposits.

Sec. 8. *Authority of Director to Pledge Revenue as Security.*—The director shall have authority to pledge all revenue derived from any project as security for any bonds issued under this article to defray the cost of such project. In any case in which the director 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.

Sec. 9. *Management and Control of Project.*—The department shall properly maintain, repair, operate, manage and control the project, fix the rates of rental, and

establish by-laws and rules and regulations for the use and operation of the project, and may make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers under this article.

Sec. 10. *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 this article or are required by the constitution of the state.

Nothing in this article contained shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the constitution of the state in relation to state debt.

Sec. 11. *Highway Beautification; Unlawful Disposal of Litter, etc.; Notice of Section; Violations; Evidence; Enforcement; Penalties.*—The director of the department of natural resources in cooperation with the state road commissioner, the department of public safety, the United States forestry service, and other law enforcement agencies of local, state and federal governments, shall be responsible for administration and enforcement of all laws and regulations relating to maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and other public areas and ways of the state and shall make recommendations to the director from time to time concerning means and methods of accomplishing state highway beautification consistent with the provisions of this chapter.

It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, cans, bottles, papers, ashes, cigarette or cigar butts, carcass of any dead animal, offal or any other offensive or unsightly matter in or upon any

public or private highway, road, street or alley, or upon the surface of any land within one hundred yards thereof without the consent of the owner, or in or upon any private property into or upon which the public is admitted by easement or license, 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.

If any such materials be thrown, cast, dumped or discharged from a motor vehicle in violation of the provisions hereof, such action shall be deemed prima-facie evidence that the owner and driver of such motor vehicle intended to violate the provisions of this section.

The state 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 this section.

The state road commissioner shall 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 herein provided for disposing of litter in, upon and near highways and roads in violation of this section.

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 materials designated in this section in any manner authorized by law.

Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than five hundred dollars or be imprisoned in the county jail for a period of time not exceeding six months, or, in the discretion of the court, may be subject to both such fine and imprisonment.

Sec. 12. *Correlation of Projects and Services.*—The chief of the division of parks 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 fish hatcheries, game farms, wildlife research areas, feeding stations, historic and scenic monuments and markers, and other institutions and activities of the state.

## PART II. MOTORBOATING

Sec. 13. *Motorboats and Other Terms Defined.*—As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto, nor to a vessel powered by a motor of five horsepower or less; and

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

Sec. 14. *Motorboat Identification Numbers; Applications for Numbers; Fee; Displaying; Reciprocity; Change of Ownership; Conformity with U. S. Regulations; Issuing Agents; Records; Renewal of Certificate; Transfer of Interest, Abandonment, etc.; Change of Address; Unauthorized Numbers; Information to Be Furnished Assessors.*—Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided.

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the director on forms approved by him. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of five dollars. All such fees

shall be deposited in the state treasury to the credit of the state general fund. Upon receipt of the application in approved form, the director shall enter the same upon the records of his office and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the director in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally-approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the ninety-day reciprocity period provided for in section sixteen of this article. Such recordation shall be in the manner and pursuant to the procedure required for the award of a number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form with fee shall be filed with the director and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the commission shall be in conformity therewith.

(e) The director may designate as issuing agent the clerk of any county court and such other persons in each county, as he deems advantageous to provide for the issuance of certificates of number in accordance with the provisions of this article. For services rendered in issuing such certificates, and collecting and paying over such

numbering fees, each issuing agent, other than a state or county official, shall charge and retain an additional fee of twenty-five cents from the person obtaining the certificate of number. Every such issuing agent, unless already under bond with the director as an agent for the collection of its moneys, shall file a bond with the director, payable to the state of West Virginia, in an amount to be fixed by the director at not more than one thousand dollars, before the supply of certificates of number is delivered to him, conditioned upon the faithful performance of his obligation to issue certificates only in conformance with the provisions of this article and the regulations of the director. Each issuing agent, on the first day of each month, shall remit to the director all moneys collected for the director during the preceding month, and shall accompany his remittance with a report showing the name of the county, the names and addresses of the persons paying the same, and the date of the receipt thereof.

(f) All records of the director made or kept pursuant to this section shall be public records.

(g) Such license shall be valid only until the last day of the calendar year in which the same is issued. If at the end of such year ownership has remained unchanged, such owner shall, upon application and payment of a fee of two dollars, be granted a renewal of such certificate of number for an additional one-year period.

(h) The owner shall furnish the director notice of the transfer of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subsections (a) and (b) of this section, or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify the director within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the director

with his new address. The director may provide in his rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this article shall be painted, attached or otherwise displayed on either side of the bow of such motorboat.

(k) It shall be the duty of the director on or before January thirtieth of each year, commencing with the year one thousand nine hundred sixty, to forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the same or other boats registered with the director under the provisions of this article. In furnishing this information to each county assessor, the director shall include in his report such information as is made available to him in the reports and registrations he receives as to make, model, value and cost price of such vessels and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: *Provided, however,* That the director need not furnish such information to the assessor if the cost price of such vessel does not exceed two hundred dollars nor the cost of the motor does not exceed one hundred seventy-five dollars.

Sec. 15. *Motorboat Classification; Required Lights and Equipment; Rules and Regulations; Pilot Rules.*—(a) Motorboats subject to the provisions of this article shall be divided into four classes as follows:

Class A. Less than sixteen feet in length;

Class 1. Sixteen feet or over and less than twenty-six feet in length;

Class 2. Twenty-six feet or over and less than forty feet in length;

Class 3. Forty feet or over.

(b) Classes 1, 2 and 3 motorboats in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

(1) Every motorboat of Class 1 shall carry the following lights:

First. A bright white light aft to show all around the horizon;

Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(2) Every motorboat of Classes 2 and 3 shall carry the following lights:

First. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side;

Second. A bright white light aft to show all around the horizon and higher than the white light forward;

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Class 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of Classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, pre-

scribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, one thousand nine hundred forty-eight, Federal Act of October eleven, one thousand nine hundred fifty-one, (33 USC 143-147d) as amended, in lieu of the lights required by subsection (b) of this section.

(d) Every motorboat of Class 1, 2, or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of Class 2 or 3 shall be provided with an efficient bell.

(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by regulations of the commission for each person on board, so placed as to be readily accessible: *Provided,* That every motorboat carrying passengers for hire shall carry so placed to be readily accessible at least one life preserver of the sort prescribed by the regulations of the director for each person on board.

(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the director, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of subsections (d), (e) and (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to section twenty-two of this article, or, if such boats be designed and intended solely for racing while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the director.

(j) Every such motorboat and every such vessel, except open boats using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the director for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

(k) The director is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(l) The director is hereby authorized to establish and maintain, for the operation of vessels on the waters of this state, pilot rules in conformity with the pilot rules contained in the federal navigation laws or the navigation rules promulgated by the United States coast guard.

(m) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

Sec. 16. *Motorboats Exempted from Numbering.*—A motorboat shall not be required to be numbered under this article if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally-approved numbering system of another

state: *Provided,* That such boat shall not have been within this state for a period in excess of ninety consecutive days;

(2) A motorboat from a country other than the United States temporarily using the waters of this state;

(3) Motorboats used exclusively for racing while participating in races, and the preparation therefor, which have been authorized pursuant to the provisions of section twenty-two of this article.

Sec. 17. *Dealers' and Manufacturers' Certificate of Number; Application and Fees.*—Dealers' and manufacturers' certificate of number, containing the word "manufacturer" or "dealer", as appropriate, may be used in connection with the operation of any motorboat in the possession of such dealer or manufacturer, when the boat is being used for demonstrative purposes. Application for a dealer's or manufacturer's certificate of number shall be made upon a form provided by the director, and shall contain such information as may be required by the director. Upon receipt of the application and upon the payment of a fee of five dollars for the initial certificate of number, and five dollars for each additional certificate of number, the director shall issue to the applicant a manufacturer's or dealer's certificate of number which shall contain the word "manufacturer" or "dealer" in lieu of a description of the boat. The manufacturer or dealer may have the number awarded to him printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated, so long as the display meets the requirements of the provisions of this article and regulations issued hereunder.

Sec. 18. *Boat Liveries.*—(a) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat, the identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

(b) Neither the owner of a boat livery, nor his agent or employee, shall permit any motorboat or any vessel

designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section fifteen of this article and any rules and regulations made pursuant thereto.

Sec. 19. *Motorboat Muffling.*—The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section twenty-two of this article, and for such motorboats while on trial runs during a period not to exceed seventy-two hours immediately preceding such regatta or race, and for such motorboats while competing in official trials for speed records during a period not to exceed seventy-two hours immediately following such regatta or race.

Sec. 20. *Care in Handling Watercraft; Prohibited Operation; Collision, Accident or Casualty; Reports.*—(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(d) In the case of a collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars, shall file with the director a full description of the collision, accident, or other casualty, including such information as the director may, by regulation, require. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to such official or agency of the United States.

Sec. 21. *Handling Water Skis and Surfboards.*—(a) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(b) The provisions of subsection (a) of this section do not apply to a performer engaged in a professional exhibition, or a person or persons engaged in an activity authorized under section twenty-two of this article.

(c) No person shall operate or manipulate any vessel, tow rope or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause water skis, surfboard, or similar device, or any person thereon to collide with or strike against any object or person.

Sec. 22. *Regattas, Races and Exhibitions; Applications and Permits.*—(a) The department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof, shall, at least fifteen days prior thereto, file an application with the

director for permission to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the director in writing.

(b) The provisions of this section shall not exempt any person from compliance with the applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

Sec. 23. *Incapable Operator; Owner Responsibility.*—No person who is the owner of any motorboat, or has such in his charge or control shall act or permit the same to be operated by any person who, by reason of any physical or mental disability, is incapable of operating such motorboat under all the prevailing circumstances.

Sec. 24. *General Rules and Regulations for Motorboating; Special Rules.*—The director is hereby authorized and empowered to prescribe and to enforce:

(a) General rules and regulations to be observed in the operation or navigation of motorboats upon, over or through the waters of this state which he shall deem necessary for the public health or safety of persons or property on or in such waters, or for the preservation of all forms of useful aquatic life, particularly as to speed, running, lights, signals, courses, channels, rights of way, and the disposal of oil, gas, gasoline or other wastes from such boats;

(b) Special rules and regulations for such particular, artificial or natural areas of water, for further limiting, restricting, or prohibiting the operation or navigation of motorboats thereof to protect the public health or to protect and preserve useful aquatic life.

Sec. 25. *Local Rules and Regulations.*—(a) The provisions of this article and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel

shall be operated on the waters of this state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or regulations issued thereunder: *Provided,* That such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this article, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The director is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

## Article 5. Water Resources.

**Section**

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23. Water areas beautification; investigations; enforcement.
24. Litter along streams; violations; evidence; penalties.

Section 1. *Division of Water Resources; Duties and Functions.*—The division of water resources, herein created and established, shall have within its jurisdiction and supervision the state water resources board, the Ohio river valley water sanitation commission from the state of West Virginia, the interstate commission on the Potomac river basin from the state of West Virginia, and the administration and enforcement of all laws relating to slack-water dams, stream and water areas beautification, and the conservation, development, protection, enjoyment and use of the water resources of the state consistent with the provisions of this chapter. The chief of the division shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state and shall organize and staff his division so as to accomplish these ends in an orderly, efficient and economical manner. The division chief shall give consideration to other functions and services of the department and, wherever practicable, shall coordinate the plans and programs of his division with the functions and services of other divisions, offices and activities of the department.

## PART I. WATER RESOURCES BOARD

Sec. 2. *Definitions.*—Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Board" shall mean the state water resources board;

(b) "Water resources" shall mean any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused water on the surface of the ground, and water percolating, standing or flowing beneath the surface of the ground;

(c) "Domestic use" shall mean any use of water resources by occupants of land for personal need and for household purposes, including (1) uses for drinking, bathing, cooking and sanitation; (2) uses for maintaining poultry and animals kept for household sustenance; (3) uses for maintaining household pets; and (4) uses for

heating and cooling private residences and for maintaining noncommercial lawns, gardens, or orchards appurtenant to private residences;

(d) "Commercial use" shall mean any use of water resources other than domestic use;

(e) "Pollution" shall mean the discharge or deposit, directly or indirectly, of sewage, industrial wastes or other substances, in such condition, manner or quantity as may contaminate or alter the physical, chemical or biological properties of any of the waters of the state to such extent as to render such waters directly or indirectly detrimental to the public health or unreasonably and adversely affect such waters for present or future domestic, commercial, industrial, agricultural, recreational or other legitimate uses; and

(f) "Person" shall mean any and all persons natural or artificial, including any municipal or private corporation organized or existing under the laws of this or any other state or country, any county court, governmental institution, agency or political subdivision as well as any firm or association.

Sec. 3. *Water Resources Board; Creation, Composition and Organization.*—A state water resources board is hereby created and established as successor to the state water commission and the state water resources commission. It shall be a public corporation and as such may sue and be sued, plead and be impleaded, contract and be contracted with, and shall have and use a common seal.

The board shall be composed of the state director of health, the superintendent of the state geological and economic survey, the director of the department of natural resources and four other members to be appointed by the governor with the advice and consent of the senate. The director of the department of natural resources shall be the chairman of the board. Members of the commission in office at the effective date of this section shall continue in office as members of the board until the new appointees have been appointed and qualified. The terms of office of the members of the board to be appointed by the governor

shall be for six years. The first appointments made under the provisions of this section shall be as follows: Two members for three years and two members for six years; as these terms expire, the offices shall be filled for six-year terms. The members of the board shall receive no salary or remuneration for their services as such board members, but they shall be reimbursed, out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such board. The director of the division of sanitary engineering in the state health department shall perform such services as the board may request of him in connection with its duties hereunder and he shall be reimbursed, out of moneys appropriated for such purposes, all sums which he necessarily shall expend in the performance of such services. Nothing contained in this article, however, shall be construed to limit or interfere with the power of the state health department to select, employ and direct the director of the division of sanitary engineering of said department, or any employee thereof who in any way may perform any services for the board. The college of engineering at West Virginia University, under the direction of the dean thereof, shall, insofar as it can, without interference with its usual and regular activities, aid and assist the board in the study and research of questions connected with pollution of waters. The dean of the college of engineering shall be reimbursed out of moneys appropriated for such purposes, any and all sums which he necessarily shall expend in the performance of any services he may render to the board under the provisions hereof.

A majority of the board shall constitute a quorum for transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chairman. The board shall keep an accurate record of all of its proceedings and maintain such board records and shall make certificates thereof or therefrom as may be required by law. The chief of the division of water resources shall be the executive secretary of the board.

Sec. 4. *Board Functions, Services and Reports.*—The board shall make surveys and investigations of the water resources of the state and, as soon as practicable, shall inventory the water resources of the state and to the extent practicable shall divide the state into watershed drainage areas in making this inventory. The board shall investigate and study the problems of agriculture, industry, conservation, health, stream pollution, domestic and commercial uses and allied matters as they relate to water resources of the state, and shall make and formulate comprehensive plans and recommendations for the further development, improvement, protection, preservation, regulation and use of such water resources, giving proper consideration to the hydrologic cycle in which water moves. Annually, not later than the first of November, the board shall prepare and publish a full report on the board's work as to collection and evaluation of the information which has been obtained in accordance with the requirements of this section and shall include in this report the plans and recommendations which have been formulated pursuant to the requirements of this section. The report shall include the board's reasons for such plans and recommendations, as well as any changes in the law which are deemed desirable to effectuate such plans and recommendations. Such reports shall be made available to the public at a price to be determined by the board.

The board may request and, upon its request, shall be entitled to receive from any agency of the state or any political subdivision thereof, or from any other person who engages in a commercial use or controls any of the water resources of the state, such necessary information and data as will assist the board in obtaining a complete picture of the water resources of the state and their existing control and commercial uses. The board shall reimburse such agencies, political subdivisions and other persons for any expenses which would not otherwise have been incurred in making such information and data available to the board.

The board shall study questions arising in connection with stream flow and pollution of waters in the state and

make reports and recommendations in respect thereto; and, in cooperation with the college of engineering at West Virginia University, make research, investigation and scientific experiments in efforts to discover economical and practical methods for elimination, disposal and treatment of industrial wastes and the control and correction of stream pollution; and to this end the board may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any money which such agency may contribute as its part of the expense thereof, and gifts, donations or contributions received as aforesaid may be expended according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the board.

Sec. 5. *Board Powers and Duties.*—In addition to all other powers and duties of the board as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and perform the following duties:

(1) To enter into compacts and agreements concerning this state's share of waters in watercourses where a portion of such waters are contained within the territorial limits of a neighboring state or states, subject to the approval of the Legislature;

(2) To cooperate with federal officers and agencies, other state agencies and officers, interstate agencies, and other interested persons in the conservation, improvement and development of water resources, and to this end the board may receive money from such agencies and persons, on behalf of the state: *Provided,* That all moneys received as provided in this subsection shall be paid into a special fund which is hereby created in the state treasury and shall be expended, under the direction of the board, solely for the purpose or purposes for which the grant, gift, or contribution shall have been made;

(3) To conduct, or contract for the conducting of, scientific investigations, experiments and research and to

collect data concerning the water resources of the state and pollution;

(4) To enter at all reasonable times upon any land, public or private, for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning water resources and their use or pollution thereof, subject to responsibility for any damage to the property entered;

(5) To hold public hearings pursuant to rules and regulations established by the board, to obtain the necessary information to carry out the purposes of this article, particularly with reference to the formulation of plans and recommendations required by the provisions of section four of this article and, at any such hearing, the board or its duly authorized agents, shall have the power to administer oaths, to take testimony, to issue subpoenas and to compel the attendance of witnesses; and

(6) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development, and conservation.

Sec. 6. *Condemnation; Pollution Control.*—All persons not otherwise having the right to condemn lands to effectuate the purposes of this article shall be vested with the right of eminent domain under the provisions of chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, upon application to the board for, and the entry by the board of, an order finding that the use by the applicant of a specified interest in a specifically described parcel of land is necessary in connection with the elimination or control of a substantial pollution or the substantial reduction of the pollution of any of the waters of the state and directing the applicant to put the said land to use for such purpose within a reasonable time after the acquisition of title or the right of possession thereof.

Sec. 7. *Cooperation with Other Governments and Agencies.*—The board is hereby designated as the water pollution agency for this state for all purposes of the Water

Pollution Control Act, Public Law 845, 80th Congress (62 Stat. 1155) approved June thirtieth, one thousand nine hundred forty-eight, hereinafter called the "federal act", and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said act. In carrying out the purposes of this section the board, in addition to any other action which may be necessary or appropriate, is authorized to cooperate with the surgeon general of the United States public health service and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary conditions of waters, and on behalf of this state to apply for and receive funds made available to the board under the aforesaid federal act by any agency of the federal government: *Provided*, That all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direction of the board, solely for the purpose or purposes for which the grant or grants shall have been made; to approve projects for which application for loans or grants under the federal act is made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over disposal of sewage, industrial wastes or other substances) or agency of this state or by any interstate agency; to participate through its authorized representatives in proceedings under the federal act to recommend measures for abatement of water pollution originating in this state; to give consent on behalf of this state to requests by the federal security administrator to the attorney general of the United States for the bringing of suits for abatement of such pollution; and to consent to the joinder as a defendant in such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating

to the water resources of the state, the board, subject to approval of the Legislature, is hereby designated as the sole agency to give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.

Sec. 8. *Pollution Abatement and Control; Reports; Permits; Citations.*—Any and all persons causing a material contribution of sewage, industrial wastes or other polluting substances to the waters of the state, shall file with the board such information as the board may require with regard thereto, including, but not limited to, the kind, characteristics and rate of flow.

No person shall, without first securing a permit from the board, construct, install or operate a new sewer, disposal system or treatment works; extensions, modifications or additions to new or existing disposal systems or treatment works; extensions, modifications or additions to industrial or commercial establishments or the operation thereof, or make or cause to be made any new outlet, or to add to the load from any existing outlet; which would cause a material pollution of the waters of the state. For the purposes herein, the board may issue temporary or conditional permits and renew, change, modify, amend or revoke the same. Any person who is denied a permit by the board, or who has such permit revoked or modified, shall be afforded an opportunity for hearing in connection therewith, as hereinafter provided, upon written application filed with the board within twenty days of receipt of such denial, revocation or modification, which notice shall be communicated to the board by registered mail, addressed to its chairman or secretary, and upon any other persons affected, personally or by registered mail. All such applications for permits primarily relating to sewage shall be submitted to the state department of health in such form as shall have been approved by both the board and the department of health. After the decision by the state department of health in regard thereto and the reasons have been noted therein, the application, the notation of the health department's decision and other

papers making up the file shall be forwarded by the department of health to the board. The board's permit or other decision shall be returned with the entire file to the state department of health, which shall notify the applicant in writing of the decisions of both the health department and the board, enclosing certificates where granted, and shall deliver to the board a copy of such notification.

The procedures prescribed and detailed in this section shall not be employed or construed to impede, interfere with, delay or prevent prompt and expeditious action by the director, the attorney general, any prosecuting attorney, or other natural resources authority acting under other provisions of this chapter when such prompt and expeditious action is, in the opinion and judgment of the acting authority, necessary to prevent or abate water pollution.

Any person causing the pollution of any water, or alleged to be causing the pollution of any water, may be cited by the board on its own motion, or by any member thereof, or the executive secretary on his own motion, to appear not less than fifteen nor more than thirty days from the date of service of such citation at a place designated by it, within the county wherein the pollution is alleged to have occurred or is being caused, then and there to show cause, if any shall exist, why said board should not issue an order regulating such pollution, and any persons affected by such pollution may by petition intervene as a party complainant or respondent in any proceeding instituted by or before the board. Such citation may be issued by the board or any member thereof, or its executive secretary, and may be served and returned in the same manner as process in any civil action, or it may be served by sending a copy thereof by registered mail addressed to the person causing, or alleged to be causing, any pollution of any water, at his, their or its usual, or last known, postoffice address. The hearings herein provided may be conducted by the board, any member thereof, or its executive secretary, or any person authorized to take depositions by the laws of this state: *Provided,* That where any such hearing is not conducted by the board,

all the testimony shall be reduced to writing as provided by law applicable to the taking of depositions, the cost thereof to be borne by the party presenting the same, and all findings in connection therewith shall be made by the board at a meeting to be called by its chairman not less than thirty days after conclusion of its hearing. Any member of the board or its executive secretary may issue any subpoena, administer oaths and cause the attendance of witnesses, the production of evidence and testimony in any proceeding, subject to the same conditions as are provided by the general statutes for the attendance of witnesses and the production of evidence and testimony in civil actions.

Sec. 9. *Pollution Orders; Procedure; Enforcement.*— After a full hearing the board shall make its finding of facts, and if it finds that any person is polluting any of the waters of the state, or that the construction, installation or operation of any new sewer, disposal system or treatment works, extensions, modifications or additions to new or existing disposal systems or treatment works, extensions, modifications or additions to industrial or commercial establishments or the operation thereof, or any new outlet or additional load from any existing outlet would cause a material pollution of the waters of the state, and that the same should be prevented, eliminated, controlled or reduced, considering the purposes of this article, the amount and effect of such pollution, the practicality and physical and economic feasibility of eliminating, controlling or reducing such pollution, the health and welfare of the public and other present and future uses of the waters of the state, it shall make and enter an order directing such person to cease such pollution, or shall make and enter an order denying any permit being sought under the provision of section eight of this article, and such person shall have thirty days after notice of the entry of such final order to notify the board that he will comply therewith or will install, use and operate some practical and reasonably available system or means which will so eliminate, control or reduce such pollution, having regard for the rights and interests of all persons con-

cerned, and if such person does not so comply with such order, thereafter the board may cause the enforcement of any order issued by it to cease such pollution and, as well all other orders entered by it in matters subject to its jurisdiction, by application to the circuit court of any county wherein the alleged pollution originated or naturally flows or to any judge of such court if the same shall be in vacation, to enjoin any persons from causing or continuing such pollution, which application shall be brought and the proceedings thereon conducted by the attorney general, through his assistant as provided in section thirteen, article one of this chapter, or by the prosecuting attorney of the county wherein such proceedings may be pending, or by special counsel employed by any intervening complainant petitioner. If any person notifies the board that he will comply with such final order by installing, using and operating some practical and available system to so eliminate, control or reduce such pollution, and makes application for an extension of time, the board within reasonable limits may grant such extension of time. The person against whom such order shall be issued shall, before proceeding to install any system or means, submit to the board, for its consideration and approval, a plan or statement describing the system or means which is proposed to be used or operated; if any person shall desire to make any substantial change in any system or means used or operated, such person shall, before making such change, file with the board for its consideration and approval a plan or statement describing such proposed change, together with application for the action of the board thereon and in respect thereto. The board shall, in any case, enter an order approving or disapproving any such system or means proposed to be used or operated, or permit or refuse to permit the proposed change in any system or means adopted, used or operated, and shall make and enter all such orders as the board deems proper and necessary. Any order of the board may, at any time after at least twenty days' notice in writing to any person affected thereby and any intervening petitioner, and after a hearing thereon, be modified or re-

voked by an order entered by the board and the board shall forthwith cause an attested copy of any order entered by it to be served upon all persons affected thereby in the same manner as writs or summons in civil actions may be served, or by sending the same by registered mail to such person, or intervener, at his, their or its usual or last known postoffice address.

Sec. 10. *Compliance with Orders; Finances and Funds; Procedures.*—Any person, corporation, municipal corporation, partnership or legal entity, upon whom a final order of the board as herein provided is served, which order shall not have been set aside by a court of competent jurisdiction upon complaint filed as herein provided or upon whom a final order is served as modified to conform with a judgment of such court directing modification, shall, within thirty days after receipt of such order, or after judgment affirming such order is entered, take steps for the acquisition or construction of such plants, machinery or works, or for such repair, alteration or extension of existing plants, machinery or works, as may be necessary for the disposition or treatment of the organic or inorganic matter which is causing or contributing to, or is about to cause or contribute to, a polluted condition of such water or waters, or shall take such other steps as may be necessary to comply with said final order of the board. If the offender be a municipal corporation, the cost of acquisition, construction, repair, alteration or extension of the necessary plant, machinery or works, or taking such other steps as may be necessary to comply with said order, shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated; or if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by issuance of bonds, such bond issue to be subject to the approval of the state sinking fund commission and the attorney general of the state of West Virginia.

If the estimated cost of the steps necessary to be taken by such municipal corporation to comply with such final order of the board is such that the bond issue necessary

to finance such project would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall determine against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three: *Provided, however,* That the provisions of section six of the above-mentioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty per cent or more of the owners of real estate shall require a four-fifths vote of the governing body for issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with the final order issued by the board, under the authority of this article, and such objections or submission of written protest shall not be authorized, nor shall the same, if had, operate to justify or excuse failure to comply with such final order of the board.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a "sanitary fund", and shall be used for no other purpose than for carrying out such order or orders of the board; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof has been approved by the board.

Sec. 11. *Municipal Projects; Finances; Law Controlling.*

—The construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works by any municipal corporation, in compliance with a final order of the board, as herein provided, other than the financing thereof, and the rights, powers and duties, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three.

Sec. 12. *Time of Compliance; Procedures; Penalties.*— It shall be the duty of each individual offender and of each member of a partnership, and of each member of the governing body of a municipal corporation, and of each member of the board of directors or other governing body of a private corporation, association or other legal entity, against whom a final order has been issued, as herein provided, to begin appropriate action or proceedings to comply with such order, within thirty days from the receipt thereof, if no action has been commenced in the circuit court of the county where such violation is alleged to exist to set aside or vacate such order, as provided in this article, or, in case such action has been brought, within thirty days from the date of judgment affirming such order, or from the date of the receipt of such order, as modified in conformity with the judgment of such court. Failure of the governing body in the case of a municipal corporation, or of the board of directors or any other governing body of any private corporation, association or other legal entity, to provide for the financing and construction of such works as may be necessary to carry out said order by appropriate ordinance or resolution, shall constitute failure to begin appropriate action or proceedings to comply with such order, as above provided. Any individual offender, or member of a partnership, or any officer or member of the board of directors of a private corporation, association, or other legal entity, or any mayor, councilman or member of a sanitary board as pro-

vided for in said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, of any municipal corporation, who fails or refuses to discharge any duty imposed upon him by this article or by such final order of the board, or any duty imposed upon him by reason of any ordinance of the governing body of any municipal corporation, or resolution of the board of directors or other governing body of any private corporation, association or other legal entity, pursuant to this article or to such final order, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum of not less than twenty-five dollars nor more than one hundred dollars, to which, in the discretion of the court, may be added imprisonment in the county jail for any period not to exceed ninety days. Each day that such failure or refusal to discharge such duties continues, shall be and constitute a separate and additional offense for the purposes of this section.

Sec. 13. *Time Extension; Procedures; Penalties.*—The board shall have the authority, in its discretion, to extend the time fixed in any final order issued by it, within which any offender is ordered to correct or abate a condition of pollution of any water or waters, upon written petition filed with the board not less than thirty days prior to the time fixed in such order, when it shall appear that a good faith effort to comply with said order is being made, and that it shall be impossible for such an offender to complete the project of work undertaken within the time so fixed: *Provided, however,* That when it shall appear from such petition aforesaid that due to wartime or other governmental restrictions with respect to labor or material, or both, compliance with any such order would be impossible or place undue burden upon such offender, the board shall then stay the execution of its order until such time as it may satisfactorily appear that such wartime or other restrictions no longer exist.

Any person, corporation, municipal corporation, partnership, association or other legal entity, who shall fail or refuse to correct or abate such polluted condition in compliance with such order within the time fixed or

within the time additionally granted as herein provided, shall be subject to a penalty of one hundred dollars for each day that such polluted condition continues to exist after the time so fixed, or additionally granted, which may be recovered in a civil suit brought in the name of the state of West Virginia and which penalty shall be in addition to the penalty provided in section twelve of this article. It shall be the duty of the attorney general to prosecute all actions for penalties under this section, and all penalties so recovered shall be paid into the state treasury to the credit of the state fund as general revenue. The penalties accruing for any two or more days under the provisions of this section may be recovered in one complaint and may be joined in one paragraph of said complaint.

Sec. 14. *Judicial Review.*—Any party feeling aggrieved by the entry of a final order by the board, affecting him or it, may present a petition in writing to the circuit court of the county wherein the pollution originated or naturally flows, or to the judge of such court in vacation, within thirty days after the entry of such order, praying that such final order may be set aside or modified. The applicant shall deliver a copy of such petition to the secretary of the board 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, unless by agreement by the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the board, so that the board may be represented at such hearing by one or more of its members or by counsel. For such hearing the board shall file with the clerk of said court all papers, documents, evidence and records or certified copies thereof as were before the board at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The board shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall by order entered of record, affirm, modify or set

aside in whole or in part the order of the board. Upon such judicial review, the findings of fact made by the board shall have like weight to that accorded to the findings of fact of a trial chancellor or at any equity procedure. The supreme court of appeals of the state shall have jurisdiction to review the order of the circuit court upon application of either party or any intervener. The prosecuting attorney of the county wherein the proceedings in the circuit court are had, or the attorney general through his assistant as provided in section thirteen of article one of this chapter, shall represent the board, and the attorney general of the state shall represent it in any proceedings in the supreme court of appeals and any intervener may be represented by counsel specially employed.

## PART II. SLACK-WATER DAMS

Sec. 15. *Location and Construction of Slack-Water Dams.*—The state road commissioner, in constructing public highways, bridges and culverts, as provided by law, and any municipal corporation constructing or improving public streets, viaducts, bridges and culverts, either severally or jointly, upon request of the director of the department of natural resources and with the approval of the state road commissioner, may construct and maintain slack-water dams in connection with such public highways, streets, bridges, culverts or viaducts so as to create reservoirs, ponds, water parks, basins, lakes or other incidental works to conserve the water supply of the state.

Sec. 16. *Dam Construction Initiated; Approval by Public Authority; Costs; Plans.*—The director may request the public authority having charge of the construction of state highways, highway bridges, and culverts or municipal streets, viaducts, bridges and culverts for the construction of slack-water dams in connection with the construction of any such public highway, street, bridge, viaduct or culvert whenever, in his opinion, the construction of such dam is desirable and feasible for the economical creation and construction of reservoirs, ponds, water parks, basins, lakes or other incidental works for the conservation of the water supply of the state.

The public authority having charge of such construction may approve such request when, in its opinion, the construction of such dams will not unnecessarily delay or hinder the construction of the public highway, street, bridge, viaduct or culvert, or will not interfere with its value or use for highway purposes.

If such request is approved, the director, in cooperation with the state road commissioner and the public authority participating in the project, shall make a survey and prepare plans, specifications and estimates for the construction of such dams, reservoirs, ponds, water parks, basins, lakes or other incidental works in connection therewith.

Upon approval of the plans and specifications and determination to proceed with the project, the director shall enter into an agreement with the public authority on the distribution of the cost and expense of the construction of such dams and incidental works in connection therewith. The portion of the cost to be paid by the department shall be paid from any funds appropriated for or paid into the department and available for such purpose. No public authority shall proceed with the construction of such a project unless the plans have complied with the other requirements of law relative to the construction of dams and the director shall have satisfied the public authority that sufficient funds are available for the completion of the dam.

Such dams shall be constructed under and subject to any laws governing the construction of state, county or municipal highways, streets, viaducts, bridges or culverts. Any public authority undertaking construction pursuant to this article shall proceed in the same manner as provided for the construction of public highways or street improvements.

Nothing herein contained shall require the public authority so concerned to delay or postpone the construction of the principal public improvement, though approval of the combined project may have been given.

Sec. 17. *Requests to Director for Dam Construction; Costs; Procedure.*—Any department or division of the

state government or any county, municipal corporation, park board or district or any organization, club, corporation, or private person may petition the director for the construction of dams and reservoir projects in connection with the construction of any public highway, bridge, culvert, street or viaduct.

Upon receipt of such a petition and its approval by the director, the director shall proceed as authorized by section sixteen of this article. If the public authority having charge of the construction of such public highway, street, bridge, viaduct or culvert approves the request, then the director shall enter into an agreement with the public authority, organization or persons petitioning for the construction of such dam or reservoir on the apportionment of the cost and expense of construction. The cost and expense of such dam project shall include the cost of clearing and grubbing and the cost of property and damages incidental thereto. Such agreement shall also contain provisions for the proper maintenance and repair of such projects after completion, and also apportion the revenue derived therefrom between the department and the petitioner.

Sec. 18. *Payment of Dam Costs; Deficiencies and Refunds.*—In all cases in which a public authority, private organization or person shall petition for the construction of a dam and reservoir project as authorized by this article, the director, as a condition precedent to the construction of such project, shall require the petitioning authority, organization or person to pay his share of the cost and expense of such project into the hands of the treasurer of the state to be kept in a separate account for each such project and to be disbursed upon the order of the director.

If the estimated cost paid into the state treasury is found to be insufficient, the deficiency shall be made up by the parties bearing the cost before any further work is done. If the deficiency is not made up within sixty days after notice to such parties, the cost paid in, less the amount of expense incurred by the director and the cooperating public authorities shall be refunded to the donor. After completion of the work, any amount remaining in the state

treasury to the credit of the project shall likewise be refunded.

Sec. 19. *Contracts for Dam Construction.*—In the construction of dams, reservoirs and other incidental works pursuant to this article, the state road commissioner or the public authority of a municipality shall proceed as provided by law and shall enter into contracts as provided by law.

Sec. 20. *Dam Supervision, Maintenance and Management.*—The director shall have the supervision, care and control of all dams, reservoirs, ponds, water parks, basins, lakes or other incidental works constructed pursuant to this article and shall maintain and keep them in repair. The cost of such maintenance and repair shall be paid from any funds appropriated to the department for that purpose or paid into the state treasury as agreed upon with the public or contracting authorities cooperating in the construction of such projects.

Such projects may also be maintained by any department or division of state government or other public authorities leasing or operating the projects, through agreements made with said director. All rentals derived from the leases of such projects shall be used by said director in the maintenance or repair of all such projects. The costs and expenses of the reconstruction of any such projects shall be distributed, unless otherwise agreed, on the same basis and pro rata share of the costs and expenses as was paid by the contracting authorities to the cost of the original project: *Provided, however,* That the state road commission shall not be required to contribute any portion of the cost of maintaining or repairing any dam, reservoir, pond, water park, basin, lake, or other incidental work when the maintenance of the road, bridge, or culvert would not have required such expenditure if it were not for the installation of the project or projects by this article contemplated.

Sec. 21. *Titles and Leases to Lands; Management and Funds.*—The title or lease to any such lands, waters or riparian rights shall be taken by the department, subject

to the approval of the governor and the attorney general, in the name of the state. The lease rentals or purchase price of any such lands, waters or riparian rights, as well as all costs and expenses of constructing any such reservoirs, ponds, water parks, basins, lakes or other incidental works on such lands, may be paid for from any funds appropriated for the use of or paid into the department and available for such purpose. The director may accept contributions to such funds from individuals, associations, clubs, organizations and corporations to effectuate the purposes of this article.

Sec. 22. *Future Plans for Road and Other Construction; Coordination.*—Upon request by the director, the state road commissioner or other public authority shall furnish such director plans underway or contemplated for the construction of new public highways, bridges, culverts, viaducts, or streets; and, thereupon, it shall become the duty of the director to coordinate the plans of the department, if any, with the state road commission or other public authority to the end that such additional project shall not cause a delay in or interfere with the construction of the principal project, and to the end that such additional project shall, in all respects, be in conformity with recognized road construction standards and practices.

## PART III. HUSBANDRY OF WATER AREAS

Sec. 23. *Water Areas Beautification; Investigations; Enforcement.*—The division of water resources shall be responsible for the department's program and practices in the husbandry of rivers, streams, creeks, lakes, ponds, except farm ponds and other water areas and the lands immediately adjacent thereto. The chief of the division shall make such investigations and surveys, conduct such schools and public meetings and take such other steps as may be expedient in the conservation, beautification, improvement and use of all such water areas of the state. He shall cooperate with the department's chief law enforcement officer in enforcing the provisions of law prohibiting disposal of litter in, along and near such water areas.

Sec. 24. *Litter along Streams; Violations; Evidence; Penalties.*—It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal, offal or any other offensive or unsightly matter into any river, stream, creek, lake or pond, or upon the surface of any land within one hundred yards thereof or in such location that high water or normal drainage conditions will cause material designated in this section to be washed into any river, stream, creek, lake or pond.

No portion of this section shall be construed to restrict a private owner or lessee in the use of his own private property or leased property or to prohibit the disposal of materials designated in this section in any manner authorized by law. But if any owner, renter or lessee, private or otherwise, knowingly permits such material, heretofore designated in this section, to be deposited, dumped or thrown in such location that high water or normal drainage conditions will cause such material to wash into any river, stream, creek, lake or pond, it shall be deemed prima-facie evidence that such owner, renter, or lessee intended to violate this section. The provisions of this section shall not apply to persons, firms or corporations subject to the jurisdiction of the state water resources board under provisions of this article.

In addition to enforcement by the director, provisions of this section may be enforced by the United States forestry service and all other proper law enforcement agencies.

Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty nor more than five hundred dollars, or be imprisoned in the county jail for a period of time not exceeding six months, or, in the discretion of the court, may be subject to both such fine and imprisonment.

## Article 6. Reclamation.

**Section**

1. Division of reclamation; duties and functions; state agriculturist, his compensation and duties.

2. Surface mining of coal.
3. Performance bond.
4. Duties of operators; requirements; procedures.
5. Bond forfeitures; procedures; funds and uses.
6. Validity of existing permits and bonds; continuity.
7. When bond released and discharged.
8. Offenses; penalties; prosecutions.

Section 1. *Division of Reclamation; Duties and Functions; State Agriculturist, His Compensation and Duties.*— The division of reclamation, herein created and established, shall have within its jurisdiction and supervision all lands and areas of the state surfaced mined or susceptible of being surfaced mined for the removal of coal and other minerals and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive, and subject to soil erosion and waste, except land being utilized in the production of agricultural commodities. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter, shall be in cooperation with other offices and divisions of the department, and shall not interfere with or encroach upon powers, functions and services lawfully within the jurisdiction of the government of the United States.

The chief of the division shall organize and staff his division for the orderly, efficient and economical execution and administration of the provisions of this article as an integral part of the department's natural resources program.

Upon request of the director of the department of natural resources, the director of the West Virginia agricultural experiment station at West Virginia University shall select and designate a competent and qualified person to be state agriculturist who shall serve in a liaison and advisory capacity between the experiment station and the department in agricultural reclamation programs and projects. The state agriculturist shall be a graduate of an accredited school or college of agriculture, shall have had

at least five years' practical experience in agricultural work. The director of the experiment station shall fix the state agriculturist's salary, which shall be paid from university funds, and shall arrange on the university campus for adequate office facilities, stenographic and clerical assistance, and such other supplies and materials as needed by the state agriculturist. When performing services for the department of natural resources, his travel expenses shall be paid from department funds. The state agriculturist shall study and develop agricultural reclamation programs and projects consistent with the provisions of this chapter, and, under the supervision and direction of the directors of the experiment station and the department of natural resources, shall plan, effect and prosecute programs, projects and activities for the reclamation and restoration of lands of the state for agricultural uses and purposes.

Sec. 2. *Surface Mining of Coal.*—The terms "surface mining" or "strip mining of coal", as herein used, shall mean the mining of coal by any method from an open cut or open pit from which the overburden or surface materials have been removed or stripped so as to expose the coal in place. The term shall not be construed to include conventional deep mining and auger mining.

Surface mining of coal, as an industrial enterprise and occupation, shall be within the jurisdiction and subject to regulations of the state department of mines, as provided in article two-a, chapter twenty-two of this code, but the department of natural resources shall have jurisdiction and control over issuance of all surface mining permits, land and soil aspects of all surface mining operations, and the restoration and reclamation of all lands and areas surface mined, partially surface mined, and affected by adjacent or nearby surface mining operations.

Personnel of the department of mines and of the department of natural resources shall correlate and coordinate their respective departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article.

Sec. 3. *Performance Bond.*—It shall hereafter be unlawful for any person, firm or corporation to engage in the surface mining of coal without having first obtained from the director of the department of mines a permit therefor as provided in section three, article two-a, chapter twenty-two of the code. Before issuance of such permit the director of the department of natural resources shall certify to the director of the department of mines that such applicant for said permit has posted a bond with satisfactory corporate surety, in a penalty of five hundred dollars for each acre or fraction thereof covered by said permit with a minimum of one thousand dollars, conditioned upon the faithful performance of the requirements contained in section four hereof.

Sec. 4. *Duties of Operators; Requirements; Procedures.*—It shall be the duty of each operator to: (1) Cover the face of the coal and so far as practicable, bury all roof coal and pyritic shales; (2) seal off with an earth fill any break-through to underground workings in the coal; (3) drain all the surface involved in the mining operation and provide such outlets as may be necessary to conduct storm and seepage waters from such surface to a permanent stream or stream bed with as little erosion as possible; (4) remove all metal, lumber and other refuse resulting from the operation; (5) regrade, in a manner approved by the director and the agriculturist, the overburden or other strata removed from the coal so as to refill any ditches, trenches or excavations made in the mining operation, in order to minimize the hazards of floods, pollution of streams and water, accumulation of stagnant water, and the loss of soil for agricultural, forestry or grazing purposes, but any lands upon which stripping operations are conducted, which are not used for agricultural or grazing purposes, and in the opinion of the agriculturist, are not adapted therefor, shall be exempted from the provisions of this requirement by the director in the exercise of his sound discretion; and (6) to plant trees, shrubs, grasses or vines upon the land affected in such a manner so as to establish a satisfactory cover on the land in compliance with rules

and regulations approved and adopted by the director or to offer to deposit with the soil conservation district, in which the operation covered by such permit is located, a sufficient amount of money to reclaim the area of the permit, as estimated by the district. If the offer is accepted by the district and the deposit made with the district, and approved by the director, the district then assumes the responsibility for the reclamation work. If the district assumes responsibility for the reclamation work, the director shall release the bonds.

If the operator, landowner or coal owner, including the lessee, desires to conduct drift mining upon the premises, he may designate drift locations, and also outside haulage ways along the exposed face of the coal, at which places it will not be necessary to replace the overburden on the haulage way to the coal until such mining is completed.

For failure to do all the things required of the operator within one year after the completion of the mining operation on the land covered by the permit, and after receipt of a thirty-day notice in writing from the director, which notice may be sent by registered or certified mail, that any one or more of such things have not been done, the permit covering the particular operation and any other surface mining permits that may have been issued to the operator involved shall be revoked by the director and the performance bond shall be forfeited, unless such operator shall comply with the provisions of this section within said thirty-day period.

Any operator whose surface mining permit has been revoked shall not be eligible to receive another such permit until he shall have complied with the requirements of all the laws in respect to former permits issued him.

Sec. 5. *Bond Forfeitures; Procedures; Funds and Uses.* —Upon default in the performance of the conditions of the performance bond, the director shall give notice to the attorney general and it shall be his duty to collect the forfeiture without delay.

All such forfeitures, heretofore or hereafter collected,

as provided in this article, shall be deposited with the state treasurer in a special fund to be designated "Surface Mining Reclamation Fund" to the credit of the department and shall be expended to reclaim and rehabilitate land affected in accordance with the provisions of this article.

It shall then be the duty of the director with the knowledge and concurrence of the agriculturist to reclaim and rehabilitate land affected in accordance with the provisions of section four of this article. Insofar as reasonably practicable, the moneys in the fund shall be expended upon the lands upon which the permit was issued and for which the bond was given. The department may, when deemed necessary, avail itself of any services which may be provided by the state or federal government.

The auditor shall issue his warrant for any or all money in the special fund created by this section upon written request of the director. The special fund heretofore designated "Strip Mining Fund" shall be included in and made a part of the "Surface Mining Reclamation Fund" herein provided for.

Sec. 6. *Validity of Existing Permits and Bonds; Continuity.*—The provisions of chapter eighty-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, shall continue to be in full force and govern in all respects every existing right for surface mining operations, every outstanding permit for surface mining operations and every existing cash or other bond posted in connection therewith, and the enactment of this article shall not affect any offenses or acts committed or done, or any penalty or forfeiture incurred, or any right established, accrued, or accruing before the day this law takes effect. Any money received from the forfeiture of bonds given under the provisions of said act shall be deposited in the same fund and used in the same manner as forfeitures under this article. Every operator under an existing permit, under which actual mining operations have not been commenced prior to the effective date of this article, shall nevertheless be required to perform all the duties specified in section four of this article, and, for failure to do so, his bond shall

be forfeited and he shall be subject to all other penalties provided by the above-mentioned former act. Every such operator shall be required to comply with the provisions of section four of this article under which actual mining operations have not been commenced prior to the effective date of this article.

Sec. 7. *When Bond Released and Discharged.*—Upon satisfactory completion of all requirements of law under the permit granted to any operator pursuant to the provisions hereof, the director of the department of natural resources shall issue to the operator a certificate releasing and discharging the bond and surety thereon.

Sec. 8. *Offenses; Penalties; Prosecutions.*—Any operator, or surface owner or owners, or owner or owners of surface rights who shall conduct any surface mining operation or any part thereof without a permit, or who shall carry on such operation or be a party thereto on land not covered by a permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars or be imprisoned in the county jail for a period not exceeding twelve months, or in the discretion of the court be subject to both such fine and imprisonment, for each such offense. It shall be the duty of the director to see that prosecutions are instituted for violations of the provisions hereof.

## Article 7. Law Enforcement, Procedures and Penalties.

**Section**

1. Chief conservation officer, duties; conservation officers; special conservation officers.
2. Conservation officer qualifications; oath; uniforms.
3. Powers and duties of other law officers.
4. Powers and duties of conservation officer.
5. Enforcement processes.
6. Prosecutions; attorney services; costs.
7. Conspiracy to violate natural resources laws; withholding information; obstructing officers.
8. Property used for illegal purposes; seizure and disposition.
9. Offenses generally; penalties.
10. Justice of peace jurisdiction.

Section 1. *Chief Conservation Officer, Duties; Conservation Officers; Special Conservation Officers.*—The depart-

ment's law enforcement policies, practices and program shall be under the immediate supervision and direction of the department law enforcement officer selected by the director and designated as chief conservation officer as provided in article one hereof.

Under the supervision of the director, the chief conservation officer shall organize, develop and maintain law enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the department's comprehensive natural resources program. All department personnel detailed and assigned to law enforcement duties and services hereunder shall be known and designated as conservation officers and shall be under the immediate supervision and direction of the chief conservation officer. All such conservation officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by department law enforcement needs.

The chief conservation officer, acting under supervision of the director, is authorized to select and appoint special conservation officers for limited or extended periods of time for effective enforcement of the provisions of this chapter when considered necessary because of seasonal, emergency or other unusual circumstances. The special conservation officers shall be selected from qualified merit system personnel and shall otherwise comply with other requirements and qualifications of conservation officers, except in emergency situations and circumstances when the director may designate such officers, without regard to such requirements and qualifications, to meet immediate law enforcement needs.

The term "conservation officer", as used in this chapter, shall mean and include personnel which may be designated and described in other provisions of this code as game protectors, game wardens, fire wardens and by other like or similar names.

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.

Sec. 2. *Conservation Officers; Qualifications; Oath; Uniforms.*—In addition to merit system qualifications and requirements, persons selected as conservation officers shall have reached their twenty-first birthday and shall not have reached their forty-fifth birthday at the time of appointment, be of height between five feet nine inches and six feet six inches, with weight proportioned to height, in good physical condition and of good moral character. Each person so selected shall be certified by the judge of the circuit court, the sheriff and the prosecuting attorney of the county in which he resides to be a person of good moral character, temperate in habits and without criminal record. Whenever possible and practicable, preference in selection of conservation officers shall be given honorably discharged United States military personnel. Each conservation officer, before entering upon the discharge of his duties, shall take and subscribe to the oath of office prescribed in article four, section five of the constitution of West Virginia, which executed oath shall be filed with the director.

The director shall prescribe the kind, style and material of uniforms to be worn by conservation officers. Uniforms and other equipment furnished to the conservation officers shall be and remain the property of the state.

Sec. 3. *Powers and Duties of Other Law Officers.*—The sheriffs and constables of the several counties of the state, police officers of any city and members of the department of public safety shall be vested, within their respective jurisdictions, with all of the powers and authority of conservation officers without requirement of any additional oath or bond. Immediately upon making any arrest or executing any process under provisions of this chapter, each such officer shall report thereon to the director.

Sec. 4. *Powers and Duties of Conservation Officer.*—Conservation officers and all other persons authorized to enforce the provisions of this chapter shall be under the supervision and direction of the director in the performance of their duties as herein provided. The authority, powers and duties of the conservation officers shall be state-wide and they shall have authority to:

(1) Arrest on sight, without warrant or other court process, any person or persons detected by them in the violation of any of the provisions of this chapter, but no such arrests shall be made where any form of administrative procedure is prescribed by this chapter for the enforcement of any of the particular provisions contained herein;

(2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, upon giving the bond required by provisions of section five, article seven, chapter sixty-one of this code, but no license or other authorization shall be required of such officers for this privilege;

(3) Search and examine, in manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat, or any other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of any provision of this chapter;

(4) Execute and serve any search warrant, notice or any process of law issued under the authority of this chapter or any law relating to wildlife, forests, and all other natural resources, by a justice of the peace, any court having jurisdiction thereof, or the water resources board, in the same manner, with the same authority, and with the same legal effect, as any constable or sheriff can serve or execute such warrant, notice or process;

(5) Require the operator of any motor vehicle or other conveyance, on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing such officers to conduct game-kill surveys;

(6) Summon aid in making arrests, seizures or executing any warrants, notices or processes, and shall have the same rights and powers as sheriffs have in their respective counties in so doing;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties hereunder: *Provided, however,* That in connection with all surveys, examinations, investigations and studies needed in the gathering of facts concerning water resources and their use or pollution thereof under article five of this chapter, such conservation officers and all other persons authorized to enforce the provisions of this chapter, shall act pursuant to and under the direction of the state water resources board, and such officers and other persons shall be subject to the provisions of subsection four, section five, article five of this chapter; and

(8) Do all things necessary to carry into effect the provisions of this chapter.

Sec. 5. *Enforcement Processes.*—The director shall be charged with the duty and responsibility of enforcing the provisions of this chapter and to this end may call upon the attorney general, the prosecuting attorneys of the several counties, the department of public safety and all other law enforcement officers of the state. He shall have authority to compel compliance with and to prevent violations and threatened violations of any provisions of this chapter, lawful rules and regulations promulgated hereunder, and cease and desist orders issued pursuant hereto. He may invoke the processes of any court for coercive, remedial or preventive relief by injunction, mandamus or other appropriate proceedings.

Sec. 6. *Prosecutions; Attorney Services; Costs.*—The director may cause complaints to be made and proceedings to be instituted and prosecuted against any violators of this chapter, without the sanction of the prosecuting attorney of the county wherein such proceedings are instituted, and in all such cases no security for costs shall be required of the director. In any unusual or emergency situation or case wherein a prosecuting attorney or the attorney general may not be available to the director for legal services, the director may employ another attorney or other attorneys to represent the state in prosecutions and proceedings under provisions of this chapter and shall

pay costs and fees for such services from department funds.

Sec. 7. *Conspiracy to Violate Natural Resources Laws; Withholding Information; Obstructing Officers.*—Any person who shields or conspires with another in the commission of a violation of any of the provisions of this chapter, or who, upon inquiry, withholds information from enforcement officers, or who hinders, obstructs, interferes with, or impersonates, or attempts to hinder, obstruct, interfere with or impersonate an officer in the performance of his duties shall be guilty of a misdemeanor.

Sec. 8. *Property Used for Illegal Purposes; Seizure and Disposition.*—Any officer, when he arrests or otherwise takes a person into custody for violating any provision or provisions of this chapter, is hereby also authorized and empowered to take and impound any property found in the possession of the accused and susceptible of use in committing the offense of which the person is accused. Such property shall include firearms, fishing equipment, traps, boats, dogs, or any other device, appliance or conveyance.

If the accused is acquitted the property seized shall be returned. If the accused is convicted and pays the fine, costs and other penalties, the property shall be returned, but if the accused fails to pay the fine and costs, the property shall be sold at public auction in such manner as the director may prescribe. The proceeds of the sale shall be applied toward the payment of the fine and costs. The remainder, if any, shall be paid to the owner of the seized property.

Whenever a person is convicted of a violation of this chapter a second time, the property seized at the time of arrest shall in any case be declared forfeited to the state and shall be sold in the manner provided by this section.

Property seized, the use of which is forbidden by this chapter, or which is unfit or unsafe for further use, shall be declared forfeited to the state and shall be disposed of by the director.

Sec. 9. *Offenses Generally; Penalties.*—Any person violating any of the provisions of this chapter, or rules and regulations promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than twenty nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid; and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided.

Sec. 10. *Justice of Peace Jurisdiction.*—Justices of the peace and all other courts established in lieu thereof or in supplementation thereto shall have jurisdiction of all misdemeanor offenses arising under provisions of this chapter concurrent with the jurisdiction of circuit and other criminal courts.

## Article 8. General and Miscellaneous Provisions.

**Section**

1. Transition in terms; continuity.
2. Transfer of records, appropriations, facilities and other properties and assets.
3. Construction.
4. Effective date.

Section 1. *Transition in Terms; Continuity.*—Wherever in this code and elsewhere in law the terms "The Conservation Commission of West Virginia", "conservation commission", "director of conservation" and similar and related terms are used and referenced, they shall be read, understood and construed in the light of the enactment of this chapter by which the conservation commission and the office of director of conservation are abolished and the responsibilities, functions and services thereof are transferred to and absorbed in the department of natural resources, the natural resources commission and the office of director of the department of natural resources as in this chapter provided.

Wherever in this code and elsewhere in law the terms "state water commission" and "state water resources commission" are used and referenced, they shall be read, understood and construed to mean and refer to the state water resources board established and continued in this chapter as an activity of the department of natural resources.

Any litigation instituted, entered into or pending to which any of the governmental corporations and agencies abolished by this chapter are named parties may be continued and prosecuted to completion in such party names or, at the option of the litigants and by leave of court, such party names may be amended or changed to correspond with the names of the successor governmental corporations and agencies as in this chapter provided.

All contracts, compacts and agreements, heretofore entered into by any of the governmental corporations and agencies hereby abolished, shall continue to be the obligations of the respective successor corporations and agencies as in this chapter provided. No provision of this chapter shall be construed as impairing the obligation of any contract.

Sec. 2. *Transfer of Records, Appropriations, Facilities and Other Properties and Assets.*—As of the effective date of this chapter, the records, funds, unexpended appropriations, facilities, equipment and real and personal properties and assets of every kind and character belonging to, owned by or in the custody and control of any governmental corporation, agency, office or activity abolished or transferred to and absorbed in the department of natural resources by the provisions of this chapter shall be by each such governmental corporation, agency, office or activity transferred and delivered to the department of natural resources or to the identifiable successor to the abolished corporation, agency, office or activity as in this chapter established and constituted. It is the intent and purpose of the provisions of this section that continuity in the governmental operations, functions and services affected by this transition shall not be interrupted or impeded.

Sec. 3. *Construction.*—The provisions of this chapter shall be liberally construed to effect the objects and purposes hereof. The provisions of the chapter shall be construed to be separable and severable and in the event any clause, sentence or provision hereof shall for any reason be construed or held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect or impair the remaining provisions hereof.

Sec. 4. *Effective Date.*—The provisions of this chapter shall become effective on the first day of July, one thousand nine hundred sixty-one.

# CHAPTER 134

**(Com. Sub. for House Bill No. 330—Originating in the House Committee on the Judiciary)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-d, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state fire marshal and city officials within certain municipalities.

**Article 3. State Fire Marshal; Protection against Fire.**

**Section**

4-d. Powers of fire marshal and city officials within certain municipalities.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4-d. *Powers of Fire Marshal and City Officials within Certain Municipalities.*—The powers herein granted in sections four-a, four-b and four-c may also be exercised, except as to public and private school buildings,

including colleges and universities, public and private hospitals and nursing homes, and buildings owned or operated by or for the state of West Virginia or any division or agency thereof or public corporation performing any function of the state other than municipalities, within any municipality which has adopted, or which shall hereafter upon the request of the fire marshal adopt, ordinances by which the fire chief or other appropriate municipal officer is given substantially the same powers contained in said sections four-a, four-b and four-c, by the appropriate municipal officer or officers; but the powers granted the state fire marshal by sections four-a, four-b and four-c shall continue to be exercised exclusively by the state fire marshal within each such municipality with respect to public and private school buildings, including colleges and universities, public and private hospitals and nursing homes, and buildings owned or operated by or for the state of West Virginia or any division or agency thereof or public corporation performing any function of the state other than municipalities, located within each such municipality: *Provided, however,* That the inspections of the foregoing excepted buildings authorized to be made by section four-a and any regulations adopted pursuant thereto, and by section sixteen may be made by the appropriate officials or officers of any fire department of any city which has adopted or which shall hereafter, upon the request of the fire marshal, adopt ordinances by which the fire chief or other appropriate municipal officer is given substantially the same power as contained in sections four-a, four-b and four-c. Any fire hazard found within any excepted building by any municipal fire department shall be reported by it to the state fire marshal.

# CHAPTER 135

**(Com. Sub. for House Bill No. 115—Originating in the House Committee on the Judiciary)**

[Passed March 6, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new article, designated article eleven, relating to the creation and establishment of the West Virginia human rights commission and providing for its personnel, powers, functions and services.

## Article 11. Human Rights Commission.

Section

1. Created; status, powers and objects generally; "Commission" defined.
2. Composition; appointment, terms and oath of members; expenses.
3. Organization and personnel; offices; meetings; quorum; minutes; expenses of personnel.
4. Powers; functions; services.
5. Assistance to commission; legal services.
6. Construction; separable provisions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Created; Status, Powers and Objects Generally; "Commission" Defined.*—A West Virginia human rights commission is hereby created and established in the state government. The commission shall have the powers and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodation by virtue of race, creed or religious belief. Unless the context clearly requires another meaning or reference, the word "commission" as used in this article shall be construed to mean and to refer to the West Virginia human rights commission.

Sec. 2. *Composition; Appointment, Terms and Oath of Members; Expenses.*—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.

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 five of article four of the constitution of West Virginia, which executed oath shall be filed in the office of the secretary of state.

No member of the commission shall receive any salary or compensation for his services as such, but each member shall be reimbursed for his reasonable and necessary travel expenses incurred in performance of his commission services.

Sec. 3. *Organization and Personnel; Offices; Meetings; Quorum; Minutes; Expenses of Personnel.*—As soon as practical after the first day of July following creation of the commission, the governor shall call a meeting thereof to be convened at the state capitol. The commission shall at the meeting organize by electing one of its members as chairman of the commission and one as vice chairman thereof for a term of one year or until their successors are elected and qualified. Annually thereafter, as soon as practical after the first day of July, the commission shall elect a chairman and vice chairman from its member-

ship and such other officers as may be found necessary and proper for its effective organization.

When organized, the commission shall select an executive director who shall serve at the will and pleasure of the commission. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He shall be selected with particular reference to his training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director, may employ, prescribe the duties for, and fix the salaries and compensation within available appropriations, of such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission.

The commission shall equip and maintain its offices at the state capitol and shall hold its annual organizational meeting thereat. The commission may hold other meetings during the year at such times and places within the state as may be found necessary and proper in the discharge of its duties. Any five members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses incurred in performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

Sec. 4. *Powers; Functions; Services.*—The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the

advancement of tolerance, understanding and the equal protection of the laws for all groups and peoples;

(c) To act as conciliator in matters of employment and places of public accommodation involving race, color, religion, national origin or ancestry, but no decision of the commission shall be binding upon any parties to the conciliation;

(d) To receive and consider complaints involving employment and places of public accommodation and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment and places of public accommodation;

(e) To hold and conduct public and private hearings on complaints, matters and questions before the commission and, in connection therewith, to

(1) Administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Compile hearing records and furnish copies of the whole or any parts thereof to the governor, the Legislature and such other governmental officials and agencies as may be concerned therewith;

(3) Furnish copies of public hearing records to interested parties involved therein upon their payment of the reasonable costs thereof to the commission;

(4) Delegate to the executive director, or to any five members of the commission the power and authority to hold and conduct the hearings, as herein provided, but all decisions and action growing out of or upon any such hearings shall be reserved for determination by the commission;

(f) To encourage, promote and conduct studies and research projects in matters and questions involving and relating to human rights and to compile and make public reports thereon;

(g) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(h) To delegate to its executive director and to such other investigative and research personnel as it may employ such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(i) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(j) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations implementing the powers and authority hereby vested in the commission;

(k) Not withstanding any other provisions of this article, any person called as a witness before the commission may, in that person's discretion, demand either a public or private hearing.

Sec. 5. *Assistance to Commission; Legal Services.*—The commission may call upon other officers, departments and agencies of the state government to assist in its hearings, programs and projects. The attorney general of the state shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

Sec. 6. *Construction; Separable Provisions.*—The provisions of this article shall be liberally construed to accomplish the objectives and purposes hereof. If any provision of this article be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and separable.

# CHAPTER 136

**(Com. Sub. for Senate Bill No. 146—Originating in the Senate Committee on the Judiciary)**

[Passed March 4, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article one-c, relating to the "Interstate Commission on the Potomac River Basin", and the revision of the interstate compact on the Potomac river basin.

**Article 1-c. Interstate Commission on the Potomac River Basin.**

Section

1. Creation of commission; members; terms; compact with other political units.
2. Appointment of alternates.
3. Expenses of commission; appropriation; officers and employees; meetings.
4. Effective date.
5. Restrictions.

*Be it enacted by the Legislature of West Virginia:*

That article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article one-c be enacted in lieu thereof, to read as follows:

Section 1. *Creation of Commission; Members; Terms; Compact with Other Political Units.*—There is hereby created a commission consisting of three members, to act jointly with commissioners appointed for like purposes by the commonwealths of Pennsylvania and Virginia, the state of Maryland, and the District of Columbia, and an additional three members to be appointed by the president of the United States, and which, together with the other commissioners appointed as hereinbefore mentioned, shall constitute and be known as the "Interstate Commis-

sion on the Potomac River Basin". The said commission of the state of West Virginia shall consist of three members. The governor, by and with the advice and consent of the senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the senate, for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner 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. The third commissioner from this state shall be the commissioner of health ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of commissioner of health, and his successor as a commissioner shall be his successor as said commissioner of health. Said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The term of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners: *Provided*, That the compact hereinafter referred to shall then have gone into effect, in accordance with article six thereof, otherwise to begin upon the date said compact shall become effective, in accordance with said article six.

Any commissioner may be removed from office by the governor.

The governor of the state of West Virginia is hereby authorized and directed to execute a compact on behalf of the state of West Virginia, with the other states and the district hereinabove referred to, who may by their legislative bodies so authorize a compact in form substantially as follows:

## A COMPACT

WHEREAS, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate streams; and

WHEREAS, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac river and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

WHEREAS, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district; now, therefore,

The states of Maryland and West Virginia, the commonweatlhs of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac valley conservancy district, hereinafter designated the conservancy district, comprising all of the area drained by the Potomac river and its tributaries; and also, do hereby create, as an agency of each signatory body, the interstate commission on the Potomac river basin, hereinafter designated the commission, under the articles of organization as set forth below.

## ARTICLE I

The interstate commission on the Potomac river basin shall consist of three members from each signatory body and three members appointed by the president of the United States. Said commissioners, other than those appointed by the president, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed, and shall serve without compensation from the commission but shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

(A) The commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, shall adopt suitable by-laws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The commission shall appoint, and at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The commission may maintain one or more offices for the transaction of its business and may meet at any time within the area of the signatory bodies.

(C) The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the commission.

(D) A quorum of the commission shall, for the transaction of business, the exercise of any powers, or the

performance of any duties, consist of at least six members of the commission who shall represent at least a majority of the signatory bodies: *Provided, however,* That no action of the commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the commissioners from such signatory body shall vote in favor thereof.

## ARTICLE II

The commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the conservancy district.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said conservancy district.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the conservancy district and on the aims, views, purposes and recommendations of the commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon

any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F) (1). To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the conservancy district, and also, for cleanliness of the various streams in the conservancy district.

(2). To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the commission with its recommendations thereon.

The commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the commission for classified waters. The commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a

manner similar to that in which these standards and classifications were originally established.

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

ARTICLE III

For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the commission may establish sections of the commission consisting of the commissioners from such affected signatory bodies: *Provided, however*, That no signatory body may be excluded from any section in which it wishes to participate. The commissioners appointed by the president of the United States may participate in any section. The commission shall designate, and from time to time may change, the geographical area with respect to which each section shall function. Each section shall, to such extent as the commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the commission, and in addition may exercise such other powers and perform such functions as may be vested in such section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a section of any power or function vested in the commission may be financed by the commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

## ARTICLE IV

The moneys necessary to finance the commission in the administration of its business in the conservancy district shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

## ARTICLE V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the conservancy district and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in article four.

## ARTICLE VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the commissioners of the District of Columbia, and approval by the Congress of the United States: *Provided, however,* That this compact shall not be effective as to any signatory body until ratified thereby.

## ARTICLE VII

Any signatory body may, by legislative action, after one year's notice to the commission, withdraw from this compact.

Sec. 2. *Appointment of Alternates.*—The governor, by and with the consent of the senate, shall appoint an alternate member for the two members of the commission who are not ex officio, and each alternate shall have power to act in the absence of the person for whom he is alternate. The governor shall appoint the first alternates hereunder on or before July first, one thousand nine hundred forty-nine, the term of each alternate to run concurrently with the term of the member for whom he is alternate.

Sec. 3. *Expenses of Commission; Appropriation; Officers and Employees; Meetings.*—The commissioners shall be reimbursed, out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this article and the payment of the proper proportion of the state of West Virginia of the expenses of the "Interstate Commission on the Potomac River Basin", in accordance with article four of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistants as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

Sec. 4. *Effective Date.*—This article shall become effective upon the adoption of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the

amendments to the compact by the Congress of the United States.

Sec. 5. *Restrictions.*—Neither the governor of the state of West Virginia nor any member of the commission aforesaid, representing the state of West Virginia, shall consent to the construction of any dam, whether in the state of West Virginia, or without this state, which shall flood lands in this state, without the express consent of the Legislature.

# CHAPTER 137

**(Senate Bill No. 13—By Mr. Carson, Mr. President)**

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to records management and preservation of essential records.

**Article 8. Public Records Management and Preservation Act.**

**Section**

1. Short title.
2. Declaration of policy.
3. Definitions.
4. Categories of records to be preserved.
5. State records administrator.
6. Records management and preservation advisory committee.
7. Duties of administrator.
8. Rules and regulations.
9. Duties of agency heads.
10. Essential state records; preservation duplicates.
11. Essential state records; safekeeping.
12. Essential state records; maintenance; inspection and use.
13. Essential state records; confidential records.
14. Essential state records; review of program.
15. Records management and preservation of local records.
16. Assistance to legislative and judicial branches.
17. Disposal of records.
18. Destruction of non-record materials.
19. Annual report.
20. Separability clause.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Short Title.*—This article shall be known as the "Records Management and Preservation of Essential Records Act."

Sec. 2. *Declaration of Policy.*—The Legislature declares that programs for the efficient and economical management of state and local records will promote economy and efficiency in the day-to-day record-keeping activities of state and local government and will facilitate and expedite government operations; that records containing information essential to the operation of government and to the protection of the rights and interests of persons must be protected against the destructive effects of all forms of disaster and must be available when needed. It is necessary, therefore, to adopt special provisions for the selection and preservation of essential state and local records thereby providing for the protection and availability of such information.

Sec. 3. *Definitions.*—As used in this article:

(a) "Disaster" means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

(b) "Records" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publica-

tions and of processed documents are not included within the definition of records as used in this article.

(c) "State record" means:

(1) A record of a department, office, commission, board or other agency, however designated, of the state government.

(2) A record of the state Legislature.

(3) A record of any court of record, whether of statewide or local jurisdiction.

(4) Any record designated or treated as a state record under state law.

(d) "Local record" means a record of a county, city, town, authority or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.

(e) "Agency" means any department, office, commission, board or other unit, however designated, of the executive branch of state government.

(f) "Preservation duplicate" means a copy of an essential state record which is used for the purpose of preserving such state record pursuant to this article.

Sec. 4. *Categories of Records to Be Preserved.*—State or local records which are within the following categories are essential records which shall be preserved pursuant to this article:

Category A. Records containing information necessary to the operation of government in the emergency created by a disaster.

Category B. Records not within category A but containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

Sec. 5. *State Records Administrator.*—The commissioner of finance and administration is hereby designated the state records administrator, hereinafter called the administrator. The administrator shall establish and administer

in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance and retention, preservation and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of programs for the selection and preservation of essential local records.

Sec. 6. *Records Management and Preservation Advisory Committee.*—A records management and preservation advisory committee is hereby established to advise the administrator and to perform such other duties as this article requires. The records management and preservation advisory committee shall be composed of the following members: The governor, auditor, attorney general, president of the senate, speaker of the house of delegates, the president of the supreme court of appeals, a judge of a circuit court to be appointed by the governor, the state director of civil and defense mobilization, or their respective designated representatives. The advisory committee shall designate one of its members to be chairman, and it shall adopt rules for the conduct of its business. The advisory committee shall meet whenever called by its chairman or the administrator. The members of the advisory committee shall serve without compensation but shall be reimbursed for their actual expenses incurred while performing their duties as members of the advisory committee.

Sec. 7. *Duties of Administrator.*—The administrator shall, with due regard for the functions of the agencies concerned:

(a) Establish standards, procedures, and techniques for effective management of records.

(b) Make continuing surveys of paper work operations and recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records.

(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping.

(d) Select the state records which are essential and determine their category pursuant to this article. In accordance with the rules and regulations promulgated by the administrator, each person who has custody or control of state records shall (1) inventory the state records in his custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing his recommendations as to which state records are essential; and (3) periodically review his inventory and his report and, if necessary, revise his report so that it is current, accurate and complete.

(e) Obtain reports from agencies as are required for the administration of the program.

Sec. 8. *Rules and Regulations.*—The administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential state records as are necessary or proper to effectuate the purpose of this article.

Sec. 9. *Duties of Agency Heads.*—The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

(c) Submit to the administrator, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The head of each agency also

shall submit lists of state records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further keeping for disposal in conformity with the requirements of section ten of this article.

(d) Cooperate with the administrator in the conduct of surveys made by him pursuant to the provisions of this article.

(e) Comply with the rules, regulations, standards and procedures issued by the administrator.

Sec. 10. *Essential State Records; Preservation Duplicates.*—(a) The administrator may make or cause to be made preservation duplicates or may designate as preservation duplicates existing copies of essential state records. A preservation duplicate shall be durable, accurate, complete and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film or microfilm shall be made in conformity with the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

Sec. 11. *Essential State Records; Safekeeping.*—(a) The administrator shall prescribe the place and manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the Legislature, storage facilities therefor. The administrator may provide for storage outside the state.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be

destroyed or unavailable in the event of a disaster caused by an enemy of the United States:

(1) The administrator shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location; or

(2) The administrator shall store such state record at a location other than its legally designated or customary location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The administrator may store such state record at a location other than its legally designated or customary location, without providing for a preservation duplicate, upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster caused by an enemy of the United States has occurred or is imminent.

Sec. 12. *Essential State Records; Maintenance, Inspection and Use.*—(a) The administrator shall properly maintain essential state records and preservation duplicates stored by him.

(b) An essential state record or preservation duplicate stored by the administrator may be recalled by the regularly designated custodian of the state record for temporary use when necessary for the proper conduct of his office and shall be returned by such custodian to the administrator immediately after such use.

(c) When an essential state record is stored by the administrator, the administrator, upon request of the regularly designated custodian of the state record, shall provide for its inspection, or for the making or certification

of copies thereof, and such copies when certified by the administrator shall have the same force and effect as if certified by the regularly designated custodian.

Sec. 13. *Essential State Records; Confidential Records.*—When a state record is required by law to be treated in a confidential manner and is an essential state record, the administrator in effectuating the purpose of this article with respect to such state record, shall protect its confidential nature.

Sec. 14. *Essential State Records; Review of Program.*—The administrator shall review periodically but at least once a year the program for the selection and preservation of essential state records, including the classification of records and the provisions for preservation duplicates, and for safekeeping of essential state records or preservation duplicates to ensure that the purposes of this article are accomplished.

Sec. 15. *Records Management and Preservation of Local Records.*—The governing body of each county, city, town, authority or any public corporation or political entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such governing body may, as far as practical, follow the program established for the management and preservation of state records. The administrator shall, upon the request of a local governing body, provide advice and assistance in the establishment of a local records management and preservation program.

Sec. 16. *Assistance to Legislative and Judicial Branches.*—Upon request, the records administrator shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this article.

Sec. 17. *Disposal of Records.*—No record shall be destroyed or otherwise disposed of by any agency of the

state, unless it is determined by the administrator that the record has no further administrative, legal, fiscal, research or historical value.

Sec. 18. *Destruction of Nonrecord Materials.*—Nonrecord materials or materials not included within the definition of records as contained in this article may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials.

Sec. 19. *Annual Report.*—The administrator shall make an annual written report to the governor for transmission to the Legislature. The report shall describe the status and progress of programs established pursuant to this article and shall include the recommendations of the administrator for improvements in the management and preservation of records in the state government.

Sec. 20. *Separability Clause.*—If a part of this article is invalid, all valid parts that are separable from the invalid part remain in effect. If a part of this article is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications.

# CHAPTER 138

**(Senate Bill No. 268—By Mr. Nuckols)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter one hundred seventy-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-nine, relating to creation of the "West Virginia Centennial Fund".

**West Virginia Centennial Commission**

**Section**

**3. Creation of the West Virginia centennial fund.**

*Be it enacted by the Legislature of West Virginia:*

That section three, chapter one hundred seventy-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:

Section 3. *Creation of the West Virginia Centennial Fund.*—For the purpose of carrying out the provisions of this act, there is hereby created a special revenue fund entitled "The West Virginia Centennial Fund", which fund shall remain in existence only to the end of the fiscal year, one thousand nine hundred sixty-four.

The commission shall have the duty of administering, managing and controlling said fund and shall make expenditures therefrom in accordance with the provisions of article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Requisitions for expenditures from said fund shall be signed by either the chairman or vice chairman of the commission, secretary, treasurer or comptroller. All such requisitions shall require the signature of two such officers.

The commission is authorized to receive annual appropriations from the Legislature of West Virginia and from counties and municipalities within the state, which are hereby authorized and empowered to make appropriations as a budget expenditure, and is empowered to allow such annual appropriations to accumulate until such time as it becomes necessary to make expenditures therefrom. The commission is further authorized and empowered to solicit, encourage and request tax-deductible donations, gifts and contributions from any source, both private and public.

All money so appropriated or received shall be turned over to the nonprofit corporation authorized herein.

# CHAPTER 139

(Senate Bill No. 40—By Mr. Carson, Mr. President)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to the promotion and expansion of industrial development in the state of West Virginia and the creation of a public corporation to be known as the "West Virginia Industrial Development Authority" to allocate funds for and make secured loans to industrial development agencies for the payment of a part of the cost of industrial development projects in the state of West Virginia; authorizing the authority to enter into agreement with the government of the United States or any federal agency or industrial development agency; empowering the authority to take title to sell, convey and lease industrial development projects where necessary to protect loans made by the West Virginia industrial development authority on industrial development projects; providing for the establishment of industrial development projects in the state of West Virginia; providing that no debt of the state, its municipalities and political subdivisions shall be incurred in the exercise of any powers granted by this article; and providing for the examination of the accounts and affairs of the authority; and the authorization for appropriations for the establishment of an industrial development fund.

## Article 15. West Virginia Industrial Development Authority.

Section

1. Short title.
2. Legislative findings.
3. Purposes.
4. Definitions.
5. The West Virginia industrial development authority created; composition of board of members; appointment and term of members; compensation.
6. Powers of authority.
7. Loans.

8. Loan application requirements; hearings upon applications.
9. Industrial development fund.
10. Governing body; organization and meetings; quorum; additional powers of authority.
11. Moneys of the authority; deposits; payments.
12. Conflict of interest.
13. Limitation of powers.
14. Audit.
15. Severability and construction.

*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 fifteen, to read as follows:

Section 1. *Short Title.*—This article shall be known and may be cited as the "West Virginia Industrial Development Authority Act".

Sec. 2. *Legislative Findings.*—It is hereby determined and declared as a matter of legislative finding: (a) That critical conditions of unemployment exist in many areas of the state and that such conditions may well come about, from time to time, in other areas of the state; (b) that in some areas of the state such conditions are chronic and have been so for so long a period of time that, without remedial measures, they may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and ultimately upon the state in the form of public assistance and unemployment compensation; (e) that the absence of employment and business opportunities for the youth of such areas is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of employment and business opportunities in such areas has resulted in thousands of workers and their families leaving the state to find such opportunities, and that this exodus has adversely affected the tax base of counties and municipalities within such areas

resulting in an impairment of their financial ability to support education and other local government services; (g) that security against unemployment and the resulting spread of indigency and economic stagnation in affected areas can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing in such areas; (h) that the present and future health, safety, morals, right to gainful employment and general welfare of the people of the state require as a public purpose the promotion and development of new and expanded industrial and manufacturing enterprises within areas of critical unemployment; (i) that the device under which private community industrial development organizations in the state acquire or build industrial buildings with funds raised through popular subscription, loans, or otherwise for lease and sale to new or expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise, and requires and deserves encouragement and support from the state, as a means toward alleviation of unemployment and chronic economic distress; (j) that community industrial development corporations in the state have invested substantial funds in successful industrial development projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizeable first deed of trust or mortgage loans; (k) that an urgent need exists to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into such community industrial building programs in areas of chronic and critical distress; and (l) that by increasing the number of community industrial building projects presenting attractive opportunities for private investment in such areas, a larger portion of the private capital available in this state for investment can be put to use in the general economic development of the state.

Sec. 3. *Purposes.*—The purposes of this article shall be to provide for the formation of a public industrial development authority to promote, assist, encourage and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies, or related corporations, partnerships, foundations, or other institutions to develop and advance the business prosperity and economic welfare of the state of West Virginia; to encourage and assist in the location of new business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial or manufacturing developments in this state; to furnish money and credit to approved industrial development agencies in this state, thereby establishing a source of credit not otherwise available therefor. Such purposes are hereby declared to be public purposes for which public money may be spent and are purposes which will promote the health, safety, morals, right to gainful employment, business opportunities and general welfare of the inhabitants of the state.

Sec. 4. *Definitions.*—The following terms, whenever used or referred to in this article, shall have the following meanings:

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

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

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

(d) The term "critical economic area" shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the state reasonably defined by the authority wherein critical con-

ditions of unemployment, economic depression, widespread reliance on public assistance and unemployment compensation are found to exist by the authority. Prior to determination and designation of any area of the state as a critical economic area, the authority shall conduct such investigations of the area and of the records and statistical indices of the department of employment security, department of labor, conservation commission, department of public assistance and other applicable state agencies, as well as the declarations and statistics of any federal agencies as shall be necessary to establish the existence of the above conditions in such area and to establish that an average of not less than six per cent of the labor force of such area has been unemployed for a period of not less than three years, or an average of not less than nine per cent of the labor force of such area has been unemployed for a period of not less than eighteen months, immediately prior to the date of such investigations and findings. No area of the state shall be designated a critical economic area without such investigations and findings having been first made and certified to the permanent records of the authority.

(e) The term "federal agency" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the United States of America.

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

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

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

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

(j) The term "municipality" shall mean any city or town of the state.

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

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

(m) The words "cost of establishing an industrial development project" shall embrace any or all of the following: The cost of construction, the cost of all lands, property rights, easements and franchises acquired which are deemed necessary for such construction, financing charges, interest prior to and during construction, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation; the cost of all machinery and equipment and its installation and maintenance shall not be included in the cost of establishing an industrial development project, but shall be provided by the responsible buyer.

Sec. 5. *West Virginia Industrial Development Authority Created; Composition of Board of Members; Appointment and Term of Members; Compensation.*—There is hereby created a body corporate and politic, constituting a public corporation and government instrumentality by the name of the "West Virginia Industrial Development Authority", the board of members of which shall be composed of the following: The commissioner of commerce, who shall serve as chairman, the state tax commissioner, the state banking commissioner and the director of the conservation commission, and their respective successors in office, and five additional members who shall be appointed by the governor, with the advice and consent of the senate, who shall represent the general public and the public interest. The members of the authority initially appointed by the governor shall continue in office for terms of one to five years, respectively, from the date of their appointment and until their respective successors shall be duly appointed and qualified the term of each appointed member to be designated by the governor at the time of his appointment; but their successors shall each be appointed for a term of five years, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member of the authority shall be eligible for reappointment. Said members of the authority shall be entitled to no 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.

Sec. 6. *Powers of Authority.*—The authority, as a public corporation and governmental instrumentality exercising public powers of the state, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article, including the following powers, in addition to others herein granted:

(a) To make determination and designation of critical economic areas.

(b) To cooperate with industrial development agencies in their efforts to promote the expansion of industrial and manufacturing activity in critical economic areas.

(c) To determine, upon proper application of industrial development agencies, whether the declared public purpose of this article has been accomplished or will be accomplished by the establishment by such industrial development agencies of an industrial development project in a critical economic area.

(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 material for its information and necessary to the determination and designation of critical economic areas and the establishment of industrial development projects therein.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such authority, or before one or more members of the authority appointed by it to conduct such hearings.

(f) To apply to any court, having territorial jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear.

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

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

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

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

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

(l) To make by-laws for the management and regulation of its affairs.

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

(n) To make contracts of every name and nature and

to execute all instruments necessary or convenient for carrying on its business.

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

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

Sec. 7. *Loans.*—Loans to industrial development agencies: When it has been determined by the authority upon application of an industrial development agency and upon hearing thereon in the manner hereinafter provided that the establishment of a particular industrial development project (of such industrial development agency) in a critical economic area has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency an amount not in excess of thirty per cent of the cost, or estimated cost, of such industrial development project, as established or to be established, subject, however, to the following conditions:

(A) Industrial development projects to be established.

1. The authority shall have first determined that the industrial development agency holds funds in an amount equal to, or property of a value equal to, not less than

twenty per cent of the estimated cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of such project; and

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

(B) Industrial development projects established with initial authority loan participation.

1. The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than twenty per cent of the cost of establishing the industrial development project; and

2. The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, other funds necessary for payment of all the cost of establishing the industrial development project, and that the industrial development agency participation and these funds, together with the machinery and equipment provided by the responsible tenant or responsible buyer, has been adequate to insure completion and operation of the plant or facility: *Provided, however,* That the proceeds of any loan made by the authority to the industrial development agency pursuant to this subsection (B) shall be used only for the establishment of additional industrial development projects in furtherance of the public purposes of this article.

Any such loan of the authority shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and shall be secured by bond

of the industrial development agency and by deed of trust on the industrial development project for which such loan was made, such deed of trust to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the authority to industrial development agencies shall be withdrawn from the industrial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the authority.

All payments of interest on said loans and the principal thereof shall be deposited by the authority in the industrial development fund.

Loans by the authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by loan, grant or otherwise of federal funds. When any federal agency does so participate the authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds, and the authority in such manner as to insure the maximum benefit available to the industrial development agency, the authority, or both, by the participation of the federal agency: *Provided, however,* That no such adjustment of such ratios shall cause the authority to grant a loan to the industrial development agency in excess of thirty per cent of the cost or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust the lien of which is junior to the deed of trust of the authority, the authority shall, in such instances, be authorized to take as security for its loan to the industrial development agency a deed of trust junior in lien to that of the federal agency.

Sec. 8. *Loan Application Requirements; Hearings Upon Applications.*—Prior to the loaning of any funds to an industrial development agency for an industrial development project in a critical economic area, the authority shall receive from such industrial development agency a loan application in form adopted by the authority which shall contain, without being limited to, the following provisions:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing enterprise for which the industrial development project has been or is to be established.

(b) A legal description of all real estate necessary for the industrial development project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the industrial development project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the industrial development project.

(e) Cost or estimates of cost of establishing the industrial development project.

(f) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the industrial project.

(g) A statement of cash funds previously applied, or then held by the industrial development agency which are available for and are to be applied, to the establishment of the industrial development project.

(h) Evidence of the arrangement made by the industrial development agency for the financing of all cost of the industrial development project over and above the participation of the industrial agency.

(i) A general description of the responsible tenant to which the industrial development agency has leased or will lease the industrial development project or of the responsible buyer to which the industrial development agency has sold or will sell the project.

(j) A general description of the form of lease or sales agreement entered into or to be entered into by and be-

tween the industrial development agency and its responsible tenant or responsible buyer.

(k) Evidence that the establishment of the industrial development project will not cause the removal of an industrial or manufacturing plant or facility from one area of the state to another area of the state.

The board of the authority shall hold such hearings and examinations as to each loan application received as shall be necessary to determine whether the public purposes of this article will be accomplished by the granting of loans within such applications requested.

When the board shall have determined said facts favorable as to any application, it is authorized and empowered, having due regard to the promotion of the public purposes herein declared, to grant a loan to an industrial development agency in the manner and to the extent as in this article provided.

Sec. 9. *Industrial Development Fund.*—There is hereby created a special account in the treasury of the state to be known as the industrial development fund to which shall be accredited any appropriation made by the Legislature to the authority, as well as such other deposits as in this section provided.

As often as may be necessary, the authority shall requisition from the industrial development fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purposes of this article.

The authority shall also requisition, from time to time from the industrial development fund such amounts as shall be allocated and appropriated by the authority for loans to industrial development agencies for industrial development projects. When and as the amounts so allocated and appropriated by the authority as loans to industrial development agencies are repaid to the authority pursuant to the terms of the mortgages and other agreements made and entered into by the authority, the authority shall pay such amounts into the industrial development fund, it being the intent of this article that the industrial development fund shall operate as a revolving

fund whereby all appropriations and payments made thereto may be applied and re-applied to the purposes of this article.

At any time that the authority shall determine that funds held for the credit of the industrial development fund are in excess of the amount needed by the authority to carry out the purposes of this article, the authority shall take such action as shall be required to release such excess from the industrial development fund and transfer the same to the general fund of the state treasury.

Sec. 10. *Governing Body; Organization and Meetings; Quorum; Additional Powers of Authority.*—The powers of the authority shall be exercised by a governing body consisting of the members of the authority acting as a board. Within ninety days after this article shall become effective, the board shall meet and organize. The commissioner of commerce and his successor in office shall be the chairman and chief executive officer and the board shall elect a secretary and a treasurer from their number. At the first meeting in each year thereafter they shall elect from their number a secretary and treasurer.

A majority of the members shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business thereof, and, except in the instance of loan applications, all action may be taken by a vote of a majority of the members present, unless in any case the by-laws shall require a larger number; approval or rejection of loan applications shall be by a majority vote of the full membership of the board.

The board shall have full authority to manage the properties and business of the authority, and to prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the business of the authority may be conducted, and the powers granted to it may be exercised and embodied.

The department of commerce shall provide staff services to the authority for its administration of the article, including liaison between the authority and industrial development agencies and related organizations, and between the authority and other agencies of the state whose

facilities and services may be useful to the authority in its work.

The authority is authorized to make reimbursement to any agency of the state for such special expenses as may be incurred in the provision of any services or the use of any facilities required by the authority.

In addition, the authority may employ an executive director, appoint its own counsel and legal staff, and, as required for special studies and surveys, retain such temporary engineering, finance and other consultants and technicians as it may require.

Sec. 11. *Moneys of the Authority; Deposits; Payments.*—All moneys of the authority, from whatever source derived, shall be paid to the treasurer of the authority. Said moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the state, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the treasurer of the authority, or of such other person or persons as the authority may authorize to execute such warrants or orders.

Sec. 12. *Conflict of Interest.*—No member of the authority or officer or employee thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority. If any contract or agreement shall be made in violation of the provisions of this section, the same shall be null and void and no action shall be maintained thereon against such authority.

Sec. 13. *Limitation of Powers.*—The state does hereby

pledge to and agree with the United States and any other federal agency that in the event any federal agency shall construct or loan or contribute any funds for the construction, extension, improvement or enlargement of any industrial development project, or any portion thereof, 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 agreements between the authority and any such federal agency, and the authority shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this article.

Sec. 14. *Audit.*—The accounts and books of the authority, including its receipts, disbursements, contracts, mortgages and/or deeds of trust, investments and other matters relating to its finances, operation and affairs, shall be examined and audited from time to time by the state tax commissioner in accordance with statutes applicable to audits of other state agencies.

Sec. 15. *Severability and Construction.*—The provisions of this article are considered remedial and shall be liberally construed and interpreted so as to effect the general purposes and objectives hereof. The provisions of the article shall be severable, and if any of the provisions thereof shall be held unconstitutional, such decisions shall not affect the validity of any of the remaining provisions of this article. It is hereby declared as the legislative intent that this article would have been adopted had such unconstitutional provisions not been included herein.

# CHAPTER 140

**(Senate Bill No. 162—By Mr. Riley)**

**[Passed February 27, 1961; in effect from passage. Approved by the Governor.]**

AN ACT to amend article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section five-a, relating to confinement of tuberculosis patients who are a health menace to others.

**Article 5-a. Tuberculosis Control.**

**Section**

5-a. Return of escapees of state tuberculosis institutions.

*Be it enacted by the Legislature of West Virginia:*

That article five-a, chapter twenty-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 five-a, to read as follows:

Section 5-a. *Return of Escapees of State Tuberculosis Institutions.*—If any person confined in a state tuberculosis institution by virtue of an order of a circuit court as provided for in section five of this article shall escape therefrom, the superintendent thereof shall issue a notice giving the name and description of the person escaping and requesting his or her apprehension and return to the hospital, and may offer such reward for the return of such person as the commissioner of public institutions may authorize. The superintendent shall issue a warrant directed to the sheriff of the county commanding him to arrest and carry such escaped person back to the hospital, which warrant may be executed in any part of the state. If such person flee to another state, the superintendent shall notify the commissioner of public institutions, and the commissioner of public institutions shall take such action as may be deemed proper in the premises for the return of such person to the hospital.

# CHAPTER 141

**(House Bill No. 51—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter twenty-seven of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to West Virginia Training School.

**Article 10. West Virginia Training School.**

Section
1. Persons who may be admitted.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Persons Who May Be Admitted.*—There shall be admitted to the West Virginia Training School any person mentally ill from birth or from an early age, so pronounced that he is unable to care for himself and manage his affairs with ordinary prudence and who, because of such mental illness, is a menace to the happiness and welfare of himself or others in the community, and requires care, training or control for the protection of himself or of others. This type of person is usually classified as a mental defective. Should the school at any time not be able to accommodate all persons of such class offered for admission, preference in admission shall be given to children between the ages of seven and fourteen years, inclusive, who are capable of being trained and of attending to their own physical needs.

# CHAPTER 142

**(Senate Bill No. 121—By Mr. Carson, Mr. President, and Mr. Carrigan)**

[Passed March 11, 1961; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter seven, and to add to said article seven a new section, designated section sixteen; to amend and reenact

section seven, article two, chapter eleven, and to add to said article two a new section, designated section eleven; to amend and reenact sections one, two, three, four, five, six, nine, ten, twelve, thirteen, fifteen, nineteen, twenty-four and twenty-four-a, article three, chapter eleven, and to add to said article three a new section, designated section thirty; to amend and reenact sections one, two, three, four and nine, article five, chapter eleven; to amend and reenact sections one, nine, eleven, eighteen, twenty-two and twenty-three, article six, chapter eleven, and to add to said article six a new section, designated section twenty-five; to amend and reenact sections five, six-c, eight, nine, ten, ten-a, twelve, twelve-a, fourteen and fourteen-a, article eight, chapter eleven, and to add to said article eight a new section, designated section thirty-three; to amend and reenact sections two, three, six, eight and fourteen, article one, chapter eleven-a, and to add to said article one, a new section, designated section eighteen; to amend and reenact sections four, ten-a, eleven, thirteen and fourteen, article two, chapter eleven-a, and to add to said article two a new section, designated section nineteen; to amend and reenact sections two, four, five and fourteen, article three, chapter eleven-a, and to add to said article three a new section, designated section forty-four; to amend and reenact section nine, article four, chapter eleven-a; to amend and reenact section four, article four, chapter eighteen, and to add to said article four a new section, designated section twelve; to amend and reenact section four, article five, chapter eighteen, and to add to said article five a new section, designated section thirty-eight; to amend and reenact sections two-a and three-a, article nine, chapter eighteen, and to add to said article nine a new section, designated section eight, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the assessment of property and the levying and collection of taxes thereon.

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**Chapter**

7. **County Courts and Officers.**
11. **Taxation.**
18. **Education.**

*Be it enacted by the Legislature of West Virginia:*

That section seven, article seven, chapter seven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section sixteen; that section seven, article two, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section eleven; that sections one, two, three, four, five, six, nine, ten, twelve, thirteen, fifteen, nineteen, twenty-four and twenty-four-a, article three, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section thirty; that sections one, two, three, four and nine, article five, chapter eleven, be amended and reenacted; that sections one, nine, eleven, eighteen, twenty-two and twenty-three, article six, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section twenty-five; that sections five, six-c, eight, nine, ten, ten-a, twelve, twelve-a, fourteen and fourteen-a, article eight, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section thirty-three; that sections two, three, six, eight and fourteen, article one, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section eighteen; that sections four, ten-a, eleven, thirteen and fourteen, article two, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section nineteen; that sections two, four, five and fourteen, article three, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section forty-four; that section nine, article four, chapter eleven-a, be amended and reenacted; that section four, article four, chapter eighteen, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section twelve; that section four, article five, chapter eighteen, be amended and reenacted, and that said article be further amended by adding thereto a new section thirty-eight; that sections two-a and three-a, article nine, chapter eighteen, be amended and reenacted, and that said article be further

amended by adding thereto a new section, designated section eight, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

## CHAPTER 7. COUNTY COURTS AND OFFICERS

### Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

7. Deputies and assistants of sheriffs and clerks of the courts; salaries; fiscal budget.
16. Exception.

Section 7. *Deputies and Assistants of Sheriffs and Clerks of the Courts; Salaries; Fiscal Budget.*—The sheriff, clerk of the county court, clerk of the circuit court, clerk of the criminal, common pleas or intermediate courts, on or before February first of each year, shall file with the county court, or tribunal in lieu thereof, a detailed statement of the probable amount necessary to be expended for deputies, assistants, and other employees of their respective offices in the following fiscal year. If any such officer shall fail to file the statement hereby required, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both, in the discretion of the court. The county court, or tribunal in lieu thereof, shall, not later than fifteen days after the filing of such statement, take up and consider the same and shall determine and fix an aggregate sum to be expended for the period covered by such statement for the compensation of all such deputies, assistants, and other employees of the respective officers, which shall be reasonable and proper, regard being had to the amount of labor necessary to be performed by those to receive the compensation, and shall enter upon its court record a finding of its action: *Provided,* That any clerk of a circuit court, feeling that the sum so fixed and determined is inadequate to enable him to properly conduct his office, may appeal to the circuit court of such county, which shall determine and fix a reasonable and just amount for the compensation of his deputies and assist-

ants: *Provided further,* That any taxpayer feeling aggrieved at the allowance made by the county court to the sheriff, and any sheriff feeling that the business of his office cannot be conducted properly by the maximum allowance by the county court for office expenditures, or the number of deputies and their salaries, shall be allowed the right of appeal to the circuit court of such county for the purpose of determining the equity of such maximum allowance.

The officers herein named shall appoint and employ such deputies, assistants and other employees in the manner provided by law, as may be necessary for their respective offices and fix their compensation, and shall file with the clerk of the county court, or other tribunal in lieu thereof, a statement in writing showing such action and setting forth the name of each deputy, assistant and employee, the time for which employed and the monthly compensation; but the compensation for all deputies, assistants and other employees shall not exceed in the aggregate, for each office, the amount so fixed for that office as hereinbefore provided. The officers herein named shall have authority to discharge any deputy, assistant, or other employee, by filing with the clerk of the county court, or tribunal in lieu thereof, a statement in writing showing such action. All statements required to be filed by this section shall be verified by the affidavit of the person making them, and among other things contained in the affidavit shall be the statement that the amounts shown therein were the amounts actually paid or intended to be paid to the deputies, assistants, or other employees, without rebates, or any agreement, understanding and expectation that any part thereof shall be repaid to him, and that nothing has heretofore been paid or promised him on that account, and that if he shall thereafter receive any money, or thing of value, on account thereof, he will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any officer for deputies, assistants or other employees.

Sec. 16. *Exception.*—Notwithstanding the provisions of

section seven of this article, the provisions of said section seven as of January first, one thousand nine hundred sixty-one, shall be applicable for the fiscal year ending June thirty, one thousand nine hundred sixty-two.

## CHAPTER 11. TAXATION

**Article**

**2. Assessors.**
**3. Assessments Generally.**
**5. Assessment of Personal Property.**
**6. Assessment of Public Service Corporations.**
**8. Levies.**

### Article 2. Assessors.

**Section**

7. State and local meetings.
11. Exception.

Section 7. *State and Local Meetings.*—There shall be an annual meeting of the assessors, which meeting the assessors of the several counties of the state shall attend. The date and place of such meeting shall be fixed by the tax commissioner and due notice thereof shall be given to the assessors of the state. The tax commissioner shall prepare a program of matters pertaining to assessments and work of the assessors to be discussed at such meeting and he shall attend and be ex officio chairman of the same. The meeting shall continue for a period of at least two days but not more than four days. The actual and necessary expense incurred by any assessor and not more than two deputies to be designated by him in attendance at such meeting shall be paid out of the county treasury of the county of the assessor and deputies so attending. Before such payment, however, the assessor shall file an itemized statement, which shall be sworn to, of his actual and necessary expenses, with the clerk of the county court.

In addition to the meeting hereinbefore provided for, there shall be at least two meetings of each assessor and his deputies between the first day of the assessment year and the twentieth day of January, of the current year, at such time and place as the assessor shall designate,

of which meeting all deputies shall have notice, for the purpose of securing uniform valuation of property, both real and personal, throughout the entire county, according to the true and actual value. The last meeting shall be held after the work of listing property has been completed, at which meeting all the lists shall be thoroughly gone over, and if found to be erroneous, either in the amount of property, real or personal, assessed to any person, firm or corporation, or in the value given to any item of property by the taxpayer shall be revised and corrected by placing on such list the omitted property and giving to it, as well as to any property that has been listed, but which has been incorrectly valued, the true and actual value thereof according to the rule prescribed by law and by omitting property improperly listed.

Sec. 11. *Exception.*—Notwithstanding the provisions of section seven of this article, between the first day of January and the twentieth day of June in the year one thousand nine hundred sixty-one, the assessor and his deputies shall meet for the purposes specified by section seven of this article.

## Article 3. Assessments Generally.

**Section**

1. Time and basis of assessments; true and actual value; default; reassessment; special assessors.
2. Canvass by assessor; lists of property.
3. Who to furnish property list.
4. Oath of owner.
5. Correction of previous property books; entry of omitted property.
6. Statements of assessed valuations for municipalities and boards of education; extension of levies.
9. Property exempt from taxation.
10. Failure to list property, etc.; collection of penalties and forfeitures.
12. Assessment of corporate property; reports to assessor by corporations.
13. Entry of corporate property by assessor.
15. Assessment of capital used in trade or business by natural persons.
19. Property books; time for completing; extension of levies; copies; to whom delivered.
24. Review and equalization by county court.
24-a. Protest to assessor; appeal to circuit court.
30. Exception.

Section 1. *Time and Basis of Assessments; True and Actual Value; Default; Reassessment; Special Assessors.* —All property shall be assessed annually as of the first

day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others. If at any time after the beginning of the assessment year, it be ascertained by the tax commissioner that the assessor, or any of his deputies, is not complying with this provision or that he has failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at its true and actual value, the tax commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making such assessment and correction of values, the tax commissioner may appoint one or more special assessors, as necessity may require, to make such assessment in any such county, and any such special assessor or assessors, as the case may be, shall have all the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or them. The tax commissioner shall, with the approval of the board of public works, fix the com-

pensation of all such special assessors as may be designated by him, which, together with their actual expenses, shall be paid out of the county fund by the county court of the county in which any such assessment is ordered, upon the receipt of a certificate of the tax commissioner filed with the clerk of the court showing the amounts due and to whom payable, after such expenses have been audited by the county court.

Any assessor who knowingly fails, neglects or refuses to assess all the property of his county, as herein provided, shall be guilty of malfeasance in office, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than three nor more than six months, or both, in the discretion of the court, and upon conviction, shall be removed from office.

Sec. 2. *Canvass by Assessor; Lists of Property.*—On the first day of July, in each year, the assessors and their deputies shall begin the work of assessment in their respective counties, and shall, from that date, diligently and continuously pursue with all reasonable dispatch, their work of assessment until the same is completed: *Provided, however,* That the assessor and his deputies shall finish their work of assessment, and complete the land and personal property books not later than the thirtieth day of January. Beginning on the first day of July, as aforesaid, the assessor or a deputy shall call upon every person in the territory, appointed to such assessor and deputy, who is liable to assessment, and thereupon such person shall furnish to such assessor, or his deputy, a full and correct description of all of the real estate and personal property of which he was the owner on the first day of July of the current year, fixing what he deems to be the true and actual value of each item of property, both real and personal, for the guidance of the assessor, who shall finally settle and determine the actual value of each item of such property by the rule prescribed in section one of this article; such person shall also, at the same time, make separate, full and true statements, in like manner, and upon similar blanks to be furnished

him, distinctly setting forth in each a correct description of all the property, real and personal, held, possessed or controlled by him, as executor, administrator, guardian, trustee, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker, or in any representative or fiduciary character, and he shall fix what he deems the true and actual value thereof to each item of such property, which valuation shall be subject to revision and change by the assessor in like manner as property owned by such person in his own right: *Provided, however,* That no person shall be compelled to furnish the list mentioned in this section sooner than the tenth day of July of the current year.

The assessor shall perform such other duties while making his assessment as may be required of him by law.

Sec. 3. *Who to Furnish Property List.*—The list required in the preceding section shall be made and information furnished: (a) With respect to property of a minor, by his guardian, if he has one, and if he has none, by his father, if living, or, if not, by his mother, if living, and if neither be living or be a resident of this state, by the person having charge of the property; (b) with respect to the separate property of a married woman, by herself or her husband in her name; (c) with respect to the property of a husband, who is out of the state or incapable of listing such property, by his wife; (d) with respect to the property held in trust, by the trustee, if in possession thereof, otherwise by the party for whose benefit it is held; (e) with respect to the personal property of a deceased person, by the personal representative; (f) with respect to the property of an insane person, or a person sentenced to confinement in the penitentiary, by his committee; (g) with respect to the property of a company, whether incorporated or not, whose assets are in the hands of an agent, factor or receiver, by such agent, factor or receiver, otherwise by the president or proper accounting officer, partner or agent within the state; (h) with respect to credits or investments, in the possession or under the charge of a receiver or commissioner, by

such receiver or commissioner; and (i) with respect to shares in a banking institution or national banking association, by the cashier, secretary or principal accounting officer of such banking institution or national banking association, as provided in section fourteen of this article.

Sec. 4. *Oath of Owner.*—The assessor and his deputies are empowered to administer oaths in all matters pertaining to their official business, and every such list provided to be made out by the two next preceding sections shall be sworn to or affirmed, by the person making the same, before it shall be received by the assessor or any of his deputies; the form of such oath or affirmation, when made by the person owning the property (and the oath or affirmation of the owner of the property shall be required in all cases where it is practicable, instead of the oath or affirmation of his agent or manager), shall be substantially as follows, to-wit:

State of West Virginia, County of..... ..... ss:

I, ....., do solemnly swear (or affirm) that to the best of my knowledge, information and belief, the foregoing statement contains a true, full and correct list of all property, real and personal, owned by me on the first day of the assessment year; that where I have been unable to exhibit any class of property to the assessor or to his deputy, such property has been fully and fairly described to him and its true condition represented; that I have in no case sought to mislead the assessor or his deputy, as to the entire quantity, quality or value of the property; that I have reported the value of all credits and investments owned by me on the said day and liable to taxation, except bonds of the United States, and other tax exempt securities, and except stock in a banking institution, and other incorporated companies whose property is assessed in the name of such corporation either within or without this state; that, since the first day of the assessment year, I have not directly or indirectly converted or exchanged any of my property temporarily for the purpose of evading the assessment thereof for taxes into nontaxable property or securities of any kind; that I have, to the best of my knowledge and

judgment, valued the said property, both real and personal, at its true and actual value on the first day of the assessment year, by which I mean the price that could be obtained for said property at private or voluntary sale, and on such terms as are usually employed in the selling of such property, and not the price which might be realized at a forced or auction sale; so help me, God.

.....

Subscribed and sworn (or affirmed) to before me, this ..... day of ..... 19.....

....., Assessor.

By.....

Sec. 5. *Correction of Previous Property Books; Entry of Omitted Property.*—The assessor in making out the land and personal property books, shall correct any and every mistake he shall discover in the books for any previous year.

When the assessor shall ascertain that any real or personal property in his county liable to taxation, other than that mentioned in the next succeeding paragraph, has been omitted from the land or personal property books for a period of less than five years, he shall make an entry thereof in the proper book of the year in which such omission was discovered, and assess the same according to the rule prescribed in section one of this article, and shall charge the same with all taxes chargeable against it at the rate of levy for the year or years the same was omitted, together with interest thereon at the rate of six per cent per annum for the years the same was omitted from the books.

And when the assessor shall ascertain that any notes, bonds, bills and accounts receivable, stocks and other intangible personal property in his county liable to taxation has been omitted from the personal property books for a period of five years or less after December thirty-first, one thousand nine hundred thirty-two, he shall make entry thereof in the personal property book of the year in which such omission was discovered, and assess the same at its true and actual value according to the rule

prescribed in section one of this article, and shall charge the same with all taxes chargeable against it after the year last aforesaid at the rate of levy for the year or years the same was omitted after the year aforesaid, together with interest thereon at the rate of six per cent per annum for the years the same was omitted from the books.

Any assessor failing to make such entry as in this act provided, when discovered by him, or called to his attention by any taxpayer interested therein, shall forfeit one hundred dollars.

Sec. 6. *Statements of Assessed Valuations for Municipalities and Boards of Education; Extension of Levies.*— The assessor shall annually, not later than the seventh day of March, furnish to the recorder or clerk of the city or town council of every incorporated city and town in his county and also to the secretary of the board of education of his county, a certified statement, showing in separate amounts the aggregate value of all property, real and personal, and of all property within each class as provided in section four, article eight of this chapter, and the clerk of the county court shall, in like fashion, certify the aggregate value of all property assessed by the board of public works, or other board in lieu thereof, in such city or district, as ascertained from the land and personal property books and from the statement furnished by the auditor to the county clerk of the value of property assessed in such county by the board for the current year.

The statement so furnished shall be taken, by the council of such city or town, as the proper valuation of all property situated therein and liable for taxation for municipal purposes notwithstanding any provisions which may be contained in the charter of any city or town. Upon receiving such statement, the recorder or clerk of the council, shall present the same to the council at a meeting to be held for the purpose of making the estimate and laying the levy as hereinafter required; and, as soon as the rate shall have been determined upon, the recorder, or secretary of the council, shall furnish the officer whose duty it is to make out the land and personal property

books a certified copy of the order of such city or town council fixing the rate of tax, and such officer shall thereupon extend the tax against the property situated in such city or town, in the land books and the personal property book of his county, in separate columns in such books, which columns shall be headed with the words: "Town, or city, tax for the town, or city, of....."

Sec. 9. *Property Exempt from Taxation.*—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 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 club room, 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 conducted for private profit; fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies; and all property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year, money, household goods to the value of two hundred dollars, dead victuals laid away for family use and any other property or security exempted by any other provision of law; but no property shall be exempt from taxation 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, however,* That the property, both real and personal, which is exempt from taxation by this section, except money, 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 provision 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 purposes of such corporations or organizations.

Sec. 10. *Failure to List Property, etc.; Collection of Penalties and Forfeitures.*—If any person, firm or corporation, including public service corporations whose duty it is by law to list any real estate or personal property for taxation, shall refuse to furnish a proper list thereof or refuse to list within the time required by law, or to make such oath as required by this chapter; or if any person, firm or corporation, including public service corporations, shall refuse to answer or shall answer falsely any question asked by the assessor or by the tax commissioner, or shall fail or refuse to deliver any statement required by law, he or it shall forfeit not less than twenty-five nor

more than one hundred dollars, and shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works. If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether such return is to be made to the assessor, the board of public works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, including notes, bonds, bills and accounts receivable, stocks and any other intangible personal property, such person, firm or corporation, in addition to all other penalties provided by law, shall forfeit two per cent of the value of the property not yet returned and not otherwise taxed in this state. A forfeiture as to all property aforesaid may be enforced for any such default occurring in any year not exceeding five years immediately prior to the time the same is discovered, but no liability to penalty or forfeiture as to notes, bonds, bills and accounts receivable, stocks and other intangible personal property arising prior to the first day of January, one thousand nine hundred thirty-three, shall be enforceable on behalf of the state or of any of its subdivisions. Each failure to make a true return as herein required shall constitute a separate offense, and a forfeiture shall apply to each of them, but all such forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against such person, firm or corporation, or against the estate of any deceased person and shall not exceed ten per cent of the value of the property not returned. The state tax commissioner shall collect such forfeitures without suit, but if unable so to do, shall instruct the prosecuting attorney of the county in which the defaulting taxpayer resides or has its principal office, or in which such property should have been returned for taxation, to enforce collection. It shall thereupon be the duty of such prosecuting attorney to institute and prosecute proceedings in the name of the state of West Virginia against the defaulting taxpayer, or, in case of a decedent, against his personal representative, in the circuit court upon motion, whereof the defendant shall have at least twenty days' notice.

Either party shall have the right to have the issue tried by jury, and the state, as well as the defendant, shall have the right to an appeal. Ten per cent of the amount collected and an attorney's fee of ten dollars to be taxed as a part of the cost shall be collected and paid over by the prosecuting attorney to the sheriff of the county and by him credited to the general county fund. No special counsel shall be employed to institute or conduct such suits. Any prosecuting attorney failing or refusing to perform the duties required of him by this section, shall forfeit the sum of one hundred dollars to be recovered against him by the state tax commissioner in the name of the state of West Virginia upon twenty days' notice by motion in any court having jurisdiction. The amount collected in any such suit after deducting ten per cent as aforesaid, or the entire sum if collected by the tax commissioner without suit, shall be paid over to the sheriff of the proper county and his receipt taken therefor. The sheriff shall apportion such fund among the state, county, district, school district, and municipalities which would have been entitled to the taxes upon such property if it had been assessed, in proportion to the rates of taxation for each such levying unit for the year in which the judgment was obtained bears to the sum of rates for all. When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of such deceased person next preceding the appraisal of his estate, it shall be prima facie evidence that such deceased person returned an imperfect list of his property: *Provided, however,* That any person liable for the tax or his personal representative, may always be permitted to prove by competent evidence that the discrepancy between such assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation. Any judgment recovered under this section shall be a lien, from the time of the service of the notice, upon all real

estate and personal property of such defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

Sec. 12. *Assessment of Corporate Property; Reports to Assessor by Corporations.*—Each incorporated company, foreign or domestic, having its principal office or chief place of business in this state, or owning property subject to taxation in this state, except railroad, telegraph and express companies, telephone companies, pipe line, car line companies and other public utility companies, banking institutions, national banking associations, building and loan associations, federal savings and loan associations and industrial loan companies, shall annually, between the first day of the assessment year and the first day of November, make a written report, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated, showing the following items, viz: (a) The amount of capital authorized to be employed by it; (b) the amount of cash capital paid on each share of stock; (c) the amount of credits and investments other than its own capital stock held by it on said date, with their true and actual value; (d) the quantity, location and true and actual value of all of its real estate, and the magisterial district or districts in which it is located; (e) the kinds, quantity and true and actual value of all its tangible property in each magisterial district in which it is located.

The oath required for this section shall be substantially as follows, viz:

State of West Virginia, County of ....., ss:

I, ....., president (treasurer or manager) of (here insert name of corporation), do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if volun-

tarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and said corporation has not, to my knowledge, during the sixty-day period immediately prior to the first day of the assessment year converted any of its assets into non-taxable securities or notes or other evidence of indebtedness for the purpose of evading the assessment of taxes thereon; so help me, God.

.....

The officer administering such oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by.....
this the.....day of....., 19.....

.....

Sec. 13. *Entry of Corporate Property by Assessor.*— Upon receiving the verified report required by the preceding section, the assessor, if satisfied with the correctness thereof, shall assess the value of all the property of such corporation liable to taxation, and enter the same as follows, viz: All property in item (d) shall be entered with its valuation in the land books of the county and in the magisterial district in which the real estate is situated; all property mentioned in item (c) shall, together with its valuation, be entered in the personal property book of the county and in the magisterial district wherein is the principal office or chief place of business of such corporation, under the appropriate heads; and all property mentioned in item (e) shall, together with its valuation, be entered in the personal property book of the county and in the magisterial district wherein such property is on the first day of the assessment year; the property mentioned in items (c), (d) and (e) shall constitute all the property on which any such corporation shall be liable to pay taxes. If a company has branches, each branch shall be assessed separately in the county and magisterial district where its principal office for transacting its financial concerns is located; or, if there be no such office, then in the magisterial district where its operations are carried on. All locks and dams of naviga-

tion companies shall be assessed and taxed as real estate in the county and magisterial district wherein they are situated; and in case such locks and dams are located on any creek or river which is the dividing line between counties, or the dividing line between magisterial districts of the same county, one half of the value thereof shall be assessed in each of such counties or magisterial districts, as the case may be; when the property of an incorporated company is assessed as aforesaid, no individual shareholder therein shall be required to list or be assessed with his share, portion or interest in the capital stock of such corporation.

Sec. 15. *Assessment of Capital Used in Trade or Business by Natural Persons.*—The value of the capital used by any individual or firm not incorporated, in any trade or business taxable by law, shall be ascertained in the following manner: The owner, agent, or chief accountant of every such trade or business, except the business of agriculture, carried on in any county of the state, shall, annually, between the first day of the assessment year and the first day of November of the current year, make a written report as of the first day of the assessment year, to the assessor, verified by his affidavit, showing the following matters and things, viz: (a) The amount, the true and actual value and classification of all tangible personal property used in connection with such trade or business, otherwise than such as is regularly kept for sale therein, including chattels real; (b) the true and actual value and classification of all goods and property kept for sale and remaining unsold; (c) the amount in value of all credits arising out of any such business and remaining unpaid on that date, whether due or not, and whether in or out of the state; (d) the amount and true and actual value of all notes, bonds, bills, accounts receivable, stocks and other intangible property made by such person or firm whether in or out of the state, other than those hereinbefore specified; (e) the location, quantity, the true and actual value and classification of all real estate owned by such individuals or firm and used in such trade or business. The assessor shall, upon the receipt of such

report, properly verified, if he is satisfied with the correctness thereof, enter the real estate in the land book of the county in the district wherein the same is situated, and assess the same with taxes, if not otherwise assessed, to the owner thereof; the personal property mentioned in such report he shall enter in the personal property book of his county for assessment with taxes as follows, viz: Items (a) and (b) shall be entered in the magisterial districts where they are for the greater part of the year kept or located; and items (c), (d) and (e) shall be entered under their appropriate headings, in the municipality or magisterial district wherein the principal place of business of such individual or firm is; if the assessor is not satisfied with the correctness of such report, he may proceed to ascertain a correct list of the property on which such individual or firm is liable to be assessed with taxes, and to value the same as in other cases; the person making such report shall take and subscribe an oath in substantially the following form:

I, ....., do solemnly swear (or affirm) that the foregoing list is true and correct to the best of my knowledge; that the value affixed to the property therein listed I believe to be the true and actual value thereof; that none of the assets belonging to (here state the name of individual or firm) and used in the business of (here describe the business) have to my knowledge, since the first day of the assessment year, been converted into nontaxable securities for the purpose of evading the assessment of taxes thereon; so help me, God.

_____

The officer administering said oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by (here insert affiant's name) this.....day of....., 19.....

_____

Sec. 19. *Property Books; Time for Completing; Extension of Levies; Copies; to Whom Delivered.*—The assessor shall complete his assessment and make up his official copy of the land and personal property books in

time to submit the same to the board of equalization and review not later than February first of the assessment year. The assessor shall, as soon as practicable after the levy is laid, extend the levies on the land and personal property books, and shall forthwith make three copies of the land and personal property books with the levies extended; one of such copies he shall deliver to the sheriff not later than the seventh day of June, one copy he shall deliver to the clerk of the county court not later than the first day of July, and one copy he shall send to the state auditor not later than the first day of July, and such copies so delivered shall be official records of the respective officers. He may require the written receipt of each of such officers for such copy. Before delivering any of such copies the assessor shall make and subscribe the following oath at the foot of each of them: I, _____, assessor of the County of _____, do solemnly swear, (or affirm) that in making the foregoing assessment I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors and that I have not been influenced in making the same by fear, favor or partiality; so help me, God.

_____

Assessor.

The officer administering the foregoing oath shall append thereto a certificate in substantially the following form:

Subscribed and sworn to before me, a _____ for the County of _____ and State of West Virginia, by _____, assessor for said county, this the _____ day of _____, 19____.

_____

Sec. 24. *Review and Equalization by County Court.*— The county court shall annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessment made by the assessor. It shall not adjourn for longer than three days at a time until this work is completed, and shall not remain in session for a longer period than twenty-eight days. At the first

meeting, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his assistants shall attend and render every assistance possible in connection with the value of property assessed by them. The court shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. They shall correct all errors in the names of persons, in the description and valuation of property, and they shall cause to be done whatever else may be necessary to make the valuation comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed. If the court determine that any property or interest is assessed at more or less than its true and actual value, it shall fix it at the true and actual value. But no assessment shall be increased without giving the property owner at least five days' notice in writing, and signed by the president of the court, of the intention to make the increase. Service upon the property owner shall be sufficient, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent, or attorney, at the last known place of abode. If he be not found and have no known place of abode, then notice shall be given by publication once in some newspaper published in the county, at least five days prior to the increase. When it is desired to increase the entire valuation in any one district by a general increase, notice shall be given by publication in two newspapers published in the county, once each week for two consecutive weeks, and completed at least five days prior to the increase in valuation. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided.

The clerk of the county court shall publish notice once each week for three successive weeks before the meeting of the county court in two newspapers of general circula-

tion published in the county, of opposite politics, if there be any; if there be no newspaper published in the county, notice shall be published in some newspaper of general circulation. The notice shall state briefly the time, place and general purpose of the meeting. The expense of publication shall be paid out of the county treasury.

If any person fails to apply for relief at this meeting, he shall have waived his right to ask for correction in his assessment list for the current year, and shall not thereafter be permitted to question the correctness of his list as finally fixed by the county court, except on appeal to the circuit court. After the county court completes the review and equalization of the property books, a majority of the court shall sign a statement that it is the completed assessment of the county for the year; then the property books shall be delivered to the assessor and the levies extended as provided by law.

Sec. 24-a. *Protest to Assessor; Appeal to Circuit Court.*— At any time after property is returned for taxation and up to and including the time the property books are before the county court for equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of his property. In case the taxpayer is dissatisfied with the classification of property assessed to him or believes that such property is exempt or otherwise not subject to taxation, he shall file his objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for his refusal. The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the state tax commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements, giving a full description of the property and any other information which the tax commissioner may require.

The tax commissioner shall, as soon as possible on receipt of the question, but in no case later than February twenty-eighth of the assessment year, instruct the assessor as to how the property shall be treated. The instructions

issued and forwarded by mail to the assessor shall be binding upon him, but either the assessor or the taxpayer may apply to the circuit court of the county for the review of the question of classification and taxability in the same fashion as is provided for appeals from the county court in section twenty-five of this article. The tax commissioner shall prescribe forms on which the aforesaid questions shall be certified and he shall have the authority to pursue any inquiry and procure any information which may be necessary for the disposition of the issue.

Sec. 30. *Exception.*—Notwithstanding the provisions of sections one, two, six, twelve, fifteen, nineteen, twenty-four and twenty-four-a of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern assessment generally for the assessment year one thousand nine hundred sixty-one.

## Article 5. Assessment of Personal Property.

**Section**

1. What personal property taxable.
2. Personal property books.
3. Definitions.
4. In what district personalty assessed.
9. Ascertainment of property held under order of court.

Section 1. *What Personal Property Taxable.*—All personal property belonging to persons residing in this state, whether such property be in or out of the state, and all personal property in the state, though owned by persons residing out of the state, shall be entered in the personal property book, and be subject to equal and uniform taxation, except as classified in section four, article eight of this chapter, unless especially exempted by law; but personal property of all classes, except as hereinbefore provided, belonging to the residents of this state, which is actually and permanently located in another state, and by the laws of such other state is subject to taxation and is actually taxed in such other state, shall not be entered on the personal property book, or be taxed in this state. But the shares of capital stock owned by residents of this state in corporations actually

located in other states, and whose property is taxed by the laws of such other state, shall not be required to be listed for taxation. Any person who at any time before the assessment year transfers by loan, deposit or gift, any notes, bonds, bills and accounts receivable, stocks and other intangible personal property, which are subject to taxation to anyone, who does not return a list of taxation as of the day on which the assessment year commences including such property, transfers, loans, deposits or gifts, if made with intention of evading taxation, shall be deemed and treated as illegal and fraudulent and the assessor shall assess such property for taxation to the party who makes such transfers, loans, deposits or gifts as aforesaid.

Sec. 2. *Personal Property Books.*—In his personal property books the assessor shall enter the names and postoffice addresses of the owners of personal property and of other persons liable to capitation tax, alphabetically arranged by districts, showing separately the values of:

(1) All tangible personal property employed exclusively in agriculture including horticulture and grazing;

(2) All products of agriculture (including livestock) while owned by the producer;

(3) All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

(4) The total of one, two and three;

(5) All other tangible personal property.

The tax commissioner may prescribe such itemization and further information as he deems necessary. The assessor shall make the same number of copies and extend the levies in the same way as he does with the land book.

Sec. 3. *Definitions.*—The words "personal property", as used in this chapter, shall include all fixtures attached to land, if not included in the valuation of such land entered in the proper land book; all things of value, movable and tangible, which are the subjects of ownership; all chattels, real and personal; all notes, bonds, and accounts receivable, stocks and other intangible property.

"Agriculture" shall mean the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock.

"Horticulture" shall mean plant production of every character except forestry.

"Grazing" shall mean the use of land for pasturage.

"Products of agriculture" shall mean those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material.

"Producer" shall mean the person who is actually engaged in the agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman.

"While owned by the producer" shall mean while title is in the producer as above defined.

"Employed exclusively" shall mean that the preponderant, and the sole gainful use is for the designated purpose.

Sec. 4. *In What District Personalty Assessed.*—Every person required by law to list personal property for taxation shall list the tangible personal property in the magisterial district wherein it is on the first day of the assessment year, and chattels real in the magisterial district wherein the land to which they relate is located; and he shall list for taxation in the magisterial district in which he resides the notes, bonds, bills and accounts receivable, stocks and other intangible personal property subject to taxation belonging to himself or under his charge or control, whether the same, or the evidence thereof be in or out of the state; but capital, and intangible property (except real estate and chattels real) employed in any trade or business (other than agriculture) belonging to a company whether it is incorporated or not, or to an individual, shall be assessed for taxation in the magisterial district wherein the principal office

for the transaction of the financial concerns pertaining to such trade or business is located; or, if there be no such office, then in the district where the operations are carried on. Goods and chattels and other tangible personal property not exempt from taxation which may not be assessed for taxation in the magisterial district where the same were on the first day of the assessment year, but which have been removed therefrom, shall be assessed in the magisterial district where the same were on the first day of the assessment year; but the assessment and payment of taxes in any county or district in any year shall exonerate the owner of such property in any other county or district for such year: *Provided, however*, That in cases of the assessment of leasehold estates a sum equal to the valuations placed upon such leasehold estates shall be deducted from the total value of the estate, to the end that the valuation of such leasehold estate and the remainder shall aggregate the true and actual value of the estate.

Sec. 9. *Ascertainment of Property Held under Order of Court.*—The assessor shall ascertain from each person in his county, who acts under the order of any court as receiver or commissioner, the amount of all bonds, or other evidence of debt, under his control, and the style of the suit in which such fund belongs.

## Article 6. Assessment of Public Service Corporations.

Section

1. Public service corporations; returns of property to board of public works.
9. Compelling such return; procuring information and tentative assessment by tax commissioner.
11. Valuation of property by board.
18. Payment of assessment by owner or operator.
22. Certification by auditor of amount chargeable to sheriff from levies against public service corporations; payment of amount due municipality.
23. Lien of taxes; notice of; collection by suit.
25. Exception.

Section 1. *Public Service Corporations; Returns of Property to Board of Public Works.*—On or before the first day of May in each year a return in writing to the board of public works shall be delivered to the tax com-

missioner by the owner or operator of every railroad, wholly or in part within this state; by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; 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; 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; by the owner or operator of every pipe line, 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; and 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; and by the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; and hydro-electric companies for the generation and transmission of light, heat or power; water companies furnishing or distributing water, and all other public service corporations or persons engaged in public service business whose property is located wholly or in part within this state. 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. 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. Such return shall be signed and sworn to by such owner or operator if a natural person, or, if such owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer. The return required by this section of every such owner or operator shall cover the year ending on the thirty-first day of December, next preceding, and shall be made on forms prescribed by the board of public works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe such forms as will require from any owner or operator herein mentioned such information as in the judgment of the board, may be of use to it in determining the true and actual value of the properties of such owners or operators.

Sec. 9. *Compelling Such Return; Procuring Information and Tentative Assessment by Tax Commissioner.*— If any owner or operator fail 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. 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. If any such owner or operator fail 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; and to this end 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. 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, and shall on or before the fifteenth day of September, lay such returns and work sheets, together with his recommendations in the form of a tentative assessment of the property of each such owner or operator, before the board of public works. And as soon as the tax commissioner has completed the preparation of such work sheets and tentative assessments, he shall notify the owner or operator affected thereby of the amount of such tentative assessment by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator, and 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.

Sec. 11. *Valuation of Property by Board.*—Upon the fifteenth day after giving the notices required by section nine of this article, or as soon thereafter as reasonably convenient but not later than the first day of October, the board of public works shall proceed to assess and fix the true and actual value of all property of such owner or operator hereinbefore required to be returned, in each county through which the railroad, car line, cars, express, telegraph, telephone, or pipe line of such owner or operator runs, and in which any property to be assessed is located. In ascertaining such value the board 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 and tentative assessment recommended 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 board of such owner or operator, and any other pertinent evidence, information and data, at a regular meeting of the board held for such purpose at least fifteen days after giving the notice required by section nine of this article. Before any assessment shall be made by the board, any and all evidence, information and data considered by the board shall be available for inspection by any such owner or operator or his duly authorized representative, and an opportunity given to be heard thereon. When the board of public works has assessed any property hereby required to be returned, and has determined the valuation thereof, such assessment and valuation shall be entered of record in the book of minutes of its proceedings, and shall be certified by the secretary of the board to the auditor. Nothing in this chapter contained shall be construed to require the assessment by the board of public works of any part of a railroad, telegraph, telephone or pipe line until such part is so far completed as to be fit for use. But material held by any railroad, telegraph, telephone or pipe line company shall be returned to the board of public works for assessment as personal property. As soon as such assessment is made, the secretary of the board shall notify the owner or operator affected thereby of the amount thereof by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator. Such assessment and valuation shall be final and conclusive, unless the same be appealed from in the manner following, within fifteen days after such notice is so deposited.

Sec. 18. *Payment of Assessment by Owner or Operator.* —The auditor shall, as soon as possible after such assessment is completed, make out and transmit by mail or otherwise, to such owner or operator, a statement of all taxes and levies so charged, and it shall be the duty of such owner or operator, so assessed and charged, to pay one half of the amount of such taxes and levies into the treasury of the state by the first day of September and the remaining one half by the first day of the following

March, subject to a deduction of two and one-half per centum if the taxes be paid on or before the date due. If such owner or operator fail to pay such taxes and levies when due, interest thereon at the rate of nine per centum per annum until paid shall be added, and the auditor shall certify, after the date the second installment is due, to the sheriff of each county, the amount of such taxes and levies assessed within his county; and it shall be the duty of every sheriff to collect and account for such taxes and levies in the same manner as other taxes are levied or collected and accounted for by him. The payment of such taxes and levies by any such owner or operator shall not prejudice or affect the right of such owner or operator to obtain relief against the assessment or valuation of its property in proceedings now pending or hereafter brought under the provisions of section twelve of this article, or in any suit, action or proceeding in which such relief may be obtainable; and if under the provisions of said section twelve or in any suit, action or proceeding, it be ascertained that the assessment or valuation of the property of such owner or operator is too high and the same is accordingly corrected, it shall be the duty of the auditor of the state to issue to the owner or operator a certificate showing the amount of taxes and levies which have been overpaid, and such certificate shall be receivable thereafter for the amount of such overpayment in payment of any taxes and levies assessed against the property of such owner or operator, its successors or assigns. It shall likewise be the duty of said auditor to certify to the county court, school districts and municipalities, the amounts of the respective overpayments distributable to such counties, school districts and municipalities. All moneys received by the auditor under the provisions of this section shall be transmitted to the several counties within twenty days from receipt thereof.

Sec. 22. *Certification by Auditor of Amount Chargeable to Sheriff from Levies against Public Service Corporations; Payment of Amount Due Municipality.*—The auditor shall certify to the county court and the county superintendent of schools of every such county, on or before the first day of February in each year, the respective

amounts with which the sheriff thereof is chargeable on account of the various levies upon the property of such owner or operator. The amount so paid in for each municipal corporation shall, as soon as received by the auditor, be paid over to the sheriff, or the treasurer of such municipal corporation, or to such other officer of the municipality as the council may designate, and the auditor shall report such payment to the council. But the failure of the clerk of any county court, or the secretary of any board of education, or the proper officer of any municipal corporation, to certify the levies to the auditor within the time herein prescribed shall not invalidate or prevent the assessment required by this article, but the auditor shall make the assessment and proceed to collect or certify the same to the sheriff as soon as practicable after he shall have obtained the information necessary to make such assessment.

Sec. 23. *Lien of Taxes; Notice of; Collection by Suit.*— The amount of taxes and levies assessed under this article shall constitute a debt due the state or county, district or municipal corporation entitled thereto, and shall be a lien on all of the property and assets of the taxpayer within the state. The lien shall attach as of the thirty-first day of December following the commencement of the assessment year, and shall be prior to all other liens and charges. The auditor shall, between the first and fifteenth day of May of each year, prepare a list of the taxpayers delinquent in the payment of such taxes and levies, setting forth their respective addresses and the amount of state, county, district and municipal taxes due from each, which said list shall be certified by the auditor to the board of public works and filed in the office of the secretary of state. The secretary of state shall preserve the list in his office, and a certificate from him that any taxpayer mentioned in such list is delinquent in the amount of taxes assessed under this article shall be prima facie evidence thereof. Within ten days after the filing of such list, the secretary of state shall give written notice of such delinquency by registered mail to each of such delinquent taxpayers at his, or its, last known postoffice address; and upon the failure of any such delinquent taxpayer to

pay said taxes within thirty days from mailing of such notice, it shall be the duty of the attorney general to enforce the collection of such taxes and levies, and for that purpose he may distrain upon any personal property of such delinquent taxpayer, or a sufficient amount thereof to satisfy said taxes, including accrued interest, penalties and costs.

The attorney general may also enforce the lien created by this section on the real estate of such delinquent taxpayer by instituting a suit, or suits, in equity in the circuit court of Kanawha county, in the name of the state, in which such delinquent taxpayers shall be made defendants. In the bill filed in any such suit it shall be sufficient to allege that the defendant or defendants have failed to pay the taxes hereunder and that each of them justly owes the amount of property taxes, levies and penalties stated therein, which amount shall be computed up to the first day of the month in which the bill was filed. No such defendant shall plead that the secretary of state failed to give notice as prescribed by this section. If, upon the hearing of such suit, it shall appear to the court that any defendant has failed to pay such taxes and accrued penalties, the court shall enter a decree against such defendant for the amount due, and if the decree be not paid within ten days after made, the court shall enter a decree directing a sale of the real estate subject to said lien, or so much thereof as may be necessary to satisfy said taxes, including interest, penalties and costs. When two or more taxpayers are included in one suit, the court shall apportion the cost thereof among them as it may deem just.

Sec. 25. *Exception.*—Notwithstanding the provisions of sections one, nine, eleven, eighteen, twenty-two and twenty-three of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern the assessment of public service corporations for the assessment year beginning December thirty-first, one thousand nine hundred sixty.

## Article 8. Levies.

Section

5. Classification of property for levy purposes.
6-c. Maximum levies on each classification by county boards of education; order of levy; exceeding levy for school bond issues.
8. Levies by board of public works; certification.
9. Meetings of local levying bodies.
10. Levy estimate by county court; certification to tax commissioner and publication.
10-a. Adjourned session of county court to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness, second for indebtedness not bonded, then for current expenses.
12. Levy estimate by board of education; certification and publication.
12-a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, second for permanent improvement fund, then for current expenses.
14. Levy estimate by municipality; certification to tax commissioner and publication.
14-a. Adjourned session of municipal governing body to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses.
33. Exception.

Section 5. *Classification of Property for Levy Purposes.* —For the purpose of levies, property shall be classified as follows:

Class I. All tangible personal property employed exclusively in agriculture, including horticulture and grazing;

All products of agriculture (including livestock) while owned by the producer;

All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

Class II. All property owned, used and occupied by the owner exclusively for residential purposes;

All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants;

Class III. All real and personal property situated outside of municipalities, exclusive of classes I and II;

Class IV. All real and personal property situated inside of municipalities, exclusive of classes I and II.

Sec. 6-c. *Maximum Levies on Each Classification by County Boards of Education; Order of Levy; Exceeding*

*Levy for School Bond Issues.*—County boards of education are hereby authorized to lay not in excess of the following maximum levies, for the purposes specified and in the following order:

(1) With respect to a magisterial, independent or other school district existing in a county prior to May twenty-second, one thousand nine hundred thirty-three, or any special taxing district for which the board of education is required to lay the levy, for the payment of (a) interest and sinking fund requirements for bonded indebtedness incurred prior to the adoption of the tax limitation amendment; and (to the extent not so required), (b) other legally incurred contractual indebtedness not bonded, if any, incurred prior to the adoption of the tax limitation amendment as follows: On class I property, thirty-five one hundredths of one cent; on class II property, seven tenths of one cent; and on classes III and IV property, one and four-tenths cents.

(2) For either or both of (a) the permanent improvement fund, and (b) the payment of interest and sinking fund requirements for bonded indebtedness incurred subsequent to the adoption of the tax limitation amendment, as follows: On class I property, one and five-tenths cents; on class II property, three cents; and on classes III and IV property, six cents.

(3) For the general current expenses of schools as follows: On class I property, twenty-one and one-tenth cents; on class II property, forty-two and two-tenths cents; and on classes III and IV property, eighty-four and four-tenths cents. But if the tax commissioner has approved the levy of an additional amount for the general current expenses of the county as authorized by section six-b, subsection three, the amount of the levy authorized for boards of education by this subsection shall be reduced by the tax commissioner to that extent.

If the rates of levy under (2) above are not required in whole or in part for the purposes for which they are allocated by this section, the county board of education may, with the prior written approval of the state board of school finance, created by section three, article nine-b,

chapter eighteen of the code, as amended, lay such rates of levy or portion thereof not so required, for the general current expenses of schools: *Provided, however,* That if the rates of levy under paragraph (3) of this section are not sufficient for the purposes for which they are allocated, the county board of education may, with the prior written approval of the state tax commissioner, lay such additional rates of levy, or portion thereof, as are surrendered by the county court under paragraph (3), section six-b of this article: *Provided further,* That a county board of education shall be required to levy outside the levy rates hereinabove provided sufficient to pay the principal and interest requirements on bonds now or hereafter issued by any school district, not exceeding in the aggregate five per centum of the assessed value of all taxable property in the county school district, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness, in the manner provided by the "Better Schools Amendment", as ratified.

Sec. 8. *Levies by Board of Public Works; Certification.*—The state board of public works shall, on or before April fifteenth of each year, levy on the one hundred dollars' valuation of each class of property subject to taxation in the state the rates fixed by section six-a of this article. The board shall forthwith certify its action to the state tax commissioner and to the assessor of each county.

Sec. 9. *Meetings of Local Levying Bodies.*—Each local levying body shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the transaction of business generally and particularly for the business herein required.

Sec. 10. *Levy Estimate by County Court; Certification to Tax Commissioner and Publication.*—The county court shall, at the session provided for in section nine of this article, ascertain the fiscal condition of the county, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for

the year upon the county as a whole and upon any district of the county for which the levies are laid by the county court;

(2) The interest, sinking fund and amortization requirements for the current fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, prior to the adoption of the tax limitation amendment, owing by the county as a whole and by any district;

(3) Other contractual indebtedness not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the county as a whole and such debts owing by any district;

(4) All other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(5) The total amount necessary to be raised for each fund by the levy of taxes for the current year;

(6) The proposed county levy in cents on each one hundred dollars' assessed valuation of each class of property for the county and its subdivisions;

(7) The proposed levy in each district for district funds, if any, on each one hundred dollars' valuation of each class of property;

(8) The separate and aggregate amounts of the real, personal and public utility properties in each class in the county and in each subdivision thereof.

A copy of the statement, duly certified by the clerk of the court, shall be forwarded to the tax commissioner, and the clerk shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene.

Sec. 10-a. *Adjourned Session of County Court to Hear Objections to Proposed Levies; Approval of Estimate and Levy by Tax Commissioner; First Levy for Bonded Indebtedness, Second for Indebtedness Not Bonded, Then for Current Expenses.*—The county court shall, when it reconvenes upon the third Tuesday in April, hear and consider any objections made orally or in writing by the

prosecuting attorney, by the tax commissioner or his representative, or by any taxpayer of the county, to the estimate and proposed levy or to any item thereof. The court shall enter of record any objections so made and the reasons and grounds therefor.

The failure of any officer or taxpayer to offer objections shall not preclude him from pursuing any legal remedy necessary to correct any levy made by any fiscal body under this article.

The court, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the tax commissioner. When the same shall have been approved by the tax commissioner, the clerk shall then enter the estimate and levy, together with the order of the court approving them and the written approval of the tax commissioner thereof, in the proper record book.

The county court shall then levy as many cents per hundred dollars' assessed valuation on each class of property in the county or its subdivisions, as the case may be, as will produce the amounts, according to the last assessments, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of the county incurred prior to the adoption of the tax limitation amendment;

Second, for the bonded debt and for the contractual debt not bonded, if any, of any magisterial or special taxing district for which the county court is required to lay the levy;

Third, for general current expenses of the county.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-b unless another rate is authorized by the tax commissioner in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Sec. 12. *Levy Estimate by Board of Education; Certification and Publication.*—Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of the code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

(1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May twenty-second, one thousand nine hundred thirty-three, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May twenty-second, one thousand nine hundred thirty-three, prior to the adoption of the tax limitation amendment, owing by such district;

(4) The amount to be levied for the permanent improvement fund;

(5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(6) The amount of such total to be raised by the levy of taxes for the current fiscal year;

(7) The proposed rate of levy in cents on each one hundred dollars' assessed valuation of each class of property;

(8) The separate and aggregate amounts of the assessed valuation of real, personal, and public utility property within each class.

The secretary of the board shall forward immediately a certified copy of the statement to the tax commissioner and shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene.

Sec. 12-a. *Adjourned Session of Board of Education to Hear Objections to Proposed Levies; Approval of Estimate and Levy by Tax Commissioner; First Levy for Bonded Indebtedness and Indebtedness Not Bonded, Second for Permanent Improvement Fund, Then for Current Expenses.*—Each board of education when it reconvenes on the third Tuesday in April shall proceed in a manner similar in all respects to that provided for in section ten-a of this article. The board shall not finally enter any levy until it has been approved in writing by the tax commissioner. After receiving such approval, the board shall enter the statement as approved in its record of proceedings, together with the written approval.

The board shall levy as many cents per hundred dollars' assessed valuation on each class of property in the county or in the area of a pre-existing school district, as the case may be, as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of any school district of the county existing prior to May twenty-second, one thousand nine hundred thirty-three, and incurred prior to the adoption of the tax limitation amendment;

Second, for the permanent improvement fund;

Third, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-c unless another rate is authorized by the tax commissioner in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Sec. 14. *Levy Estimate by Municipality; Certification to Tax Commissioner and Publication.*—A municipal governing body shall, at the session provided for in section nine, ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current

fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness, legally incurred upon a vote of the people as provided by law, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness, not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the municipality;

(4) All other expenditures to be paid out of the receipts of the municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The total amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars' assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the municipality.

The recording officer of the municipality shall forward immediately a certified copy of the statement to the tax commissioner, and shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene.

Sec. 14-a. *Adjourned Session of Municipal Governing Body to Hear Objections; Approval of Levies by Tax Commissioner; First Levy for Bonded Indebtedness and Indebtedness Not Bonded, Then for Current Expenses.*— The governing body of a municipality when it reconvenes on the third Tuesday in April shall proceed in a manner similar in all respects to that provided for in section ten-a of this article.

The governing body shall not finally enter any levy until it has been approved in writing by the state tax commissioner. After receiving such approval, the gov-

erning body shall enter the statement as approved in its record of proceedings, together with the written approval.

The governing body shall levy as many cents per hundred dollars' assessed valuation on each class of property in the municipality as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of the municipality incurred prior to the adoption of the tax limitation amendment;

Second, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-d unless another rate is authorized by the tax commissioner in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Sec. 33. *Exception.*—Notwithstanding the provisions of sections eight, nine, ten, ten-a, twelve, twelve-a, fourteen and fourteen-a of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern levies for the fiscal year beginning July first, one thousand nine hundred sixty-one; nor shall the powers heretofore given the board of park commissioners of the city of Huntington, by chapter twenty-six, acts of the Legislature, one thousand nine hundred twenty-five, and subsequent amendments thereto be in any manner impaired by the provisions of this article, and further that levies to be laid by said board of park commissioners of the city of Huntington be laid at the same time and in the manner herein provided.

## CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

**Article**

1. **Accrual and Collection of Taxes.**
2. **Delinquency and Methods of Enforcing Payment.**
3. **Sale of Land for Taxes.**
4. **Sale of Lands for School Fund.**

## Article 1. Accrual and Collection of Taxes.

Section

2. Lien for real property taxes.
3. Accrual; time for payment; interest on delinquent taxes.
6. When collection to commence.
8. Notice of time and place for payment.
14. Payment by sheriff into state treasury.
18. Exception.

Section 2. *Lien for Real Property Taxes.*—There shall be a lien on all real property for the taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on the first day of July, one thousand nine hundred sixty-one, and each July first thereafter for the taxes payable for the ensuing fiscal year.

Sec. 3. *Accrual; Time for Payment; Interest on Delinquent Taxes.*—All current taxes assessed on real and personal property may be paid in two installments. The first installment shall be payable on September first of the year for which the assessment is made, and shall become delinquent on October first; the second installment shall be payable on the first day of the following March and shall become delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, shall be subject to a discount of two and one-half per cent. If taxes are not paid on or before the date on which they become delinquent, including both first and second installments, interest at the rate of nine per cent per annum shall be added from the date they become delinquent until paid.

Sec. 6. *When Collection to Commence.* — The sheriff shall commence collection of current taxes on the fifteenth day of July, or as soon thereafter as he receives copies of the land and personal property books.

Sec. 8. *Notice of Time and Place for Payment.*—The sheriff may give notice by posting at not less than six public places in each magisterial district, for at least ten days before the time appointed, that between July fifteenth and August thirty-first he will attend at one or more of the most public and convenient places in each district, such places to be specified in the notice, for the

purpose of receiving taxes due by the people residing or paying taxes in such district. The notice shall also state that those who pay the first installment of their taxes on or before September first will be entitled to a discount of two and one-half per cent. Like notice may be given that between January fifteenth and February twenty-eighth he will again appear in each district for the collection of taxes, and that those who pay their second installment on or before March first will be entitled to the same discount. Failure of the sheriff to post such lists shall not impair the right of the state to collect such taxes.

The county court of any county may order that the above notice shall also be given by advertisement. Such an order, once entered, shall continue in effect until rescinded by the county court. Upon entry of such order, the sheriff shall, besides posting as required above, insert the proper notice in two newspapers of opposite politics, if such there be in the county, once a week for two successive weeks next preceding the fifteenth day of July or the fifteenth day of January as the case may be. For every failure so to advertise, the sheriff shall forfeit one hundred dollars.

Sec. 14. *Payment by Sheriff into State Treasury.*—All taxes collected for the state shall be paid into the state treasury by the sheriff as follows: On or before November fifteenth, all such taxes collected before November first; on or before April fifteenth, all collected before April first. Every sheriff who fails to make any payment when due shall be charged with interest at the rate of twelve per cent per annum.

Sec. 18. *Exception.*—Notwithstanding the provisions of sections two, three, six, eight and fourteen of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern the accrual and collection of taxes levied upon assessed values as of January first, one thousand nine hundred sixty-one, or prior years.

## Article 2. Delinquency and Methods of Enforcing Payment.

Section
4. Abatement of distress.
10-a. Notice of delinquency.
11. Delinquent lists; oath.
13. Publication and posting of delinquent lists.
14. Correction of delinquent lists by county court; certification to auditor; recordation.
19. Exception.

Section 4. *Abatement of Distress.*—Whenever by mistake taxes are assessed wholly to one person or estate on a tract or lot of land, part of which has become the freehold of another, by a title recorded before July first of the assessment year, the goods and chattels of the party or estate so assessed shall not be liable to distraint for more than a due proportion of such taxes.

Sec. 10-a. *Notice of Delinquency.*—On or after April first of each year, the sheriff may prepare and insert twice in two newspapers of opposite politics, if such there be published in the county, a notice stating in effect that the taxes assessed for the previous year have become delinquent, and that unless paid by April thirtieth will be included for publication in the forthcoming delinquent lists. Of the costs of publishing this notice, the county court shall pay an amount not to exceed the regular commercial rate for a display advertisement of twelve column inches.

Sec. 11. *Delinquent Lists; Oath.*—The sheriff, after ascertaining which of the taxes assessed in his county are delinquent, shall, on or before the first day of May next succeeding the year for which the taxes were assessed, prepare the following delinquent lists, arranged by districts and alphabetically by name of the person charged, and showing in respect to each the amount of taxes remaining delinquent on April thirtieth: (1) A list of property in the land book improperly entered or not ascertainable. (2) A list of other delinquent real estate. (3) A list of all other delinquent taxes.

The sheriff on returning each list shall, at the foot thereof, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, _____, sheriff (or deputy sheriff or collector) of the County of _____, do swear that the foregoing list is, to the best of my knowledge and belief, complete and accurate, and that I have received none of the taxes listed therein.

Except for the oath, the tax commissioner shall prescribe the form of the delinquent lists.

Sec. 13. *Publication and Posting of Delinquent Lists.*—A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county court at which they are to be presented for examination. At the same time a copy of each list shall be printed once in two newspapers of opposite politics, if such there be in the county, and the costs of printing, not to exceed twenty-five cents per item for each insertion in each newspaper, shall be paid out of the county treasury; but in such publication, only the aggregate amount of the taxes owed by each person need be published. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of one dollar shall be added to the taxes and interest already due on each item listed.

Any person, whose taxes were delinquent on May first, may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication, by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only fifty cents if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

Sec. 14. *Correction of Delinquent Lists by County Court; Certification to Auditor; Recordation.*—The sheriff shall on or before June fifteenth present the delinquent lists to the county court for examination. The court having become satisfied that the lists are correct, or having corrected them if erroneous, shall direct the clerk of the court to certify a copy of each list to the auditor

not later than July first. The original lists shall be preserved by the clerk in his office, and the list of delinquent real estate shall be recorded in a permanent book to be kept by him for that purpose.

Sec. 19. *Exception.*—Notwithstanding the provisions of sections four, ten-a, eleven, thirteen and fourteen of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern delinquency and methods of enforcing payment of taxes levied upon assessed values as of January first, one thousand nine hundred sixty-one, or prior years.

## Article 3. Sale of Land for Taxes.

**Section**

2. Second publication and posting of list of delinquent real estate; notice.
4. Sale by sheriff.
5. Suspension from sale.
14. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.
44. Exception.

Section 2. *Second Publication and Posting of List of Delinquent Real Estate; Notice.*—On or before September tenth of each year, the sheriff shall 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:

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....

Each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, or so much thereof

as may be necessary, will be sold for the amount due thereon, as set forth in the following table:

| Name of person charged with taxes | Quantity of land | Local description | Total amount of taxes, interest and charges due to date of sale |
|---|---|---|---|

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.

Given under my hand this _____ day of _____, 19____.

_____
Sheriff (or collector)

The sheriff shall publish the list and notice, once a week for four successive weeks prior to the sale date fixed in the notice, in two newspapers of opposite politics, if such there be in the county, and the costs of printing, not to exceed forty cents per item for each insertion in each newspaper, shall be paid out of the county treasury. He shall also post a copy of such list and notice at the front door of the courthouse at least four weeks before the sale. If there is no newspaper published in the county, or if no such newspaper will publish the list and notice for the compensation provided by law, then the sheriff shall also post a copy of the notice, but not of the delinquent list, at some public place in each magisterial district at least twenty days before the sale. In such case, the notice shall also state that the delinquent list has been posted at the front door of the courthouse.

To cover the costs of preparing, publishing and posting the delinquent list, a charge of two dollars and fifty cents shall be added to the taxes, interest and charges already due on each item listed. The sum of the taxes, interest to the date of sale, 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 newspaper or newspapers for publication 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 shall be paid into the general county fund.

Sec. 4. *Sale by Sheriff.*—Each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, or so much of any unredeemed tract or part thereof as may be necessary, shall be sold by the sheriff at public auction, between the hours of ten in the morning and four in the afternoon on the third Monday in October, for the total amount of taxes, interest and charges then due. If the sale is not completed on that day, it shall be continued from day to day between the same hours until all the land has been disposed of.

Sec. 5. *Suspension from Sale.*—Whenever it shall appear to the sheriff that any real estate included in the list has been sold previously for taxes and not redeemed, or ought not to be sold for the amount stated therein, he shall suspend the sale thereof and report his reasons therefor to the county court. If the court finds that the real estate ought not to be sold, it shall so order; but if the court finds that the real estate ought to be sold for the amount stated, or for a greater or less amount, it shall order the sheriff to include such real estate in his next September list, unless sooner redeemed.

Sec. 14. *Auditor to Report Redemptions to County Officers; Disposition of Redemption Money; Credit of State Taxes to Proper Fund.*—The auditor shall report monthly to the sheriff, the assessor and the clerk of the county court of each county all land in such county which was redeemed in his office during the preceding month. The assessor shall enter the fact of such redemption in the land book in his office. The clerk shall file and index the report in a separate volume provided for the purpose.

Between August fifteenth and August thirty-first of each year, the auditor shall report to the sheriff of each county for inclusion in his next September delinquent

list all tracts of land redeemed from the auditor, which after purchase by the state have been reported to him by the sheriff as suspended from sale, if the taxes for the year or years of suspension were not collected by the auditor. The sheriff shall be charged with such taxes and shall account for them as is required in the case of current taxes. Instead of making this report, the auditor may collect the taxes due for the year or years of suspension. Upon collection thereof he shall issue a second certificate of redemption, and such certificate shall be a release of the state's lien for such taxes.

The auditor shall each month draw his warrant upon the treasury, payable to the sheriff of each county, for that part of the taxes, interest and charges received by him upon the redemption of the property included in his report, which was owing to any of the taxing units in such county. The sheriff shall account for and pay over such money as if it had been paid to him for redemption before sale.

Upon collection of delinquent taxes due the state, the auditor shall credit them to the proper fund.

Sec. 44. *Exception.*—Notwithstanding the provisions of sections two, four, five and fourteen of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern the sale of land for taxes levied upon assessed values as of January first, one thousand nine hundred sixty-one, or prior years.

## Article 4. Sale of Lands for School Fund.

**Section**

9. Auditor to certify list of lands to be sold; lands heretofore certified made irredeemable and subject to transfer or sale.

Section 9. *Auditor to Certify List of Lands to Be Sold; Lands Heretofore Certified Made Irredeemable and Subject to Transfer or Sale.*—On or after the first day of May and on or before the first day of October of each year, the auditor shall certify to the circuit court of each county a list of all lands in the county subject to sale under this article, except that forfeited, escheated, or waste and unappropriated lands may be certified by the auditor at any time after they are brought to his atten-

tion. He shall note the fact of certification on the land record in his office. Upon completion of a list for certification, a charge of one dollar shall be added to the taxes, interest and charges already due on each item listed, to cover the costs incurred by the auditor in the preparation of the list, and in the event of sale or redemption, the same shall be collected and paid into the operating fund provided for in this article.

Escheated lands and waste and unappropriated lands shall be listed separately. The list shall be arranged by districts and, except in the case of waste and unappropriated lands, alphabetically by name of the former owner. The list shall state as to each item listed the information required by section six of this article to be set forth in the land record in the auditor's office, and shall specify as to each tract listed as forfeited or delinquent the amount of taxes and interest due or chargeable thereon on the date of certification, the publication and other charges due, with interest, and the total currently due. The specification of taxes due or chargeable shall as to delinquent land commence with those for nonpayment of which it was sold, and as to forfeited land with those properly chargeable to it for the first year of nonentry.

All items certified to each circuit court shall be numbered consecutively, and all subsequent orders, entries, applications or proceedings under this article in respect to any item shall refer to its number and to the year of certification. All tracts, lots, or parcels sold to the state as a unit may be treated by the auditor as a single item for purposes of certification. Subject to the provisions of this section, the auditor shall prescribe a form for the list and shall provide in such form adequate space to show the subsequent history and final disposition of each item certified.

The list shall be made in quadruplicate. The auditor shall keep the original and shall send one copy to the clerk of the circuit court, one to the clerk of the county court, and one to the deputy commissioner. The clerk of the circuit court and the clerk of the county court shall each bind his copy in a permanent book to be labeled

"Report of State Commissioner of Forfeited and Delinquent Lands", and the clerk of the county court shall note the fact of the certification of each item on his record of delinquent lands. Such copies shall become permanent records, and shall be preserved as such in the offices of the auditor, the county clerk and the circuit clerk.

All forfeited or delinquent lands heretofore certified by the auditor to the circuit courts under the provisions of former law may be redeemed at any time on or before the thirtieth day of June, one thousand nine hundred forty-seven, by paying to the sheriff upon order of the deputy commissioner the amount required for redemption under the provisions of chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred forty-five, and for this purpose, and no other, such provisions in respect to redemption shall remain in full force and effect until the thirtieth day of June, one thousand nine hundred forty-seven. Thereafter, the deputy commissioner shall allow no further redemptions, and all such delinquent land shall, on the first day of May, become irredeemable and subject to transfer or sale under the provisions of sections three and four, article thirteen of the constitution. Thereafter, the deputy commissioner shall proceed as provided in this article to institute suits for the sale of lands heretofore certified by the auditor which are subject to sale under the provisions hereof.

## CHAPTER 18. EDUCATION

**Article**

**4. County Superintendent of Schools.**
**5. District Board of Education.**
**9. School Finances.**

### Article 4. County Superintendent of Schools.

**Section**

4. Compensation.
12. Exception.

Section 4. *Compensation.*—On or before the first day of May of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent

for the period of appointment for the term beginning on the first day of July following. The annual salary of such superintendent shall not be less than five thousand dollars nor more than ten thousand dollars, both exclusive of state aid: *Provided, however,* That in counties having a population in excess of sixty-five thousand, the board may pay salaries in excess of ten thousand dollars. The board shall pay the salary from the general current expense fund of the district.

Sec. 12. *Exception.*—Notwithstanding the provisions of section four of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern the meeting of the boards of education for purposes of fixing the annual salaries of superintendents for the fiscal year beginning July first, one thousand nine hundred sixty-one.

## Article 5. District Board of Education.

Section

4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations.
37. Exception.

Section 4. *Meetings; Quorum; Employment and Assignment of Teachers; Compensation of Members; Affiliation with State and National Associations.*—The board shall meet on the first Monday of July and the first and third Tuesdays in August 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. On or before the first Monday in May the superintendent shall furnish to the board a list of those probationary and continuing contract teachers to be considered for transfer and subsequent assignment for the next ensuing school year.

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.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members shall receive compensation at the rate of twenty dollars per meeting attended. But they shall not receive pay for more than twenty-four meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses 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 expense 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.

Sec. 38. *Exception.*—Notwithstanding the provisions of section four of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern the meetings of the boards of education for the calendar year one thousand nine hundred sixty-one.

## Article 9. School Finances.

**Section**

2-a. Levy by board; increased levy.
3-a. Publication of financial statement by county board of education.
8. Exception.

Section 2-a. *Levy by Board; Increased Levy.*—The board, as provided by section nine, article eight of chapter eleven, shall impose a levy for the maintenance and operation of all schools in the county. This levy shall be uniform throughout the county and the funds shall be distributed and expended without regard to the locality from which collected: ***Provided, however,*** That if a

majority of the voters of any political subdivision of the county shall file with the board of education of the county of which such political subdivision is a part, at their budget session as provided by section nine, article eight of chapter eleven, a petition praying for increased salaries, funds for the support and maintenance of libraries, medical and dental clinics, supervision and/or an extension of the school term therein for a given number of months, the board shall extend the term of school for the number of months requested in such petition and shall lay levies sufficiently high on each one hundred dollars' valuation of taxable property within such political subdivision according to the last assessment thereof for such purpose or purposes as specified in the petition, which levies shall be separated and designated as a special maintenance fund levy and special teachers' fund levy of the political unit for which such levies are laid.

All additional levies so authorized shall be made as provided by law and shall in no case exceed the statutory limitation or maximum for the various classes of property of the political subdivision authorizing the same.

Upon a petition of one hundred taxpayers of any political subdivision of a county to the board of education of the county of which such political subdivision is a part, the board of education shall call an election within said political subdivision for the purpose of authorizing the county board of education to lay special increased rates of levy on the property of said political subdivision, as provided by law, for educational purposes as may be set forth in the petition and in the call for the election.

The bonded indebtedness incurred by former magisterial school district boards and independent district boards shall remain the debt of the property originally pledged as security for the payment of the obligation.

The county board shall impose separate levies in the manner provided by sections nine and thirteen, article eight, chapter eleven, upon the property in former magisterial districts and independent districts for the payment of current requirements of principal and interest of bonded indebtedness incurred prior to the creation of the county school districts.

Sec. 3-a. *Publication of Financial Statement by County Board of Education.*—The county board of education of every county, within four weeks after the beginning of each fiscal year, shall prepare and cause to be published, one time, on a form to be prescribed by the state tax commissioner and the state superintendent of free schools, in two newspapers of opposite politics, if there be such within the county, or if none be published therein (or if no such paper will publish the same for the price fixed by law therefor), the same shall be posted at each place of voting in the county, a statement of the receipts and expenditures of said board during the previous fiscal year, showing the total receipts and the general sources from which received, the name of each person receiving money from any fund, together with the total amount received during the fiscal year and the purpose for which paid, arranging same under appropriate heads, the cost of publishing such statement to be paid by the board from the maintenance fund of said board. Such statement shall also show a specific statement of all debts of the board, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

As soon as is practicable following the close of the fiscal year, a copy of the published statement herein required shall be filed by the board with the state tax commissioner and with the state superintendent of free schools.

Sec. 8. *Exception.*—Notwithstanding the provisions of sections two-a and three-a of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern for the year one thousand nine hundred sixty-one, insofar as they relate to school finances.

# CHAPTER 143

**(House Bill No. 224—By Mr. Speaker, Mr. Singleton)**

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

**AN ACT** to amend and reenact section one, article one, chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to appointment, term, salary and bond of tax commissioner; and appointment of assistant attorneys general to perform duties for the tax commissioner.

## Article 1. Supervision.

Section

1. Tax commissioner; appointment of assistant attorneys general to perform duties for commissioner.

*Be it enacted by the Legislature of West Virginia:*

That section one, article 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:

Section 1. *Tax Commissioner; Appointment of Assistant Attorneys General to Perform Duties for Commissioner.*—There shall be a tax commissioner who shall be appointed by the governor, by and with the advice and consent of the senate. The tax commissioner in office when this code takes effect shall, unless sooner removed, continue to serve until his term expires, and his successor has been appointed and has qualified. On or before the first day of March, one thousand nine hundred thirty-five, and on or before the first day of March of each sixth year thereafter, the governor shall appoint a tax commissioner for a term of six years, commencing on said first day of March. The person so appointed shall take the oath or affirmation prescribed by section five of article four of the constitution. He shall give bond with good security, to be approved by the governor, in the penalty of five thousand dollars. The salary of the tax commissioner shall be ten thousand dollars a year. He shall be repaid his actual disbursements for traveling expenses. He shall be provided with an office in the capitol, and with such furniture and clerical assistance as shall be necessary.

The tax commissioner, if he deem such action necessary, may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the tax commissioner. The attorney

general, in pursuance of such request, may select and appoint assistant attorneys general, to serve during the will and pleasure of the attorney general, and such assistants shall be paid out of any funds made available for that purpose by the Legislature to the office of the tax commissioner.

# CHAPTER 144

**(Senate Bill No. 279—By Mr. Davis)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property tax exemption for area development corporations on property used for profit, but solely for the purpose of promoting employment opportunities through industrial and economic development.

**Article 3. Assessments Generally.**

**Section**

9. Property exempt from taxation.

*Be it enacted by the Legislature of West Virginia:*

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

Section 9. *Property Exempt from Taxation.*—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, money and furniture; public and family libraries; property used for charitable purposes, and not held or leased out 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 club room, 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 conducted for private profit; fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meetings of fire companies; and all property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year, household goods to the value of two hundred dollars, dead victuals laid away for family use and any other property or security exempted by any other provision of law; but no property shall be exempt from taxation which shall have been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assess-

ment year or otherwise: *Provided, however,* That the property, both real and personal, which is exempt from taxation by this section, except money, 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 provision 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 purposes of such corporations or organizations.

# CHAPTER 145

**(House Bill No. 447—By Mr. Myles and Mr. Boiarsky)**

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to license taxes on coin operated laundries.

**Article 12. License Taxes.**

**Section**

3-a. Coin-operated laundries.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3-a. *Coin-Operated Laundries.*—Notwithstanding all other provisions of this article, the owner or oper-

ator of a coin-operated laundry shall not be required to obtain any license except a general store license, as provided in article thirteen-a, section two, and a decalcomania stamp for each coin operated machine owned by the operator of said laundry and situate in said laundry. The decalcomania stamp for each of the said machines shall be obtained from the tax commissioner at a cost not exceeding fifty cents.

# CHAPTER 146

**(House Bill No. 86—By Mr. Brotherton)**

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six-a and six-b, imposing a license tax on the sale of manufactured tobacco by wholesale dealers; defining certain words for the purposes of the sections; providing appropriation to the state tax commissioner for the enforcement of the provisions of the cigarette sales act with respect to wholesalers and retailers of tobacco.

**Article 12. License Taxes.**

**Section**

6-a. Wholesale dealers in tobacco; definitions.
6-b. Amount allocated for administration of cigarette sales act.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6-a. *Wholesale Dealers in Tobacco; Definitions.* —When used in this section the following words, terms,

and phrases and any variations thereof required by the context, shall be the meaning ascribed to them in this section, except where the context indicates a different meaning.

"Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

"Wholesaler" shall include any person who:

(a) Purchases cigarettes directly from the manufacturer; or

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.

"Commissioner" means the state tax commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him.

"Sale at wholesale" shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

After the effective date of this section, no person shall engage in, or conduct the business of purchasing, selling, consigning or distributing tobacco, as defined herein, in this state without having first obtained the appropriate license for that purpose as prescribed by this section. The annual license fee as a wholesale dealer to sell tobacco as defined herein shall be divided into three classes, as follows: (1) Class A—all dealers who sell up to seven hundred fifty thousand packages of cigarettes, one hundred dollars; (2) Class B—all dealers who sell from seven hundred fifty thousand packages of cigarettes to one million five hundred thousand packages, two hundred dollars; (3) Class C—all dealers who sell more than one million five hundred thousand packages of cigarettes, three hundred fifty dollars.

Sec. 6-b. *Amount Allocated for Administration of Cigarette Sales Act.*—For the purpose of providing revenue for the enforcement of the cigarette sales act with respect to wholesalers and retailers of tobacco, from the moneys derived from licenses issued under the provisions of section six-a there is hereby appropriated to the state tax commissioner, the sum of twenty thousand dollars per annum which must be used for the enforcement of the provisions of the cigarette sales act.

# CHAPTER 147

**(Senate Bill No. 103—By Mr. Davis)**

**[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]**

AN ACT to amend and reenact section twelve, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the license fee for collection agencies, the bond required to be furnished by such agencies and the filing of such bond.

**Article 12. License Taxes.**

**Section**

12. Collection agencies.

*Be it enacted by the Legislature of West Virginia:*

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

Section 12. *Collection Agencies.*—The annual license fee to engage in the business of a collection agency within this state shall be one hundred dollars. For purposes of this section, solicitation or collection by or through an agent operating within this state shall be considered to be engaging in the business of a collection agency within this state. Before such certificate of license is issued, the person applying for the same shall execute a continuing bond in the form prescribed by the tax commissioner with satisfactory corporate surety in the penalty of five thousand dollars, conditioned that such person will pay all damages resulting from any unlawful act or action by such person or his or its agent in connection with the conduct of the business of the collection agency. This bond shall be filed with the tax commissioner.

# CHAPTER 148

**(House Bill No. 80—By Mr. Bedell)**

[Passed March 7, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of gasoline.

**Article 14. Gasoline Tax.**

Section

1. Definitions; gasoline, person, company, distributor, retail dealer, importer, sale, purchase and motor vehicles.

*Be it enacted by the Legislature of West Virginia:*

That section one, article fourteen, chapter eleven of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Definitions; Gasoline, Person, Company, Distributor, Retail Dealer, Importer, Sale, Purchase and Motor Vehicles.*—When used in this article: The term "gasoline" shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner's solvent, and any other liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine: *Provided, however,* That the term "gasoline" shall not include diesel fuel, fuel oil or kerosene when used or sold for use as a motor fuel to operate railroad diesel locomotives in this state or when used as a motor fuel to operate watercraft operated upon the navigable streams of this state, nor include any fuel of a type sold exclusively as a motor fuel to operate aircraft.

The term "person" or the term "company" shall include any individual, firm, copartnership, joint venture, association, corporation, trust and any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context, and when used in connection with the penalties imposed by this article, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint venture, association, corporation, trust or any other group acting as a unit.

The term "distributor" shall mean and include every person who refines, produces, manufactures, compounds or blends gasoline in this state for use or for sale to jobbers or consumers, and every person who is now engaged, or who may hereafter engage, in his own name or in the name of his representative or agent in this state, in the selling of gasoline for the purpose of resale or distribution; and persons operating tank wagons into this state from places of business located outside this state and selling gasoline in quantities as desired by purchasers in this state without definite orders having been placed prior to the delivery of the product, shall be deemed distributors in this state.

The term "retail dealer" shall mean and include any person not a distributor who sells gasoline in this state to consumers only.

The term "importer" shall mean any person who purchases or obtains gasoline in the amount of twenty-five gallons or more outside this state and uses the same within the state.

The term "sale" shall include any exchange, gift, or other disposition, and "purchase" shall include any acquisition of ownership.

The term "motor vehicle" shall mean automobiles, motor trucks and motorcycles, and shall include all other vehicles, engines or machines which are operated or propelled by combustion of gasoline.

# CHAPTER 149

**(Senate Bill No. 277—By Mr. Jackson)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to gasoline tax, and particularly the amount, measure and lien of tax and notice of discontinuance of business.

**Article 14. Gasoline Tax.**

**Section**

3. Amount, measure and lien of tax; notice of discontinuance of business.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Amount, Measure and Lien of Tax; Notice of Discontinuance of Business.*—There is hereby imposed upon every person who is a distributor, retail dealer or importer under the terms of this article, an excise tax based on the quantities of all gasoline produced, purchased, sold or used in this state, which tax shall be equivalent to seven cents per gallon on all gasoline. The tax shall be paid as hereinafter provided.

A distributor shall use as the measure of the tax the gallonage produced, purchased, sold or used in this state, as provided in section four of this article. Gallonage shall be included in the measure of the tax by refiners and producers when such gallonage has been placed into any tank from which withdrawals are made for sales or transfer to any other person.

An importer shall use as the measure of the tax the gallonage purchased and received for whatever use, as provided in section six of this article.

A retail dealer shall use as the measure of the tax the gallonage purchased or obtained by him, as provided in section five of this article.

The excise tax imposed by this article shall be paid by the person first producing, or receiving in this state, the gallonage of gasoline which under this article shall form the measure of such tax; but in no case shall any such gallonage be used more than once in determining taxes due hereunder.

The taxes imposed by this article are in addition to all other taxes now imposed by law.

The excise tax imposed by this article shall accrue from the date of production, purchase, sale or use of the gasoline. The penalties imposed by section thirteen of this article shall accrue from the date they become due and payable. A tax due and unpaid under this article shall be a debt due the state of West Virginia. It shall be a personal obligation of the taxpayer and shall be a lien in favor of the state of West Virginia upon all property and rights to property, whether real or personal, belonging to such taxpayer. The lien shall arise when a taxpayer fails to file his return and remit the tax at the time required

by this article. Such lien shall not be valid or enforceable against a purchaser, including lien creditor, of real estate or personal property for a valuable consideration without notice, unless docketed in the office of the clerk of the county court as provided in sections one and two, article ten-c, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

Whenever a distributor, importer or retail dealer ceases to engage in business within this state by reason of the discontinuance, sale or transfer of the business of such distributor, importer or retail dealer, it shall be his duty to notify the tax commissioner in writing at the time of the discontinuance, sale or transfer. Such notice shall give the date of discontinuance, and in the event of the sale or transfer of the business the date thereof and the name and address of the purchaser or transferee thereof; all taxes accruing under this article, but not yet due and payable under the provisions of this article, shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale or transfer, and it shall be the duty of such distributor, importer or retail dealer to make a report and pay all such taxes, and to surrender to the tax commissioner the license certificate theretofore issued, under the provisions of this article.

Unless the notice shall have been given to the tax commissioner as above provided, such purchaser or transferee shall be liable to the state of West Virginia, for the amount of all taxes and penalties, under the article accrued against such distributor, importer or retail dealer so selling or transferring his business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor, importer, or retail dealer.

Any unexpended and unobligated revenue derived from the one cent tax per gallon on gasoline imposed or levied by chapter one hundred sixty-nine, acts of the Legislature,

regular session, one thousand nine hundred fifty-nine, to match federal funds allocated for the interstate road system in West Virginia, shall be used only for the purposes set out in section twenty-two of this article.

# CHAPTER 150

**(House Bill No. 356—By Mr. Watson)**

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a; and to amend and reenact section twenty-one, article fourteen of said chapter; and to amend and reenact section four, article fourteen-a of said chapter, all relating to the tax on gasoline and the motor carrier road tax.

**Article**

**14. Gasoline Tax.**
**14-a. Motor Carrier Road Tax.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 14. Gasoline Tax.

**Section**

20-a. Partial refund of tax on gasoline used by buses.
21. False or fraudulent claim for refund; penalty.

Section 20-a. *Partial Refund of Tax on Gasoline Used by Buses.*—Any person who shall buy in quantities of

twenty-five gallons or more, at any one time, gasoline as defined by this article, for use in any vehicle or vehicles regularly operated by such person under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, may, if the gasoline tax imposed by this article shall have previously been paid upon such gasoline, be refunded an amount equal to three cents per gallon for each gallon of gasoline upon which tax has been paid, upon presenting to the tax commissioner an affidavit accompanied by proof of such purchases as required in section twenty and in the manner and subject to the requirements as therein set forth. The right to a refund under this section shall not be assignable, and any assignment so made shall be void.

Notwithstanding any other provision of law, no refund shall be made under authority of this section except on gasoline and motor fuel used in the operation of urban or suburban bus lines in this state, which are hereby defined as bus lines the majority of whose passengers use the buses for traveling a distance of not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools.

Sec. 21. *False or Fraudulent Claim for Refund; Penalty.*—If any person shall make a false or fraudulent claim for the refunds referred to in sections nineteen, twenty and twenty-a hereof, he shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

## Article 14-a. Motor Carrier Road Tax.

**Section**

4. Credit for payment of gasoline tax; refunds; hearing upon commissioner's refusal to make refund; appeals.

Section 4. *Credit for Payment of Gasoline Tax; Refunds; Hearing Upon Commissioner's Refusal to Make Refund; Appeals.*—Every motor carrier subject to the tax herein imposed shall be entitled to a credit on such tax equivalent to the amount of tax per gallon of gasoline assessed by article fourteen of this chapter on all gasoline purchased by such carrier within this state for use in operations either

within or without this state and upon which gasoline the tax imposed by the laws of this state has been paid: *Provided, however,* That such credit shall not be allowed for any gasoline taxes for which any person, firm or corporation has applied, or received, a refund of gasoline taxes under sections nineteen and twenty of article fourteen of this chapter. Evidence of the payment of such tax in such form as may be required by the commissioner shall be furnished by each motor carrier claiming the credit herein allowed. When the amount of the credit herein provided exceeds the amount of the tax for which the carrier is liable for the same quarter, such excess shall, under regulations of the commissioner, be allowed as a credit on the tax for which the carrier would be otherwise liable for any of the four succeeding quarters. The commissioner is, under regulations to be established by him, hereby authorized to refund from the funds collected under the provisions of this article the amount of the credit, if the motor carrier by duly filed petition requests the commissioner to do so and the commissioner is satisfied that said motor carrier is entitled to said refund and that said motor carrier has not applied for a refund of the tax imposed by article fourteen of this chapter: *Provided, however,* That such refund shall not be made until after audit of the applicant's records by the commissioner or upon the posting of a surety company bond by the applicant in an amount fixed by the commissioner conditioned to pay all road taxes due hereunder: *Provided further,* That said credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a motor carrier below the amount due as tax on gasoline used in this state as provided by article fourteen of this chapter. If the commissioner shall refuse to allow a refund or credit in the amount claimed by the applicant, the applicant may request a hearing on said application. Such hearing shall be held within a reasonable time after such request is made and after notice to the applicant of not less than ten days.

The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered in support of the claim

of credit or refund or to prove that such claim is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from the service of this notice, the tax commissioner's decision shall be final.

An appeal may be taken by the taxpayer to the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his determination as provided in this section.

The court shall hear the appeal, and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct his decision accordingly and allow the credit or refund as decreed by said court.

An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

# CHAPTER 151

**(House Bill No. 81—By Mr. Bedell)**

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of gasoline.

**Article 14-a. Motor Carrier Road Tax.**

**Section**

2. Definitions.

*Be it enacted by the Legislature of West Virginia:*

That section two, article fourteen-a, chapter eleven of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Definitions.*—The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them by this section, except where the context clearly indicates a different meaning:

"Motor carrier" means every person, firm or corporation who operates or causes to be operated on any highway in this state any passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck, or any truck having more than two axles.

"Operations" means operations of all such vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

"Gasoline" shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner's solvent, and any other liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine.

"Commissioner" means the state tax commissioner of West Virginia.

# CHAPTER 152

**(Senate Bill No. 3—By Mr. Carson, Mr. President)**

[Passed January 19, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to consumers sales tax.

**Article 15. Consumers Sales Tax.**

**Section**

3-a. Additional consumers sales tax.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3-a. *Additional Consumers Sales Tax.*—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent ($.01) on each one dollar ($1.00) of monetary consideration, or fraction thereof, in excess of one dollar ($1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission, and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall expire August thirty-one, one thousand nine hundred sixty-one.

# CHAPTER 153

**(House Bill No. 481—By Mr. Speaker, Mr. Singleton)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article fifteen-a, chapter eleven 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 use tax.

**Article 15-a. Use Tax.**

**Section**

2-a. Additional use tax; expiration date.

*Be it enacted by the Legislature of West Virginia:*

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

Section 2-a. *Additional Use Tax; Expiration Date.*— For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase price being exempt for the purpose of computing the additional excise tax imposed by this section.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission, and assessment of the excise tax imposed by section two of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section.

Notwithstanding the provisions of section twenty-six of this article, all moneys received from the additional tax imposed by this section shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall expire August thirty-one, one thousand nine hundred sixty-one.

# CHAPTER 154

**(Senate Bill No. 105—By Mr. McCourt)**

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of an additional tax on the sale of cigarettes, and upon the use, consumption or storage of cigarettes in this state, and declaring the purpose thereof.

**Article**

**17. Excise Tax on Sale of Cigarettes.**
**18. Excise Tax on Use, Consumption or Storage of Cigarettes.**

*Be it enacted by the Legislature of West Virginia:*

That section two-b, article seventeen, and section two, article eighteen, 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 17. Excise Tax on Sale of Cigarettes.

**Section**

2-b. Additional cigarette tax for support of schools.

Section 2-b. *Additional Cigarette Tax for Support of Schools.*—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June, one thousand nine hundred sixty-one, in addition to the taxes imposed by sections two and two-a of this article, an additional excise tax of two cents on each ten cigarettes, or fractional part thereof, sold within this state. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular excise tax on the sale of

cigarettes shall be applicable to the levy, imposition and collection of such additional tax. Notwithstanding other provisions of this article to the contrary, all moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration and operation, shall be paid by the tax commissioner into the general school fund, to be used solely for the support of free schools: *Provided, however,* That the additional one cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-two.

**Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.**

**Section**

2. Levy of tax on cigarettes.

Section 2. *Levy of Tax on Cigarettes.*—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied, on and after midnight of the last day of June, one thousand nine hundred sixty-one, on the use, consumption or storage of cigarettes by consumers in this state at the rate of three cents on each ten cigarettes or fractional part thereof: *Provided, however,* That the tax shall not apply if the tax levied in article seventeen of this chapter has been paid: *Provided further,* That the additional one cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-two.

# CHAPTER 155

**(Senate Bill No. 106—By Mr. Carson, Mr. President, and Mr. McCourt)**

[Passed February 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one,

imposing a tax on personal incomes as such incomes are defined for federal income tax purposes, and providing for the administration and collection thereof.

## Article 21. Personal Income Tax.

### PART I. GENERAL.

Section
1. Legislative findings.
2. Short title; arrangement and classification.
3. Persons subject to tax.
4. Rate of tax.
5. Optional tax for certain resident individuals.
6. Accounting periods and methods.
7. Resident and nonresident defined.
8. Credits against tax.
9. Meaning of terms.

### PART II. RESIDENTS.

11. West Virginia taxable income of a resident individual.
12. West Virginia adjusted gross income of a resident individual.
13. West Virginia deduction of a resident individual.
14. West Virginia standard deduction of a resident individual.
15. West Virginia itemized deduction of a resident individual.
16. West Virginia personal exemptions of a resident individual.
17. Resident partners.
18. West Virginia taxable income of a resident estate or trust.
19. Share of resident estate, trust or beneficiary in West Virginia fiduciary adjustment.
20. Credit for income tax of another state.

### PART III. NONRESIDENTS.

31. West Virginia taxable income of a nonresident individual.
32. West Virginia adjusted gross income of a nonresident individual.
33. West Virginia deduction of a nonresident individual.
34. West Virginia standard deduction of a nonresident individual.
35. West Virginia itemized deduction of a nonresident individual.
36. West Virginia personal exemptions of a nonresident individual.
37. Nonresident partners.
38. West Virginia taxable income of a nonresident estate or trust.
39. Share of a nonresident estate, trust or beneficiary in income from West Virginia sources.
40. Credit for income tax of state of residence.

### PART IV. RETURNS, DECLARATIONS AND PAYMENT OF TAX.

51. Returns and liabilities.
52. Time and place for filing returns and paying tax.
53. Signing of returns and other documents.
54. Change of resident status during year.
55. Declarations of estimated tax.
56. Payments of estimated tax.
57. Extensions of time.
58. Requirements concerning returns, notices, records and statements.
59. Report of change in federal taxable income.
60. Change of election.

### PART V. WITHHOLDING OF TAX.

71. Requirement of withholding tax from wages.
72. Information statement for employee.
73. Credit for tax withheld.

Section
74. Employer's return and payment of withheld taxes.
75. Employer's liability for withheld taxes.
76. Employer's failure to withhold.

PART VI. PROCEDURE AND ADMINISTRATION.

80. General provisions.
81. Assessment.
82. Deficiency procedure.
83. Collection.
84. Lien.
85. Distraint.
86. Overpayments, credits and refunds.
87. Limitations on assessment.
88. Limitations on collection.
89. Interest.
90. Additions to tax.
91. Penalties.
92. Crimes.
93. Disposition of revenue.
94. Effective date; severability.

*Be it enacted by the Legislature of West Virginia:*

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

## PART I. GENERAL

Section 1. *Legislative Findings.*—The Legislature hereby finds and declares that the adoption by this state for its personal income tax purposes of the provisions of the laws of the United States relating to the determination of income for federal income tax purposes will (1) simplify preparation of state income tax returns by taxpayers, (2) improve enforcement of the state income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

Sec. 2. *Short Title; Arrangement and Classification.*—This article may be cited as the "West Virginia Personal Income 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, nor shall the descriptive matter or headings relating to any part, section, subsection, or paragraph be given any legal effect.

Sec. 3. *Persons Subject to Tax.*— (a) Imposition of Tax. —A tax determined in accordance with the rates set forth in section four of this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate and trust.

(b) Partners and Partnerships.—A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities.

(c) Associations Taxable as Corporations.—An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt Trusts and Organizations.—A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross References.—For definitions of West Virginia taxable income of:

(1) Resident individual, see section eleven.

(2) Resident estate or trust, see section eighteen.

(3) Nonresident individual, see section thirty-one.

(4) Nonresident estate or trust, see section thirty-eight.

Sec. 4. *Rate of Tax.*— (a) Rate of Tax on Individuals.— The tax imposed by section three of this article on the West Virginia taxable income of every individual (other than a head of a household to whom subsection (b) applies) and upon the West Virginia taxable income of every estate and trust shall be equal to six per centum of the federal income tax which would be imposed on an identical amount of federal taxable income under subsection

(a) of section one of the United States Internal Revenue Code of 1954.

(b) Rate of Tax on Heads of Households.—The tax imposed by section three of this article on the West Virginia taxable income of every individual who is a head of a household in the determination of his federal income tax for the taxable year shall be equal to six per centum of the federal income tax which would be imposed upon an identical amount of federal taxable income under subsection (b) of section one of the United States Internal Revenue Code of 1954.

(c) Rates of Tax in Case of Joint Return or Return of Surviving Spouse.—In the case of a joint return of a husband and wife, the tax imposed by section three of this article on the West Virginia taxable income shall be equal to six per centum of twice the tax which would be imposed upon half the identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954. For purposes of this subsection of this article and for the purposes of section five of this article, the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse shall be treated as a joint return of a husband and wife.

Sec. 5. *Optional Tax for Certain Resident Individuals.* —(a) General.—The tax commissioner may promulgate tables enabling resident individuals who meet the conditions of this section to compute their taxes under section three of this article on the basis of their federal adjusted gross incomes.

(b) Tables.—The tables promulgated under this section shall show the amounts of tax due under section three of this article to the nearest two dollars (or such smaller amount as the tax commissioner may establish).

(c) Conditions for Optional Computation.— The optional tax computation under this section may be elected only if all the following conditions are satisfied by the taxpayer, or by both husband and wife whose federal income tax is determined on a joint return:

(1) The taxpayer has elected to take the standard de-

duction for federal income tax purposes or to pay the federal optional tax.

(2) The taxpayer has no items of income or deduction described in section twelve (b) or (d) as an individual, as a partner, or as a beneficiary of an estate or trust.

(3) The taxpayer's federal income tax is not reduced by operation of:

(a) The federal alternative tax on long term capital gains, or

(b) A federal provision which has the effect of taxing income of the taxable year as if it were partly or wholly income of a prior taxable year.

(4) The taxpayer satisfies such other conditions, not inconsistent with the purposes of this section, as may be specified by the tax commissioner.

(d) Manner of Election.—The election by a taxpayer to compute his tax under this section shall be made under regulations of the tax commissioner.

(e) Husband and Wife Computing West Virginia Taxes Separately.—(1) A husband or wife who files a separate federal return may elect the optional tax computation under this section only if the other spouse's tax under this article, if any, is determined under this section.

(2) A husband and wife who file a joint federal return may not elect the optional tax computation under this section if they elect to determine their West Virginia taxes separately.

Sec. 6. *Accounting Periods and Methods.*—(a) Accounting Periods.—A taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(b) Change of Accounting Periods.—If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the West Virginia standard deduction, the West Virginia personal exemptions and the credits allowed under section eight

shall be prorated under regulations of the tax commissioner.

(c) Accounting Methods.—A taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, West Virginia taxable income shall be computed under such method as in the opinion of the tax commissioner clearly reflects income.

(d) Change of Accounting Methods.—(1) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were rateably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commissioner.

Sec. 7. *Resident and Nonresident Defined.*—(a) Resident Individual.—Resident individual means an individual:

(1) Who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or

(2) Who is not domiciled in this state but maintains

a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state.

(b) Nonresident Individual.—A nonresident individual means an individual who is not a resident.

(c) Resident Estate or Trust.—A resident estate or trust means:

(1) The estate of a decedent who at his death was domiciled in this state,

(2) A trust created by will of a decedent who at his death was domiciled in this state, or

(3) A trust created by, or consisting of property of, a person domiciled in this state.

(d) Nonresident Estate or Trust.—A nonresident estate or trust means an estate or trust which is not a resident.

(e) Cross Reference.—For effect of change of an individual's resident status, see section fifty-four.

Sec. 8. *Credits against Tax.*—(a) Business and Occupation 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 under article thirteen of 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 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.

(b) Transportation Privilege 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 exercise of the privilege with respect of which said 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) Cross Reference.—For credit in respect of:

(1) Taxes withheld on wages, see section seventy-three,

(2) Taxes imposed on a resident by other states, see section twenty,

(3) Taxes imposed on a nonresident by the state of his residence, see section forty.

Sec. 9. *Meaning of Terms.*—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 sixty-one, shall be given effect in determining the taxes imposed by this article but no amendment to laws of the United States made after said date shall be given effect.

## PART II. RESIDENTS

Sec. 11. *West Virginia Taxable Income of a Resident Individual.*—(a) General.—The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia deduction and West Virginia personal exemptions, as determined under this Part.

(b) Husband and Wife.—(1) If the federal taxable income of husband or wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

Sec. 12. *West Virginia Adjusted Gross Income of a Resident Individual.*—(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications Increasing Federal Adjusted Gross Income.—There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income.

(c) Modifications Reducing Federal Adjusted Gross Income.—There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: *Provided, however,* 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 further,* That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain; and

(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.

(d) Modification for West Virginia Fiduciary Adjustment.—There shall be added to or subtracted from federal adjusted gross income (as the case may be) the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen.

(f) Husband and Wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

Sec. 13. *West Virginia Deduction of a Resident Individual.*—The West Virginia deduction of a resident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section fifteen.

Sec. 14. *West Virginia Standard Deduction of a Resident Individual.*— (a) General.—The West Virginia standard deduction of a resident individual, or of husband and wife whose West Virginia taxable income is determined jointly, shall be ten per centum of West Virginia adjusted gross income or one thousand dollars, whichever is less.

(b) Husband and Wife Determining Income Separately.—The West Virginia standard deductions of husband and wife whose West Virginia taxable incomes are determined separately (whether or not on a single form) shall not exceed ten per centum of the aggregate of their separate West Virginia adjusted gross incomes or one thousand dollars, whichever is less, but may be taken by either or divided between them in such proportions as they may elect.

Sec. 15. *West Virginia Itemized Deduction of a Resident Individual.*—(a) General.—If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and Wife.—(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications Reducing Federal Itemized Deductions.—The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) Income taxes imposed by this state or any other taxing jurisdiction; and

(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article.

(d) Partners.—The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

Sec. 16. *West Virginia Personal Exemptions of a Resident Individual.*—(a) General.—A resident individual shall be allowed a West Virginia exemption of six hun-

dred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and Wife.—If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

Sec. 17. *Resident Partners.*—(a) Partner's Modifications.—In determining West Virginia adjusted gross income and West Virginia taxable income of a resident partner, any modification described in section twelve (b), (c) or (d) or section fifteen (c), which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the items to which the modifications relate. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partners distributive share of such item shall be his distributive share for federal income tax purposes of partnership taxable income or loss generally.

(b) Character of Items.—Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this article as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) West Virginia Tax Avoidance or Evasion.—Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or

evasion of tax under this article, the partner's distributive share of such item, and any modification required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Sec. 18. *West Virginia Taxable Income of a Resident Estate or Trust.*—The West Virginia taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be subtracted the modification described in section twelve (c) (3), with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from distributable net income of the estate or trust for federal income tax purposes.

(3) There shall be added or subtracted (as the case may be) the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen.

Sec. 19. *Share of Resident Estate, Trust or Beneficiary in West Virginia Fiduciary Adjustment.*—(a) General.—An adjustment shall be made in determining West Virginia taxable income of a resident estate or trust under section eighteen, or West Virginia adjusted gross income of a resident beneficiary of any estate or trust under section twelve (d), in the amount of the share of each in the West Virginia fiduciary adjustment as determined in this section.

(b) Definition.—The West Virginia fiduciary adjustment shall be the net amount of the modifications described in section twelve (b), (c) and (d), and section fifteen (c) which relate to items of income, gain, loss or deduction of an estate or trust. Such net amount shall not include any modification described in section twelve (c) (3), with respect to gains from the sale or other disposi-

tion of property, to the extent such gains are excluded from distributable net income of the estate or trust for federal income tax purposes.

(c) Shares of West Virginia Fiduciary Adjustment.—(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the West Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust for federal income tax purposes.

(2) If the distributable net income for the taxable year of the estate or trust is zero, the share of each beneficiary in the West Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is distributed within such year, or is required to be distributed currently. Any balance of the West Virginia fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate Attribution of Modifications.—The tax commissioner may, on application, authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as he may require.

Sec. 20. *Credit for Income Tax of Another State.*—(a) General.—A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, upon income both derived therefrom and subject to tax under this article.

(b) Limitations.—(1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less

than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) Exception.—No credit shall be allowed under this section for a tax of a jurisdiction which allows residents of this state a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by section forty.

(d) Definition.—For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his West Virginia adjusted gross income under section twelve.

## PART III. NONRESIDENTS

Sec. 31. *West Virginia Taxable Income of a Nonresident Individual.*—(a) General.—The West Virginia taxable income of a nonresident individual shall be his West Virginia adjusted gross income less his West Virginia deduction and West Virginia personal exemptions, as determined under this part.

(b) Husband and Wife.—(1) If the federal taxable income of husband or wife, both of whom are nonresidents, is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife, both of whom are nonresidents, is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

Sec. 32. *West Virginia Adjusted Gross Income of a Nonresident Individual.*—(a) General.—The West Virginia adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with West Virginia sources, including:

(A) His distributive share of partnership income, gain, loss and deduction, determined under section thirty-seven, and

(B) His share of estate or trust income, gain, loss and deduction, determined under section thirty-nine; and

(2) The portion of the modifications described in subsections (b) and (c) of section twelve which relate to income derived from West Virginia sources (including any modifications attributable to him as a partner).

(b) Income and Deductions from West Virginia Sources.—(1) Items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be those items attributable to:

(A) The ownership of any interest in real or tangible personal property in this state; or

(B) A business, trade, profession or occupation carried on in this state.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(3) Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(c) Income and Deductions Partly from West Virginia Sources.—If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commissioner, the items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be determined by apportionment and allocation under such regulation.

(d) Purchase and Sale for Own Account.—A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property for his own account.

(e) 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.

Sec. 33. *West Virginia Deduction of a Nonresident Individual.*—The West Virginia deduction of a nonresident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section thirty-five.

Sec. 34. *West Virginia Standard Deduction of a Nonresident Individual.*—The West Virginia standard deduction of a nonresident individual shall be ten per centum of his West Virginia adjusted gross income, or one thousand dollars, whichever is less. The West Virginia standard deduction of a nonresident husband or wife shall be determined under the rules of section fourteen.

Sec. 35. *West Virginia Itemized Deduction of a Nonresident Individual.*—(a) General.—If federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a nonresident individual shall be the same as the total amount of the following of his deductions from federal adjusted gross income, as provided in the laws of the United States for the taxable year (including any items attributable to him as a partner):

(1) Deductions for contributions or gifts to this state or to any political subdivision thereof, or to any corporation, trust, community chest, fund, foundation, or other entity organized or operated under the laws of this state;

(2) Deductions for alimony or separate maintenance payments includible in the West Virginia adjusted gross income of the recipient;

(3) Deductions for losses of real or tangible personal property having an actual situs in this state, arising from fire, storm, shipwreck or other casualty, or from theft;

(4) Deductions, with respect to real or tangible personal property having an actual situs in this state, for losses (other than capital losses) incurred in any transaction entered into for profit but not connected with the taxpayer's trade or business; and

(5) Deductions determined under regulations of the tax commissioner to be connected with his West Virginia adjusted gross income, except deductions for income taxes imposed by this state or any other taxing jurisdiction.

(b) Husband and Wife.—(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return but whose West Virginia taxable incomes are determined separately may be taken by either or divided between them as they may elect.

Sec. 36. *West Virginia Personal Exemptions of a Nonresident Individual.*—A nonresident individual shall be allowed the same West Virginia exemptions as are allowed by section sixteen to a resident individual.

Sec. 37. *Nonresident Partners.*—(a) Portion Derived from West Virginia Sources.—In determining West Virginia adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with West Virginia sources of such partner's distributive share, for federal income tax purposes, of items of partnership income, gain, loss and deduction, as such portion shall be determined under regulations of the tax commissioner consistent with the applicable rules of section thirty-two. In determining West Virginia taxable income of a nonresident partner of any partnership, there shall be attributed to him his distributive share, for federal income tax purposes, of those partnership items of deduction which are deductible by him under the applicable rules of section thirty-five.

(b) Special Rules as to West Virginia Sources.—In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital, or

(2) Allocates to the partner, as income or gain from sources outside West Virginia, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside West Virginia to partnership income or gain from all sources, except as authorized in subsection (d), or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with West Virginia sources than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (d).

(c) Partner's Modifications.—Any modification described in subsection (b) or (c) of section twelve, which relates to an item of partnership income, gain, loss or de-

duction, shall be made in accordance with the partner's distributive share for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with West Virginia sources.

(d) Alternate Methods.—The tax commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(e) Cross Reference.—(1) For a partner's distributive share of items, see subsection (a) of section seventeen.

(2) For character of partnership items for a partner, see subsection (b) of section seventeen.

(3) For effect of special provision in partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this article, see subsection (c) of section seventeen.

Sec. 38. *West Virginia Taxable Income of a Nonresident Estate or Trust.*—(a) General.—The West Virginia taxable income of a nonresident estate or trust shall be determined as follows:

(1) Items in Distributable Net Income.—There shall be determined its share of income, gain, loss and deduction from West Virginia sources under section thirty-nine (relating to items entering into the definition of distributable net income).

(2) Items Not in Distributable Net Income.—There shall be added or subtracted (as the case may be) the amount derived from or connected with West Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes, but excluded from the definition of federal distributable net income of the estate or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable

rules of sections thirty-two and thirty-five as in the case of a nonresident individual.

(3) Modifications.—There shall be subtracted the amount of any modifications described in paragraph (3) of subsection (c) of section twelve with respect to income or gain referred to in paragraph (2) of this subsection.

(4) Exemption.—There shall be subtracted the amount of six hundred dollars as a West Virginia exemption.

(b) Special West Virginia Source Rules.—Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

Sec. 39. *Share of a Nonresident Estate, Trust or Beneficiary in Income from West Virginia Sources.*—(a) General.—The share of a nonresident estate or trust under paragraph (1) of subsection (a) of section thirty-eight, and the share of a nonresident beneficiary of any estate or trust under subsection (a) of section thirty-two, in estate or trust income, gain, loss and deduction from West Virginia sources shall be determined as follows:

(1) Items of Distributable Net Income from West Virginia Sources.—There shall be determined the items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which enter into the definition of federal distributable net income of the estate or trust for the taxable year. Such determination of source shall be made in accordance with the applicable rules of sections thirty-two and thirty-five as in the case of a nonresident individual.

(2) Addition or Subtraction of Modifications.—There shall be added or subtracted (as the case may be) the modifications described in subsections (b) and (c) of section twelve, to the extent relating to items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which enter into the definition of federal distributable net income. No modification shall be made

under this subsection which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(3) Allocation Among Estate or Trust and Beneficiaries.—(A) The amounts determined under paragraphs (1) and (2) shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income.

(B) The amounts so allocated shall have the same character under this article as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) Alternate Methods of Determining Shares.—(1) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of this allocation, resident beneficiaries) in the net amount determined under paragraphs (1) and (2) of subsection (a) shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amounts shall be allocated to the estate or trust.

(2) The tax commissioner may, on application, authorize the use of such other methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

Sec. 40. *Credit for Income Tax of State of Residence.*—(a) General.—A nonresident shall be allowed a credit against the tax otherwise due under this article for any

income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation.—The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions. — No credit shall be allowed under this section unless the jurisdiction of which the taxpayer is a resident:

(1) Grants a substantially similar credit to residents of this state, or

(2) Imposes an income tax on its own residents with respect to income derived from this state, and exempts from income tax the income of residents of this state.

(d) Definition.—For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual.

## PART IV. RETURNS, DECLARATIONS, AND PAYMENT OF TAX

Sec. 51. *Returns and Liabilities.*— (a) General.—On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West

Virginia adjusted gross income for the taxable year, determined under section twelve in excess of the sum of his West Virginia personal exemptions;

(2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two, in excess of the sum of his West Virginia personal exemptions; and

(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) Husband and Wife.—(1) If the federal income tax liability of husband or wife is determined on a separate federal return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in paragraph (3) of this subsection (b) are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several, or

(B) They may elect to file separate West Virginia income tax returns on a single form if they comply with the requirements of the tax commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the tax commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents.—The return for any deceased indi-

vidual shall be made and filed by his executor, administrator, or other person charged with his property.

(d) Individuals under a Disability.—The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and Trusts.—The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint Fiduciaries.—If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a Debt.—Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the state of West Virginia.

(h) Cross Reference.—For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight.

Sec. 52. *Time and Place for Filing Returns and Paying Tax.*—A person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon 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). The tax commissioner shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this article and for payment of any tax.

Sec. 53. *Signing of Returns and Other Documents.*—(a) General.—Any return, declaration, statement or other document required to be made pursuant to this article shall be signed in accordance with regulations or instructions prescribed by the tax commissioner. The fact that an individual's name is signed to a return, declaration, statement, or other document shall be prima facie evi-

dence for all purposes that the return, declaration, statement or other document was actually signed by him.

(b) Partnerships.—Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications.—The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

Sec. 54. *Change of Resident Status during Year.*—(a) General.—If an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and one return as a nonresident for the portion of the year during which he is a nonresident, subject to such exceptions as the tax commissioner may prescribe by regulation.

(b) West Virginia Taxable Income as Resident and Nonresident.—The West Virginia taxable income for the portion of the year during which he is a resident shall be determined under Part II of this article as if his taxable year for federal income tax purposes were limited to the period of his resident status. The West Virginia taxable income for the remaining portion of his taxable year during which he is a nonresident shall be determined under Part III of this article as if his taxable year for federal income tax purposes were limited to the period of his nonresident status.

(c) Special Accruals.—(1) If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status

any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for West Virginia income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(2) If an individual changes his status from nonresident to resident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, other than items derived from or connected with West Virginia sources, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subsection shall be taken into account in determining West Virginia adjusted gross income or the West Virginia itemized deduction for any subsequent taxable period.

(4) The accruals under this subsection shall not be required if the individual files with the tax commissioner a bond or other security acceptable to the tax commissioner, conditioned upon the inclusion of amounts accruable under this subsection in West Virginia adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status.

(d) Minimum Tax.—Where two returns are required under this section, the total of the taxes due thereon shall not be less than would be due if the West Virginia taxable

incomes reportable on the two returns were includible in one return.

(e) Prorations.—Where two returns are required under this section, the West Virginia standard deduction allowable under sections fourteen and thirty-four, the West Virginia personal exemptions allowable under sections sixteen and thirty-six shall be prorated, under regulations of the tax commissioner, between the two returns to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident.

Sec. 55. *Declarations of Estimated Tax.*—(a) Requirement of Declaration.—Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by regulations or instructions, if his West Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hundred dollars plus the sum of the West Virginia personal exemptions to which he is entitled.

(b) Definition of Estimated Tax.—The term "estimated tax" means the amount which an individual estimates to be his income tax under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Joint Declaration of Husband and Wife.—A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but husband and wife elect to determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Time for Filing Declaration.—A declaration of estimated tax of an individual other than a farmer shall be filed on or before the fifteenth day of April of the tax-

able year, except that if the requirements of subsection (a) are first met:

(1) After the first day of April and before the second day of June of the taxable year, the declaration shall be filed on or before the fifteenth day of June, or

(2) After the first day of June and before the second day of September of the taxable year, the declaration shall be filed on or before the fifteenth day of September, or

(3) After the first day of September of the taxable year, the declaration shall be filed on or before the fifteenth day of January of the succeeding year.

(e) Declaration of Estimated Tax by a Farmer.—A declaration of estimated tax of an individual having an estimated West Virginia adjusted gross income from farming for the taxable year which is at least two thirds of his total estimated West Virginia adjusted gross income for the taxable year may be filed at any time on or before the fifteenth day of January of the succeeding year, in lieu of the time otherwise prescribed.

(f) Declaration of Estimated Tax of Forty Dollars or Less.—A declaration of estimated tax of an individual having a total estimated tax for the taxable year of forty dollars or less may be filed at any time on or before the fifteenth day of January of the succeeding year under regulations of the tax commissioner.

(g) Amendments of Declaration.—An individual may amend a declaration under regulations of the tax commissioner.

(h) Return as Declaration or Amendment.—If on or before the fifteenth day of February of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before the fifteenth day of January.

(2) Such return, if filed on or before the fifteenth day of January, shall be considered an amendment permitted

by subsection (g) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(i) Fiscal Year.—This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) Short Taxable Year.—An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the tax commissioner.

(k) Declaration for Individual under a Disability.—The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

Sec. 56. *Payments of Estimated Tax.*—(a) General.—The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before the fifteenth day of April of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following fifteenth day of June, fifteenth day of September, and fifteenth day of January, respectively.

(2) If the declaration is filed after the fifteenth day of April and not after the fifteenth day of June of the taxable year, and is not required to be filed on or before the fifteenth day of April of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following fifteenth day of September and fifteenth day of January, respectively.

(3) If the declaration is filed after the fifteenth day of June and not after the fifteenth day of September of the

taxable year, and is not required to be filed on or before the fifteenth day of June of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of January.

(4) If the declaration is filed after the fifteenth day of September of the taxable year, and is not required to be filed on or before the fifteenth day of September of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Farmers.—If an individual referred to in section fifty-five (e) (relating to income from farming) makes a declaration of estimated tax after the fifteenth day of September of the taxable year and on or before the following fifteenth day of January, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amendments of Declaration.—If any amendment of a declaration is filed, the remaining installments, if any, shall be rateably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after the fifteenth day of September of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) 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.

(e) Fiscal Year.—This section shall apply to a taxable year other than a calendar year by the substitution of the

months of such fiscal year for the corresponding months specified in this section.

(f) Installments Paid in Advance.—An individual may elect to pay any installment of his estimated tax prior to the date prescribed for its payment.

Sec. 57. *Extensions of Time.*—(a) General.—The tax commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension shall exceed six months.

(b) Amount Determined as Deficiency.—The tax commissioner may, under regulations, extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this subsection may be granted only where it is established to the satisfaction of the tax commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to intentional disregard of rules and regulations or to fraud.

(c) Claims in Bankruptcy or Receivership Proceedings.—Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

(d) Furnishing of Security.—If any extension of time is granted for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the tax commissioner may require.

Sec. 58. *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 under this article for tax or for collection of tax.

(b) Partnerships.—Every partnership having a resident partner or having any income derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commissioner may by regulations and instructions prescribe.

(c) Information at Source.—The tax commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before the twenty-eighth day of February of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this article. Such returns may be required of any person, including lessees or mortgagors 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. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) 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.

Sec. 59. *Report of Change in Federal Taxable Income.*—If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a re-negotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or re-negotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the tax commissioner may require. The tax commissioner may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

Sec. 60. *Change of Election.*—Any election expressly authorized by this article may be changed on such terms and conditions as the tax commissioner may prescribe by regulation.

## PART V. WITHHOLDING OF TAX

Sec. 71. *Requirement of Withholding Tax from Wages.*—(a) General.—Every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year.

The method of determining the amount to be withheld shall be prescribed by regulations of the tax commissioner, with due regard to the West Virginia withholding exemptions of the employee; such method for the year one thousand nine hundred sixty-one, shall prescribe rates of withholding estimated by the tax commissioner to result in the withholding during the portion of said year during which withholding is in effect of an amount substantially equivalent to the tax due for the entire year one thousand nine hundred sixty-one. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) Withholding Exemptions.—For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) The amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or a nonresident.

(c) Exception for Certain Nonresidents.—If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

Sec. 72. *Information Statement for Employee.*—Every employer required to deduct and withhold tax under this article from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemp-

tion, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before the fifteenth day of February of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the date on which the last payment of the wages is made, a written statement as prescribed by the tax commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the tax commissioner shall prescribe.

Sec. 73. *Credit for Tax Withheld.*—Wages upon which tax is required to be withheld shall be taxable under this article as if no withholding were required, but any amount of tax actually deducted and withheld under this article in any calendar year shall be deemed to have been paid to the tax commissioner on behalf of the person from whom withheld, and such persons shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commissioner.

Sec. 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; but the tax commissioner may, by regulation, provide that every such employer shall on or before the fifteenth day of each month pay over to the tax commissioner, or a depository designated by the tax commissioner, the taxes so required to be deducted and withheld if such taxes aggregate one hundred dollars or more for the preceding calendar month. 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. 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) 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.

Sec. 75. *Employer's Liability for Withheld Taxes.*—Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. To the extent not inconsistent with the provisions of this article, all the provisions of sections eighty to ninety-three of this article relating to assessment and collection of taxes, and to penalties, additions to tax, and interest in respect thereto, shall apply to every employer required to withhold tax under this article. For such purposes, any amount required to be withheld and paid over to the tax commissioner shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this article shall be held to be a special fund in trust for the tax commissioner. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the tax commissioner in compliance or in intended compliance with this article.

Sec. 76. *Employer's Failure to Withhold.*—If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited

is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

## PART VI. PROCEDURE AND ADMINISTRATION

Sec. 80. *General Provisions.*—(a) Regulations.—The tax commissioner shall administer and enforce the tax herein imposed and shall issue all needful regulations, rules and interpretations thereof. All regulations, rules and interpretations issued by the tax commissioner shall be filed with the secretary of state of West Virginia as provided in section three, article two, chapter five of this code: *Provided,* That all such regulations, rules and interpretations originally issued by the tax commissioner during the year one thousand nine hundred sixty-one shall take effect immediately upon the filing of copies thereof in the office of the secretary of state.

(b) Investigations.—The tax commissioner, for the purpose of ascertaining the correctness of any returns or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or cause to be examined, by any agent or any representative designated by the tax commissioner, any books, papers, records or memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge in the premises and may take testimony and may require material proof with power to administer oath to such person or persons.

(c) Returns by Tax Commissioner.—If any taxpayer fails to file a return at the time required by law or by regulation made under authority of law, the tax commissioner may proceed to make a return from any information available.

(d) Secrecy of Returns.—Except when required in an official investigation or proceedings in court involving taxes payable under this article and except as provided in subsection (e) of this section, it shall be unlawful for

any officer or employee of the state to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by this article or any regulation of the tax commissioner issued hereunder.

(e) Reciprocal Exchange.—The tax commissioner may permit the proper officer of the United States or any state, territory or political subdivision of the United States, or his authorized representative, to inspect reports, declarations or returns filed with the tax commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the tax commissioner or to the attorney general of this state. Subsection (d) of this section shall not be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof.

Sec. 81. *Assessment.*—(a) Taxes Shown on Return.—The tax commissioner shall assess all taxes determined by the taxpayer or the tax commissioner to be due as shown by any return filed under this article and may at any time within the period prescribed for assessment make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) Assessment of Deficiencies.—Whenever the tax commissioner shall determine that any tax due under this article has not been paid in full, the tax commissioner shall make an assessment against the taxpayer of such deficiency in tax, addition to tax, interest or penalties as he may find to be due, and shall give the taxpayer written notice of such assessment.

(c) Abatement of Assessments.—The tax commissioner may abate in whole or in part any assessment which he shall determine to be erroneous.

Sec. 82. *Deficiency Procedure.*—(a) Informal Proceedings.—Prior to assessing a deficiency as provided in section eighty-one, the tax commissioner may notify the tax-

payer in writing that he proposes to assess a deficiency and afford the taxpayer in person or by his representative an opportunity to be heard with respect to the proposed deficiency, either by the filing of a written protest against the proposed deficiency or by informal conference, or both.

(b) Judicial Review of Proposed Assessments.—At least ninety days prior to assessing a deficiency (except a deficiency occurring as the result of a mathematical error on the face of the return), the tax commissioner shall notify the taxpayer in writing of the amount of the deficiency to be assessed and the reasons therefor. Such notice shall advise the taxpayer that the assessment will be made unless the taxpayer within said ninety-day period either pays the amount to be assessed or commences suit for a declaratory judgment or decree as to his liability therefor. If the taxpayer neither pays the amount of the deficiency proposed nor commences a suit for a declaratory judgment or decree within said ninety-day period, the assessment shall be made. A taxpayer who has been notified of the determination of a deficiency under this article may apply to a circuit court for a declaratory judgment or decree under article thirteen, chapter fifty-five of this code. In the case of a resident taxpayer, application may be made to the circuit court of the county of the taxpayer's residence. In the case of a nonresident taxpayer, such application may be made to the circuit court of the county in which the taxpayer is employed, or if the taxpayer is not employed within the state, to the circuit court of the county in which income-producing property of the taxpayer is situated. In all other cases, such applications shall be made to the circuit court of the county in which the seat of the state government is located. No assessment shall be made of any proposed deficiency while proceedings to secure a declaratory judgment or decree are pending. In any such proceedings all questions relating to the liability of the taxpayer for the taxable year or years shall be determined. The tax commissioner shall have the burden of proof on any issue raised by him subsequent to the commencement of the proceedings.

Sec. 83. *Collection.*—The tax commissioner shall collect

the taxes, additions to tax, interest and penalties imposed by this article. In addition to all other remedies available for the collection of debts due the state, the tax commissioner may proceed by foreclosure of the lien provided in section eighty-four or by distraint and sale under section eighty-five. Every assessment made by the tax commissioner under this article shall constitute a judgment and may be collected as judgments are collected.

Sec. 84. *Lien.*—If any person liable to pay any tax assessed under this article, neglects or refuses to pay the same within ten days after written notice of assessment of the same, the amount of said tax, including any additions to tax, interest and penalties, together with any costs that may accrue, shall become a lien in favor of the state of West Virginia upon all property and rights to property whether real or personal belonging to such person.

The lien imposed by this section shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed shall be satisfied or becomes unenforceable by reason of lapse of time.

The lien imposed by this section shall be subject to the restrictions and conditions embodied in article ten-c, chapter thirty-eight of this code and any amendment made or which may hereafter be made thereto.

The tax commissioner, pursuant to regulations prescribed by him, may issue his certificate of release of any lien imposed pursuant to this section upon finding that the liability for the amount assessed has been fully satisfied or has become legally unenforceable or is adequately secured by bond or other security.

Sec. 85. *Distraint.*—If any tax imposed by this article required to be paid at the time a return is filed or any portion of such tax be not so paid or if an assessment of the tax be made by the tax commissioner and notice thereof be given as required by this article or if any installment of a tax be not paid within thirty days after the same becomes due, the tax commissioner may issue a warrant directed to the sheriff of any county of the state com-

manding him to levy upon and sell the real and personal property of the person owing the same found within his county for the payment of the amount thereof with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the tax commissioner and pay to him the money collected by virtue thereof by a time to be therein specified and not less than sixty days from the date of such warrant. In case the tax commissioner shall find that the collection of a tax would be jeopardized by the delay of thirty days as above provided, he may issue his warrant within said period. The sheriff shall within five days after the receipt of the warrant file with the clerk of the county court a copy thereof and thereupon the clerk shall enter in the judgment docket the name of the taxpayer mentioned in the warrant and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commissioner, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the tax commissioner and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the tax commissioner shall have the same remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.

Sec. 86. *Overpayments, Credits and Refunds.*— (a) Refunding of Overpayments.—In the case of any overpayment of any tax, addition to tax, interest or penalties imposed by this article, whether by reason of error on the part of the taxpayer, excessive withholding, or an erroneous assessment of tax, the tax commissioner shall refund the amount of the overpayment to the taxpayer. If any overpayment is not refunded within six months from the date a claim for the refund thereof is filed by the taxpayer, interest shall be paid upon the amount of such overpayment at the rate of six per centum from the date of the filing of the claim for the refund thereof. The tax commissioner may prescribe by regulation the form and content of a claim for refund.

(b) Credits.—At the election of the taxpayer, the amount of any overpayment may be applied by the taxpayer as a credit against his liability for taxes under this article for the subsequent year.

(c) Petitions for Refund.—In the event that any overpayment of tax, addition to tax, interest or penalty paid under this article is not refunded or credited pursuant to subsection (a) or (b) of this section within six months after the filing of a claim for the refund thereof, or in the event such claim is denied by the tax commissioner, the taxpayer may file a petition for refund pursuant to section two-a, article one, chapter eleven of this code. Notwithstanding the period of limitations prescribed in said section, a taxpayer may file a petition for refund at the latest within six months after a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability.

Sec. 87. *Limitations on Assessment.*— (a) General Rule.—The amount of any tax imposed by this article shall be assessed within three years after the due date of the return: *Provided,* That in the case of a false or fraudulent return filed with the intent to evade tax or in the case no return is filed, the tax may be assessed or a proceeding in court for the collection of such tax may be begun at any time: *Provided further,* That in the event the tax commis-

sioner notifies the taxpayer of a deficiency pursuant to section eighty-two (b) of this article, within three years after the due date of the return, the deficiency may be assessed within ninety days from the date of such notice or from the final determination of any declaratory judgment proceeding brought by the taxpayer.

(b) Extension by Agreement.—The tax commissioner and the taxpayer may by a written agreement extend the period within which the tax may be assessed in accordance with regulations promulgated by the state tax commissioner.

(c) Deficiency in Federal Tax.—In the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation upon assessment of a deficiency reflecting said final determinations in the tax imposed by this article shall not expire until ninety days after the tax commissioner is advised of the determination by the taxpayer as provided in section fifty-nine.

Sec. 88. *Limitations on Collection.*—No proceeding shall be maintained in any court to collect any tax imposed by this article or to subject any property to sale under the lien provided for in section eighty-four of this article after the expiration of the period of limitation on assessment provided in section eighty-seven, unless the tax was assessed prior to the expiration of such period.

Sec. 89. *Interest.*—Taxes imposed by this article, if not paid when due, shall bear interest at the rate of six per centum per annum from the due date of the return. Each assessment made by the tax commissioner shall bear interest at the rate of six per centum per annum from the date thereof if not paid within ten days from receipt of notice thereof by the taxpayer.

Sec. 90. *Additions to Tax.*—(a) Delinquency.—In the case of any failure to make or file a return or whenever the full amount of the tax or any portion or deficiency thereof has not been paid, as required by this article, unless it be shown that such failure be due to reasonable

cause and not due to willful neglect there shall be added to the tax five per centum if a failure is not for more than thirty days with an additional five per centum for each additional thirty days or fraction thereof during which failure shall continue not to exceed twenty-five per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect by the tax commissioner in which case the amount so added shall be collected in the same manner as the tax: *Provided,* That in all cases of delinquency, interest shall be assessed.

(b) Fraud.—In the case of the filing of any false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, there shall be added to the tax an amount equal to fifty per centum thereof which shall be in lieu of the addition to tax provided for in subsection (a) of this section. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the tax commissioner.

Sec. 91. *Penalties.*—(a) Failure to Collect, Account for, and Pay over Tax, or Attempt to Defeat or Evade Tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall, in addition to other penalties provided by law, be liable to a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over.

(b) Fraudulent Statement or Failure to Furnish Statement to Employee.—Any person required under the provisions of section seventy-two of this article to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by said section, or regulations pre-

scribed thereunder, shall for each such failure be subject to a money penalty of fifty dollars.

(c) Person Defined.—The term "person" as used in this section includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

(d) Collection of Penalty.—Any money penalty may be collected in the same way as the tax imposed by this article.

Sec. 92. *Crimes.*—(a) Failure to File Returns, Submit Information, or Pay Tax.—Any person required under this article to pay any tax or estimated tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, withholding, or collection of any tax or estimated tax imposed by this article, who, at the time or times required by law, willfully fails to pay such tax or estimated tax, make such return or declaration, keep such records, or supply such information, or willfully furnishes false and fraudulent information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Failure to Collect and Pay over Tax, or Attempt to Defeat or Evade Tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or withhold or truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) False Returns or Certification.—Any person who

willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, or who willfully makes a certification (as defined in subsection (c) of section fifty-three of this article) that is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(d) Person Defined.—The term "person" as used in this section includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

(e) State Officers or Employees.—Any officer or employee of the state who violates section eighty (d) of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(f) Prima Facie Evidence.—The certificate of the tax commissioner signed by his own hand to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this article shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

(g) Venue.—The tax commissioner or any other public officer initiating proceedings against any person under this section shall do so in the county wherein such person resides, or if such person be a nonresident, then in the county wherein such nonresident is employed, or, if such nonresident is not employed in this state then in the county in which the seat of the state government is located.

Sec. 93. *Disposition of Revenue.*—Of the revenue collected under this article the state treasurer shall retain in his hands such amount as the tax commissioner may determine to be necessary for refunds to which taxpayers

shall be entitled under this article. The state treasurer shall, after reserving such refund fund, on or before the tenth day of each month, pay all interest, penalties and taxes collected under this article and remaining to his credit in banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury.

Sec. 94. *Effective Date; Severability.*—(a) Effective Date.—The provisions of this article shall take effect immediately. Such provisions shall apply to all taxable years ending on or after the thirty-first day of December, one thousand nine hundred sixty-one, and to the entirety of each such year, including that part which has elapsed prior to the effective date of this article. Such provisions shall also apply to taxable years beginning prior to and ending in the year one thousand nine hundred sixty-one, but the tax imposed for any such year shall be one twelfth of a tax for the full year multiplied by the number of months elapsed from the first day of January, one thousand nine hundred sixty-one, until the end of the taxable year.

(b) 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.

# CHAPTER 156

**(House Bill No. 419—By Mr. Speaker, Mr. Singleton)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, and chapter twenty-six, acts of the Legis-

lature, regular session, one thousand nine hundred sixty, and to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, numbered and designated article twenty-two, relating to the imposition of a state excise tax upon the privilege of transferring real property and providing penalties for violations thereof.

## Article 22. Excise Tax on Privilege of Transferring Real Property.

**Section**

1. Definitions.
2. Rate of tax; when and by whom payable.
3. Payment from proceeds of judicial sale.
4. Documentary stamps; affixing; cancellation; declaration of value.
5. Commissioner to provide for sale of stamps; rules and regulations.
6. Duties of clerk; declaration of consideration or value; remittance and use of proceeds.
7. Failure to affix stamps.
8. Penalty for recording without documentary stamp; effect.
9. Unlawful acts; penalty.
10. Erroneous collections; refund.

*Be it enacted by the Legislature of West Virginia:*

That chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, and chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty, be, and the same are, hereby repealed; and that chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be, and the same is, hereby amended by adding thereto a new article, designated and numbered article twenty-two, to read as follows:

Section 1. *Definitions.*—The following words when used in this chapter shall have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

"Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons.

"Corporation" means a corporation or joint-stock asso-

ciation, organized under the laws of this state, the United States or any other state, territory, or foreign country, or dependency, including, but not limited to, banking institutions.

"Commissioner" means the state tax commissioner.

"Document" means any deed, or instrument or writing whereby any real property within this state or any interest therein shall be granted, conveyed or otherwise transferred to the grantee, purchaser, or any other person; but does not include wills, transfer of real property where the value of the property transferred is one hundred dollars or less, testamentary or inter vivos trusts, deeds of partition, deeds made pursuant to mergers of corporations, deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock, leases, transfers between husband and wife, between parent and child without consideration, transfers without consideration between a principal and straw party for any purpose, transfers to or between voluntary charitable or educational associations or trustees thereof and like nonprofit corporations having the same or similar purposes, quitclaim or corrective deeds without consideration, transfers to or from the United States, the state of West Virginia, or to or from any of their instrumentalities, agencies or political subdivisions, by gift, dedication, deed or condemnation proceedings, or mortgages or deeds of trust given as security for a debt.

"Person" means every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

"Transaction" means the delivering, accepting, or presenting for recording of a document.

"Value" means in the case of any document not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens assumed; in the case of a gift, or any other document without consideration, the actual monetary value of the

property conveyed or transferred. In the event any document includes real property or any interest therein lying outside the state of West Virginia or includes personal property, value shall be the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value as herein defined shall be stated in the declaration of consideration or value provided for in section six hereof.

Sec. 2. *Rate of Tax; When and by Whom Payable.*—Every person who delivers, accepts or presents for recording any document, or in whose behalf any document is delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of one dollar and ten cents for each five hundred dollars value or fraction thereof as represented by such document as defined in section one hereof, which state tax shall be payable at the time of delivery, acceptance or presenting for recording of such document: *Provided, however,* That only one such state tax shall be paid on any one document; and the same shall be paid by the grantor therein unless the grantee accepts the same without such tax having been paid, in which event such tax shall be paid by the grantee: *Provided further,* That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee.

Sec. 3. *Payment from Proceeds of Judicial Sale.*—The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, commissioner, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith.

Sec. 4. *Documentary Stamps; Affixing; Cancellation; Declaration of Value.*—The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person executing, delivering or presenting for recording such document. Each stamp shall be affixed in such manner that its removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: *Provided,* That the commissioner may prescribe such other method of cancellation as he may deem expedient.

Sec. 5. *Commissioner to Provide for Sale of Stamps; Rules and Regulations.*—The commissioner shall prescribe, prepare and furnish adhesive stamps of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article, to the clerks of the various county courts whose duty it shall be to offer said stamps for sale.

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

(a) The method and means to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.

(b) The denominations and sale of stamps.

(c) Any other matter or thing pertaining to the administration and enforcement of the provisions of this article.

Sec. 6. *Duties of Clerk; Declaration of Consideration or Value; Remittance and Use of Proceeds.*—When any instrument on which the tax as herein provided is imposed is offered for recordation, the clerk of the county court shall ascertain and compute the amount of the tax due thereon and shall ascertain if stamps in the proper amount are attached thereto as a prerequisite to acceptance of the instrument for recordation.

When offered for recording on or after the first day of July, one thousand nine hundred fifty-nine, each instru-

ment subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed. Such declaration may be in the following language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property conveyed by the document to which this declaration is appended is $.....; or,

(b) The true and actual value of the property transferred by the document to which this declaration is appended is, to the best of my knowledge and belief $ .....; or,

(c) The proportion of all the property included in the document to which this declaration is appended which is real property located in West Virginia is .....%; the value of all the property $.....; the value of real estate in West Virginia is $.....; or,

(d) This deed conveys real estate located in more than one county in West Virginia; the total consideration paid for, or actual cash value of, all the real estate located in West Virginia conveyed by this document is $.....; and documentary stamps showing payment of all of the excise tax on all of said real estate are attached to an executed counterpart of this deed recorded in ..... county.

Given under my hand this ..... day of ....., 19.....

Signature.....

(Indicate whether grantor, grantee, or other interest in conveyance).

.....

Address "

Such declaration shall be considered by the clerk in ascertaining the correct number of stamps required, and if declaration (d) is used no stamps shall be required on the duplicate deed to which it is attached and such dupli-

cate deed shall be admitted to record, and when recorded shall have the same effect for all purposes as if stamps were attached thereto.

The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps to the state auditor in the manner provided by law which shall be credited to the state general revenue fund.

Sec. 7. *Failure to Affix Stamps.*—No document upon which a tax is imposed by this article shall be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this state, nor shall the same be recorded in the office of any clerk of any county court of this state, unless or until a documentary stamp or stamps as provided in this article have been affixed thereto, but if recorded without stamps or without the proper amount of stamps, said document shall nevertheless be duly of record except that no copy thereof may be admitted in evidence until the proper amount of stamps has been placed on the original or such copy.

Sec. 8. *Penalty for Recording Without Documentary Stamp; Effect.*—Any clerk who shall record any document upon which a tax is imposed by this article without the proper documentary stamp or stamps affixed thereto as required by this article as is indicated in such document or accompanying declaration shall, upon conviction in a court of competent jurisdiction, be fined fifty dollars.

Failure of the clerk to require the attachment of the proper number of stamps shall not affect the recordability of the instrument, if otherwise recordable and regularly recorded. The failure to pay this tax and to attach the required stamps shall not be or constitute a lien or claim against the property conveyed by the recorded instrument.

Sec. 9. *Unlawful Acts; Penalty.*—It shall be unlawful for any person to:

(1) Knowingly make a false statement in the declaration provided for in section six of this article; or,

(2) Fraudulently affix to any document upon which tax is imposed by this article any previously used docu-

mentary stamp which has been cut, torn or removed from any other document upon which tax is imposed by this article, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate or other article; or,

(3) Wilfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any person for use, or knowingly use the same; or,

(4) Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this article: *Provided,* That the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause; or,

(5) Knowingly or wilfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than five years, or both, in the discretion of the court.

Sec. 10. *Erroneous Collections; Refund.*—Any person who may have been required to pay the tax provided for in this article because of any mistake of law or fact or because the tax herein provided for was improperly collected may apply for a refund thereof either to the county clerk receiving such payment, or to the state auditor.

# CHAPTER 157

**(House Bill No. 284—By Mr. Boiarsky)**

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article twenty-three, chapter nineteen of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, relating to taxes to be paid by and the financial responsibility of licensees conducting horse racing within the state, and to the regulation and control of horse racing.

## Article 23. Horse Racing.

Section

7. Per diem tax on tracks; tax on pool contribution; how taxes paid; financial responsibility of licensees.
9. Only pari-mutuel system of wagering permitted; commission of licensee on pari-mutuel pools; minors; auditor.

*Be it enacted by the Legislature of West Virginia:*

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

Section 7. *Per Diem Tax on Tracks; Tax on Pool Contribution; How Taxes Paid; Financial Responsibility of Licensees.*—A person operating any horse race track one mile or more in length shall pay each day upon which horse races are run, a license tax of five hundred dollars; any race track less than one mile in length shall pay for each day upon which horse races are run a license tax of two hundred fifty dollars: *Provided,* That the per diem tax shall not apply to horse shows or county fairs at which racing is conducted for not more than six days. Any person licensed by the commission to conduct racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the afore-mentioned tax, pay to the racing commission of the state of West Virginia a tax of six per cent of the total contribution to all pari-mutuel pools conducted or made at any and every race meeting licensed under this article: *Provided, however,* That on and after the first day of July, one thousand nine hundred sixty-two, said tax shall be reduced to five per cent of said contributions. Such payments shall be made to the commission or its agent after the last race on each day and every day of each and every race meeting, and

shall be made from all contributions to all pari-mutuel pools to each and every race of the day, which payment shall be deposited with the treasurer of the state of West Virginia to the credit of the general revenue fund.

Any person making application for a license for a meeting to be held on any track in the state of West Virginia, shall, when required, furnish satisfactory evidence to the commission of his or their ability to pay license fees, purses, salaries of officials and other expenses incident to the meeting. In the event the applicant is not able to furnish such satisfactory evidence of his or their ability to pay such expenses and fees, then the commission may require bond or other adequate security for not more than four successive days before such license is issued.

Sec. 9. *Only Pari-Mutuel System of Wagering Permitted; Commission of Licensee on Pari-Mutuel Pools; Minors; Auditor.*—A person licensed by the commission shall permit only the pari-mutuel system of wagering within the enclosure at which horse racing is held, and the commission deducted by the licensee from the said pari-mutuel pools shall not exceed fifteen per cent of the total pari-mutuel pools for the day, including the license fee of the gross amount handled hereinbefore provided for, plus the breakage, which shall be made and calculated to the dime. Such breakage shall be retained by the licensee: *Provided, however,* That on and after the first day of July, one thousand nine hundred sixty-two, the said commission so deducted shall not exceed fourteen per cent.

No holder of such license shall permit or allow any person under the age of twenty-one years to wager thereat, knowing or having reason to believe that such person is under the age of twenty-one years. Any violation of this paragraph shall be punishable by revocation of license.

An auditor of pari-mutuel pools shall be appointed by the commission and shall be compensated by said commission. He shall be an experienced public accountant. Said auditor shall have free access to the space or enclosure where the pari-mutuel pool system of wagering is conducted or calculated at any race meeting to which he shall be assigned for the purpose of ascertaining whether or not said licensee is

retaining only the commission provided for in said section. He shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel pool system of wagering, and shall report to the commission in writing, under oath, whether or not the licensee has retained any commissions in excess of those permitted under this article.

# CHAPTER 158

**(Senate Bill No. 126—By Mr. Davis and Mr. Handlan)**

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, 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 two-b, relating to the investment of trust funds by boards of trustees or fiduciaries of any university, college, seminary or other institution of learning and of any hospital, church or other eleemosynary or charitable institution.

**Article 6. Investments by Fiduciaries.**

**Section**

2-b. Circumstances under which certain fiduciaries may commingle or consolidate trust funds.

*Be it enacted by the Legislature of West Virginia:*

That article six, 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 two-b, to read as follows:

Section 2-b. *Circumstances under Which Certain Fiduciaries May Commingle or Consolidate Trust Funds.*— Whenever any board of trustees or any fiduciary or co-fiduciary for any institution or association designated in section two-a of this article holds funds for investment

for one or more purposes other than the general objectives of such institution or association under the terms of more than one trust, such funds, or any part thereof, may, for purposes of collective investment, by such board of trustees or such fiduciary or co-fiduciary, be commingled or consolidated into and treated as one trust fund. If any bank or trust company qualified to act as fiduciary in this state be such a fiduciary or co-fiduciary, the funds of such commingled or consolidated trust fund may be invested in interests in any common trust fund established by such bank or trust company so qualified under the provisions of section six of this article, and, provided such common trust fund be invested in keeping with the standards for investments by fiduciaries provided by section two-a of this article, the investments of such trust fund need not be limited to securities described in subdivisions (a) to (g), inclusive, of section two of this article. If funds of any such commingled or consolidated trust fund be invested in interests in any such common trust fund, the commingled or consolidated trust fund shall be treated as a single participant in the common trust fund, but whether investment be in interests in a common trust fund or in other property, each individual trust the funds of which shall have been commingled or consolidated for purposes of investment shall be entitled to such share in the value of any investment of the commingled or consolidated fund and in the income thereof as the value of its contribution to the commingled or consolidated fund bears to the total value of the funds so commingled or consolidated as one trust fund for purposes of collective investment.

# CHAPTER 159

**(House Bill No. 281—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)**

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto four new sections, designated sections eight, nine, ten and eleven, relating to devises and bequests made by will to the trustee or trustees of an existing trust or a trust subsequently established by the testator or others by adopting the Uniform Testamentary Additions to Trusts Act.

**Article 3. Provisions as to Construction.**

Section

8. Testamentary additions to trusts; uniform act.
9. Same; effect on prior wills.
10. Same; uniformity of interpretation.
11. Same; short title.

*Be it enacted by the Legislature of West Virginia:*

That article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto four new sections, designated sections eight, nine, ten and eleven, to read as follows:

Section 8. *Testamentary Additions to Trusts; Uniform Act.*—A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed (a) shall not be deemed to be held under a testamentary trust of the testator but shall be-

come a part of the trust to which it is given and (b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse.

Sec. 9. *Same; Effect on Prior Wills.*—Sections eight through eleven of this article shall be effective with respect to any devise or bequest described in section eight made by the will of a testator dying after the effective date of this act whose will shall have been executed prior to such date.

Sec. 10. *Same; Uniformity of Interpretation.*—Sections eight through eleven of this article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 11. *Same; Short Title.*—Sections eight through eleven of this article may be cited as the "Uniform Testamentary Additions to Trusts Act."

# CHAPTER 160

**(Senate Bill No. 210—By Mr. Carson, Mr. President)**

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, six-a, eight-c, nine, ten, fifteen and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to workmen's compensation.

**Article 4. Disability and Death Benefits.**

**Section**

3. Disbursements for medicine, hospital treatment, artificial limbs and other appliances; contract by employer with hospital prohibited.
6. Classification of disability benefits.
6-a. Stages of silicosis; benefits and mode of payment to employees and dependents.
8-c. Silicosis medical board; reports and distribution thereof; findings required of board; objection to findings; procedure thereon.
9. Physical and vocational rehabilitation.
10. Classification of death benefits; "dependents" defined.
15. Application for benefits; report of injuries by employer.
15-c. Nonmedical questions determined by commissioner on hearing of claim for occupational diseases other than silicosis.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by Employer with Hospital Prohibited.*—Except in case of silicosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required, but in no case to exceed the sum of twenty-four hundred dollars: *Provided, however,* That in exceptional cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of such amount, the commissioner may pay out of any available funds, such additional sum as may be necessary, not to exceed an additional sum of eight hundred dollars, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and

such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person or persons who have furnished such service, or who have advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within six months after the cessation of such treatment or the delivery of such appliances: *Provided, however,* That no payment hereunder shall be made unless such verified statement shows no other or additional charge for such treatment, appliance or device has been or will be made against any person, firm or corporation. Failure on the part of the doctor or hospital to submit to the commissioner within such six months' period bills for services rendered to an injured employee shall preclude collection thereof from the injured employee.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees, to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to his or its employees and shall not avail himself of any of the common law defenses mentioned in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars or undergo imprisonment not exceeding one year, or both.

Sec. 6. *Classification of Disability Benefits.*—Where compensation is due an employee under the provisions of this chapter for a personal injury other than first-stage

silicosis, such compensation shall be as provided in the following schedule:

(a) If the injury causes temporary total disability, the employee shall receive during the continuance thereof sixty-six and two-thirds per cent of his average weekly earnings, not to exceed a maximum of thirty-eight dollars a week nor to be less than a minimum of twenty-two dollars a week.

(b) Subdivision (a) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(c) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed and allowed as follows:

For permanent disability of from one per cent to eighty-four per cent, inclusive, sixty-six and two-thirds per cent of the average weekly earnings for a period to be computed on the basis of four weeks' compensation for each per cent of disability determined.

For a disability of eighty-five to one hundred per cent, sixty-six and two-thirds per cent of the average weekly earnings during the remainder of life.

(d) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (c) of this section:

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of fore part of foot shall be considered a thirty percent disability.

The loss of foot shall be considered a thirty-five percent disability.

The loss of leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks.

For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

(e) Should a claimant to whom has been made a permanent partial award of from one per cent to eighty-four per cent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chap-

ter, if any; such payment to be made in the same installments that would have been paid to claimant if living: *Provided, however,* That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(f) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one per cent to eighty-four per cent shall be in the same proportion and shall be computed and allowed by the commissioner.

(g) The percentage of all permanent disabilities other than those enumerated in subdivisions (c), (d), (e) and (f) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (c).

(h) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed a maximum of thirty-eight dollars a week nor to be less than a minimum of twenty-two dollars a week.

(i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (c). Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(j) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (c).

Sec. 6-a. *Stages of Silicosis; Benefits and Mode of Payment to Employees and Dependents.*—An employee shall, for the purpose hereof, be deemed to have silicosis: (1) In the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) In the advanced stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease.

Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be as provided in the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive one thousand dollars as compensation in full for silicosis that he has sustained as a result of and in the course of his employment, to be payable as a lump sum or in periodic installments in the discretion of the commissioner, which shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis, either to the compensation commissioner or against his employer, anything to the contrary in this chapter notwithstanding. (b) If the employee is suffering from silicosis in the advanced stage, the percentage of permanent disability shall be determined by the commissioner in accordance with the facts in the case and with the advice and recommendation of the silicosis medical board. Compensation shall be paid therefor in

the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (c), (e), (f), (g) and (h) of the preceding section: *Provided,* That the determination by the commissioner of the percentage of permanent disability and acceptance of the first payment on such award by the claimant shall cause the determination to become final and the claimant, except for the remainder due him under such original award shall not have the right to receive any or further compensation or make any claim because of silicosis irrespective of whether the employee thereafter continues in the same employment, either to the compensation commissioner or against the employer, anything to the contrary in this chapter notwithstanding: *Provided further,* That in no case shall an award for advanced silicosis be less than the compensation herein provided for first-stage silicosis. (c) If the employee dies from silicosis within six years from the date of his last injurious exposure to silicon dioxide dust in harmful quantities, the benefits shall be in the amounts and to the persons provided for in section ten of this article; as to such benefits, sections eleven to fourteen inclusive, of this article shall apply. (d) In cases of permanent disability or death due to silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), compensation shall be payable as for disability or death due to silicosis alone.

Sec. 8-c. *Silicosis Medical Board; Reports and Distribution Thereof; Findings Required of Board; Objection to Findings; Procedure Thereon.* — The silicosis medical board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

The findings and conclusions of the board shall set forth, among other things, the following:

(a) Whether or not the claimant or the deceased employee has contracted silicosis, and, if so, the stage thereof, and in all cases where silicosis is found in an advanced stage, the percentage of permanent disability resulting therefrom.

(b) If the claimant or the deceased employee has contracted such disease, whether or not the exposure in the employment was sufficient to have caused silicosis or to have perceptibly aggravated an existing silicosis.

(c) What, if any, physician appeared before the board on behalf of the claimant, and what, if any, X-rays were produced by or on behalf of the claimant, and what, if any, physician appeared before the board on behalf of the employer, and what, if any, X-rays were produced by or on behalf of the employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days of the mailing of such copy to him unless for good cause shown the commissioner extends such time, his objections thereto in writing, specifying the particular statements of the board's findings and conclusions to which he objects. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to support or controvert the findings and conclusions of the board shall be limited to examination

and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.

Sec. 9. *Physical and Vocational Rehabilitation.*—In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes, not, however, in any case, to exceed the sum of twelve hundred dollars. No payment, however, shall be made for such purposes as provided by this section unless authorized by the commissioner prior to the rendering of such treatment.

In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he is receiving any vocational rehabilitation or rehabilitative treatment that renders him totally disabled during the period thereof, be compensated on a temporary total disability basis for such period, unless he is being paid compensation under an award granted prior to the time such rehabilitation is authorized by the commissioner.

Sec. 10. *Classification of Death Benefits; "Dependent" Defined.*—In case a personal injury other than silicosis or other occupational disease, suffered by an employee in the course of and resulting from his employment, causes death within the period of six years and disability is continuous from date of such injury until date of death, or if death results from silicosis or from any other occupational disease within six years from the date of the last exposure to the hazard of silicon dioxide dust or to the other particular occupational hazard involved, as the case may be, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article.

(b) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be seventy-five dollars a month until death or remarriage of such widow or widower, and in addition twenty dollars a month for each child under eighteen years of age, to be paid until such child reaches such age, or, if an invalid child, twenty-five dollars a month, to continue as long as such child remains an invalid: *Provided, however,* That if such widow or invalid widower shall remarry within ten years from the date of the death of such employee, such widow or widower shall be paid at the time of remarriage twenty per cent of the amount that would be due for the period remaining between the date of such remarriage and the end of ten years from the date of death of such employee, and such widow or widower shall be advised in writing by the commissioner of his or her rights under this proviso at the time of making the original award: *Provided further,* That if upon investigation and hearing, as provided in article five of this chapter, it shall be ascertained that such widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or that the widow is living a life of prostitution, the commissioner shall stop the payments of the benefits herein provided to such widow or widower.

If the deceased employee be a widow or widower and leaves a child or children under the age of eighteen years, the payments shall be twenty-five dollars a month to each child until he or she reaches the age of eighteen years.

In all awards of compensation to children, unless otherwise provided herein, the award shall be until they reach the age of eighteen years or until their death prior thereto.

(c) If the deceased employee leaves no dependent widow or widower and leaves a wholly dependent father or mother, he or she shall be paid the sum of sixty dollars a month, payments to continue until death, and if there

be no widow or widower and both the father and mother are wholly dependent, then a joint award shall be made to the father and mother in the sum of sixty dollars a month until death.

Upon the death of either the father or mother in any case in which a joint award has been made to them, the full award of sixty dollars a month shall be paid to the survivor until his or her death.

(d) If the deceased employee leaves no dependent widow or widower or wholly dependent father or mother but there are other wholly dependent persons, as defined in subdivision (f) of this section, the payment shall be fifty dollars a month, to continue for six years after the death of the deceased, except as otherwise provided herein.

(e) If the deceased employee leaves no dependent widow or widower, child under eighteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be twenty dollars a month, to continue for such portion of the period of six years after the death, as the commissioner may determine, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b), (c), (d) and (e) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under eighteen years of age, invalid child or posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions: Stepchild under eighteen years of age, child under eighteen years of age legally adopted prior to the injury causing death, father, mother, grandfather or

grandmother, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; an invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.

Sec. 15. *Application for Benefits; Report of Injuries by Employer.*—To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for silicosis or other occupational disease, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within one year from and after the injury or death, as the case may be, and all proofs of dependency in fatal cases must likewise be filed with the commissioner within one year from and after the death. In case the employee is mentally or physically incapable of filing such application, it may be filed by his attorney or by a member of his family. It shall be the duty of every employer to report to the commissioner every injury sustained by any person in his employ. Such report shall be on forms prescribed by the commissioner and shall be made within sixty days from the date the employer first receives knowledge of such injury.

To entitle any employee to compensation for silicosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within two years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazard of silicon dioxide dust or to the other particular occupational hazard involved, as the case may be, or, in the case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after such employee's death.

To entitle any employee to compensation for occupational disease other than silicosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the

office of the commissioner within two years from and after the day on which the employee was last exposed to the particular occupational hazard involved, or, in the case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after such employee's death.

Sec. 15-c. *Nonmedical Questions Determined by Commissioner on Hearing of Claim for Occupational Diseases Other Than Silicosis.*—On the hearing of a claim for compensation for an occupational disease other than silicosis, the commissioner shall hear, determine and file findings covering, but not limited to, the following nonmedical questions:

(a) Whether the employee was in fact, within two years prior to the filing of his claim, in the employ of the employer, and, if so, the duration of such employment and whether or not such employment was subject to the provisions hereof.

(b) The occupation or occupations, process or processes, in which the employee was engaged during such employment and the approximate periods of work in each such occupation or process.

(c) The employments, previous and subsequent to the employment out of which the claim arose, the duration thereof and the exposure therein to the hazard causing the occupational disease.

(d) Whether the last injurious exposure to the hazard causing occupational disease in the employment with the employer occurred within two years prior to the filing of the claim, and if the employee is no longer in the service of the employer, the date upon which such employee ceased so to work; and, if the employee has died, the date and place of such death, and the place of interment of the body.

The parties may in writing waive the hearing required by this section, in which case the commissioner shall determine the nonmedical facts listed above, and such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts, and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

# CHAPTER 161

**(House Bill No. 344—By Mr. Brotherton)**

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing Bedford Land Company to cause the removal, transfer and reinterment of certain graves in Kanawha county upon certain terms and conditions.

**Section**

1. Bedford Land Company authorized to remove, transfer and reinter certain graves.

WHEREAS, Bedford Land Company has heretofore filed a petition in the circuit court of Kanawha county, West Virginia, and presented evidence thereupon, praying for permission to remove, transfer and reinter thirty-two graves in an area located on Abbotts Fork Hollow of Fifteen Mile Fork of Cabin Creek in Cabin Creek district, Kanawha county, West Virginia; and

WHEREAS, The said court has made certain findings of fact, included among which are that said grave area has been abandoned for many years, that all known survivors of persons interred in said grave area have consented to the removal, transfer and reinterment thereof; and that the livelihood of approximately five hundred persons in the coal industry will be jeopardized unless such permission is granted; and

WHEREAS, The said court has found and ordered that the equities are in favor of said Bedford Land Company, but has declined to grant the permission sought on the sole ground that the court is unable to find any precedent for the granting of such relief and is of the opinion that the matter is one for legislative consideration; therefore,

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Bedford Land Company Authorized to Remove, Transfer and Reinter Certain Graves.*—Bedford Land Company is hereby authorized to remove, transfer and reinter thirty-two graves in a certain area located on Abbotts Fork Hollow of Fifteen Mile Fork of Cabin Creek in Cabin Creek district, Kanawha county, West Virginia, upon the following terms and conditions: Said removal, transfer and reinterment to be made carefully and reverently, at the expense of Bedford Land Company, by a duly licensed undertaking establishment and funeral director, and the relocated graves located as nearly as possible in the same manner with relation to another as they are now located. The place of reinterment of the aforesaid graves shall be a location approved by the known surviving relatives of persons interred in the present grave area and by the circuit court of Kanawha county.

# CHAPTER 162

**(House Bill No. 370—By Mr. Metz and Mr. Noll)**

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county courts of Berkeley county and Jefferson county to expend funds out of the general fund for the construction of improvements and maintenance of Camp Frame, 4-H Club Camp.

**Section**

1. Berkeley county court and Jefferson county court authorized to expend from general funds for construction of improvements and maintenance of Camp Frame, 4-H Club Camp.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Berkeley County Court and Jefferson County Court Authorized to Expend from General Funds for Construction of Improvements and Maintenance of Camp*

*Frame, 4-H Club Camp.*—The county court of Berkeley county and the county court of Jefferson county are hereby each authorized and empowered to expend funds in an amount not to exceed ten thousand dollars out of the county general fund for the construction of improvements and maintenance of Camp Frame, 4-H Club Camp.

# CHAPTER 163

**(House Bill No. 93—By Mr. Bias)**

[Passed February 13, 1961; in effect January 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section eight, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, relating to the terms of court of the common pleas court of Cabell county.

**Section**

8. **Terms of court of common pleas of Cabell county.**

*Be it enacted by the Legislature of West Virginia:*

That section eight, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, and as last amended and reenacted by chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, be amended and reenacted to read as follows:

Section 8. *Terms of Court of Common Pleas of Cabell County.*—There shall be held three terms of said court each year commencing the second Monday in January, the second Monday in May and the second Monday in September. The terms of said court shall be held at the county seat of said county at the courthouse thereof, and the court shall prescribe proper rules for the conduct of the business of said court, giving precedence to the crim-

inal business over civil business, jurisdiction for which has been heretofore conferred upon such court.

All acts or parts of acts inconsistent or in conflict with this act are hereby repealed.

# CHAPTER 164

**(House Bill No. 34—By Mr. Ours)**

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to authorize the county court of Grant county to create a special courthouse building and improvement fund, to transfer surpluses and unexpended balances in general county funds to said special fund, and to expend such fund for repairs, improvements and additions to the present courthouse or for the construction and equipment of a new courthouse.

**Section**

1. Grant county court authorized to create special courthouse building and improvement fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Grant County Court Authorized to Create Special Courthouse Building and Improvement Fund.*—The county court of Grant county is hereby authorized and empowered to create a special courthouse building and improvement fund, and, from year to year, to transfer to such special fund any surplus or unexpended funds in its general county funds. Said county court is further authorized and empowered to use and expend the special fund created under authority of this act for the purpose of making repairs and improvements, including additions, to the present courthouse, or for constructing and equipping a new courthouse at the county seat of Grant county.

# CHAPTER 165

**(House Bill No. 164—By Mr. Slonaker)**

[Passed February 20, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing and empowering the county court of Hampshire county to transfer and expend twenty thousand dollars of the building fund of said county to the current operating fund of the Hampshire county memorial hospital.

Section

1. Hampshire county court authorized to transfer and expend the building fund of said county.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Hampshire County Court Authorized to Transfer and Expend the Building Fund of Said County.*—The county court of Hampshire county is authorized and empowered to transfer and expend the sum of twenty thousand dollars of the building fund of said county to the current operating fund of the Hampshire county memorial hospital for the purpose of meeting the current operating expenses of said hospital.

# CHAPTER 166

**(House Bill No. 114—By Mr. Miley)**

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine, authorizing the county court of Hardy county to transfer unexpended sums and surpluses in the general fund of said county and in the special jail fund authorized by chapter one hundred forty-six of said acts

into a special fund to be used and expended by the county court for repairs, improvements, and additions to the courthouse of Hardy county.

Section

1. Hardy county court authorized to create a special courthouse building and improvement fund.

*Be it enacted by the Legislature of West Virginia:*

That chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine, be amended and reenacted to read as follows:

Section 1. *Hardy County Court Authorized to Create a Special Courthouse Building and Improvement Fund.*—The county court of Hardy county is hereby authorized and empowered to create a special courthouse building and improvement fund, and to transfer to such fund any unexpended sums and surpluses, presently or hereafter existing in the general fund of said county and in the special jail fund authorized by chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine. Said county court is further authorized and empowered to use and expend the the special fund created under authority of this act for the purpose of making repairs and improvements, including additions, to the present courthouse, or for constructing and equipping a new courthouse at the county seat of Hardy county.

# CHAPTER 167

**(House Bill No. 448—By Mr. White and Mr. Cann)**

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as amended, by adding thereto a new section, to be numbered

and designated section twenty-five-a, relating to a court worker for the criminal court of Harrison county, and providing for the appointment, tenure, salary and expenses of such court worker.

Section

25-a. Court worker; appointment, duties, tenure, salary and expenses.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as amended, be amended by adding thereto a new section, numbered and designated section twenty-five-a, to read as follows:

Section 25-a. *Court Worker; Appointment, Duties, Tenure, Salary and Expenses.*—On and after July first, one thousand nine hundred sixty-one, the criminal court of Harrison county or the judge thereof in vacation, with the approval of the county court of Harrison county, is authorized and empowered to employ a full-time court worker to assist and enable the court to discharge all the official duties required of it under the provisions of this act, and the general laws of the state. The court worker shall perform whatever duties may be assigned to or required of such court worker by the court or the judge in vacation.

The said criminal court shall have the sole power and authority to select, appoint, fix the standards for employment, prescribe qualifications for and supervise the court worker herein provided for, any other provisions of law of this state to the contrary notwithstanding. Said court worker shall serve during the will and pleasure of the appointing court or judge.

The court worker shall receive as compensation for his or her services an annual salary of not more than six thousand eight hundred dollars, to be determined by the judge and approved by the county court. Said salary shall be paid in twelve equal monthly installments.

In addition to the annual salary provided for herein, the court worker shall be reimbursed by the county court

by reason of his or her actual and necessary expenses, including mileage allowances, incurred in line of official duty in the field, the extent of such expenses to be fixed by the judge and approved by the county court. The county court shall provide office space, equipment and supplies for the court worker as the judge may deem necessary and adequate.

The appointment of the court worker when made by the court or judge shall be entered by the court in the order book of the appointing court, a copy of which order of appointment shall be transmitted to the clerk of the county court. Thereupon the county court shall make provision for payment and pay the salary and expenses of the court worker as shown by the order of appointment.

Expenses and mileage accounts of the court worker shall be itemized and verified and presented to and paid by the county court when approved by the judge.

# CHAPTER 168

**(House Bill No. 84—By Mr. Brotherton)**

[Passed February 28, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, relating to the probation staff of the intermediate court of Kanawha county.

**Section**

37. Probation staff; probation officers, chief probation officer, clerical and secretarial assistants.

*Be it enacted by the Legislature of West Virginia:*

That section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred seventy-

nine, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

Section 37. *Probation Staff; Probation Officers, Chief Probation Officer, Clerical and Secretarial Assistants.*— The court is authorized and empowered to appoint and discharge such additional officers, probation officers, and such medical, clerical and secretarial assistance as shall enable the court to discharge all of the duties required of it under the provisions of this act and the general laws of the state, and such personnel shall be paid by the county court monthly such sums as are annually appropriated by the county court, plus reimbursement by the county court of his or her necessary expenses actually incurred monthly in the performance of official duties, including mileage as fixed by the judge and approved by the county court for his or her automobile driven in the performance of official duties. Thereupon, the county court shall make provisions for payment and pay the salaries of said appointees as shown by the order of appointment in equal monthly installments. Expenses and mileage accounts of the probation officers and chief probation officer shall be itemized and verified and presented to and paid by the county court, if such accounts are approved by the judge. The county court shall provide such office space, equipment and supplies for the probation staff, clerical and secretarial and medical assistance as the judge shall deem necessary and adequate: *Provided,* That the appointing judge shall first obtain the approval of the county court of the expenses to be incurred and the salary to be paid any appointee, which approval shall be discretionary with the county court and shall be required before any appointment made hereunder becomes effective.

# CHAPTER 169

**(House Bill No. 25—By Mr. Bailey)**

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT authorizing the county court of Lewis county, West Virginia, to use unexpended funds of said county and any

surpluses in the funds of said county and any funds derived from capital assets of the county for the purposes of repairing, improving and constructing additions to the courthouse of said county and to expend for such purposes the fund so created.

**Section**

1. Lewis county authorized to create special fund for repair and improvement of courthouse and construction of additions thereto.
2. Retransfer of funds.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Lewis County Authorized to Create Special Fund for Repair and Improvement of Courthouse and Construction of Additions Thereto.*—The county court of Lewis county, West Virginia, is hereby authorized and empowered from year to year to use all or so much as the court may designate of any unexpended funds of said county and any surpluses in county funds and any existing surpluses or funds derived from capital assets for the purpose of creating a special fund for the repair and improvement of, and construction of additions to, the county courthouse of said county. The county court is hereby authorized and empowered to expend for such courthouse purposes the fund so created.

Sec. 2. *Retransfer of Funds.*—In cases of emergency the county court of Lewis county, by unanimous vote thereof, shall be empowered to retransfer funds from the special building fund herein created to the general county fund.

# CHAPTER 170

**(House Bill No. 486—By Mr. Lohr)**

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Mercer county to expend money for propagation or stocking of fish in any public stream, lake or pond in Mercer county.

Section

1. County court of Mercer county may expend money to stock fish in public streams, lakes or ponds within county.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *County Court of Mercer County May Expend Money to Stock Fish in Public Streams, Lakes or Ponds within County.*—The county court of Mercer county may appropriate and expend money from the general county fund, or from any special fund available for such purpose, to propagate or stock game fish in any public stream, lake or pond within the county as designated by the county court.

# CHAPTER 171

**(House Bill No. 306—By Mr. Gilmore)**

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county court of Tucker county to use any surplus in any fund in said county for the purpose of creating a special building fund for the construction and equipping of a courthouse and/or for the repairing, renovation or reconstruction of the existing courthouse and to expend for such purposes the funds so created.

Section

1. Tucker county court authorized to create a special courthouse building fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Tucker County Court Authorized to Create a Special Courthouse Building Fund.*—The county court of Tucker county is hereby authorized and empowered from year to year to use any surplus in any county fund of said county for the purpose of creating a special building

fund and expend therefrom such funds for the purpose of the construction and equipping of a courthouse at the county seat of Tucker county, and/or for the repairing, renovation or reconstruction of the existing courthouse building at said county seat.

# CHAPTER 172

**(House Bill No. 248—By Mr. England and Mr. West)**

[Passed February 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county court of Wyoming county, West Virginia, and the municipalities of Mullens, Pineville and Oceana, of said county, each to establish and maintain a special fund to be known as the "Airport Fund," and to use and transfer to said "Airport Fund" unexpended funds and surpluses in any fund or funds of said county or municipalities, and to raise and deposit in said fund all money that may be raised from tax levies and appropriations made and provided for that purpose, and within the constitutional limitations, and all money and income derived from the operation of an airport in this county or in other counties in this state, operated jointly with another or other counties or a public agency known as "Wyoming County Airport Authority," and all grants, appropriations, gifts, donations and financial assistance made to said airport by the state of West Virginia, or the United States government, or any person, firm or corporation, and to use said fund for the acquisition, construction, maintenance, improvement, operation, or leasing of an airport in Wyoming county or in other counties in this state operated jointly with another or other counties, or a public agency known as "Wyoming County Airport Authority," and to transfer annually from said fund to the general county fund or any municipal fund, as the case may be, any money in said fund not needed for airport purposes.

**Section**

1. Authorizing Wyoming county and the municipalities of Mullens, Pineville and Oceana to establish airport fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Authorizing Wyoming County and the Municipalities of Mullens, Pineville and Oceana to Establish Airport Fund.*—The county court of Wyoming county, West Virginia, and the municipalities of Mullens, Pineville and Oceana, are each authorized to establish and maintain a special fund to be known as the "Airport Fund," and to use and transfer to said "Airport Fund" unexpended funds and surpluses in any fund of said county or municipalities, and to raise and deposit in said fund all money that may be raised from tax levies and appropriations made, provided and authorized for that purpose, and within constitutional limitations, and all money and income derived from the operation of an airport in this county or any other counties in this state operated jointly with another or other counties or a public agency known as "Wyoming County Airport Authority," and all grants, appropriations, gifts, donations and financial assistance made to said airport by the state of West Virginia, or the United States government or any person, firm or corporation, and to use said fund for the acquisition, construction, maintenance, improvement, operation or leasing of an airport in Wyoming county, or in other counties in this state, operated jointly with another or other counties, a public agency known as "Wyoming County Airport Authority," and to transfer annually from said fund to the general county fund or any municipal fund, as the case may be, any money in said fund not needed for airport purposes.

# RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1961 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

## HOUSE CONCURRENT RESOLUTION NO. 15

(By Mr. Bailey and Mrs. Withrow)

[Adopted February 8, 1961.]

Requesting the U. S. Bureau of Public Roads to allocate additional mileage to the State of West Virginia under the Federal Highway Act of 1956 and to include U. S. Route 19 in the Interstate System.

WHEREAS, The State of West Virginia is desperately lacking in transportation facilities North and South; and

WHEREAS, U. S. Route 19 offers an ideal route for a North-South highway through this State, providing a fitting link in a highway leading from the Great Lakes to Florida; and

WHEREAS, Such a highway through the State from Morgantown to Beckley would start only 15 miles from the Pennsylvania Turnpike on the North and connect with improved highways to the South, portions of which are now being improved in the States of North Carolina, Georgia and Florida; and

WHEREAS, Such a route would accommodate a huge amount of traffic and transportation from East, West, North and South; and

WHEREAS, Route 19 through West Virginia serves many state institutions, including West Virginia University and its new Medical Center, Fairmont College and Weston State Hospital; and traverses an area rich in scenic and historical values, including the boyhood home of General Stonewall Jackson; and

WHEREAS, West Virginia is one of the most vital states in our National Defense due to its production of metallurgical coals and chemicals; and

WHEREAS, West Virginia is strategically located as a refuge for citizens of a large segment of the United States population in case of attack by foreign enemies, providing adequate transportation is available; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That we, the members of the Legislature of West Virginia, representing the two million citizens of this State, do hereby respectfully request the U. S. Bureau of Public Roads to allocate additional highway mileage for improvement or reconstruction of U. S. Route 19 through the State of West Virginia under the Federal Highway Act of 1956, thereby providing a vital link in a direct route from the Great Lakes to Florida and strengthening the National Defense System of the Nation; and, be it

*Further Resolved,* That the Clerk of the House of Delegates transmit a copy of this resolution to the President of the United States, the United States Bureau of Public Roads, the members of the Congress from the State of West Virginia, the Governor and the State Road Commissioner of West Virginia.

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## HOUSE CONCURRENT RESOLUTION NO. 17

(By Mr. White)

[Adopted March 7, 1961.]

Requesting the Director of the Conservation Commission to purchase the logging railroad and the rolling stock of said railroad which was used by the Mower Lumber Company in its logging operation at Cass, West Virginia.

WHEREAS, In recent years the government of West Virginia has placed special emphasis on increasing the tourist industry in the State; and

WHEREAS, The promotion of tourism has been extensively conducted through the West Virginia Industrial and Publicity Commission and the West Virginia Conservation Commission; and

WHEREAS, Certain areas of the State are suffering economic distress due to the lack of industry; and

WHEREAS, The Mower Lumber Company which operated a large sawmill at Cass, West Virginia, has recently ceased operation causing a large number of its employees to become unemployed; and

WHEREAS, The company operated a logging railroad which extends from Cass into the wilderness of Cheat Mountain; and

WHEREAS, The railroad transcends a wilderness of sixty-six thousand acres which is reported to be the largest area of wilderness east of the Rocky Mountain range; and

WHEREAS, The scenic beauty of this mountain area is unsurpassed in West Virginia; and

WHEREAS, The mountain railroad used by the Mower Lumber Company is one of the few mountainous railroads left in the Nation; and

WHEREAS, The tourist potential in the area involved is virtually unlimited; and

WHEREAS, The Legislature of West Virginia has previously requested the Director of the Conservation Commission to make a study regarding the possibility of purchasing the railroad and its rolling stock; and

WHEREAS, It has been determined that the railroad and its rolling stock which includes two 1880 model steam shay engines can be purchased if acted upon immediately; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Director of the Conservation Commission of West Virginia is hereby requested to negotiate for the purchase of approximately eleven miles of the railroad extending from the crossing near Leather Bark Run above the town of Cass to the vicinity of Bald Knob, to purchase the rolling stock of said railroad along with the available spare parts, to purchase land for the purpose of constructing thereon a shop and other needed improvements. It being the express intent of the Legislature

that the railroad be developed as a tourist attraction and recreational facility, the Director is requested to do any other thing necessary to the use of said railroad for the purpose of incorporating the same into the state park system in West Virginia.

## HOUSE CONCURRENT RESOLUTION NO. 27

(By Mr. McCoy)

[Adopted March 4, 1961.]

Authorizing the purchase of land and the establishment of an educational facility and tourist attraction in connection with the U. S. Navy's giant telescope at the Naval Radio Research Station at Sugar Grove, Pendleton County.

WHEREAS, The United States Navy is now working on a project, staggering to the imagination, at Sugar Grove, Pendleton County—the construction of the world's largest radio telescope—a massive object weighing 20,000 tons and towering 660 feet into the sky, which, when completed, will be the largest fixed, movable structure ever built by man anywhere, and will enable space research experts to listen in on sounds originating 38 billion light-years away; and

WHEREAS, When the installation, which has been nicknamed the "Big Ear" by the Saturday Evening Post, is ready to begin listening to the sounds of outer space it will have cost more than $100,000,000; and is scheduled to be in operation by the middle of 1963, and by reason of its size and uniqueness of its mission will undoubtedly be a focal point of public interest and attention throughout the world; and

WHEREAS, Among the purposes of this installation are to listen to sounds from space, record and analyze them, to determine if sound patterns can be defined which might be classified as a language of some sort and to identify and analyze the different sounds in space, looking to the approaching era of space travel, as well as to conduct general space research and to complement our systems of military communication; and

WHEREAS, The location and mission of the installation offers an ideal opportunity to organize an eductaional undertaking

with tremendous impact on the space-consciousness of the American people, especially our younger people; and

WHEREAS, In order to take advantage of this educational opportunity, it is believed that the State of West Virginia should without delay promote the establishing of a suitable structure in the vicinity of the "Big Ear" to contain exhibits, visual aid devices, dioramas and sound reproduction materials, which structure should contain an auditorium and an interior decor which would reproduce the heavens and the relationship of the stellar bodies to one another, and into which could be cabeled the sounds from the giant reflector; and

WHEREAS, Such a development would soon provide a tourist attraction that would dwarf anything within our country, and as the space program and the science of radio-astronomy develops serve as a growing identification between West Virginia and the challenging enterprise of the conquest of space; and

WHEREAS, Congressman John M. Slack, Jr., has advised that the Navy Department could lend appreciable assistance to creation of suitable interior furnishings for such a development; and

WHEREAS, It is the consensus that such a development should be located on state-owned property, controlled in the public interest under the administration of the State Parks Division of the Conservation Commission; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Director of Conservation, or such state officer as may be established hereafter having jurisdiction over State Parks, is hereby requested to explore immediately the possibility of purchasing land in Pendleton County for a site for a development as herein described; and that he is requested and urged upon finding a suitable location for said development to purchase land therefor, from any funds available for establishing parks and recreational facilities, and to expend funds for the construction and equipment of appropriate facilities on such land.

## HOUSE CONCURRENT RESOLUTION NO. 30

(Originating in the House Committee on the Judiciary)

[Adopted March 11, 1961.]

Creating an interim committee to study the laws, regulations and administration of the Department of Public Assistance and to make recommendations for the recodification of such laws; changes in regulations, and improvement in administration thereof.

WHEREAS, The Department of Public Assistance of the State of West Virginia was created by enactment of the "Public Welfare Law of 1936"; and

WHEREAS, The express purpose of the Legislature in creating the Department of Public Assistance was to provide an agency to administer assistance to the ". . . indigent, aged, the indigent blind, dependent children, the indigent relative with whom any dependent child is living, and the indigent permanently and totally disabled . . ."; and

WHEREAS, It was further the intention of the Legislature that public assistance be granted only ". . . to those actually in need"; and

WHEREAS, Although the said Department has discharged its duties admirably since its creation, the growing work load of the Department in the intervening years, the present economic conditions prevalent in the State, and possible weaknesses in the law have combined to create many discrepancies in the administering of assistance and deviations from the original purpose as set forth by the Legislature; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That an interim committee of six be appointed, three by the Speaker of the House of Delegates and three by the President of the Senate, not more than two appointed by the Speaker and President to be members of the same political party, for the purpose of studying the laws governing the Department of Public Assistance for the recodification of such laws; the regulations and the administrative practices, and to make recommendations therefor; and, be it

*Further Resolved,* That the members appointed to this committee be compensated at the rate of twenty-five dollars per diem; mileage at the rate of ten cents per mile while attending meetings of said committee; and authorized to employ a secretary. The committee shall file its written report of its findings and recommendations with the Governor of West Virginia and the Clerk of the House and the Clerk of the Senate on or before December 1, 1962, after which said committee shall cease and terminate. The total expenditure of said committee shall not exceed nine thousand dollars.

## HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Brotherton and Mr. Hubbard)

[Adopted March 11, 1961.]

Directing the Joint Committee on Government and Finance to make a study on liquor control methods, alcoholism, and related matters.

WHEREAS, The Legislature has currently proposed submission of a constitutional amendment which would permit significant changes in our liquor control system and our code of laws covering that system; and

WHEREAS, Some degree of controversy over these proposals is based on a reported lack of generally known body of facts in this field; and

WHEREAS, A keen awareness of the need for such body of facts is evidenced; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Joint Committee on Government and Finance be, and it is, hereby directed to conduct a study on liquor control methods, alcoholism and related matters; and that said committee report the result of its findings, together with its recommendations, to the members of the Legislature, on or before July one, one thousand nine hundred sixty-two; and that said report and recommendations be made public.

## HOUSE CONCURRENT RESOLUTION NO. 39

(By Mr. Cann and Mr. Creel)

[Adopted March 7, 1961.]

Requesting and authorizing the Director of the West Virginia Conservation Commission to accept for the State of West Virginia from the Ohio River Company the steamboat Omar or Orco (formerly the John J. Rowe), and to transform it into a museum to be used as a floating exhibit center along the Ohio, Kanawha and Monongahela Rivers.

WHEREAS, In recent years the government of West Virginia has placed special emphasis on increasing the tourist industry in the State; and

WHEREAS, The promotion of tourism has been extensively conducted through the West Virginia Industrial and Publicity Commission and the West Virginia Conservation Commission; and

WHEREAS, Navigation on the Ohio, Kanawha, Monongahela and other rivers has played an important role in the economy of this State; and

WHEREAS, The Ohio River Company has offered to give the State of West Virginia the steamboat Omar or Orco (formerly the John J. Rowe); and

WHEREAS, The Senate will conduct a centennial celebration during the summer of 1963, the purpose of which will be to bring favorable attention to the State of West Virginia, its people, its resources, and its potential for the future, in which year thousands of visitors will come to our State; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Director of the West Virginia Conservation Commission be requested and is hereby authorized to accept for the State of West Virginia from the Ohio River Company the steamboat Omar or Orco (formerly the John J. Rowe), and to transform it into a museum to be used as a floating exhibit center along the Ohio, Kanawha and Monongahela Rivers.

It being the expressed intent of the Legislature that if the steamboat be accepted that it be developed as a centennial attraction, and then incorporated in the state park system of West Virginia.

## HOUSE CONCURRENT RESOLUTION NO. 43

(By Mr. Rollins)

[Adopted March 9, 1961.]

Concerning the program of academic education at the West Virginia Industrial School for Boys at Pruntytown.

WHEREAS, The educational program at the West Virginia Industrial School for Boys at Pruntytown is currently administered by the superintendent of the school and offers education only through the tenth grade; and

WHEREAS, Many of the boys in the Industrial School are substandard students and in need of remedial instruction which is not now available at such school; and

WHEREAS, If the educational program at such school were incorporated into the school system of Taylor County and placed under the supervision and administration of the Taylor County Board of Education, schooling could be provided for the boys of the Industrial School through the twelfth grade, diplomas could be awarded to boys completing their high school work and remedial instruction of the Taylor County schools could be made available to substandard students; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the State Superintendent of Schools be requested to appoint a committee comprised of three members, being one member each from the office of the State Superintendent of Free Schools, the office of the Commissioner of Institutions and a staff member from the Taylor County school system, to study the practicability and feasibility of placing the educational program at the West Virginia Industrial School for Boys at Pruntytown under the administration and supervision of the Board of Education of Taylor County; and, be it

*Further Resolved,* That such committee make a report of its findings to the West Virginia Legislature at the session in the year one thousand nine hundred sixty-two.

## HOUSE CONCURRENT RESOLUTION NO. 45

(By Mr. Boiarsky)

(Originating in the House Committee on Finance)

[Adopted March 9, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the feasibility of transfer of facility of Fairmont Emergency Hospital to West Virginia University Medical Hospital.

WHEREAS, It appears that the present Fairmont Emergency Hospital has a very limited capacity with consequent high cost of operation and maintenance; and

WHEREAS, In view of the completion of the Medical Hospital at the West Virginia University at Morgantown, only nineteen miles away; and

WHEREAS, Complete facilities at the Medical Hospital are more desirable; and

WHEREAS, The conversion of the Fairmont Emergency Hospital as a nursing home may be or become a more practical use for this institution; and

WHEREAS, Certain equipment would thus become of little value at Fairmont and could thus be transferred or exchanged; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Joint Committee on Government and Finance be requested and directed to make a study of the feasibility of transferring the activities and functions of the Fairmont Emergency Hospital at Fairmont to the West Virginia University Medical Hospital at Morgantown, and the possible conversion of the improvements at Fairmont Emergency Hospital into

a nurses home or other use for the community and for the State; and, be it

*Further Resolved,* That the expenses necessarily incurred in making and completing this study be paid from funds provided as joint expenses of the legislative committees.

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## HOUSE CONCURRENT RESOLUTION NO. 50

(By Mr. Boiarsky)

[Adopted March 10, 1961.]

Requesting the Governor to appoint a committee to make specific recommendations in West Virginia higher educational system.

WHEREAS, The State of West Virginia has one junior college, nine colleges and two universities; and

WHEREAS, Two state boards, namely: the Board of Governors of West Virginia University and the State Board of Education, divide authority in the field of higher education; and

WHEREAS, There appears to be no specific, coordinated plan of functions and objectives among the various colleges and universities; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That we, the members of the Legislature of West Virginia, do respectfully request the Governor of West Virginia to appoint a nine-man committee of his selection, two members to be selected from the State Board of Education and two members from the West Virginia University Board of Governors; and, be it

*Further Resolved,* That this committee report back to the Legislature in January, one thousand nine hundred sixty-two, with specific recommendation concerning what, if any, changes should be made in West Virginia's higher education complex to assure maximum benefit from the State's higher education resources.

## HOUSE JOINT RESOLUTION NO. 2

(By Mr. Speaker, Mr. Singleton, and Mr. Buch)

[Adopted March 11, 1961.]

Proposing an amendment to the Constitution of the State amending article seven thereof, relating to the executive department of state government.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia shall be submitted to the voters at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article seven of the Constitution of the State of West Virginia be amended so as to read as follows:

**Article VII. The Executive.**

Section 1. *Governor.*—The chief executive power of the State shall be vested in a Governor, who shall cause the laws to be faithfully executed. He may require the Attorney General to institute and prosecute appropriate actions and proceedings in the courts, brought in the name of the State, to enforce compliance with the laws.

Sec. 2. *Elected Officers.*—In addition to a Governor, there shall be an Attorney General, who shall be the chief legal officer of the State, an Auditor, who shall be the chief fiscal officer of the State, a Commissioner of Agriculture, a Secretary of State and a Treasurer. These officers shall be elected by the qualified voters of the State, and the election shall be held at such times and places as may be prescribed by law. Their terms of office shall be four years and until their successors as designated herein have qualified. Their terms shall commence on the first Monday after the second Wednesday of January next after their election. During their terms of office, they shall reside within the county in which the seat of government is located. Unless otherwise provided by law, they shall keep at the seat of government the public records, books and papers pertaining to their respective offices. They shall

have such powers and perform such duties as may be prescribed by this Constitution or by law.

Sec. 3. *Election Returns; Contests.*—The returns of every election for the officers named in section two of this article shall be sealed and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the House of Delegates, who shall, immediately after the organization of the House, before proceeding to other business, and in the presence of a majority of the members of each House of the Legislature, open and publish the returns. The person having the highest number of votes for each of the offices shall be declared elected; but if two or more shall have the highest and equal number of votes for the same office, one of them shall be chosen for the office by joint vote of a majority of the members of both Houses.

Contested elections for these state elective offices shall be determined in such manner as may be prescribed by law.

Sec. 4. *Eligibility.*—None of the officers named in section two of this article shall hold any other office during the term of his service. A person who has been elected or has served as Governor during all or any part of two consecutive terms shall be ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms.

Sec. 5. *Executive and Administrative Organization.*—Except for the offices of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and governing boards of institutions of higher education, all executive and administrative offices, departments, and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by the Legislature among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. However, temporary commissions for special purposes may be established by law, and such commissions need not be allocated within a principal department.

Except for the offices of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and

the governing boards of institutions of higher education, each principal department shall be under the supervision of the Governor. The head of each such principal department shall be a single executive unless otherwise provided by law.

The Legislature, in compliance with these provisions shall prior to the first day of July, one thousand nine hundred sixty-three, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the state government among and within the principal departments. If such allocation shall not have been completed within the time limited, the Governor shall call an extraordinary session of the Legislature to which he shall submit a plan or plans for consideration to complete such allocation; and no other matters shall be considered at such session.

Sec. 6. *Appointment and Removal of Officers.*—The Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint, to serve at the pleasure of the Governor during their terms of office and until the appointment and qualification of their successors, the heads of the principal departments which are under his supervision, whether the head be a single executive or members of a board, commission, or other body prescribed by law.

Without such advice and consent, unless otherwise provided by law, the Governor shall also appoint all other officers whose offices are established by this Constitution or shall be created by law and whose appointment or election is not otherwise provided; and no such officers, except officers of the Legislature, shall be appointed or elected by the Legislature. Except as otherwise provided by general laws, such officers shall serve at the pleasure of the Governor. He shall also have the power to remove any officer, in the manner prescribed by law, for incompetency, neglect of duty, gross immorality, malfeasance in office, or official misconduct. The governor shall fill any vacancies in such offices in the manner prescribed by law. Unless removed, such officers shall continue to serve until their successors are appointed and qualified.

Sec. 7. *Governor's Messages.*—The Governor shall, at the beginning of each session, and at such other time as he may

deem necessary, give to the Legislature information by message as to the condition and affairs of the State, and shall in like manner recommend such measures as he shall deem desirable or expedient.

Sec. 8. *Extraordinary Legislative Session.*—The Governor may convene the Legislature in extraordinary session whenever, in his opinion, the interest of the State requires it; and it shall be his duty to convene the Legislature on application in writing of three fifths of the members elected to each House. When convened at the Governor's instance, the Legislature shall enter upon no business except that stated in the proclamation by which it was convened.

Sec. 9. *Legislature's Meeting Place.*—The Governor may direct that sessions of the Legislature be held at some convenient place other than the seat of government whenever from the presence of an enemy, or from any other cause, it shall become an unsafe place for the meeting of the Legislature.

Sec. 10. *Commander-in-Chief of Armed Forces.*—The Governor shall be commander-in-chief of the armed forces of the State (except when they shall be called into the service of the United States), and may call the same out to enforce the execution of the laws, suppress insurrection, or repeal invasion.

Sec. 11. *Executive Clemency.*—The Governor shall have and may exercise general powers of executive clemency, including the power to commute capital punishment and other sentences, to grant reprieves, to remit fines and penalties in whole or in part, and except where the prosecution has been carried on by the House of Delegates, to grant full or conditional pardons after conviction. The Legislature may by law provide for a board composed of not more than three members, to be appointed by the Governor and to serve during his will and pleasure, to which board he may delegate any or all of his powers of executive clemency, except the power to commute capital punishment. The Governor or the board, as the case may be, shall report to each House of the Legislature at every regular session thereof, and at such other times as required by either House, the particulars of every case in which executive clemency has been granted since the last preceding report. The

report shall be in such form and detail as may be prescribed by law.

Sec. 12. *Governor's Approval or Disapproval of Bills Passed by the Legislature.*—Except as otherwise provided in this Constitution, every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and may proceed to reconsider the bill. Upon such reconsideration, if a majority of the members elected to that House agree to pass the bill, it shall be sent, together with the objections of the Governor to the other House, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law notwithstanding the objections of the Governor: *Provided,* That, if upon such reconsideration the bill be amended and reenacted, then it shall be again sent to the Governor and he shall act upon it as if it were before him for the first time. In all such cases, the vote of each House shall be determined by yeas and nays to be entered on the journal.

Any bill which shall not be returned by the Governor within five days, Sunday excepted, after it shall have been presented to him shall be a law, in the same manner as if he had signed it, unless the Legislature shall, by adjournment prevent its return; in which case it shall be filed with his objections in the office of an officer prescribed by law within fifteen days, Sundays excepted, after such adjournment, or become a law.

Sec. 13. *Salaries of Elected Officers.*—The Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer shall each receive for his services a salary to be fixed by law, which shall not be increased or diminished during his official term, and for the performance of any official duty he shall not receive to his own use any fees, costs, perquisites of office or compensation, except his salary. He shall account for and pay over in the manner provided by law all moneys collected by him by virtue of his office.

Sec. 14. *Vacancy in Governorship; Judicial Determination.*—In the event of a vacancy in the office of Governor resulting

from death, resignation or removal of a Governor in office, or the death of a Governor-elect or his failure to qualify, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve, first, upon the President of the Senate; second, upon the Speaker of the House of Delegates; and then upon such officers and in such order of succession as may be provided by law; and in any of these cases, except as otherwise provided herein, the person designated shall serve until a successor shall be elected and qualified as herein provided.

The office of Governor shall be deemed vacant if the Supreme Court of Appeals finds and declares that a Governor in office is unable to discharge the duties of the office by reason of his mental, physical, or other disability: *Provided, however,* That such vacancy shall cease to exist if, prior to the election of a person to fill the vacancy, the court shall find and declare that the inability to discharge the duties of the office by reason of his mental, physical or other disability has ceased to exist.

Upon the filing of a verified petition in writing by one third of the members elected to each House of the Legislature, alleging valid and reasonable grounds for declaring the office of Governor vacant or that the inability which created a vacancy has ceased to exist, the Supreme Court of Appeals shall have original jurisdiction, by quo warranto or other appropriate proceedings, to hear and determine questions concerning a vacancy in the office of Governor. The court may proceed to hearing on such petition and make such findings and determinations as may be warranted. Such proceedings shall have precedence over all other matters before the court, and may be heard in a regular or special term. In the event the court finds that a vacancy does or does not exist, a mandate declaratory thereof shall be issued by the court. The provisions of this section may be implemented by rules of court, but no rule shall impede or unnecessarily delay the expeditious hearing and determination herein contemplated.

Sec. 15. *Other Elective Office Vacancies.*—In the event of a vacancy in the office of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer resulting from death, resignation, or removal of the person in office, or

the death of the person elected to the office, or from any other cause, the Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint a person to fill the vacancy. The appointee shall, upon qualifying, hold the office, unless he be removed, until his successor shall be appointed, or elected, and qualified.

Sec. 16. *Elections to Fill Vacancies.*—Whenever a vacancy shall occur in the office of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer, a successor shall be elected to fill the unexpired term at the general election next succeeding the vacancy, unless the vacancy shall occur within sixty days immediately preceding such general election, in which case a successor shall not be elected to fill the unexpired term.

Notwithstanding the provisions of section three of this article, the returns of an election for any such officer for an unexpired term shall be directed to an officer prescribed by law who shall open and publish the returns, and declare the results in such manner as may be provided by law: *Provided, however,* That if two or more candidates have the highest and equal number of votes for the same office, one of them shall be chosen and declared elected to the office by joint vote of a majority of the members of both Houses of the Legislature in the regular or extraordinary session next succeeding the election.

Sec. 17. *Vacancies Filled in Recess of Legislature.*—In the event of a vacancy, during a recess of the Senate, in any office the appointment to which requires confirmation by the Senate, the Governor shall appoint a person to such office, who, upon qualifying, shall hold the office, unless he be removed, for the time herein provided.

The nomination of the person thus appointed during a recess shall be deemed made to the Senate by the Governor at the time of the appointment, unless the nomination be withdrawn by the Governor prior to confirmation by the Senate. A person so nominated, when confirmed by the Senate (a majority of all the Senators elected concurring by yeas and nays), shall hold the office during the remainder of the term, unless he be removed, and until his successor shall be appointed, or elected,

and qualified. If such an interim appointment is not confirmed, it shall expire upon the adjournment of the regular or extraordinary session of the Legislature next after the appointment or when the appointee has been rejected by the Senate, whichever shall first occur.

If a vacancy in any such office shall exist during a regular or extraordinary session of the Legislature, the Governor shall, if practicable, forward to the Senate before its adjournment the name of the person nominated to fill such vacancy.

No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall a person, whose nomination for an office failed to be confirmed, be eligible, prior to the next regular session of the Legislature, for an interim appointment to the same office.

Sec. 18. *Budget and Supplementary Appropriation Bills.*— The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

**Sub-Section A—Appropriation Bills**

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

**Sub-Section B—Budget Bills**

(2) Within ten days after the convening of the regular session of the Legislature in odd-numbered years, unless such time shall be extended by the Legislature, and on the second Wednesday of January in even-numbered years, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of the fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves and surplus or

deficit of the State; (c) the debts and funds of the State; (d) an estimate of the State's financial condition as of the beginning and end of the fiscal year covered by the budget; (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the State's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law, (a) for the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the State created in conformity with the Constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the State under the Constitution and laws of the State; (f) for such other purposes as are set forth in the Constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each House the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each House shall promptly cause the bill to be introduced therein, and such bill shall be known as the "Budget Bill". The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he may deliver such an amendment or supplement to the presiding officers of both Houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or diminishing the items therein: *Provided, however,* That the Legislature shall not increase the estimate of revenues submitted in

the budget without the approval of the Governor: *Provided further,* That, except as otherwise provided in this Constitution, the salary or compensation of any public officer shall not be increased or diminished during his term of office; and the bill when and as passed by both Houses shall be law immediately without further action by the Governor.

(6) The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either House of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

**Sub-Section C—Supplementary Appropriation Bills**

(7) Neither House shall consider other appropriations for the next ensuing fiscal year until the budget bill for such year has been finally acted upon by both Houses, and no such other appropriations whether supplementing the budget for a current fiscal year or the next ensuing fiscal year, shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in the bill unless it appears from such budget that there is sufficient revenue available; (c) no supplementary appropriation bill shall become a law unless it be passed in each House by a vote of a majority of the members present, and the yeas and nays recorded on its final passage. Each supplementary appropriation bill shall be presented to the Governor of the State as provided in section twelve of this article and thereafter all the provisions of that section shall apply.

**Sub-Section D—General Provisions**

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending

the session for such further period as may, in his judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during the extended session except a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power, and it shall be his duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the legislative department, certified by the presiding officer of each House, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he shall direct, and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments.

(11) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(12) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the Constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the Governor from calling extraordinary sessions of the Legislature, as provided by section eight of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(13) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

## HOUSE JOINT RESOLUTION NO. 4

(By Mr. Watson and Mr. Hubbard)

[Adopted March 9, 1961.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section forty-six, article six thereof, relating to the manufacture and sale of liquor.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section forty-six, article six of the Constitution be amended to read as follows:

Section 46. The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this State.

Any law legalizing the sale of intoxicating liquors other than by the State as now provided by law, shall provide:

(a) That intoxicating liquors shall be sold, dispensed and/or served only in licensed, bona fide and legitimate restaurants, hotels, clubs, and also in similar facilities owned, controlled, leased or operated by or on behalf of this State, or any municipality of this State, railroad dining cars, aeroplanes and other conveyances moving in interstate commerce.

(b) That intoxicating liquors shall not be sold, dispensed and/or served between the hours of midnight on Saturday and noon on the following Monday, at any time between the hours of midnight and noon on the following day, nor in a saloon or bar room nor to any person unless such person is seated.

(c) That no advertisement, sign, placard or other device designating or advertising the situs of a licensee describing it as a place wherein intoxicating liquors are sold, dispensed and/or served shall be exhibited thereon, in any newspaper or magazine or in any other manner or place whatsoever.

(d) That only one license for each one thousand persons, in a county, in this State, shall be issued, except, that in counties having less than ten thousand persons, three additional licenses shall be permitted; in counties where facilities described in subsection (a) controlled, owned, leased or operated by or on behalf of this State, or any municipality of this State, are located, additional licenses, equal to the number of such facilities shall be permitted and except, also, in those counties wherein race tracks are located, an additional number of licenses equal to the number of such race tracks shall be permitted.

(e) That no more than one license shall be issued to a person.

(f) For special local option elections by a county, or an incorporated municipality to determine whether such sale other than by the State as now provided by law shall be permitted within such county or municipality. An incorporated municipality through such a local option election shall have the sole power to forbid or permit such sale within its corporate boundaries regardless of any determination through a county-wide local option election conducted in the county in which such municipality is located.

(g) At least fifty per cent of all revenues from excise and license taxes on the sale of intoxicating liquors other than by the State as now provided by law shall be annually appropriated to the support of schools.

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## COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7

(Originating in the Committee on the Judiciary)

[Adopted March 11, 1961.]

Proposing an amendment to the Constitution of the State of West Virginia, by adding a new section to article ten thereof, to be designated section eleven, relating to the authority of the Legislature to refer to and prospectively adopt provisions of the laws of the United States in imposing a tax or taxes on or in respect to or measured by

income and limiting the authority of the Legislature to tax incomes.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article ten of the Constitution be amended by adding thereto a new section, to be designated section eleven, to read as follows:

Section 11. Notwithstanding any other provisions of the Constitution to the contrary, the Legislature in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provisions of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe exceptions or modifications to any such provisions. The Legislature shall in no case impose a tax on the income of any individual, estate, or trust which shall exceed two per centum of the taxable income not in excess of two thousand dollars; plus three per centum of the taxable income in excess of two thousand dollars, but not in excess of eight thousand dollars; plus four per centum of the taxable income in excess of eight thousand dollars, but not in excess of sixteen thousand dollars; plus five per centum of the taxable income in excess of sixteen thousand dollars, but not in excess of twenty-two thousand dollars; plus five and one-half per centum of the taxable income in excess of twenty-two thousand dollars. Nothing contained in this section shall affect the power of this State after the effective date of this amendment in collecting any tax on incomes for any period ending on or prior to the effective date hereof laid in accordance with the terms of any law then in effect.

## COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Moore and Mr. Tompos)

[Adopted March 10, 1961.]

Requesting the Joint Committee on Government and Finance of the Legislature to make a study and survey of the present regulatory statutes, rules and regulations pertaining to public utilities in West Virginia.

WHEREAS, There has been evident concern over the ever-increasing cost of public utilities to the people and industry of our State and the resultant hardship inflicted upon them by the virtue of such increased costs; and

WHEREAS, Serious questions have been raised as to the adequacy of our present laws pertaining to the conduct of the Public Service Commission and of prevailing methods of rate determination; and

WHEREAS, Other states are confronted with similar problems relating to the regulation of public utilities; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance be hereby requested and directed to make or cause to be made a thorough study of comparative public utility rates and the rate making methods and structure including applicable laws, rules and regulations of this and other states, particularly those states adjoining West Virginia; and, be it

*Resolved Further,* That the conclusions and recommendations resulting from this study, and appropriate bills embodying such recommendations, be presented to the regular session of the Legislature, 1963; and, be it

*Resolved Further,* That the expenses necessary to conduct this study to make the necessary report, and to draft the desired bills be paid from legislative appropriations made to the Joint Committee on Government and Finance.

## SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Hedrick)

[Adopted January 24, 1961.]

Providing for a portrait of former Governor Matthew M. Neely, and for its hanging in an appropriate place in the Capitol Building.

WHEREAS, Attention has been directed to the portraits of the former governors of our State which adorn the walls of various reception rooms and corridors of the Capitol Building; and

WHEREAS, An examination reveals that portraits are hung of most of the former governors of the State of West Virginia except that of former Governor Matthew M. Neely; and

WHEREAS, The Senate is of the opinion that such omission of the portrait of one of our former governors is not intentional; now, therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the present governor be requested to cause to be prepared a portrait of former Governor Matthew M. Neely, with suitable framing, to be hung along with other portraits aforesaid in the Capitol Building, and that the cost thereof be paid from the Governor's Contingent Fund.

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## SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. McKown)

[Adopted February 3, 1961.]

To make "The West Virginia Hills" the official state song of the State of West Virginia.

WHEREAS, The song entitled "The West Virginia Hills", music composed by H. E. Engle and words written by Mrs. Ellen King, exemplifies the majestic beauty of the "Mountain State"; and

WHEREAS, "The West Virginia Hills" is that song best known and most widely used by the citizens of this State; and

WHEREAS, The West Virginia Music Educators Association meeting in Morgantown on February 19, 1960, voted unanimously to go on record favoring and supporting the preparation and passage of a concurrent resolution by the West Virginia Legislature to make the song "The West Virginia Hills" the official song of the State of West Virginia; and

WHEREAS, Dr. Calvin Buell Agey has carefully edited the song "The West Virginia Hills" in keeping with a further recommendation of the West Virginia Music Educators Association and sound harmonic and melodic practice; and

WHEREAS, This action on the part of the West Virginia Music Educators Association has received the commendation and support of the executive branch of the state government of the State of West Virginia; and

WHEREAS, "The West Virginia Hills" catches the spirit not only of the beauty and grandeur of the State of West Virginia, but also the spirit of the people of this State, in contemplating "summits bathed in glory and pointed skyward to the Great Almighty's Land. Is it any wonder then that my heart with rapture thrills, as I stand once more with loved ones on those West Virginia Hills"; and

WHEREAS, It is desirable to have an official state song at all times, but especially at this time, inasmuch as the eyes of the entire country will be focused upon this State during the centennial celebration; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the composition consisting of the words and music known as "The West Virginia Hills", words by Mrs. Ellen King, music by H. E. Engle, and edited by Dr. Calvin Buell Agey, a copy of which is attached to and made a part of this resolution, is designated as the official state song of the State of West Virginia.




3. Oh, the West Virginia hills!
How unchanged they seem to stand,
With their summits pointed skyward
To the Great Almighty's Land!
Many changes I can see,
Which my heart with sadness fills;
But no changes can be noticed
In those West Virginia hills.
(Chorus)

4. Oh, the West Virginia hills!
I must bid you now adieu.
In my home beyond the mountains
I shall ever dream of you;
In the evening time of life,
If my Father only wills,
I shall still behold the visions
Of those West Virginia hills.
(Chorus)

(Editing copyright by C. Buell Agey, 1960)

## SENATE CONCURRENT RESOLUTION NO. 14

(By Mr. Bowers and Mr. Kaufman)

[Adopted March 10, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the salaries of all elected and appointed state officials and to submit recommendations thereon.

WHEREAS, The salaries of numerous officials of the State, both elected and appointed, were set many years ago; and

WHEREAS, Such salaries have not been changed in some instances, and in other instances have not been changed for some years, during a period of declining currency purchasing power; and

WHEREAS, New departments and commissions have been established, and the duties and responsibilities of certain other positions have grown markedly and become increasingly complicated while those of some have diminished, all without appropriate salary adjustments; and

WHEREAS, There is little correlation between salaries paid in the various departments; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of the salaries of all elected and appointed state officials to ascertain what adjustments in such salaries should be made; and, be it

*Resolved Further,* That the conclusions and recommendations which may result from this study and appropriate bills embodying such recommendations be submitted to the next session of the Legislature; and, be it

*Resolved Further,* That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

## SENATE CONCURRENT RESOLUTION NO. 17

(By Mr. Jackson)

[Adopted February 28, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the sums expended annually by the State for insurance premiums and to submit a report of its findings, together with its recommendations as to

whether it would be to the best interest of the State to become a self-insurer.

WHEREAS, It is apparent that the State is spending thousands of dollars each year in insurance premiums; and

WHEREAS, There has been no recent study of amounts expended by the State for insurance premiums and no readily available information which would disclose such amounts; and

WHEREAS, The Legislative Auditor in a report, dated August 9, 1954, to the Joint Committee on Government and Finance suggested that an approach be made toward self-insurance with relation to fire protection; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of the sums expended annually by the State in all its departments and agencies for insurance premiums to ascertain whether it would be to the best interest of the State for it to become a self-insurer; and, be it

*Resolved Further,* That its findings, conclusions, and recommendations which may result from this study be made to the regular session of the Legislature, one thousand nine hundred sixty-two; and, be it

*Resolved Further,* That the expenses necessary to conduct this study and to make the requested report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

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## SENATE CONCURRENT RESOLUTION NO. 18

(By Mr. Jackson)

[Adopted February 28, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of all special revenue fund accounts of the State and to submit a report and its recommendations thereon.

WHEREAS, Over the years numerous special revenue fund accounts have been established; and

WHEREAS, There appears to be considerable idle capital in these special revenue fund accounts; and

WHEREAS, Both the legislative and the executive branches of the government have lost a measure of control over such accounts, in that only a blanket appropriation has been made of such funds, in most instances, and balances have been allowed to accumulate in sizable sums; and

WHEREAS, To accumulate balances in this manner without specific authority is not in keeping with the principles of budgeting in our government which aims at a balance of expenditures with receipts for each appropriation period and does not contemplate accumulation; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of all special revenue fund accounts and report all such accounts in existence during the current fiscal year; the balance in each of such accounts as of the end of the preceding fiscal year; the receipts and disbursements respecting each of such accounts during the current fiscal year; the balances therein as of the end of the current fiscal year; a detailed statement respecting the sources of such funds and the purposes for which sums were expended therefrom during the current fiscal year, together with its recommendations as to whether such accounts, or any of them, should be altered, eliminated, or transferred to general revenue; and, be it

*Resolved Further,* That the conclusions and recommendations which may result from this study be made to the regular session of the Legislature, one thousand nine hundred sixty-two; and, be it

*Resolved Further,* That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

## SENATE CONCURRENT RESOLUTION NO. 23

(By Mr. Carson, Mr. President, and Mr. McCourt)

[Adopted March 7, 1961.]

Requesting and directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters relating to the replacement of our state's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure.

WHEREAS, The West Virginia "business and occupation tax" and "transportation privilege tax", more commonly referred to as "gross sales tax", is the largest single source of state revenue, producing around fifty million dollars per year; and

WHEREAS, The gross sales tax is levied on total income based upon total sales, receipts, or production, with no deduction allowed for expenses, depreciation, etc.; and

WHEREAS, A corporate net income tax is based upon the net receipts after deduction for all expenses; and

WHEREAS, The West Virginia State Tax Study Commission in its appraisal of West Virginia's gross sales tax found that the tax varies widely among industries when converted to an average net profit rate and as between the same type of industries even though the gross rate is the same; and

WHEREAS, Dr. Vance Q. Alvis, associate professor of economics, College of Commerce, West Virginia University, in his report "Impact of West Virginia Gross Receipts Tax", observes that the impact of the gross receipts tax tends to be heavier upon smaller than upon larger firms; and that it is likely that the tax imposes a greater burden upon new firms, than would some other types of taxes; and

WHEREAS, Thirty-three states have corporate net income taxes in effect with rates ranging from one per cent to eight and eight-tenths per cent; and

WHEREAS, The West Virginia State Tax Study Commission in its report of November, 1960, recommended that a continued study of the tax structure be made in order to properly evaluate the changes recommended in its report and in order to make any further necessary adjustments in the tax structure in light of developments and changes in the state's economic condition; and

WHEREAS, The Legislature at this session has passed and the Governor has signed into law the "West Virginia Personal Income Tax Act" which imposes a tax upon the incomes of individuals, estates and trusts measured by a per centum of the federal income tax; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be and they are hereby authorized and directed to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters related to the replacement of our state's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure; and, be it

*Resolved Further,* That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation shall make a full and complete report of its studies and findings, together with its recommendations for legislative or other action, to the Legislature on or before January one, one thousand nine hundred sixty-two; and, be it

*Resolved Further,* That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be authorized to employ such assistants as they may deem necessary and advisable, and to fix reasonable compensation and expenses of such persons as may seem reasonable; and, be it

*Resolved Further,* That the expenses necessary to conduct the study and to make the necessary report and recommendations be paid from legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation.

## SENATE CONCURRENT RESOLUTION NO. 25

(By Mr. Carrigan and Mr. McKown)

[Adopted March 8, 1961.]

Requesting and directing the Joint Committee on Government and Finance to study a system for the distribution of state aid to public schools, and associated problems.

WHEREAS, The present system for the distribution of state aid to public schools has been in existence and use for a number of years; and

WHEREAS, Since the adoption of the present distribution system for said state aid, various other laws, including the property revaluation program, penalty provisions for failure to meet local share and other similar laws, have been enacted which have radically affected the basic concept of the original distribution system; and

WHEREAS, By reason of the various enactments subsequent to the passage of the present state aid distribution system, which have affected the basic concept of said system, it has become impractical and impossible to determine whether the present system adequately meets the basic foundation needs of the public school system of this State, and the system has been under criticism from various interested groups of citizens; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance of this Legislature is requested and directed to conduct a study dealing with all phases of the school foundation program for public education, both on the state and local level, and determine whether or not the present system can be properly revised to meet changing social and economic conditions of this State; what changes are required in the property appraisal program and other programs which may affect the basic foundation program for public schools and other matters relating thereto; and said joint committee shall report to the Legislature not later than the end of the second week of the regular session of said Legislature convening in January, one thousand nine hundred sixty-three, together with such recommendations and reports of their findings.

## SENATE CONCURRENT RESOLUTION NO. 27

(By Mr. Riley)

[Adopted March 11, 1961.]

Directing the Joint Committee on Government and Finance to conduct a study of the system of the care, custody, control, supervision and maintenance of persons confined in the state penal and correctional institutions and the system of the control, correction and recommitment of delinquents released therefrom on parole, and the establishment of a Department of Corrections.

WHEREAS, An adequate system of care, custody, control, maintenance and supervision of persons incarcerated in the state penal and correctional institutions as well as the control, supervision, correction and recommitment of such persons on parole is essential to the well-being of the State; and

WHEREAS, Cognizant of the importance of a good system of care, custody, control, supervision, and maintenance of persons incarcerated in the state penal and correctional institutions as well as the control, correction and recommitment of such persons on parole being essential to the well-being of society and many citizens feeling that the existing system is inadequate and could be vastly and vitally improved by the creation of a Department of Corrections to better effectuate such purposes; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance is hereby directed to make a thorough study and investigation of the system of the care, custody, control, supervision and maintenance of persons incarcerated in the state penal and correctional institutions as well as the system of control, supervision, correction and recommitment of such persons on parole, and make findings and recommendations to the Legislature, especially with reference to the establishment of a Department of Corrections to better the system of incarceration and correction of delinquents as aforesaid.

The committee shall make such report to members of the Legislature from time to time as it shall deem advisable, and

shall, on or before the date of the convening of the Legislature at its regular session in January, 1962, make an interim report to members of the Legislature embracing its findings and recommendations to that time. On or before the date of the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-three, the committee shall make a final report to the Legislature, and shall include in such report such findings and recommendations as it shall deem pertinent and shall include in such report drafts of any proposed legislation which it shall deem necessary to carry the recommendations of the committee into effect.

In order to make possible the procurement of the necessary information to carry out the intent and spirit of this resolution, the committee is hereby empowered to call upon any department or agency of state government for such services, information and assistance as it may deem appropriate, to summon witnesses and take testimony and to cause the production of such papers, documents, records, and the like as the committee may deem expedient.

## SENATE JOINT RESOLUTION NO. 1

(By Mr. Carson, Mr. President)

[Adopted February 9, 1961.]

To ratify the proposed amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the following proposed amendment to the constitution of the United States be ratified:

ARTICLE .....

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Con-

gress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

# LEGISLATURE OF WEST VIRGINIA

# ACTS OF 1960

## FIRST EXTRAORDINARY SESSION
## (October 3, 1960)

# CHAPTER 1

**(Senate Bill No. 6—By Mr. Bean, Mr. President, and Mr. Carrigan)**

[Passed October 5, 1960; in effect from passage. Approved by the Governor.]

AN ACT to make supplementary appropriations of public moneys out of the state treasury for the department of public assistance to implement this state's participation in the new federal program of medical assistance to the aged.

**Section**

1. Supplemental appropriation.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Supplemental Appropriation.*—That in addition to the appropriation made by chapter two, acts of the Legislature, regular session, one thousand nine hundred sixty, there is hereby appropriated from the state fund general revenue, conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following supplemental sums of money for the following purposes:

53—*Department of Public Assistance*
Acct. No. 405

| | |
|---|---|
| Personal Services | $ 137,596 |
| Current Expenses | 26,858 |
| Equipment | 10,290 |
| Medical Services | 1,207,256 |
| Total | $ 1,382,000 |

This supplemental appropriation shall be paid out of surplus funds in the state fund general revenue, as evidenced by a revised revenue statement submitted to the Legislature by the board of public works under date of October four, one thousand nine hundred sixty, in accordance with the provisions of article six, section fifty-one of the state constitution.

It is the purpose of this appropriation to provide medical assistance to the aged in accordance with the provisions of an act of Congress entitled "Social Security Amendments of 1960" (H.R. 12580) and acts of the West Virginia Legislature, extraordinary session, one thousand nine hundred sixty. This appropriation is intended to cover the six-month period ending March thirty-one, one thousand nine hundred sixty-one, and shall be available for expenditure from date of passage of this act.

# CHAPTER 2

**(Senate Bill No. 1—By Mr. Carrigan)**

[Passed October 5, 1960; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, sixteen and thirty, article five; sections one, two and three, article five-a; and section sixteen, article eleven, all of chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to medical assistance to needy persons presently receiving public assistance, establishing a program of medical assistance for per-

sons above the age of sixty-five years, exempting certain income of needy blind persons receiving public assistance to the blind from the basic determination of need, and exempting the names of recipients of medical assistance for the aged from public disclosure.

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**Article**

5. **Public Assistance.**
5-a. **The State of West Virginia Public Assistance Medical Service Fund.**
11. **General Provisions.**

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*Be it enacted by the Legislature of West Virginia:*

That sections two, four, sixteen and thirty, article five; sections one, two and three, article five-a; and section sixteen, article eleven, all of 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 5. Public Assistance.

**Section**

2. Definitions.
4. Blind persons.
16. Hearing by board of review.
30. Grants conditional.

Section 2. *Definitions.*—Unless the context clearly requires a different meaning, when used in this chapter:

"Public assistance" shall mean money payments to, or in behalf of, aged persons, blind persons, dependent children, the relative with whom any dependent child is living, or permanently and totally disabled persons. Public assistance may also include medical care or other type of remedial care recognized by law: *Provided, however,* That public assistance shall not include medical assistance for the aged.

"Resources" shall mean all property, real and personal, tangible and intangible, and all income, whether in the form of money or otherwise.

"Applicant" shall mean the person for whose use and benefit application is made.

"Recipient" shall mean the person for whose use and benefit a grant of public assistance is made.

"Medical assistance for the aged" shall mean medical assistance to any aged person sixty-five years of age and over, who is not a patient in any institution as a result of a diagnosis of tuberculosis or mental disease, who is not an inmate of a public institution except as a patient in a medical institution, with net income and liquid assets of not more than the amount set from time to time by rules and regulations of the director, based upon services available and the number of persons who can be served within the limits of available funds; but in no event shall the net annual income of any such recipient be more than one thousand five hundred dollars.

Sec. 4. *Blind Persons.*—A blind person shall be eligible for public assistance who:

(1) Has no vision, or has vision which is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(2) Has been examined by an ophthalmologist or by a physician skilled in the diseases of the eye or by an optometrist approved or designated by the state department, and the findings of the examination have been certified by such examiner in the manner and form required by the state department.

(3) Has resided in the state for one year immediately preceding the application for public assistance.

(4) Is not an inmate of a public institution (except as a patient in a medical institution).

(5) Is not a patient in an institution for tuberculosis or mental diseases, nor has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof.

(6) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health; except that in making this determination an amount not to exceed the first eighty-five dollars per month of earned income plus one half of earned income in excess of eighty-five dollars per month shall be disregarded.

Sec. 16. *Hearing by Board of Review.*—An applicant for or a recipient of public assistance or medical assistance for the aged under this chapter shall be afforded an opportunity for a hearing before the board of review of the state department when:

(1) His application is denied or he is denied the opportunity to apply.

(2) His application is not acted upon with reasonable promptness.

(3) His grant of assistance is not forthcoming with reasonable promptness after he has been determined to be eligible therefor.

(4) He deems the grant inadequate.

(5) The grant is revoked.

(6) The grant is reduced.

The state department shall inform applicants and recipients in writing of their right to a hearing, and such a hearing shall be afforded upon request in writing setting forth the reasons it is desired.

Sec. 30. *Grants Conditional.*—A grant of public assistance or medical assistance for the aged shall be subject to:

(1) Reconsideration, revocation or change.

(2) Appropriation by the Legislature of public funds.

(3) Amendment or repeal.

(4) Continuation of federal grants-in-aid.

## Article 5-a. The State of West Virginia Public Assistance Medical Services Fund.

Section

1. Medical services fund.
2. Payments into medical services fund.
3. Payments from medical services fund.

Section 1. *Medical Services Fund.*—In order that the state of West Virginia may receive full advantage of the provisions of the Federal Social Security Act, as amended, whereby federal grants-in-aid may be used on behalf of recipients of public assistance and recipients of medical assistance for the aged for medical care or any other type

of remedial care recognized by law, the state department of public assistance is authorized, empowered and directed to establish a special fund to be known as "The State of West Virginia Public Assistance Medical Services Fund", hereinafter referred to as "the fund". The fund shall be only for the purpose of providing necessary medical services for recipients of assistance and of medical assistance for the aged, and any balance in the fund at the end of any fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made out of the fund upon requisition of the director by means of a warrant signed by the auditor and treasurer.

Sec. 2. *Payments into Medical Services Fund.*—The fund shall consist of payments made into the fund with respect to recipients of assistance and recipients of medical assistance for the aged out of state money appropriated for the purposes of old age assistance or medical services and such federal grants-in-aid as are available for these purposes under the Federal Social Security Act, as amended. The amount of such payments into the fund shall be fixed from time to time by the director, and shall be sufficient to pay the costs of necessary medical services as determined by the director to be feasible in accordance with section three of this article.

Sec. 3. *Payments from Medical Services Fund.*—Recipients of assistance and recipients of medical assistance for the aged shall be entitled to have costs of necessary medical services paid out of the fund, in such amounts, and to the extent and in the manner determined from time to time to be feasible by the director pursuant to rules, regulations and standards established by him. Such rules, regulations and standards shall be established on the basis of money available for the purpose, the number of recipients, the experience with respect to the incidence of illness, disease, accidents and other causes among such recipients causing them to require medical services and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other factors considered relevant and proper by the director.

## Article 11. General Provisions.

Section

16. Public assistance lists and records; misuse.

Section 16. *Public Assistance Lists and Records; Misuse.* —The department of public assistance shall make available for public inspection by the tenth of each month a separate alphabetical list of the names and addresses of all persons receiving any form of relief assistance except recipients of medical assistance for the aged during the preceding month together with the amounts of such relief assistance. This information shall be delivered to the clerk of each county court in the state who shall immediately file the same in his office with respect to persons receiving such assistance as residents of that county. Such information shall be retained in the files of said clerks of the county courts for a period of two years from the date of receipt thereof. All information other than names, addresses and amounts of such relief assistance shall be considered as confidential.

It shall be unlawful, for commercial or political purposes of any nature, for any person or persons, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists of names of, or any information concerning, persons applying for or receiving relief assistance, directly or indirectly derived from the records, papers, files or communications of the department of public assistance or acquired in the course of performance of official duties. The violation of this provision is a misdemeanor, punishable upon conviction, by a fine of not more than one thousand dollars or imprisonment of not more than six months, or both.

For the protection of applicants and recipients of relief assistance, the department of public assistance shall be required to establish reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department.

# RESOLUTIONS

## HOUSE CONCURRENT RESOLUTION NO. 2

(By Mr. Cruikshank)

[Adopted October 5, 1960.]

Providing for the Joint Committee on Government and Finance to make a study of the feasibility of an appropriation to authorize the Conservation Commission to acquire by purchase a railroad in Pocahontas County for its value in attracting tourists trade.

WHEREAS, The Mower Lumber Company has closed its timber operation at Cass, Pocahontas County, West Virginia, and among its assets to be disposed of is a branch railroad operated by steam locomotives; and

WHEREAS, This railroad traverses the highest elevation in the east; and its tremendous value as a scenic attraction for thousands of tourists and visitors to our State is recognized; and it is in the process of being disposed of for a "junk" price; and

WHEREAS, Other states, particularly the State of North Carolina, have recognized the importance of such an attraction and similar enterprises are in operation there; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Joint Committee on Government and Finance direct that a study of the feasibility of acquiring aforesaid railroad and its equipment be made promptly and that the study include the possible cost of such an undertaking and its possible value as a tourist attraction in connection with or separate from the general parks and recreation program of the Conservation Commission;

That the committee be authorized to designate additional members of the Legislature to assist in such study as they deem necessary;

That the expenses necessary to conduct this study and to make the necessary report as early as possible be paid from the legislative appropriation for joint expenses in the 1960-61 appropriation bill;

That the members of the committee and the legislators so designated shall receive twenty-five dollars per diem and ten cents per mile for transportation as expenses actually incurred in the discharge of their duties.

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## HOUSE CONCURRENT RESOLUTION NO. 3

(By Mr. Floyd and Mr. Zabeau)

[Adopted October 5, 1960.]

Commending the Division of Vocational Rehabilitation, West Virginia Board of Vocational Education, for rehabilitating into gainful employment 3,023 disabled West Virginians, and thereby winning for West Virginia first place national rank among state vocational rehabilitation programs for the 1959-60 fiscal year.

WHEREAS, It is basic to our way of life and government that every American shall have the opportunity to work, and thus to attain as high an economic and social stature as his abilities will warrant; and

WHEREAS, Such individual attainments collectively enhance the economic and social posture of West Virginia and the United States; and

WHEREAS, Persons who have become mentally or physically disabled are handicapped in respect to attaining such maximum economic and social stature, and therefore must be assisted if such attainment is to be theirs; and

WHEREAS, The Division of Vocational Rehabilitation, West Virginia Board of Vocational Education, is the primary agency of government empowered by law to prepare disabled men and women of West Virginia for, and place them in, suitable employment, thus helping them to reach their maximum potentials of economic and social life; and

WHEREAS, This agency, during the 1959-60 fiscal year, prepared 3,023 disabled West Virginia men and women — the greatest number in the history of vocational rehabilitation in West Virginia—for, and place them in, gainful, remunerative jobs, and as a result of rehabilitating these deserving persons into rewarding and satisfying lives, brought high national honor to West Virginia by winning for the State number one rank among state vocational rehabilitation programs for the 1959-60 fiscal year; and

WHEREAS, This accomplishment of rehabilitating 3,023 disabled persons has lowered the number of unemployed by 3,023, and has raised the number of taxpayers by the same amount; and

WHEREAS, The social value of this accomplishment, although it cannot be determined in monetary terms, is likewise important; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Division of Vocational Rehabilitation, West Virginia Board of Vocational Rehabilitation, hereby be commended for its accomplishment of restoring this record number of disabled, jobless West Virginia men and women into remunerative jobs, and for bringing high national honor to West Virginia as the number one state in vocational rehabilitation of its disabled citizens during the 1959-60 fiscal year.

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## HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Speaker, Mr. Pauley)

[Adopted October 5, 1960.]

Declaring the intent of the Legislature to recognize the authority of the Board of Public Works to meet apparent emergencies and the willingness of the Legislature to cooperate.

WHEREAS, The Governor, by proclamation, called this Legislature into extraordinary session to provide and appropriate additional revenue for the State Economic Recovery Program, as outlined therein; and

WHEREAS, The Governor suggested the Legislature request immediate release for expenditure of all these funds in order to accelerate the program; and

WHEREAS, The provisions of chapter five, article five, and other articles of the Code of West Virginia authorize the Board of Public Works to approve expenditure schedules, the limitations on expenditures, the transfer between items of appropriation, expenditures of excess collections; and

WHEREAS, It appears from financial statements presented to the Legislature by the Conservation Commission that a sum approximating $800,000.00 remains unexpended from the first quarter allotment of these funds for the current fiscal year; and

WHEREAS, It further appears from financial statements presented to the Legislature by the Conservation Commission that a sum approximating $2,400,000.00 of total funds appropriated to the Conservation Commission for construction of new facilities, for repairs and improvements at state parks and state forests, and for construction of lakes and recreational areas, including materials, water supplies, roadways, building repairs, picnic areas, timber stand improvements, swimming facilities, and camping facilities remains unexpended as of October 3rd; and

WHEREAS, Upon request of the Conservation Commission the Board of Public Works may transfer certain sums of the remaining appropriation from the third and fourth quarters of the expenditure schedule allotments to the second and/or third quarters, and that the funds so transferred may be used for the purpose of stepping up the State Economic Recovery Program as outlined herein; and

WHEREAS, The Legislature, meeting in regular session in January, one thousand nine hundred sixty-one, or prior thereto, will recognize any emergency and provide by proper appropriation the funds necessary to restore the allotment balance of the funds of the Conservation Commission for this purpose; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Legislature hereby expresses and declares its intent to endorse any action by the Board of Public Works to follow the suggestions outlined herein, and for the information of the Board of Public Works, copies of this resolution shall be forwarded to each member thereof.

## SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Traubert)

[Adopted October 5, 1960.]

Providing for an interim committee to make a study and survey looking to an amendment of the West Virginia liquor control laws to legalize the sale of intoxicating liquor by the drink for consumption on the premises where sold.

WHEREAS, The Governor has, by proclamation, called this Legislature into extraordinary session to consider and act upon legislation to permit maximum participation by the State of West Virginia in the benefits provided under an act of Congress, entitled "Social Security Amendments of 1960", and to provide and appropriate additional revenue for the purpose; to provide and appropriate additional revenue for the purchase, development, improvement, and expansion of state parks, state forests, and scenic attractions; the reclamation of strip-mined areas; the improvement of streams; the development of recreational areas and facilities, and for the expansion of the Department of Public Safety to the maximum strength now authorized by law; and

WHEREAS, This Legislature is concerned that the rights of its elderly citizens who can qualify under the provisions of the Act of Congress, entitled "Social Security Amendments of 1960 (H. R. 12580)", shall be preserved; and

WHEREAS, State economic recovery and the safety of our State is of continuing concern to the Legislature and to the people of our State; and

WHEREAS, Little or no opportunity will be afforded for immediate final permanent action by the extraordinary session upon these proposed measures until careful study and deliberation have been made by the Legislature; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That an interim committee be created to make a study and survey of the amount of revenue to be derived or expected if our West Virginia liquor control laws were amended to legalize intoxicating liquors sold in the State by the drink for consumption on the premises where sold; to include in such study and survey an estimate of the amount of such revenue now being lost to the State through the apparent violation of the existing laws which prohibit such sales; an appraisement of the reaction of the people of the State to the proposal to submit a recommendation of the Legislature to consider the use of such a source of revenue for the purpose of financing all or any part of the proposals included in the call of the Governor;

That the membership of the committee be composed of five members of the Senate to be appointed by the President thereof, and five members of the House of Delegates to be appointed by the Speaker of the House. Not more than three members of each House shall be of the same political party, with the committee to select their own chairman or co-chairman; and, be it

*Resolved further,* That the expenses necessary to conduct this study and survey and to make the necessary reports be paid from legislative appropriation made for joint expenses in the 1960-61 appropriation bill or other available appropriations of the Legislature;

That the members of the committee shall receive twenty-five dollars per diem and ten cents per mile for transportation.

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## SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Martin)

[Adopted October 5, 1960.]

Memorializing Congress for legislation covering medical insurance for the aged.

WHEREAS, This Legislature, assembled in extraordinary session, urges the Congress of the United States to enact legisla-

tion extending the social security system to include medical insurance for the aged; and

WHEREAS, Unless such a program of self-financed insurance is adopted, the State of West Virginia will have an increasingly large and costly burden in paying for the care of the medically needy as this group can grow in size, and the cost of medical care will rise as long as it is purely a welfare program; and

WHEREAS, On the other hand, the social security method will allow the ordinary person to pay a small premium and have a paid-up medical insurance policy on retirement as a matter of earned right, which will reduce the number who will require assistance on a "needs" test and place the whole program on a sound fiscal basis; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That in this manner a very important and very difficult problem of our senior citizens could be met and solved, with emphasis on dignity and self-reliance rather than charity and dependence; and this Legislature of West Virginia, assembled in extraordinary session, does hereby request legislation for such medical insurance for the aged on the part of the Congress.

# LEGISLATURE OF WEST VIRGINIA

# ACTS OF 1961

## FIRST EXTRAORDINARY SESSION
## (June 14-16, 1961)

# CHAPTER 1

(House Bill No. 12—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration fees for pesticides.

**Article 16-a. Pesticides.**

Section

4. Registration.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Registration.* — A. Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually: *Provided,* That products

which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the current period of registration. The period of registration shall be for one year, beginning January one and ending December thirty-one of that year. The registrant shall file with the commissioner a statement including:

1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

2. The name of the economic poison;

3. A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and

4. If requested by the commissioner a full description of the tests made and the results thereof upon which the claims are based, and the analytical method or methods employed in determining the percentage of each active ingredient listed on the label to be registered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last registered.

B. The registrant shall pay an annual fee of ten dollars for each of the first twenty economic poisons registered and five dollars for each additional label registered. Such fees to be deposited in the treasury of the state and to the credit of a special fund to be used only for carrying out the provisions of this article, and shall be expended upon order of the commissioner of agriculture.

C. The commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the commissioner that the composition of the item is such as to warrant the proposed claims for it and if the item and its labeling and other material

required to be submitted to comply with the requirements of section three of this article, he shall register the item.

D. If it does not appear to the commissioner that the item is such as to warrant the proposed claims for it or if the item and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the item, labeling, or other material required to be submitted fails to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the item be registered, a review of this matter may be brought before a board of review.

1. The board of review shall consist of five individual members.

a. Two of these members shall be appointed by the dean of the college of agriculture, forestry and home economics of West Virginia University.

b. One member of the board of review shall be appointed by the commissioner of agriculture.

c. One member of the board of review shall be appointed by the registrant.

d. One member of the board of review shall be appointed by the governor of the state of West Virginia and shall act as chairman.

2. This board shall have the power to subpoena witnesses and employ competent help.

3. The decision of this board of review shall be final.

4. All expenses of the board shall be paid by the commissioner, except all salaries, fees and expenses accrued by the appointee of the registrant.

E. In order to protect the public, the commissioner, on his own motion, may at any time, cancel the registration of an economic poison.

F. Notwithstanding any other provisions of this article, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

# CHAPTER 2

**(Com. Sub. for Senate Bill No. 5—Originating in the Senate Committee on Finance)**

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to make supplementary appropriation of public moneys out of the state treasury for the state department of welfare.

**Section**

1. Supplementary appropriation.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Supplementary Appropriation.*—In addition and as a supplement to the appropriation made by the Enrolled Budget Bill enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, there is hereby appropriated from the state fund, general revenue, conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, as amended, the following additional sums of money for the purposes hereinafter stated:

53—*Department of Welfare*

| | |
|---|---|
| Supplementary Appropriation to Account Number 405 | |
| Personal Services | $ 1,047,846 |
| Current Expenses | 192,500 |
| Equipment | 6,590 |
| Public Assistance Grants (Classified Aid) | 4,930,252 |
| Medical Services | 669,791 |
| Retirement Fund | 116,163 |
| Total | $ 6,963,142 |

This supplementary appropriation shall be paid out of surplus funds in the state fund, general revenue, as evidenced by a revised revenue statement submitted to the Legislature by the board of public works under date of June sixteenth, one thousand nine hundred sixty-one,

in accordance with the provisions of article six, section fifty-one of the state constitution. This supplementary appropriation shall implement through the state department of welfare this state's participation in the new federal program of aid to dependent children of unemployed parents.

# CHAPTER 3

(Senate Bill No. 10—By Mr. Carson, Mr. President)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporate powers of West Virginia business development corporations.

**Article 14. West Virginia Business Development Corporations.**

Section

5. Corporate powers.

*Be it enacted by the Legislature of West Virginia:*

That section five, article fourteen, 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:

Section 5. *Corporate Powers.*—In furtherance of the purposes set out in section two of this article, and to aid in providing an effective program to alleviate conditions of substantial and persistent unemployment, underemployment, and lack of stable economic development, by taking effective steps in planning and financing economic redevelopment, utilizing such facilities and resources as are provided by the provisions of the federal "Area Redevelopment Act of 1961", and the "West Virginia Industrial Development Authority Act of 1961", and in addition to the powers conferred on business corporations by the provisions of this chap-

ter, such corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(a) To enter into contracts and incur liabilities for any purposes of the corporation; except that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money for any of the purposes of the corporation, including, but without implied limitation, the right to obtain loans under the provisions of "Title V of the Small Business Investment Act of 1958", as amended, or from any other similar governmental agency; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith; however, no loans shall be made hereunder unless the loan applied for is not otherwise available through ordinary banking channels, private lenders, or other governmental agencies, on reasonable terms.

(d) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(e) To acquire, by gift or purchase, the good will, business, rights, real and personal property, both tangible

and intangible, and other assets, or any part thereof, or interest therein, from any persons, firms, partnerships, corporations, joint-stock companies, associations or trusts, and to assume, undertake or pay the obligations, debts and liabilities of any such person, firm, partnership, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease or otherwise dispose of industrial plants or business establishments.

(f) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust; and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote any such shares of stock.

(g) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (d), (e), or (f), as security for the payment of any part of the purchase price thereof.

(h) To cooperate with and avail itself of the facilities of the department of commerce and the office of commissioner of commerce of this state, the West Virginia industrial development authority, the federal area redevelopment administrator, and any similar federal and state governmental agencies and officers; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or any part thereof.

(i) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

# CHAPTER 4

(House Bill No. 9—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section forty-seven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obstructions, dams or other structures in streams or watercourses and fish ladders, ways or flumes in connection therewith; granting to the director of the department of natural resources authority under certain circumstances to permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing suitable fish ladder, way or flume; and providing penalties for violation thereof and specifying a violation constitutes an abatable nuisance.

**Article 3. Crimes against Property.**

Section

47. Dams or obstructions in watercourses; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

Section 47. *Dams or Obstructions in Watercourses; Penalty.*—No person shall fall any timber and permit the same to remain in any navigable or floatable stream of this state when to do so shall obstruct the passage of boats, rafts, staves, ties or timber of any kind. No person shall construct any dam or other obstruction more than ten feet in height across any stream or watercourse unless the design and proposed construction shall have been declared to be safe by an order entered by the public service commission after full investigation. Except as may be provided by chapter twenty of this code, no person shall construct or maintain any dam or other structure in any stream or watercourse, which shall in any way

prevent or obstruct the free and easy passage of fish up or down such stream or watercourse, without first providing as a part of such dam or other structure a suitable fish ladder, way or flume, so constructed as to allow fish easily to ascend or descend the same; which ladder, way or flume shall be constructed only upon plans, in a manner, and at a place, satisfactory to the natural resources commission: *Provided, however,* That if the director of the department of natural resources determines that there is no substantial fish life in such stream or watercourse, or that the installation of a fish ladder, way or flume would not facilitate the free and easy passage of fish up or down a stream or watercourse, or that an industrial development project requires the construction of such dam or other structure and the installation of an operational fish ladder, way or flume is impracticable, he may, in writing, permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing a suitable fish ladder, way or flume; and in all navigable and floatable streams provisions shall be made in such dam or structure for the passage of boats and other crafts, logs and other materials: *Provided, however,* That this section shall not relieve such person from liability for damage to any riparian owner on account of the construction or maintenance of such dam.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and, whether conviction be had under this section or not, such violation shall be deemed a nuisance, which may be abated at the suit of any citizen or taxpayer, the county court of the county, or, as to fish ladders, at the suit of the natural resources commission, and, if the same endangers county roads the county court may abate such nuisance peaceably without such suit.

# CHAPTER 5

**(Com. Sub. for Senate Bill No. 6—Originating in the Senate Committee on Finance)**

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, and section twenty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend article two of said chapter twenty by adding thereto two new sections, designated sections forty-four-a and forty-four-b, to provide that certain revenues received by the department of natural resources shall be paid as special revenue to said department; to exempt persons over sixty-five years of age from game and fish licensing requirements; and relating to the issuance of a national forest hunting and trapping license, a national forest fishing license, and the amount of fee therefor.

**Article**

1. **Organization and Administration.**
2. **Game and Fish.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 1. Organization and Administration.

**Section**

9. Fiscal management.

Section 9. *Fiscal Management.*—Subject to any controlling rules and regulations of the department of finance and administration relating to state fiscal management policies and practices, the director shall establish in the department an adequate budget, finance and accounting

system which will currently and accurately reflect the fiscal operations and conditions of the department at all times. The department's accounting and auditing services shall be on a fiscal-year basis.

The director shall select and designate a competent and qualified person as department fiscal officer who, under the supervision of the director, shall be responsible for all budget, finance and accounting services of the department. All moneys received by the department shall be recorded and shall be paid as special revenue to the department of natural resources, as provided in paragraph (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.

## Article 2. Game and Fish.

Section

27. Necessity for licensing.
44-a. Class I; national forest hunting and trapping license.
44-b. Class J; national forest fishing license.

Section 27. *Necessity for Licensing.*—Except as otherwise provided by law, no resident who has reached his fifteenth birthday and who has not reached his sixty-fifth birthday, and no nonresident, regardless of age, shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit, and then only during the respective open seasons. No person under the age of fifteen years shall hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

A resident or nonresident member of any club, organization or association, or persons owning or leasing a game preserve, or fish preserve, plant or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law: *Provided, however,* That resident landowners or their resident children, or bona fide resident tenants of such land may, without a permit or license, hunt and fish on their own land dur-

ing open seasons in accordance with laws and regulations applying to such hunting and fishing unless such lands have been designated as a wildlife refuge or preserve.

Licenses and permits shall be of the kinds and classes set forth in this article, and shall be conditioned upon the payment of the fees established therefor.

Sec. 44-a. *Class I; National Forest Hunting and Trapping License.*—A class I license shall be a national forest hunting and trapping license and shall entitle the licensee to hunt all game animals and game birds and trap all fur-bearing animals in season excepting beaver, on all national forest land in West Virginia. It shall be issued only to a nonresident holding a class E or class L license or to a resident holding a class A or AB license. The fee therefor shall be one dollar. The revenue derived from the sale of this license shall be used for management and propagation of game and fish on national forest land and for no other purpose. The department of natural resources of West Virginia shall enter into a cooperative agreement with the United States forest service, such agreement to define the means and methods to be taken to improve the wildlife and fish resources and to program the expenditure of all funds derived from this license.

Sec. 44-b. *Class J; National Forest Fishing License.*—A class J license shall be a national forest fishing license and shall entitle the licensee to fish in waters within national forest land in West Virginia. It shall be issued only to a nonresident holding a class E or class F license or to a resident holding a class B or class AB license. The fee therefor shall be one dollar. The revenue derived from the sale of this license shall be used only for management and propagation of game and fish on national forest land and for no other purpose. The department of natural resources of West Virginia shall enter into a cooperative agreement with the United States forest service, such agreement to define the means and methods to be taken to improve the wildlife and fish resources and to program the expenditure of all funds derived from this license.

# CHAPTER 6

**(Senate Bill No. 1—By Mr. Carson, Mr. President)**

[Passed June 16, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article five, by adding thereto a new section, designated section six-a, all relating to public assistance and medical assistance for the aged; and more particularly to the eligibility of a dependent child and the relative of a dependent child for public assistance; and the commissioner of welfare's rule-making powers.

## Article 5. Public Assistance and Medical Assistance for the Aged.

Section

5. Dependent children, relatives of dependent children, and foster home care of dependent children.
6-a. Commissioner's rule-making powers.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Dependent Children, Relatives of Dependent Children, and Foster Home Care of Dependent Children.* —(a) A dependent child shall be eligible for public assistance who:

(1) Has not attained the age of eighteen years.

(2) Is deprived of parental support or care by reason of the death, continued absence from home, unemployment, physical or mental incapacity of a parent, or by reason of any other cause as the laws of the federal government governing federal aid to dependent children

may from time to time include: *Provided, however,* That such unemployed parent shall not have refused without good cause to accept employment, in which he is able to engage, which (1) is offered through public employment offices, or (2) is otherwise offered by an employer if the offer is determined by the department of employment security after notification by such employer to be a bona fide offer of such employment: *Provided further,* That such determination is not in conflict with Department of Health, Education, and Welfare of the United States regulations.

It is further provided that any aid under this plan to which any child or relative might otherwise be entitled, shall be denied for any month in which the parent of such child receives unemployment compensation under an unemployment compensation law of any state, including West Virginia, or of the United States for any week any part of which is included in such month.

(3) Is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, or any other relative as the laws of the federal government governing federal aid to dependent children may from time to time include, in a place of residence maintained by one or more of such relatives as his or their own home, or is living in a foster family home in accordance with the provisions of the laws of the federal government governing federal aid to dependent children.

(4) Has resided in the state for one year immediately preceding application for public assistance; or, was born within one year immediately preceding the application of a mother who resided within the state for one year immediately preceding such birth; or, was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the state for one year immediately preceding such birth.

(5) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

(b) The relative of a dependent child shall be eligible for public assistance for any month in which public assistance is paid with respect to such child, who:

(1) Is the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, or any other relative of a dependent child as the laws of the federal government governing federal aid to dependent children may from time to time include.

(2) Maintains himself, or together with any one or more of the other specified relatives, a place of residence as his or their own home, and is the person with whom a dependent child is living in such place of residence.

(3) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

Sec. 6-a. *Commissioner's Rule-making Powers.*—The rule-making powers of the commissioner of welfare shall include authority to establish rules and regulations modifying eligibility requirements for public assistance and medical assistance for the aged, and, in addition, shall include authority to provide the necessary procedures for the preparation of plans and for classifying and reporting expenditures made with respect to recipients of public assistance and medical assistance for the aged to the extent necessary and in such manner as to permit the state and its citizens to obtain the maximum benefits provided under the Federal Social Security Act and any laws amendatory of or supplementary thereto that may hereafter be enacted.

# CHAPTER 7

**(Senate Bill No. 4—By Mr. Carson, Mr. President)**

**[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]**

AN ACT to amend and reenact section five, article three, chapter nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; to amend article four of said chapter nine by adding thereto a new section, designated section ten-a; and to amend article ten of said chapter nine by adding thereto a new section, designated section five-a, to provide that the commissioner of welfare shall receive a yearly salary of eight thousand dollars from appropriated state revenue; to provide for the dismissal or reinstatement of a county director of public assistance, an assistant or employee of a county council, who has obtained permanent status under the state's civil service system, by the commissioner of welfare in accordance with procedures provided by the civil service act; and to establish in the department of welfare a special fund to be known as "Special County General Relief Fund" and to provide for its receipts and disbursements therefrom.

**Article**

3. **Commissioner of Welfare.**
4. **County Public Assistance Council.**
10. **Fiscal Provisions.**

*Be it enacted by the Legislature of West Virginia:*

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

## Article 3. Commissioner of Welfare.

**Section**

5. Compensation.

Section 5. *Compensation.*—Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commissioner of welfare shall receive a yearly salary of eight thousand dollars from appropriated state revenue; and, in addition, the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be accompanied by such sworn and itemized statement which shall be filed with the auditor and preserved as a public record.

## Article 4. County Public Assistance Council.

Section

10-a. Dismissal of county director of public assistance, the assistants and employees of a county council.

Section 10-a. *Dismissal of County Director of Public Assistance, the Assistants and Employees of a County Council.*—After a county director of public assistance, an assistant or employee of a county council obtains permanent status under the state's civil service system, he may only be dismissed or reinstated by the commissioner of welfare in accordance with procedures provided by the civil service act.

## Article 10. Fiscal Provisions.

Section

5-a. Special county general relief fund.

Section 5-a. *Special County General Relief Fund.*—Such part or all of a county general relief fund as can be matched by federal grants may be requisitioned from the county court by the state advisory board and placed in a special fund in the department of welfare to be known as "Special County General Relief Fund", from which the commissioner of welfare shall pay for the services in a county not inconsistent with those for which the county general relief fund was established; but only to the extent of the amount requisitioned from that county and matched by grants from the federal government.

Authority is granted to the county court of a county to pay in its discretion so much of its general county fund as is provided in its levy for administration expenses of the county council, and as can be matched by grants from the federal government, into the special fund in the department of welfare as herein provided; and when so paid, the commissioner of welfare shall pay the administrative expenses of the county council of a county to the extent of the amount so paid by the county court of that county into the special fund and matched by grants from the federal government.

# CHAPTER 8

(House Bill No. 8—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of commissioners and jurors in eminent domain proceedings.

**Article 2. Procedure.**

Section

19. Compensation of commissioners and jurors.

*Be it enacted by the Legislature of West Virginia:*

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

Section 19. *Compensation of Commissioners and Jurors.* —Each commissioner shall receive as compensation for services in each eminent domain proceeding a reasonable amount to be fixed by an order entered of record in the proceeding, said compensation not to exceed the sum of twenty-five dollars per day to be taxed as a part of the costs of the proceeding.

The jurors shall receive the same compensation fixed by law for jurors in felony cases, to be taxed as a part of the costs of the proceeding.

# CHAPTER 9

(House Bill No. 11—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-a, chapter twenty-seven of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to powers and duties of the director of mental health.

**Article 1-a. Department of Mental Health.**

**Section**

4. Powers and duties of director.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Powers and Duties of Director.*—The director shall appoint the superintendents of the institutions named in section two hereof, and of any other state mental institutions hereafter created; shall supervise and coordinate their medical and fiscal administration, and may establish uniform policies for those institutions. He may transfer a patient from any state mental institution to any other institution or clinic under his control. By agreement between the director of mental health and the state commissioner of public institutions, a patient at a state mental institution may be transferred to an institution, other than correctional, under the supervision of the state commissioner of public institutions. The director of mental health shall have all the authority vested in the divisions of the department, as hereinafter provided, and shall appoint the supervisors of those divisions. He may prescribe rules and regulations to carry out his authority. The director shall make periodic reports to the governor and to the Legislature on the condition of the state mental institutions and on other matters within his authority, and shall include recommendations for improvement of the state mental institutions and any other matters affecting the mental health of the people of the state.

The director is hereby authorized and empowered to accept and use for the benefit of a state mental institution or institutions, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state mental institution or institutions, it shall be used as

specified, and the director is hereby vested with the title to the property which is or may be the subject of such gift or devise. Any gift or devise of any property or thing which lawfully may be given and whatever profit may arise from its use or investment shall be deposited in a special revenue fund with the state treasurer, and shall be used only as specified by the donor or donors.

Whenever it shall become necessary, the department of mental health may condemn any interest, right or privilege, land or improvement which in its opinion may be necessary, in the manner provided by law for the acquisition by this state of property for public purposes. The state shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for the same except from the funds provided; and in any proceeding to condemn, such orders shall be made by the court having jurisdiction of the suit, action or proceedings as may be just to the state and to the owners of property to be condemned, and a bond or other security may be required by the court securing such owners against any loss or damage to be sustained by reason of the failure of the state to accept and pay for the property, but such bond or security shall impose no liability or debt on or of the state as contemplated by the provisions of the constitution of the state in relation to state debt.

# CHAPTER 10

**(House Bill No. 7—By Mr. Speaker, Mr. Singleton)**

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter six 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 the qualification and tenure of office of members of state boards and agencies.

**Article 5. Terms of Office; Matters Affecting the Right to Hold Office.**

Section

2-a. Qualification and tenure of office of members of state boards and agencies.

*Be it enacted by the Legislature of West Virginia:*

That article five, 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 two-a, to read as follows:

Section 2-a. *Qualification and Tenure of Office of Members of State Boards and Agencies.*—Enrolled House Bill No. 472, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, relating to congressional districts, shall not affect the qualification or tenure of office of any person who was appointed a member of any state board or agency prior to the effective date thereof; however, all appointments made after the effective date thereof to any state board or agency, on which membership is affected by congressional district requirements shall be made in accordance with the congressional district arrangement provided by said bill.

# CHAPTER 11

**(House Bill No. 3—By Mr. Speaker, Mr. Singleton)**

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five-b, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to exempt wages of persons employed under state's emergency employment program from suggestee execution.

## Article 5-b. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

Section

12. Exemptions.

*Be it enacted by the Legislature of West Virginia:*

That section twelve, article five-b, 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:

Section 12. *Exemptions.*—A judgment debtor to whom money is due or to become due which would otherwise be subject to suggestion under this article may have the same exempted from levy in the manner and to the extent provided by article eight of this chapter. In the case of salary or wages the exemption may be claimed for sums currently accruing but must be asserted anew as to any salary or wages which shall begin to accrue after the next payment date. Such exemption shall not be binding upon the state, state agency or political subdivision of which the judgment debtor is an officer or employee unless and until a certificate of exemption or true copy thereof shall have been delivered to the proper officer upon whom to make service of a suggestee execution under this article.

Money due to any lawful beneficiary thereof from any workmen's compensation, unemployment compensation, pension or retirement, public assistance or relief fund or system, or under the state's emergency employment program as provided by section six, title two of Enrolled Senate Bill No. 1 (Budget Bill), enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, or any laws amendatory of, supplementary or successor to, such program that may hereafter be enacted, shall not be subject to suggestion under this article.

Public obligations, whether in the form of bonds, notes, certificates of indebtedness, or otherwise, and whether negotiable or nonnegotiable, shall not be subject to suggestion under this article.

# CHAPTER 12

(Senate Bill No. 16—Originating in the Senate Committee on Finance)

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional consumers sales tax, more particularly imposing an additional consumers sales tax, making provision for its levy, imposition, payment, collection, remission and assessment, providing that the moneys derived therefrom shall be paid by the tax commissioner into the state fund, general revenue, to be expended in whatever manner provided by law, providing that the provisions of said section three-a shall take effect upon the expiration of the additional consumers sales tax and the provisions in connection therewith as imposed and provided by Enrolled Senate Bill No. 3, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and providing that the provisions of said section three-a shall expire on June thirtieth, one thousand nine hundred sixty-two.

## Article 15. Consumers Sales Tax.

Section

3-a. Additional consumers sales tax.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3-a. *Additional Consumers Sales Tax.*—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided

by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent ($.01) on each one dollar ($1.00) of monetary consideration, or fraction thereof, in excess of one dollar ($1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall take effect upon the expiration of the additional consumers sales tax and the provisions in connection therewith as imposed and provided by Enrolled Senate Bill No. 3, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and the provisions of this section shall expire on June thirtieth, one thousand nine hundred sixty-two.

# CHAPTER 13

**(Senate Bill No. 15—Originating in the Senate Committee on Finance)**

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional use tax, more particularly imposing an additional

use tax, making provision relating to its levy, imposition, exemptions, payment, collection, remission and assessment, providing that all moneys derived therefrom shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law, providing that the provisions of said section two-a shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by Enrolled House Bill No. 481, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and that the provisions of said section two-a shall expire on June thirtieth, one thousand nine hundred sixty-two.

**Article 15-a. Use Tax.**

**Section**

2-a. Additional use tax.

*Be it enacted by the Legislature of West Virginia:*

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

Section 2-a. *Additional Use Tax.*—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase price being exempt for the purpose of computing the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission and assessment of the excise tax imposed by section two of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six of this article, all moneys received from the additional tax imposed by this section shall be paid into the state

fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by Enrolled House Bill No. 481, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and the provisions of this section shall expire on June thirtieth, one thousand nine hundred sixty-two.

# RESOLUTIONS

## HOUSE CONCURRENT RESOLUTION NO. 2

(By Messrs. White, Cann, Garrett and Zabeau)

[Adopted June 15, 1961.]

Expressing the sense of the Legislature of West Virginia in support of the finding of the United States Tariff Commission Escape Clause Investigation No. 7-101, dated May 17, 1961, pertaining to crown, cylinder and sheet glass.

WHEREAS, It is apparent to this Legislature that in many areas of our State there exists an emergency in relation to unemployment; and

WHEREAS, In Harrison and Kanawha Counties, four large sheet-glass plants are and have been operating at greatly reduced capacity, and with a reduced number of employees; and

WHEREAS, The United States Tariff Commission, on May 17, 1961, in connection with Escape Clause Investigation No. 7-101, unanimously found, after investigation, and reported to the President that sheet glass, such as produced in West Virginia, is being and has been imported into the United States in such increased quantities as to cause serious injury to the sheet-glass industry; and

WHEREAS, The Tariff Commission further recommended that the tariff on sheet glass be increased to rates set out in the report; and

WHEREAS, West Virginia produces more sheet glass than any other State; and

WHEREAS, The State of West Virginia is alert to take action that may increase employment and retain here industries traditionally a part of our economy, and to take all effective measures in support of such policy; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That it is the sense of this Legislature that the President of the United States can and should adopt and put into effect the findings of the United States Tariff Commission, dated May 17, 1961, in connection with Escape Clause Investigation No. 7-101.

## HOUSE CONCURRENT RESOLUTION NO. 4

(By Mr. Speaker, Mr. Singleton)

[Adopted June 15, 1961.]

Authorizing compensation of members of the House of Delegates of the West Virginia Legislature appointed to fill unexpired terms.

WHEREAS, In the past, vacancies have occurred in the membership of the House of Delegates of the West Virginia Legislature due to death and resignation of members; and

WHEREAS, There has not been a uniform policy regarding the compensation to be paid to members who are appointed to fill unexpired terms; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That members appointed for any reason whatsoever to fill an unexpired term in the House of Delegates of the West Virginia Legislature at the first extraordinary session, 1961, commencing on June 14th, 1961, shall receive as compensation for services rendered the sum of thirty-five dollars per day for each and every day the Legislature is in session; and, be it

*Further Resolved,* That such compensation shall not exceed one thousand five hundred dollars for any one calendar year, together with the travel expense hereinabove authorized; and, be it

*Further Resolved,* That if any member appointed to fill an unexpired term shall serve for a full calendar year, then said member shall be compensated in the same manner as duly elected members are compensated; and, be it

*Further Resolved,* That in adopting this resolution and authorizing payment to members of the House of Delegates appointed to fill unexpired terms, the Legislature finds and declares that a moral obligation exists on the part of the State of West Virginia to compensate members appointed to fill unexpired terms for the services rendered by said members.

## HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Seibert)

[Adopted June 16, 1961.]

Requesting the Joint Committee on Government and Finance to make a study of procedures and practices of the Division of Purchases of the Department of Finance and Administration and report to the Legislature thereon.

WHEREAS, Recently the press has carried a number of stories indicating that in several instances purchases by the Division of Purchases of the Department of Finance and Administration of commodities, supplies and equipment have not been made from the lowest bidder and in some instances purchases have been made without obtaining competitive bids; and

WHEREAS, The Attorney General of West Virginia has recently been quoted by the press as inviting the public to report on instances of irregularities in the conduct of the state government to the appropriate public officials in order that necessary steps may be taken to eliminate or correct any improper practices or procedures; and

WHEREAS, The Legislature hereby declares its willingness to cooperate with the Executive Department in the enactment of any legislation needed to safeguard the interests of the State in the purchasing of commodities, supplies and equipment; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Joint Committee on Government and Finance is hereby requested to immediately make a study of procedures and practices of the Division of Purchases of the Department of Finance and Administration in connection with purchases for the State and its agencies and of the law governing such purchases; and that said Committee report its findings and recommendations to the 1962 session of the Legislature; and, be it

*Further Resolved,* That any irregularities that may be discovered during the course of the study shall immediately be transmitted to the Honorable William Wallace Barron, Governor, for his information and appropriate action.

## SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Moreland)

[Adopted June 16, 1961.]

Directing the Joint Committee on Government and Finance to conduct a study of the West Virginia Merit System Council in regard to its policies, procedures; and, especially, the method used in arriving at various job specifications for the qualification of applicants.

WHEREAS, The Legislature by Chapter 108, Acts of the Legislature of West Virginia, one thousand nine hundred forty-seven, created a Merit System Council with powers, among others, to establish policies for the administration of the merit system; and

WHEREAS, It appears that in many cases, prerequisites by way of education or training are such that few applicants are eligible to apply for such jobs; and

WHEREAS, It appears that little, if any, consideration is given to the available pay for such job positions at the time the specifications and requirements for education and work training are established, so that people who do meet the specified requirements are not willing to work at the available pay rate; and

WHEREAS, The Legislature in regular session, one thousand nine hundred sixty-one, established a West Virginia Civil Service Commission to supersede the Merit System Council; and

WHEREAS, In order that such commission shall not continue what appears possibly to be impractical policies; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance be hereby directed to make a thorough study and investigation of the merit system in order to determine the soundness and reasonableness of its policies, practices and procedures in view of the particular circumstances prevailing in the State of West Virginia. The committee shall make such a report to the members of the Legislature from time to time as it deems advisable and shall, before convening of the Legislature, regular session,

one thousand nine hundred sixty-two, make an interim report to the members of the Legislature embracing its findings and recommendations at that time.

On or before the date of the convening of the Legislature, regular session, one thousand nine hundred sixty-two, the committee shall make a final report to the members of the Legislature; and shall include in such report such findings and recommendations as it deems pertinent, including drafts of any such proposed legislation that will be necessary to carry the recommendations of the committee into effect.

# LEGISLATURE OF WEST VIRGINIA

# ACTS OF 1962

## REGULAR SESSION

## CHAPTER 1

**(Com. Sub. for House Bill No. 1—Originating in the House Committee on Finance)**

[Passed February 10, 1962; in effect from passage.]

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 1. General Provisions.

**Section**


1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.


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

**Sec. 2. Definitions.**—For the purpose of this act:

"Board" shall mean the board of public works;

"Spending Unit" shall mean the department, agency or institution to which an appropriation is made;

The "fiscal year" one thousand nine hundred sixty-three shall mean the period from July first, one thousand nine hundred sixty-two through June thirtieth, one thousand nine hundred sixty-three;

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

**Sec. 3. Classification of Appropriations.**—An appropriation for:

"Personal services" shall be expended only for the payment of salaries, wages, fees, and other compensation for skill, work, or employment;

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

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

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

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

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

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

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

**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 of West Virginia, one thousand nine hundred thirty-one, or according to any law detailing a procedure specifically limiting that article.

## Title 2. Appropriations.

**Section**

1. Appropriations from general revenue.

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Department of agriculture (agricultural awards)—Acct. No. 515 1021
Department of agriculture (marketing and research)—Acct. No. 513 ..... 1021
Department of agriculture (soil conservation committee)—Acct. No. 512 ..... 1020

BUSINESS AND INDUSTRIAL RELATIONS

Bureau of labor and department of weights and measures—Acct. No. 450 ..... 1017
Commission on interstate cooperation—Acct. No. 472 ..... 1018
Department of banking—Acct. No. 480 ..... 1019
Department of commerce—Acct. No. 465 ..... 1017
Department of mines—Acct. No. 460 ..... 1017
Interstate commission on Potomac river basin—Acct. No. 473 ..... 1018
Ohio river valley water sanitation commission—Acct. No. 474 ..... 1018
Southern regional education board—Acct. No. 475 ..... 1018
West Virginia air pollution commission—Acct. No. 476 ..... 1018
West Virginia centennial commission—Acct. No. 487 ..... 1019
West Virginia historic commission—Acct. No. 477 ..... 1019
West Virginia nonintoxicating beer commissioner—Acct. No. 490 ..... 1019
West Virginia racing commission—Acct. No. 495 ..... 1020, 1042
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Andrew S. Rowan memorial home—Acct. No. 384 ..... 1012
Forestry camp for boys—Acct. No. 371 ..... 1011
Medium security prison—Acct. No. 376 ..... 1012
West Virginia children's home—Acct. No. 380 ..... 1012
West Virginia industrial home for girls--Acct. No. 372 ..... 1011, 1042
West Virginia industrial school for boys—Acct. No. 370 ..... 1010, 1041

West Virginia penitentiary—Acct. No. 375 ..... 1011
West Virginia state prison for women—Acct. No. 374 ..... 1011

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Natural resources commission (forest tree nursery facilities)—Acct. No. 521 ..... 1022

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Concord college—Acct. No. 325 ..... 1008
Department of education (aid for exceptional children)—Acct. No. 296 ..... 1005
Department of education (textbook aid)—Acct. No. 297 ..... 1005
Fairmont state college—Acct. No. 321 ..... 1007
FFA-FHA camp and conference center—Acct. No. 336 ..... 1010
Glenville state college—Acct. No. 322 ..... 1007
Marshall university—Acct. No. 320 ..... 1007
Shepherd college—Acct. No. 324 ..... 1007
State board of education (vocational division)—Acct. No. 294 ..... 1004
State board of school finance (state aid to schools)—Acct. No. 295 . 1004
Teachers retirement board—Acct. No. 298 ..... 1006
West Liberty state college—Acct. No. 323 ..... 1007
West Virginia institute of technology—Acct. No. 327 ..... 1008
West Virginia library commission—Acct. No. 350 ..... 1010
West Virginia schools for the deaf and blind—Acct. No. 333 ..... 1009
West Virginia state college—Acct. No. 328 ..... 1009
West Virginia state college (4-H camp)—Acct. No. 330 ..... 1009
West Virginia university—Acct. No. 300 ..... 1006
West Virginia university (Potomac state college)—Acct. No. 315 .. 1006

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State tax commissioner—Acct. No. 180 ..... 1001
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Department of mental health—Acct. No. 410 ..... 1014
Department of veterans affairs—Acct. No. 404 ..... 1013
Department of welfare—Acct. No. 405 ..... 1013
Fairmont emergency hospital—Acct. No. 425 ..... 1015
Hopemont sanitarium—Acct. No. 430 ..... 1016
Huntington state hospital—Acct. No. 422 ..... 1014
Lakin state hospital—Acct. No. 423 ..... 1015
Pinecrest sanitarium—Acct. No. 431 ..... 1016
Spencer state hospital—Acct. No. 421 ..... 1014
State board of education (rehabilitation division)—Acct. No. 440 ..... 1017
State health department—Acct. No. 400 ..... 1012
Welch emergency hospital—Acct. No. 426 ..... 1015
Weston state hospital—Acct. No. 420 ..... 1014
West Virginia training school—Acct. No. 419 ..... 1014, 1042

JUDICIAL

Auditor's office—Acct. No. 111 ..... 999
Judicial council—Acct. No. 118 ..... 1000
State law library—Acct. No. 114 ..... 999
Supreme court of appeals—Acct. No. 110 ..... 999

LEGISLATIVE

House of Delegates--Acct. No. 102 ..... 996
Joint expenses—Acct. No. 103 ..... 998
Senate—Acct. No. 101 ..... 995

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of accountancy—Acct. No. 586 ..... 1025
Board of architects--Acct. No. 595 ..... 1026
Board of dental examiners--Acct. No. 589 ..... 1025
Board of embalmers and funeral directors—Acct. No. 593 ..... 1026
Board of examiners for practical nurses--Acct. No. 587 ..... 1025
Board of examiners for registered nurses—Acct. No. 588 ..... 1025
Board of law examiners—Acct. No. 597 ..... 1027
Board of optometry—Acct. No. 592 ..... 1026
Board of osteopathy—Acct. No. 591 ..... 1026
Board of pharmacy—Acct. No. 590 ..... 1025
Board of registration for professional engineers—Acct. No. 594 ..... 1026
Board of sanitarians—Acct. No. 599 ..... 1027
Board of veterinarians—Acct. No. 596 ..... 1026
Human rights commission—Acct. No. 598 ..... 1027
State road commission—Acct. No. 641 ..... 1028
West Virginia public employees' retirement board—Acct. No. 614 1027

PROTECTION

Adjutant general (state militia)—Acct. No. 580 ..... 1023
Auditor's office (social security)—Acct. No. 582 ..... 1024
Commissioner of public institutions (insurance)—Acct. No. 585 ..... 1025
Department of civil and defense mobilization—Acct. No. 581 ..... 1024
Department of public safety—Acct. No. 570 ..... 1023
State board of education (insurance)—Acct. No. 584 ..... 1024

2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 812 1033
Department of agriculture—Acct. No. 818 ..... 1034
Department of employment security (federal)—Acct. No. 825 ..... 1035
Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814 ..... 1033

Department of labor (bedding division)—Acct. No. 843 ..... 1039
Department of public safety—(inspection fees)—Acct. No. 835 ..... 1038
Insurance commissioner—Acct. No. 826 ..... 1035
Insurance commissioner (fire marshal)—Acct. No. 827 ..... 1035, 1042
Natural resources commission—Acct. No. 830 ..... 1037
Public service commission—Acct. No. 828 ..... 1036
Public service commission (motor carrier division)—Acct. No. 829 1036
Real estate commission—Acct. No. 801 ..... 1032
State board of education (special capital improvement fund)—
Acct. No. 854 ..... 1040
State committee of barbers and beauticians—Acct. No. 822 ..... 1034
West Virginia civil service system—Acct. No. 840 ..... 1039
West Virginia liquor control commissioner—Acct. No. 837 ..... 1038
West Virginia racing commission—Acct. No. 808 ..... 1032
West Virginia university (special capital improvement fund)—
Acct. No. 853 ..... 1040

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671 ..... 1029, 1042
State road commission (general administration and engineering)—
Acct. No. 670 ..... 1028
State tax commissioner (gasoline tax division)—Acct. No. 672 ..... 1029

PAYABLE FROM GENERAL SCHOOL FUND

Department of education—Acct. No. 703 ..... 1030, 1042
Department of education (salaries of county superintendents)—
Acct. No. 706 ..... 1031
Department of education (scholarships for teacher training)—
Acct. No. 715 ..... 1032
Department of education (school lunch program)
Acct. No. 705 ..... 1031
Department of education (state aid to children's homes)—
Acct. No. 707 ..... 1032
Department of education (veterans education)—Acct. No. 702 ..... 1030
State board of education—Acct. No. 700 ..... 1029
State board of education (vocational division)—Acct. No. 701 ..... 1030
State board of school finance—Acct. No. 704 ..... 1031
State tax commissioner (store and general licenses division)—
Acct. No. 712 ..... 1032

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900 ..... 1041

3. Supplemental and deficiency appropriations.
4. Awards for claims against the state.
5. Appropriations for emergency relief of unemployment.
6. Appropriations from surplus revenues.
7. Special revenue appropriations.
8. Specific funds and collection accounts.
9. Appropriations for refunding erroneous payments.
10. Sinking fund deficiencies.
11. Appropriations from taxes and license fees.
12. Appropriations to pay costs of publication of delinquent corporations.
13. Appropriations for local governments.
14. Total appropriations.
15. General school fund.

**Section 1. Appropriations from General Revenue.**—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized for expenditures during the fiscal year one thousand nine hundred sixty-three.

## LEGISLATIVE

### 1—*Senate*

Acct. No. 101

| | *Fiscal Year 1962-63* |
|---|---|
| Salaries of Members | $ 48,000.00 |
| Compensation and per diem of officers and attaches | 95,000.00 |
| Mileage of Members | 2,800.00 |
| Current Expenses and Contingent Fund | 100,000.00 |
| To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the Office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the State | 10,000.00 |
| To pay cost of printing the 1962 edition of Blue Book | 46,000.00 |
| Drafting service | 8,000.00 |
| The appropriations for the Senate for the fiscal year 1961-62 are to remain in full force and effect, and are hereby reappropriated to June 30, 1963. | |

Any balances so reappropriated may be transferred and credited to the 1962-63 accounts.

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

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

### 2—*House of Delegates*

Acct. No. 102

| | |
|---|---|
| Salaries of Members | $ 150,000.00 |
| Compensation and per diem of officers and attaches | 135,000.00 |
| Mileage of Members | 5,000.00 |
| Current Expenses and Contingent Fund | 95,000.00 |
| Drafting Service | 5,000.00 |

An amount, not to exceed $3,600.00 per year, is hereby authorized to be expended from the contingent fund of the House of Delegates for janitor services, etc.

The House Committee on Rules, with the approval of the Speaker, is hereby authorized to expend from the House Contingent Fund for the fiscal year 1962-63 an amount, not to exceed the sum of Thirteen Thousand ($13,000.00) Dollars, for the purpose of carpeting the House Chamber and

altering the electrical wiring for the roll call and public address systems in said Chamber in the main unit of the Capitol Building. The appropriations for the House of Delegates for the fiscal year 1961-62 are to remain in full force and effect, and are hereby reappropriated to June 30, 1963.

Any balances so reappropriated may be transferred and credited to the 1962-63 accounts.

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

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

For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a salary of $925.00 per month, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at a salary not to exceed $375.00 per month each, payable monthly from the same fund.

### 3—*Joint Expenses*

Acct. No. 103

| | |
|---|---|
| To pay the cost of legislative printing and stationery | $ 125,000.00 |
| Commission on Interstate Cooperation | 15,000.00 |
| Joint Committee on Government and Finance | 240,000.00 |
| Other Authorized Legislative Committees | 30.000.00 |

The appropriations for Joint Expenses for the fiscal year 1961-62 are to remain in full force and effect, and are hereby reappropriated to June 30, 1963.

Any balances so reappropriated may be transferred and credited to the 1962-63 accounts.

Upon the writen 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.

Upon the written request of the Clerk of the Senate and the Clerk of the House of Delegates, the State Auditor shall transfer from the 1961-62 appropriations for "Joint Committee on Government and Finance" the sum of $25,000.00 to Account 101, "Current Expenses and Contingent Fund."

Upon the written request of the Clerk of the Senate and the Clerk of the House of Delegates, the State Auditor shall transfer from Account No. 103, of the 1961-62 Appropriation to the "Joint Committee on Government and Finance," the sum of $48,000.00 to Acct. No. 510—Department of Agriculture for Emergency Seed Program.

## JUDICIAL

### 4—*Supreme Court of Appeals*

Acct. No. 110

| | | |
|---|---|---|
| 1 | Salaries of Judges | $ 87,500.00 |
| 2 | Other Personal Services | 113,900.00 |
| 3 | Current Expenses | 22,000.00 |
| 4 | Equipment | 2,500.00 |
| 5 | Total | $ 225,900.00 |

### 5—*Judicial—Auditor's Office*

Acct. No. 111

| | | |
|---|---|---|
| 1 | Salaries of Judges | $ 345,000.00 |
| 2 | Other Personal Services | 81,000.00 |
| 3 | Current Expenses | 26,000.00 |
| 4 | Judges' Retirement System | 25,000.00 |
| 5 | Criminal Charges | 300,000.00 |
| 6 | Total | $ 777,000.00 |

7 This appropriation shall be administered by
8 the State Auditor who shall draw **his re-**
9 quisition for warrants in payment of sal-
10 aries in the form of payrolls, making de-
11 ductions therefrom as required by law, for
12 taxes and other items. The appropriation
13 for Judges' Retirement System is to be
14 transferred to the Judges' Retirement
15 Fund, in accordance with the law relating
16 thereto, upon requisition of the State
17 Auditor.

### 6—*State Law Library*

Acct. No. 114

| | | |
|---|---|---|
| 1 | Personal Services | $ 22,180.00 |
| 2 | Current Expenses | 2,000.00 |
| 3 | Equipment | 14,500.00 |
| 4 | Total | $ 38,680.00 |

*7—Judicial Council*

Acct. No. 118

| | | |
|---|---|---|
| 1 | To pay expenses of Members of the council | $ 12,000.00 |

EXECUTIVE

*8—Governor's Office*

Acct. No. 120

| | | |
|---|---|---|
| 1 | Salary of Governor | $ 17,500.00 |
| 2 | Other Personal Services | 63,747.00 |
| 3 | Current Expenses | 15,000.00 |
| 4 | Equipment | 1,500.00 |
| 5 | Civil Contingent Fund | 160,000.00 |
| 6 | Of this appropriation there may be expend- | |
| 7 | ed, at the discretion of the Governor, an | |
| 8 | amount not to exceed $1,000.00 as West | |
| 9 | Virginia's contribution to the Interstate | |
| 10 | Oil Compact Commission. | |
| 11 | Custodial Fund | 50,000.00 |
| 12 | To be used for current general expenses, | |
| 13 | including compensation of servants and | |
| 14 | employees, household maintenance, cost of | |
| 15 | official functions, and any additional | |
| 16 | household expenses occasioned by such | |
| 17 | official functions. | |
| 18 | Total | $ 307,747.00 |

*9—Board of Probation and Parole*

Acct. No. 123

| | | |
|---|---|---|
| 1 | Personal Services | $ 189,960.00 |
| 2 | Current Expenses | 80,210.00 |
| 3 | Equipment | 2,000.00 |
| 4 | Total | $ 272,170.00 |

FISCAL

*10—Auditor's Office—General Administration*

Acct. No. 150

| | | |
|---|---|---|
| 1 | Salary of State Auditor | $ 11,000.00 |
| 2 | Other Personal Services | 326,880.00 |

| | | |
|---|---|---|
| 3 | Current Expenses | 92,655.00 |
| 4 | Equipment | 15,000.00 |
| 5 | Total | $ 445,535.00 |

11—*Treasurer's Office*

Acct. No. 160

| | | |
|---|---|---|
| 1 | Salary of State Treasurer | $ 11,000.00 |
| 2 | Other Personal Services | 106,200.00 |
| 3 | Current Expenses | 16,500.00 |
| 4 | Equipment | 10,000.00 |
| 5 | Total | $ 143,700.00 |

12—*Sinking Fund Commission*

Acct. No. 170

| | | |
|---|---|---|
| 1 | Personal Services | $ 19,800.00 |
| 2 | Current Expenses | 1,500.00 |
| 3 | Total | $ 21,300.00 |

13—*State Tax Commissioner*

Acct. No. 180

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,006,830.00 |
| 2 | Current Expenses | 310,100.00 |
| 3 | Equipment | 23,000.00 |
| 4 | Administration, Enforcement and Collection under the West Virginia Personal Income Tax Law (Senate Bill No. 106—1961 Legislature) | 400,000.00 |
| 8 | Total | $ 1,739,930.00 |

9 Any unexpended balance remaining in the
10 appropriation "Administration, Enforce-
11 ment and Collection under the West Vir-
12 ginia Personal Income Tax Law (Senate
13 Bill No. 106—1961 Legislature)" at the
14 end of the 1961-62 fiscal year is hereby re-

appropriated for expenditure during the 1962-63 fiscal year.

14—*State Tax Commissioner*

Acct. No. 185

| | | |
|---|---|---|
| Property Appraisal | $ | 1,937,042.00 |

Any balance remaining in the appropriation "Property Appraisal" at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63.

15—*State Commissioner of Public Institutions*

Acct. No. 190

| | | |
|---|---|---|
| Salary of Commissioner | $ | 10,000.00 |
| Other Personal Services | | 46,920.00 |
| Current Expenses | | 11,275.00 |
| Equipment | | 1,100.00 |
| Total | $ | 69,295.00 |

16—*Department of Finance and Administration*

Acct. No. 210

| | | |
|---|---|---|
| Personal Services | $ | 482,890.00 |
| Current Expenses | | 140,320.00 |
| Repairs and Alterations | | 51,900.00 |
| Equipment | | 19,000.00 |
| Postage | | 90.000.00 |
| Records Management | | 10,000.00 |
| Emergency and Economic Stabilization | | 10,000.00 |
| Total | $ | 804,110.00 |

The Workmen's Compensation Commission, Department of Public Assistance, Public Service Commission, Natural Resources Commission, Department of Motor Vehicles, State Road Commissioner and State Health Department shall reimburse the Postage appropriation of the Department

of Finance and Administration monthly for all meter service. Any spending unit receiving reimbursement for postage costs from the Federal Government shall refund to the Postage Account of the Department of Finance and Administration such amounts. Should this appropriation for Postage be insufficient to meet the mailing requirements of the state spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for that Department for postage in excess of this appropriation.

Any unexpended balance remaining in the Postage Account at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63.

### 17—*The Board of Public Works*

Acct. No. 220

| | | |
|---|---|---|
| 1 | Contingent Fund | $ 50,000.00 |

### 18—*State Board of Insurance*

Acct. No. 225

| | | |
|---|---|---|
| 1 | Personal Services | $ 5,000.00 |
| 2 | Current Expenses | 2,200.00 |
| 3 | Total | $ 7,200.00 |

## LEGAL

### 19—*Attorney General*

Acct. No. 240

| | | |
|---|---|---|
| 1 | Salary of Attorney General | $ 12,000.00 |
| 2 | Other Personal Services | 167,840.00 |
| 3 | Current Expenses | 19,000.00 |

| | | |
|---|---|---|
| Equipment | | 9,500.00 |
| To protect the resources or tax structure of the State in controversies or legal proceedings affecting same | | 4,000.00 |
| Total | $ | 212,340.00 |

20—*Commission on Uniform State Laws*

Acct. No. 245

| | | |
|---|---|---|
| Total | $ | 3,150.00 |

## INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 250

| | | |
|---|---|---|
| Salary of Secretary of State | $ | 11,000.00 |
| Other Personal Services | | 62,640.00 |
| Current Expenses | | 13,000.00 |
| Equipment | | 3,300.00 |
| Total | $ | 89,940.00 |

## EDUCATIONAL

22—*State Board of Education—Vocational Division*

Acct. No. 294

| | | |
|---|---|---|
| Total | $ | 500,000.00 |
| To be transferred to General School Fund (Acct. No. 701) and be administered in accordance with provisions of House Bill No. 7—1960 Legislature. | | |
| Any unexpended balance remaining in this account (294) at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63. | | |

23—*State Board of School Finance—State Aid to Schools*

Acct. No. 295

| | | |
|---|---|---|
| State aid to supplement the General School Fund | $ | 58,075,585.00 |
| Reimbursement to counties which suffer reductions in state aid formula allocations | | |

| | | |
|---|---|---|
| | for instruction as a result of participation in experimental programs approved by the State Board of Education | 15,000.00 |
| | State Aid to Supplement the General School Fund—allocation for increased enrollment | 300,000.00 |
| | To the Board of Education of Morgan County for funds lost as a result of an error in the appraisal report of the Tax Commissioner for the year 1961, in addition to its regular state aid | 8,740.00 |
| | Total | $ 58,399,325.00 |

To be transferred to the General School Fund upon the requisition of the Governor. Until the property reappraisal is completed in all counties, the computed local share in any county, for the final determination of state aid, shall not be increased or decreased more than five per cent in any one year. With the exception of this limitation, provisions of article nine-a, chapter eighteen of the Code shall in no way be affected.

24—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

| | |
|---|---|
| Personal Services | $ 14,000.00 |
| Current Expenses | 4,000.00 |
| Out-of-State Instruction | 30,000.00 |
| Aid to Counties | 208,500.00 |
| Total | $ 256,500.00 |

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

25—*Department of Education—Textbook Aid*

Acct. No. 297

| | |
|---|---|
| Textbooks for Schools | $ 150,000.00 |

To be distributed according to chapter fifty-one, acts of the Legislature, regular session, 1939.

### 26—*Teachers Retirement Board*

Acct. No. 298

| | |
|---|---|
| Benefit Fund—Payments to Retired Teachers | $ 2,405,974.00 |
| Employers' Accumulation Fund—To match contributions of members | 3,344,000.00 |
| Expense Fund | 33,304.00 |
| Total | $ 5,783,278.00 |

### 27—*West Virginia University*

Acct. No. 300

| | |
|---|---|
| Personal Services | $ 8,217,126.00 |
| Current Expenses | 1,232,000.00 |
| Repairs and Alterations | 400,000.00 |
| Equipment | 533,000.00 |
| Oak Wilt Control Research | 10,000.00 |
| State Aid to Students of Veterinary Medicine | 48,000.00 |
| Institute for Planning and Research | 50,000.00 |
| Bureau for Coal Research | 60,000.00 |
| Total | $ 10,550,126.00 |

Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.

### 28—*Potomac State College of West Virginia University*

Acct. No. 315

| | |
|---|---|
| Personal Services | $ 380,750.00 |
| Current Expenses | 59,160.00 |
| Repairs and Alterations | 36,300.00 |
| Equipment | 35,046.00 |
| Total | $ 511,256.00 |

### 29—*Marshall University*

Acct. No. 320

| | | |
|---|---|---|
| 1 | Personal Services | $ 2,338,180.00 |
| 2 | Current Expenses | 240,433.00 |
| 3 | Repairs and Alterations | 67,122.00 |
| 4 | Equipment | 97,515.00 |
| 5 | Flood Wall Assessment | 3,200.00 |
| 6 | Completing Third Floor of the Library | 60,000.00 |
| 7 | Experimental Projects Approved by the | |
| 8 | State Board of Education | 15,000.00 |
| 9 | Total | $ 2,821,450.00 |

### 30—*Fairmont State College*

Acct. No. 321

| | | |
|---|---|---|
| 1 | Personal Services | $ 761,379.00 |
| 2 | Current Expenses | 86,665.00 |
| 3 | Repairs and Alterations | 33,264.00 |
| 4 | Equipment | 40,095.00 |
| 5 | Total | $ 921,403.00 |

### 31—*Glenville State College*

Acct. No. 322

| | | |
|---|---|---|
| 1 | Personal Services | $ 487,867.00 |
| 2 | Current Expenses | 68,274.00 |
| 3 | Repairs and Alterations | 43,090.00 |
| 4 | Equipment | 28,116.00 |
| 5 | Rural Education Development Program | 10,000.00 |
| 6 | Purchase of Land | 12,500.00 |
| 7 | Total | $ 649,847.00 |

### 32—*West Liberty State College*

Acct. No. 323

| | | |
|---|---|---|
| 1 | Personal Services | $ 587,293.00 |
| 2 | Current Expenses | 82,665.00 |
| 3 | Repairs and Alterations | 41,505.00 |

| | | | |
|---|---|---|---|
| 4 | Equipment | | 39,204.00 |
| 5 | Total | $ | 750,667.00 |

### 33—*Shepherd College*
Acct. No. 324

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 486,615.00 |
| 2 | Current Expenses | | 64,548.00 |
| 3 | Repairs and Alterations | | 29,452.00 |
| 4 | Equipment | | 25,987.00 |
| 5 | Purchase of Land | | 5,000.00 |
| 6 | Total | $ | 611,602.00 |

### 34—*Concord College*
Acct. No. 325

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 897,062.00 |
| 2 | Current Expenses | | 95,802.00 |
| 3 | Repairs and Alterations | | 17,126.00 |
| 4 | Equipment | | 44,550.00 |
| 5 | Books | | 24,600.00 |
| 6 | Total | $ | 1,079,140.00 |

7 Any unexpended balance remaining in the
8 appropriation for "Dormitory Equipment"
9 at the close of the fiscal year 1959-60
10 and reappropriated for expenditure during
11 the fiscal year 1960-61 and the fiscal year
12 1961-62 is hereby reappropriated for ex-
13 penditure for Dormitory Equipment, Stu-
14 dent Center Equipment, or Administra-
15 tion-Classroom Building Equipment dur-
16 ing the fiscal year 1962-63.

### 35—*West Virginia Institute of Technology*
Acct. No. 327

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 678,571.00 |
| 2 | Current Expenses | | 81,672.00 |
| 3 | Repairs and Alterations | | 43,906.00 |
| 4 | Equipment | | 78,685.00 |

| | | | |
|---|---|---|---|
| 5 | Purchase of Land | | 30,000.00 |
| 6 | Total | $ | 912,834.00 |

### 36—*West Virginia State College*

Acct. No. 328

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 1,071,715.00 |
| 2 | Current Expenses | | 151,470.00 |
| 3 | Repairs and Alterations | | 82,605.00 |
| 4 | Equipment | | 52,698.00 |
| 5 | Total | $ | 1,358,488.00 |

### 37—*Bluefield State College*

Acct. No. 329

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 390,446.00 |
| 2 | Current Expenses | | 61,408.00 |
| 3 | Repairs and Alterations | | 43,806.00 |
| 4 | Equipment | | 46,134.00 |
| 5 | Training Development Center | | 15,000.00 |
| 6 | Renovation of Boys' Dormitory | | 20.000.00 |
| 7 | Total | $ | 576,794.00 |

### 38—*West Virginia State College—4-H Camp*

Acct. No. 330

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 13,320.00 |
| 2 | Current Expenses | | 4,860.00 |
| 3 | Repairs and Alterations | | 6,160.00 |
| 4 | Equipment | | 1,950.00 |
| 5 | Total | $ | 26,290.00 |

### 39—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 473,159.00 |
| 2 | Current Expenses | | 160,330.00 |
| 3 | Repairs and Alterations | | 40,700.00 |

| | | | |
|---|---|---|---|
| 4 | Equipment | | 19,850.00 |
| 5 | Total | $ | 694,039.00 |

40—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 24,800.00 |
| 2 | Current Expenses | | 6,800.00 |
| 3 | Repairs and Alterations | | 5,550.00 |
| 4 | Equipment | | 8,500.00 |
| 5 | Total | $ | 45,650.00 |

41—*Department of Archives and History*

Acct. No. 340

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 32,190.00 |
| 2 | Current Expenses | | 6,351.00 |
| 3 | Equipment | | 8,000.00 |
| 4 | Total | $ | 46,541.00 |

42—*West Virginia Library Commission*

Acct. No. 350

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 81,000.00 |
| 2 | Current Expenses | | 5,000.00 |
| 3 | Equipment | | 1,000.00 |
| 4 | Books and Periodicals | | 30,000.00 |
| 5 | Library Services for the Blind | | 5,000.00 |
| 6 | Total | $ | 122,000.00 |

## CHARITIES AND CORRECTION

43—*West Virginia Industrial School for Boys*

Acct. No. 370

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 227,508.00 |
| 2 | Current Expenses | | 114,250.00 |
| 3 | Repairs and Alterations | | 49,200.00 |
| 4 | Equipment | | 17,250.00 |

| | | |
|---|---|---|
| 5 | New Boilers—Shop and Dining Hall | 25,000.00 |
| 6 | Total | $ 433,208.00 |

### 44—*Forestry Camp for Boys*

Acct. No. 371

| | | |
|---|---|---|
| 1 | Personal Services | $ 51,520.00 |
| 2 | Current Expenses | 68,310.00 |
| 3 | Repairs and Alterations | 6,600.00 |
| 4 | Equipment | 4,800.00 |
| 5 | Total | $ 131,230.00 |

### 45—*West Virginia Industrial Home for Girls*

Acct. No. 372

| | | |
|---|---|---|
| 1 | Personal Services | $ 115,805.00 |
| 2 | Current Expenses | 68,445.00 |
| 3 | Repairs and Alterations | 10,350.00 |
| 4 | Equipment | 7,450.00 |
| 5 | Vocational Training | 5,000.00 |
| 6 | Total | $ 207,050.00 |

### 46—*West Virginia State Prison for Women*

Acct. No. 374

| | | |
|---|---|---|
| 1 | Personal Services | $ 37,420.00 |
| 2 | Current Expenses | 31,390.00 |
| 3 | Repairs and Alterations | 11,050.00 |
| 4 | Equipment | 1,400.00 |
| 5 | Total | $ 81,260.00 |

### 47—*West Virginia Penitentiary*

Acct. No. 375

| | | |
|---|---|---|
| 1 | Personal Services | $ 603,780.00 |
| 2 | Current Expenses | 483,200.00 |
| 3 | Repairs and Alterations | 34,000.00 |
| 4 | Equipment | 17,700.00 |
| 5 | Smoke Control | 35,000.00 |
| 6 | Total | $ 1,173,680.00 |

48—*Medium Security Prison*

Acct. No. 376

| | | |
|---|---|---|
| 1 | Personal Services | $ 284,017.00 |
| 2 | Current Expenses | 150,804.00 |
| 3 | Repairs and Alterations | 15,000.00 |
| 4 | Equipment | 11,300.00 |
| 5 | Reroofing Main Building | 25,000.00 |
| 6 | Total | $ 486,121.00 |

49—*West Virginia Children's Home*

Acct. No. 380

| | | |
|---|---|---|
| 1 | Personal Services | $ 44,820.00 |
| 2 | Current Expenses | 35,175.00 |
| 3 | Repairs and Alterations | 6,300.00 |
| 4 | Equipment | 6,700.00 |
| 5 | Total | $ 92,995.00 |

50—*Andrew S. Rowan Memorial Home*

Acct. No. 384

| | | |
|---|---|---|
| 1 | Personal Services | $ 175,920.00 |
| 2 | Current Expenses | 154,186.00 |
| 3 | Repairs and Alterations | 23,400.00 |
| 4 | Equipment | 8,275.00 |
| 5 | Total | $ 361,781.00 |

## HEALTH AND WELFARE

51—*State Health Department*

Acct. No. 400

| | | |
|---|---|---|
| 1 | Personal Services | $ 396,340.00 |
| 2 | Current Expenses | 74,833.00 |
| 3 | Equipment | 4,500.00 |
| 4 | Cancer Control and Treatment | 100,000.00 |
| 5 | Tuberculosis Field Clinic and Nursing Service | 10,580.00 |
| 6 | Out-Patient Pneumothorax Treatment | 20,000.00 |

| | | |
|---|---|---|
| 7 | Local Health Services | 450,000.00 |
| 8 | Total | $ 1,056,253.00 |

52—*Department of Veterans' Affairs*

Acct. No. 404

| | | |
|---|---|---|
| 1 | Personal Services | $ 164,300.00 |
| 2 | Current Expenses | 44,730.00 |
| 3 | Equipment | 2,000.00 |
| 4 | To provide Educational Opportunities for | |
| 5 | Children of War Veterans as provided by | |
| 6 | Chapter thirty-nine, acts of the Legisla- | |
| 7 | ture, 1943 | $ 15,000.00 |
| 8 | Total | $ 226,030.00 |

9 Any unexpended balance remaining in the
10 appropriation "To Provide Educational Op-
11 portunities for Children of War Veterans"
12 at the close of the fiscal year 1961-62 is
13 hereby reappropriated for expenditure
14 during the fiscal year 1962-63.

53—*Department of Welfare*

Acct. No. 405

| | | |
|---|---|---|
| 1 | Personal Services | $ 2,000,000.00 |
| 2 | Current Expenses | 460,000.00 |
| 3 | Equipment | 34,290.00 |
| 4 | Public Assistance Grants (Classified Aid) | 7,068,000.00 |
| 5 | Aid to Crippled Children | 300,000.00 |
| 6 | Medical Services | 785,000.00 |
| 7 | Medical Aid to the Aged | 1,300,000.00 |
| 8 | Conservation of Vision and Prevention of | |
| 9 | Blindness | 40,000.00 |
| 10 | Child Welfare Services | 113,000.00 |
| 11 | General Relief | 125,000.00 |
| 12 | Boarding Care | 340,000.00 |
| 13 | Social Security Matching Fund | 58,000.00 |
| 14 | Total | $ 12,623,290.00 |

54—*Department of Mental Health*

Acct. No. 410

| | | |
|---|---|---|
| 1 | Personal Services | $ 203,180.00 |
| 2 | Current Expenses | 28,435.00 |
| 3 | Equipment | 4,400.00 |
| 4 | Research and Training | 25,000.00 |
| 5 | Civil Service Costs | 36,470.00 |
| 6 | Total | $ 297,485.00 |

55—*West Virginia Training School*

Acct. No. 419

| | | |
|---|---|---|
| 1 | Personal Services | $ 439,210.00 |
| 2 | Current Expenses | 181,015.00 |
| 3 | Repairs and Alterations | 43,050.00 |
| 4 | Equipment | 17,700.00 |
| 5 | Total | $ 680,975.00 |

56—*Weston State Hospital*

Acct. No. 420

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,483,647.00 |
| 2 | Current Expenses | 748,993.00 |
| 3 | Repairs and Alterations | 46,498.00 |
| 4 | Equipment | 24,750.00 |
| 5 | Total | $ 2,303,888.00 |

57—*Spencer State Hospital*

Acct. No. 421

| | | |
|---|---|---|
| 1 | Personal Services | $ 707,140.00 |
| 2 | Current Expenses | 382,320.00 |
| 3 | Repairs and Alterations | 48,900.00 |
| 4 | Equipment | 22,300.00 |
| 5 | Total | $ 1,160,660.00 |

58—*Huntington State Hospital*

Act. No. 422

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,134,240.00 |
| 2 | Current Expenses | 604,994.00 |

| | | | |
|---|---|---|---|
| 3 | Repairs and Alterations | | 41,900.00 |
| 4 | Equipment | | 38,100.00 |
| 5 | Total | $ | 1,819,234.00 |

59—*Lakin State Hospital*

Acct. No. 423

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 412,836.00 |
| 2 | Current Expenses | | 198,990.00 |
| 3 | Repairs and Alterations | | 44,325.00 |
| 4 | Equipment | | 47,100.00 |
| 5 | Total | $ | 703,251.00 |

60—*Barboursville State Hospital*

Acct. No. 424

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 311,829.00 |
| 2 | Current Expenses | | 130,426.00 |
| 3 | Repairs and Alterations | | 29,000.00 |
| 4 | Equipment | | 5,500.00 |
| 5 | Total | $ | 476,755.00 |

61—*Fairmont Emergency Hospital*

Acct. No. 425

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 113,185.00 |
| 2 | Current Expenses | | 70,445.00 |
| 3 | Repairs and Alterations | | 8,300.00 |
| 4 | Equipment | | 6,300.00 |
| 5 | Total | $ | 198,230.00 |

62—*Welch Emergency Hospital*

Acct. No. 426

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 141,670.00 |
| 2 | Current Expenses | | 130,000.00 |
| 3 | Repairs and Alterations | | 40,000.00 |
| 4 | Equipment | | 17,000.00 |
| 5 | Total | $ | 328,670.00 |

### 63—*Hopemont Sanitarium*

Acct. No. 430

| | | |
|---|---|---|
| 1 | Personal Services | $ 385,020.00 |
| 2 | Current Expenses | 321,540.00 |
| 3 | Repairs and Alterations | 15,000.00 |
| 4 | Equipment | 9,250.00 |
| 5 | Total | $ 730,810.00 |

6 Out of the above appropriation for Current
7 Expenses, the sum of $15,000.00 shall be
8 used only for payment to West Virginia
9 University Medical Center for treatment
10 of patients at Hopemont Sanitarium.

### 64—*Pinecrest Sanitarium*

Acct. No. 431

| | | |
|---|---|---|
| 1 | Personal Services | $ 575,130.00 |
| 2 | Current Expenses | 462,940.00 |
| 3 | Repairs and Alterations | 26,500.00 |
| 4 | Equipment | 11,400.00 |
| 5 | Total | $ 1,075,970.00 |

### 65—*Denmar State Hospital*

Acct. No. 432

| | | |
|---|---|---|
| 1 | Personal Services | $ 320,855.00 |
| 2 | Current Expenses | 127,290.00 |
| 3 | Repairs and Alterations | 38,730.00 |
| 4 | Equipment | 8,850.00 |
| 5 | Total | $ 495,725.00 |

### 66—*Berkeley Springs Sanitarium*

Acct. No. 436

| | | |
|---|---|---|
| 1 | Personal Services | $ 27,800.00 |
| 2 | Current Expenses | 6,800.00 |
| 3 | Repairs and Alterations | 6,000.00 |
| 4 | Equipment | 1,600.00 |
| 5 | Total | $ 42,200.00 |

67—*State Board of Education—Rehabilitation Division*

Acct. No. 440

| | | |
|---|---|---|
| 1 | Personal Services | $ 182,530.00 |
| 2 | Current Expenses | 34,432.00 |
| 3 | Rehabilitation Center | 103,929.00 |
| 4 | Case Services | 325,000.00 |
| 5 | Supervisory Services for Vending Stand | |
| 6 | Program for the Blind | 16,658.00 |
| 7 | Training and Special Projects | 20,000.00 |
| 8 | Social Security Matching Fund | 16,000.00 |
| 9 | Total | $ 698,549.00 |

BUSINESS AND INDUSTRIAL RELATIONS

68—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

| | | |
|---|---|---|
| 1 | Personal Services | $ 248,710.00 |
| 2 | Current Expenses | 69,440.00 |
| 3 | Equipment | 4,650.00 |
| 4 | Total | $ 322,800.00 |

69—*Department of Mines*

Acct. No. 460

| | | |
|---|---|---|
| 1 | Personal Services | $ 674,910.00 |
| 2 | Current Expenses | 142,500.00 |
| 3 | Equipment | 31,000.00 |
| 4 | Total | $ 848,410.00 |

70—*Department of Commerce*

Acct. No. 465

| | | |
|---|---|---|
| 1 | Personal Services | $ 415,185.00 |
| 2 | Current Expenses | 319,000.00 |
| 3 | Equipment | 50,000.00 |
| 4 | Urban Planning Revolving Fund | 7,500.00 |
| 5 | Mt. State Forest Festival | 15,000.00 |

| | | |
|---|---|---|
| 6 | 1964 New York Worlds Fair | 100,000.00 |
| 7 | Total | $ 906,685.00 |

8 Any balance remaining in the appropriation
9 "Industrial Development Loans" at the
10 close of the fiscal year 1961-62 may be
11 transferred to Special Revenue.

71—*Commission on Interstate Cooperation*

Acct. No. 472

| | | |
|---|---|---|
| 1 | Total | $ 10,000.00 |

2 Out of the above appropriation the sum of
3 $7,500.00 may be made available for West
4 Virginia's membership in The Council of
5 State Governments.

72—*Interstate Commission on Potomac River Basin*

Acct. No. 473

| | | |
|---|---|---|
| 1 | West Virginia's contribution to Potomac | |
| 2 | River Basin Interstate Commission | $ 3,600.00 |

73—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

| | | |
|---|---|---|
| 1 | West Virginia's contribution to the Ohio | |
| 2 | River Valley Water Sanitation Commis- | |
| 3 | sion | $ 15,860.00 |

74—*Southern Regional Education Board*

Acct. No. 475

| | | |
|---|---|---|
| 1 | West Virginia's Contribution to Southern | |
| 2 | Regional Education Board | $ 44,500.00 |

3 To be expended upon requisition of the Gov-
4 ernor.

75—*West Virginia Air Pollution Commission*

Acct. No. 476

| | | |
|---|---|---|
| 1 | Personal Services | $ 12,320.00 |
| 2 | Current Expenses | 6,200.00 |
| 3 | Equipment | 1,550.00 |
| 4 | Total | $ 20,070.00 |

*76—West Virginia Historic Commission*

Acct. No. 477

| | | |
|---|---|---|
| 1 | Personal Services | $ 800.00 |
| 2 | Current Expenses | 26,700.00 |
| 3 | Total | $ 27,500.00 |

*77—Department of Banking*

Acct. No. 480

| | | |
|---|---|---|
| 1 | Personal Services | $ 76,540.00 |
| 2 | Current Expenses | 29,750.00 |
| 3 | Equipment | 2,000.00 |
| 4 | Total | $ 108,290.00 |

*78—West Virginia State Aeronautics Commission*

Acct. No. 485

| | | |
|---|---|---|
| 1 | Personal Services | $ 5,220.00 |
| 2 | Current Expenses | 5,710.00 |
| 3 | Aerial Markers | 1,000.00 |
| 4 | Civil Air Patrol Expenses | 7,500.00 |
| 5 | Total | $ 19,430.00 |

*79—West Virginia Centennial Commission*

Acct. No. 487

| | | |
|---|---|---|
| 1 | Expenses for planning 1963 Centennial cele- | |
| 2 | bration | $ 66,250.00 |
| 3 | Planning and promotion of special events | 5,000.00 |
| 4 | To be transferred to "West Virginia Centen- | |
| 5 | nial Fund" provided by House Bill No. 57 | |
| 6 | (1959 Legislature) | 100,000.00 |
| 7 | Total | $ 171,250.00 |

*80—West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

| | | |
|---|---|---|
| 1 | Personal Services | $ 86,820.00 |

| | | |
|---|---|---|
| 2 | Current Expenses | 44,700.00 |
| 3 | Equipment | 800.00 |
| 4 | Total | $ 132,320.00 |

81—*West Virginia Racing Commission*

Acct. No. 495

| | | |
|---|---|---|
| 1 | Personal Services | $ 65,200.00 |
| 2 | Current Expenses | 23,800.00 |
| 3 | Total | $ 89,000.00 |

## AGRICULTURE

82—*Department of Agriculture*

Acct. No. 510

| | | |
|---|---|---|
| 1 | Salary of Commissioner | $ 11,000.00 |
| 2 | Other Personal Services | 174,995.00 |
| 3 | Current Expenses | 73,185.00 |
| 4 | Equipment | 25,000.00 |
| 5 | Eradication and Control of White Pine Blis- | |
| 6 | ter | 16,995.00 |
| 7 | Eradication and Prevention of Livestock | |
| 8 | Diseases | 174,300.00 |
| 9 | Eradication and Control of Japanese Beetle | |
| 10 | and other plant pests | 16,945.00 |
| 11 | Aid to Dairy Development Program | 76,287.00 |
| 12 | Eradication and Control of Oak Wilt | 88,820.00 |
| 13 | Plant Pest Control | 14,300.00 |
| 14 | Total | $ 671,827.00 |

15 The appropriation "Eradication and Control
16 of Oak Wilt" may be transferred to Special
17 Revenue Funds for the purpose of match-
18 ing Federal Funds.

83—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

| | | |
|---|---|---|
| 1 | Personal Services | $ 62,695.00 |

| | | |
|---|---|---|
| Current Expenses | | 32,995.00 |
| Watershed Improvement | | 25,000.00 |
| Total | $ | 120,690.00 |

84—*Department of Agriculture—Marketing and Research*

Acct. No. 513

| | | |
|---|---|---|
| For cooperation with the Federal Government in a program of marketing and research | $ | 100,000.00 |

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

85—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

| | | |
|---|---|---|
| West Virginia State Fair | $ | 25,000.00 |
| Agricultural Awards | | 38,500.00 |
| Agricultural Centennial | | 6,500.00 |
| Walnut Festival | | 3,500.00 |
| Total | $ | 73,500.00 |

To be expended at the discretion of the Commissioner of Agriculture in accordance with law.

Any unexpended balance remaining in the appropriation "Agricultural Centennial" at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63.

## CONSERVATION AND DEVELOPMENT

86—*Geological and Economic Survey Commission*

Acct. No. 520

| | | |
|---|---|---|
| Personal Services | $ | 112,156.00 |
| Current Expenses | | 32,415.00 |
| Equipment | | 5,000.00 |
| Cooperative Mapping Program | | 60,000.00 |
| Total | $ | 209,571.00 |

Of the above appropriation for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

Of the above appropriation for Cooperative Mapping Program the sum of $10,000.00 may be used for preparation of accurate geographic and political maps of West Virginia.

87—*Natural Resources Commission*

Acct. No. 521

Any unexpended balance remaining in the 1959-60 appropriation "For construction of forest tree nursery facilities at McClinic Wildlife Station" at the close of the fiscal year 1959-60 and reappropriated for the fiscal year 1960-61; and any balance remaining in the 1960-61 appropriation "For construction of forest tree nursery facilities" at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63, for "Planning, improvements and construction on Natural Resources property and facilities; land requisition and impoundments."

88—*Department of Veterans Affairs*

Acct. No. 564

| | | |
|---|---|---|
| In aid of Veterans Day Patriotic Exercises | $ | 2,000.00 |

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.

89—*Natural Resources Commission*

Acct. No. 565

| | | |
|---|---|---|
| Personal Services | $ | 833,480.00 |

| | | |
|---|---|---|
| Current Expenses | | 255,225.00 |
| Repairs and Alterations | | 104,250.00 |
| Equipment | | 98,075.00 |
| Historical Monuments and Parks | | 27,100.00 |
| For planning, improvements and construction on Natural Resources properties and facilities; land requisition and impoundments | | 300,000.00 |
| Out of the above appropriation $100,000.00 shall be used for construction of a tourist center at Sugar Grove Observatory. | | |
| For cooperation with the United States Department of Agriculture in Fire Prevention and Control | | 85,000.00 |
| Any unexpended balance remaining in the above item at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63. | | |
| Total | $ | 1,703,130.00 |

## PROTECTION

### 90—*Department of Public Safety*

Acct. No. 570

| | | |
|---|---|---|
| Personal Services | $ | 1,427,550.00 |
| Current Expenses | | 724,157.00 |
| Repairs and Alterations | | 22,600.00 |
| Equipment | | 107,000.00 |
| Total | $ | 2,281,307.00 |

### 91—*Adjutant General—State Militia*

Acct. No. 580

| | | |
|---|---|---|
| Personal Services | $ | 47,768.00 |
| Current Expenses | | 103,765.00 |
| Repairs and Alterations | | 7,100.00 |
| Equipment | | 6,300.00 |
| Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances | | 66,900.00 |
| Property Maintenance | | 34,245.00 |

| | | |
|---|---|---|
| 8 | State Armory Board | 442,732.00 |
| 9 | Total | $ 708,810.00 |

92—*Department of Civil and Defense Mobilization*

Acct. No. 581

| | | |
|---|---|---|
| 1 | Personal Services | $ 35,340.00 |
| 2 | Current Expenses | 11,045.00 |
| 3 | Equipment | 4,300.00 |
| 4 | Total | $ 50,685.00 |

93—*Auditor's Office—Social Security*

Acct. No. 582

| | | |
|---|---|---|
| 1 | To match contributions of state employees | |
| 2 | for social security | $ 981,675.00 |
| 3 | The above appropriation is intended to | |
| 4 | cover the State's share of social security | |
| 5 | costs for those spending units operating | |
| 6 | from General Revenue Fund and General | |
| 7 | School Fund appropriations. The State | |
| 8 | Road Commission, Department of Motor | |
| 9 | Vehicles, Workmen's Compensation Com- | |
| 10 | mission, Public Service Commission, and | |
| 11 | other departments operating from Special | |
| 12 | Revenue Funds and/or Federal Funds | |
| 13 | shall pay their proportionate share of the | |
| 14 | social security cost for their respective di- | |
| 15 | visions. | |
| 16 | Any unexpended balance remaining in this | |
| 17 | appropriation at the close of the fiscal year | |
| 18 | 1961-62 is hereby reappropriated for ex- | |
| 19 | penditure during the fiscal year 1962-63. | |

94—*State Board of Education—Insurance*

Acct. No. 584

| | | |
|---|---|---|
| 1 | Boiler Insurance Premiums | $ 10,000.00 |
| 2 | To insure contents of buildings | 8,000.00 |
| 3 | To insure contents of non-revenue producing | |
| 4 | buildings. First annual installment due on | |

a policy covering a five-year period ending July 1, 1967.

Total ..... $ 18,000.00

95—*Commissioner of Public Institutions—Insurance*

Acct. No. 585

Boiler Insurance Premiums ..... $ 7,000.00

96—*West Virginia Board of Accountancy*

Acct. No. 586

To pay the per diem of members and other general expenses ..... 15,000.00
*From Collections* ..... 15,000.00

97—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

To pay the per diem of members and other general expenses ..... $ 15,000.00
*From Collections* ..... 15,000.00

98—*State Board of Examiners for Registered Nurses*

Acct. No. 588

To pay the per diem of members and other general expenses ..... $ 33,825.00
*From Collections* ..... 33,825.00

99—*State Board of Dental Examiners*

Acct. No. 589

To pay the per diem of members and other general expenses ..... $ 5,500.00
*From Collections* ..... 5,500.00

100—*State Board of Pharmacy*

Acct. No. 590

To pay the per diem of members and other general expenses ..... $ 9,980.00
*From Collections* ..... 9,980.00

101—*State Board of Osteopathy*

Acct. No. 591

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 1,000.00 |
| *From Collections* | | 1,000.00 |

102—*State Board of Optometry*

Acct. No. 592

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 2,500.00 |
| *From Collections* | | 2,500.00 |

103—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 10,000.00 |
| *From Collections* | | 10,000.00 |

104—*State Board of Registration for Professional Engineers*

Acct. No. 594

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 20,000.00 |
| *From Collections* | | 20,000.00 |

105—*State Board of Architects*

Acct. No. 595

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 4,000.00 |
| *From Collections* | | 4,000.00 |

106—*State Veterinary Board*

Acct. No. 596

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 300.00 |
| *From Collections* | | 300.00 |

107—*State Board of Law Examiners*

Acct. No. 597

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 3,000.00 |

108—*Human Rights Commission*

Acct. No. 598

| | | |
|---|---|---|
| Personal Services | $ | 12,885.00 |
| Current Expenses | | 8,692.00 |
| Equipment | | 750,00 |
| Total | $ | 22,327.00 |

109—*West Virginia State Board of Sanitarians*

Acct. No. 599

| | | |
|---|---|---|
| To pay the per diem of members and other general expenses | $ | 800.00 |
| *From Collections* | | 800.00 |

110—*West Virginia Public Employees Retirement Board*

Acct. No. 614

| | | |
|---|---|---|
| Employers Accumulation Fund | $ | 750,000.00 |
| Expense Fund | | 25,000.00 |
| Total | $ | 775,000.00 |

The above appropriation is intended to cover the State's share of the West Virginia Public Employees Retirement cost in accordance with Senate Bill No. 22, (1961 Legislature) for those departments operating from General Revenue Fund and General School Fund appropriations. The State Road Commission, Department of Motor Vehicles, State Tax Commissioner—Gasoline Tax Division, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Fund and/or Federal

Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

111—*State Road Commission*

Acct. No. 641

| | | |
|---|---|---|
| Total | $ | 6,345,000.00 |

The purpose of the above appropriation is to aid in payment of interest and principal on outstanding road bonds and may be transferred to the State Road Fund upon the requisition of the Governor.

**Sec. 2. Appropriations from Other Funds.**—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-three.

112—*State Road Commission—General Administration and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| Personal Services | $ | 427,040.00 |
| Current Expenses | | 115,570.00 |
| Equipment | | 8,000.00 |
| Total | $ | 550,610.00 |

In addition to the foregoing appropriations and claims as authorized by this act or by law to be paid from the State Road Fund, the balance or residue of the annual receipts of the State Road Fund is hereby appropriated first for the payment of inter-

est on and principal of outstanding road bonds, and thereafter for maintenance, construction and reconstruction of state roads, in accordance with the provisions of chapter seventeen, code of West Virginia, 1931, as amended.

### 113—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 720,000.00 |
| 2 | Current Expenses | 290,000.00 |
| 3 | Equipment | 33,000.00 |
| 4 | Purchase of License Plates | 207,000.00 |
| 5 | Social Security Matching Fund | 20,542.00 |
| 6 | Employees Retirement Matching Fund | 32,868.00 |
| 7 | Total | $ 1,303,410.00 |

### 114—*State Tax Commissioner—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 112,460.00 |
| 2 | Current Expenses | 64,235.00 |
| 3 | Equipment | 5,000.00 |
| 4 | Social Security Matching Fund | 4,000.00 |
| 5 | Total | $ 185,695.00 |

### 115—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 35,732.00 |
| 2 | Current Expenses | 12,680.00 |
| 3 | Equipment | 800.00 |
| 4 | Total | $ 49,212.00 |

116—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| Personal Services | $ | 36,057.00 |
| Current Expenses | | 7,350.00 |
| Equipment | | 3,000.00 |
| Vocational Aid | | 410,000.00 |
| Total | $ | 456,407.00 |

Any unexpended balance remaining in the "Vocational Aid Account" at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63.

117—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| Personal Services | $ | 28,536.00 |
| Current Expenses | | 9,908.00 |
| Total | $ | 38,444.00 |

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 Board of Public Works for any emergency which might arise in the operation of this division during the fiscal year.

118—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| Salary of State Superintendent | $ | 12,000.00 |

| | | |
|---|---|---|
| 2 | Other Personal Services | 269,898.00 |
| 3 | Current Expenses | 81,600.00 |
| 4 | Equipment | 6,634.00 |
| 5 | National Defense Education Act | 140,000.00 |
| 6 | Preparation Program for School Dropouts | 48,000.00 |
| 7 | Statewide Testing Program | 91,630.00 |
| 8 | Experimental Projects Approved by the | |
| 9 | State Board of Education | 15,000.00 |
| 10 | Total | $ 664,762.00 |
| 11 | Any part or all of the appropriations for "Na- | |
| 12 | tional Defense Education Act" may be | |
| 13 | transferred to a Special Revenue Fund for | |
| 14 | the purpose of matching Federal Funds for | |
| 15 | this program. | |

119—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 17,750.00 |
| 2 | Current Expenses | 3,310.00 |
| 3 | Total | $ 21,060.00 |

120—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 53,360.00 |
| 2 | Current Expenses | 16,900.00 |
| 3 | Aid to Counties—Includes hot lunches and | |
| 4 | canning for hot lunches | 300,000.00 |
| 5 | Total | $ 370,260.00 |

121—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Salaries of County Superintendents | $ 63,000.00 |

122—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | State Aid to Children's Home | $ 25,000.00 |

123—*State Tax Commissioner—Store and General Licenses Division*

Acct. No. 712

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 36,800.00 |
| 2 | Current Expenses | 3,500.00 |
| 3 | Total | $ 40,300.00 |

124—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

| | | |
|---|---|---|
| 1 | Scholarships for Teacher Training | $ 200,000.00 |

125—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 27,300.00 |
| 2 | Current Expenses | 16,395.00 |
| 3 | Equipment | 500.00 |
| 4 | Social Security Matching Fund | 550.00 |
| 5 | Public Employees Retirement Matching Fund | 1,200.00 |
| 6 | Total | $ 45,945.00 |

7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out
9 of collections of license fees as provided
10 by law.

126—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Medical Expenses | $ 5,000.00 |

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

127—*Auditor's Office—Land Department Operating Fund*

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Current Expenses | $ | 15,000.00 |

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

128—*Department of Finance and Administration Division of Purchases—Revolving Fund*

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 79,100.00 |
| Current Expenses | | 14,200.00 |
| Equipment | | 6,500.00 |
| Social Security Matching Fund | | 2,475.00 |
| Public Employees Retirement Matching Fund | | 3,955.00 |
| Total | $ | 106,230.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

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.

129—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

| | |
|---|---|
| Personal Services | $ 161,990.00 |
| Current Expenses | 40,700.00 |
| Equipment | 8,000.00 |
| Social Security Matching Fund | 4,500.00 |
| Public Employees Retirement Matching Fund | 7,000.00 |
| Total | $ 222,190.00 |

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

130—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

| | |
|---|---|
| Personal Services | $ 32,000.00 |
| Current Expenses | 17,050.00 |
| Social Security Matching Fund | 960.00 |
| Public Employees Retirement Matching Fund | 1,535.00 |
| Total | $ 51,545.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the State Commit-

tee of Barbers and Beauticians as provided by law.

131—*Department of Employment Security*

Acct. No. 825

TO BE PAID FROM SPECIAL REVENUE FUND (FEDERAL)

| | | |
|---|---|---|
| Salary of Director | $ | 13,500.00 |
| Other Personal Services | | 2,425,414.00 |
| Other Expenses | | 725,000.00 |
| Total | $ | 3,163,914.00 |

It is the intention that special funds in excess of the amounts hereby appropriated shall be made available by budget amendment upon request of the Director of the West Virginia Department of Employment Security and approval of the Board of Public Works.

The total amount of this appropriation to be paid from Federal Funds.

132—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 104,285.00 |
| Current Expenses | | 14,430.00 |
| Equipment | | 3,000.00 |
| Social Security Matching Fund | | 3,260.00 |
| Public Employees Retirement Matching Fund | | 5,215.00 |
| Total | $ | 130,190.00 |

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

133—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 109,100.00 |

| | | |
|---|---|---|
| Current Expenses | | 30,345.00 |
| Equipment | | 5,800.00 |
| Building Repairs and Maintenance | | 2,600.00 |
| Social Security Matching Fund | | 2,630.00 |
| Public Employees Retirement Matching Fund | | 4,205.00 |
| Total | $ | 154,680.00 |

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of the special tax of one half of one per cent of premium receipts of fire insurance companies as provided by law.

### 134—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Salaries of Commissioners | $ | 24,000.00 |
| Other Personal Services | | 347,095.00 |
| Current Expenses | | 45,000.00 |
| Equipment | | 6,650.00 |
| Social Security Matching Fund | | 8,800.00 |
| Public Employees Retirement Matching Fund | | 18,455.00 |
| Total | $ | 450.000.00 |

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. Out of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission of the Natural Resources Commission for use in cooperation with the U. S. Geological Survey in a program of stream gauging.

### 135—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| Personal Services | $ | 197,360.00 |

| | | |
|---|---|---|
| 2 | Current Expenses | 44,980.00 |
| 3 | Equipment | 4,600.00 |
| 4 | Social Security Matching Fund | 5,900.00 |
| 5 | Public Employees Retirement Matching Fund | 9,500.00 |
| 6 | Total | $ 262,340.00 |

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

### 136—*Natural Resources Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 1,125,470.00 |
| 2 | Current Expenses | 719,116.00 |
| 3 | Repairs and Alterations | 101,700.00 |
| 4 | Equipment | 144,235.00 |
| 5 | Land Purchases | 75,000.00 |
| 6 | Total | $ 2,165,521.00 |

7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 fees collected by the Natural Resources
10 Commission. Expenditures shall be limited
11 to the amounts appropriated except for
12 Federal Funds received and Special Funds
13 collected at state parks. Special Funds in
14 excess of the amounts hereby appropriated
15 may be made available by budget amend-
16 ment upon request of the Natural Re-
17 sources Commission and approval of the
18 Board of Public Works for any emer-
19 gency which might arise in the operation
20 of this division during the fiscal year.

137—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Personal Services | $ 97,200.00 |
| 2 | Current Expenses | 67,142,00 |
| 3 | Repairs and Alterations | 7,100.00 |
| 4 | Equipment | 18,000.00 |
| 5 | Social Security Matching Fund | 600.00 |
| 6 | Total | $ 190,042.00 |

7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 fees collected for inspection stickers as
10 provided by law.
11 Special Funds in excess of the amounts
12 hereby appropriated may be made avail-
13 able by budget amendment upon request
14 of the Department of Public Safety and
15 approval of the Board of Public Works
16 for the purpose of repairs to, or construc-
17 tion of police barracks, not to exceed one
18 hundred thousand dollars in any one fiscal
19 year.

138—*West Virginia Liquor Control Commission*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Salary of Commissioner | $ 10,000.00 |
| 2 | Other Personal Services | 2,710,970.00 |
| 3 | Current Expenses | 835,000.00 |
| 4 | Repairs and Alterations | 32,500.00 |
| 5 | Equipment | 57,500.00 |
| 6 | Social Security Matching Fund | 85,030.00 |
| 7 | Public Employees Retirement Matching Fund | 136,040.00 |
| 8 | Total | $ 3,867,040.00 |

9 The total amount of this appropriation shall

be paid from Special Revenue Fund out of liquor revenues.

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

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

### 139—*West Virginia Civil Service System*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

| | |
|---|---|
| Personal Services | $ 88,400.00 |
| Current Expenses | 22,185.00 |
| Social Security Matching Fund | 2,900.00 |
| Public Employees Retirement Matching Fund | 4,325.00 |
| Total | $ 117,810.00 |

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

The Board of Public Works is hereby authorized to make available by budget amendment, upon request of the Civil Service Commission, funds in excess of the amounts hereby appropriated that may become available as a result of acts of the Legislature—1961 Session.

### 140—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

| | |
|---|---|
| Personal Services | $ 8,220.00 |
| Current Expenses | 5,580.00 |

| | | |
|---|---|---|
| 3 | Social Security Matching Fund | 390.00 |
| 4 | Total | $ 14,190.00 |

5 The total amount of this appropriation shall
6 be paid from Special Revenue Fund out of
7 fees, fines and penalties as provided by
8 law.

141—*West Virginia University—Special Capital Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Forestry Building | $ 200,000.00 |
| 2 | Communication Arts Building | 567,704.00 |
| 3 | Total | $ 767,704.00 |

4 The total amount of this appropriation shall
5 be paid from the non-revolving Capital
6 Improvement Fund created by the 1959
7 Legislature.
8 Any unexpended balance remaining in this
9 appropriation at the close of the fiscal year
10 1961-62 is hereby reappropriated for ex-
11 penditure during the fiscal year 1962-63.

142—*State Board of Education—Special Capital Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Renovation of Administration Building at | |
| 2 | Fairmont State College | $ 350,000.00 |
| 3 | Women's Dormitory at Marshall University | 600,000.00 |
| 4 | Renovation of Administration Building at | |
| 5 | Glenville State College | 60,000.00 |
| 6 | Total | $ 1,010,000.00 |

7 The total amount of this appropriation shall
8 be paid from the non-revolving Capital

Improvement Fund created by the 1959 Legislature.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1961-62 is hereby reappropriated for expenditure during the fiscal year 1962-63.

143—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

| | | |
|---|---|---|
| Personal Services | $ | 688,750.00 |
| Current Expenses | | 257,319.00 |
| Equipment | | 29,398.00 |
| Social Security Matching Fund | | 21,453.00 |
| Public Employees Retirement Matching Fund | | 35,755.00 |
| Total | $ | 1,032,675.00 |

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 and bond custodian for the protection of the Workmen's Compensation Fund.

**Sec. 3. Supplemental and Deficiency Appropriations.**—From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-two to supplement the 1961-62 appropriations, and to be available for expenditure upon date of passage.

144—*Department of Finance and Administration*

Acct. No. 210

| | | |
|---|---|---|
| Current Expenses | $ | 5,000.00 |
| Postage | | 14,000.00 |
| Total | $ | 19,000.00 |

145—*West Virginia Industrial School for Boys*

Acct. No. 370

| | | |
|---|---|---|
| Personal Services | $ | 4,817.00 |

146—*West Virginia Industrial Home for Girls*

Acct. No. 372

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 3,240.00 |

147—*West Virginia Training School*

Acct. No. 419

| | | | |
|---|---|---|---|
| 1 | Repair and Alterations | $ | 2,300.00 |
| 2 | Equipment | | 14,500.00 |
| 3 | Total | $ | 16,800.00 |

148—*Racing Commission*

Acct. No. 495

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 9,840.00 |
| 2 | Current Expenses | | 1,050.00 |
| 3 | Total | $ | 10,890.00 |

149—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 97,040.00 |
| 2 | Current Expenses | | 49,264.00 |
| 3 | Equipment | | 86,011.00 |
| 4 | License Plates | | 8,100.00 |
| 5 | Social Security Matching Fund | | 3,033.00 |
| 6 | Total | $ | 243,448.00 |

150—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

| | | | |
|---|---|---|---|
| 1 | Preparation program for school dropouts | $ | 30,000.00 |

151—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|---|---|---|
| 1 | Personal Services | $ | 4,500.00 |

| | | |
|---|---|---|
| 2 | Current Expenses | 1,300.00 |
| 3 | Equipment | 3,000.00 |
| 4 | Social Security Matching Fund | 158.00 |
| 5 | Public Employees Retirement Matching | |
| 6 | Fund | 158.00 |
| 7 | Total | $ 9,116.00 |

**Sec. 4. Awards for Claims Against the State.**—From the funds designated there are hereby appropriated for the fiscal year 1962-63, for payment of claims against the State, the following amounts, as itemized:

*Claims versus the Adjutant General*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Okey F. Smith | $ 100.00 |
| 2 | Norris Barnett | 359.00 |
| 3 | The Estate of Jan C. Dennison, deceased | 785.00 |

*Claims versus Department of Mental Health*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | E. H. Bissel | $ 600.00 |
| 2 | Elk Grocery Company | 6,136.09 |

*Claims versus Public Institutions*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Lee Lawson, Guardian of Archie Lee | |
| 2 | Lawson | $ 1,500.00 |
| 3 | Ralph Keaton | 600.00 |
| 4 | Ilene Pauline Sinsel | 546.12 |
| 5 | The Chesapeake & Potomac Telephone Com- | |
| 6 | pany of West Virginia | 233.23 |
| 7 | Sanifer's, Inc. | 26.55 |
| 8 | W. B. Cunningham | 500.00 |
| 9 | Capitol Paper Supply | 63.00 |
| 10 | Flat Iron Drug Store | 36.28 |
| 11 | General Electric Company | 301.88 |
| 12 | Hygrade Food Products Corporation | 147.26 |
| 13 | Howard's, Inc. | 1.50 |
| 14 | Parke, Davis & Company | 1,072.49 |

| | | |
|---|---|---|
| 15 | Picker X-Ray Corporation | 4.50 |
| 16 | Tug River Lumber Company | 45.19 |
| 17 | Cumberland and Allegheny Gas Company | 2,243.10 |
| 18 | James Donithan, Barbara Sue Donithan, | |
| 19 | Evelyn Donithan | 2,500.00 |

*Claims versus Department of Public Safety*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Hinton Hospital | $ 283.45 |

*Claims versus State Board of Education, Division of Vocational Rehabilitation*

TO BE PAID FROM GENERAL REVENUE FUND

| | | |
|---|---|---|
| 1 | Eastern Greyhound Lines | $ 32.15 |
| 2 | Robert K. Scott, M.D. | 50.00 |

*Claims versus State Road Commission*

TO BE PAID FROM STATE ROAD FUND

| | | |
|---|---|---|
| 1 | Cecil Corathers | $ 100.00 |
| 2 | Rhoda Lane | 300.00 |
| 3 | Raymond Paul Emsweller | 5,000.00 |
| 4 | Louis Dittmar | 101.19 |
| 5 | Mrs. Alfred R. Bowles | 136.12 |
| 6 | Doris Gale Davis | 171.09 |
| 7 | Charles E. Curry | 24.50 |
| 8 | Charles H. Phillips | 7.42 |
| 9 | Leonard A. Porter | 59.63 |
| 10 | William L. Wiles | 4.68 |
| 11 | Hubert Wriston | 35.13 |
| 12 | Coleman Perdue | 47.38 |
| 13 | Marion Canterbury | 75.00 |
| 14 | Alice E. McClung | 1,440.00 |
| 15 | V. P. Stickley, d/b/a V. P. Stickley, General | |
| 16 | Contractor | 25,000.00 |

**Sec. 5. Appropriations for Emergency Relief of Unemployment.**—In addition to all other appropriations contained in this bill, (Budget Bill), the following items are hereby appropriated from the General Revenue Fund for

the purpose of providing emergency relief of unemployment throughout the State of West Virginia:

Item I. State Road Commission: For works projects of an improvement or maintenance nature relating to primary and secondary roads, including but not limited to installation and extension of drainage and drainage structures, development of roadside parks, cleaning of streams along and of rights-of-way of existing road system, and elimination of dangerous curves and widening of primary and secondary roads. The amount herein appropriated shall be used for labor only ..... $ 1,750,000.00

The appropriation to the State Road Commission may be transferred to the State Road Fund upon the requisition of the Governor.

Item II. Department of Natural Resources: For repairs, maintenance, and improvement of Department of Natural Resources facilities, including but not limited to state parks, state forests, state game areas, lakes and streams. The amount herein appropriated shall be used for labor only, except an amount not to exceed $100,000.00 may be used for materials and supplies for permanent improvements ..... $ 850,000.00

Item III. Governor: For allocation and transfer in his discretion to mental hospitals, institutions of higher education and those agencies and departments of state government which satisfy the Governor that they can and will expend requested sums in accordance with the purpose of this appropriation. The amount herein appropriated shall be used for labor and necessary administrative costs in connection with the emergency employment program ..... $ 400,000.00

Any unexpended balance remaining in the appropriation provided under section six, Items 1, 2, and 3, of the Budget issued by the regular session of the Legislature, 1961, for the fiscal year 1961-62, is hereby reappropriated for expenditure during the 1962-63 fiscal year, including any amounts transferred from these items to other spending units.

In the event Federal Funds are made available for the relief of the unemployed, the Governor may, at his discretion transfer any or all of the above items to Special

Revenue Fund for the purpose of matching said Federal Funds.

**Sec. 6. Appropriations from Surplus Revenues.**—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure only out of the surplus in the treasury on or after the first day of July, 1962, subject to the conditions and limitations hereinafter expressed.

(b) Expenditures authorized, which are for construction purposes, shall be for a complete and usable unit or project including necessary equipment.

(c) The Board of Public Works shall review the revenues of the State from the first day of July, 1962, to the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in its opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under this and other sections of this budget bill, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues on hand or in prospect to meet all other appropriations and reappropriations made by this act (Budget Bill), the Board of Public Works may, from any excess over and above the amount required to meet all appropriations contained in the act, release the following items subject to the foregoing conditions if available funds will permit:

Item I. West Virginia Schools for the Deaf and Blind, for construction of classroom building.....$ 548,250.00

Item II. West Virginia Training School, for construction of a Crib Dormitory building.....$ 450,000.00

**Sec. 7. Special Revenue Appropriations.**—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred sixty-three 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 two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one: *Provided, however,* That none of the moneys so appropriated by this section shall be available for expenditure except in com-

pliance with and in conformity to the provisions of articles two and three, of chapter twelve, code of West Virginia, and chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, and unless the spending unit has filed with the state director of the budget and the state auditor prior to the beginning of each fiscal year:

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

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

**Sec. 8. 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 of West Virginia, one thousand nine hundred thirty-one.

There is hereby appropriated to Marshall University the sum of $57,312.24 representing interest earned on construction funds in the hands of the State Sinking Fund Commission, for the purpose of purchasing equipment and the renovation of existing facilities at the Marshall University Heights property.

**Sec. 9. Appropriations for Refunding Erroneous Payments.**—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person.

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

**Sec. 10. Sinking Fund Deficiencies.**—There is hereby appropriated to the Board of Public Works a sufficient amount to meet a deficiency that may arise in the funds of

the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and Sinking Fund requirements. The Board of Public Works is authorized to transfer from time to time such amounts to the State Sinking Fund Commission as may be necessary for this purpose.

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

**Sec. 11. Appropriations from Taxes and License Fees.**—There is hereby appropriated from the cigarette tax for administration and enforcement of the law relating to said tax a sum not to exceed one and one-half per cent of the tax collected or stamps sold. There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the Tax Commissioner through the state treasurer out of gross collections.

**Sec. 12. Appropriations to Pay Costs of Publication of Delinquent Corporations.**—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon 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 seventy-five and seventy-seven of article twelve, chapter eleven, code of West Virginia.

**Sec. 13. Appropriations for Local Governments.**—There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district, and municipal corporations and which have been paid into the treasury:

(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

**Sec. 14. Total Appropriations.**—Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay, except as otherwise provided in Title I, Section 3.

**Sec. 15. General School Fund.**—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section six, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

## Title 3. Administration

Section

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 five, chapter five, of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

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 portions shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

# CHAPTER 2

**(Senate Bill No. 47—By Mr. Martin)**

[Passed February 8, 1962; in effect July 1, 1962. Approved by the Governor.]

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

*Be it enacted by the Legislature of West Virginia:*

**Section**

1. Finding and declaring certain claims against the Adjutant General; Department of Mental Health; Department of Public Institutions; Department of Public Safety; State Board of Education; and the State Road Commission, to be moral obligations of the state, and directing payment thereof.

**Section 1. Finding and Declaring Certain Claims Against the Adjutant General; Department of Mental Health; Department of Public Institutions; Department of Public Safety; State Board of Education; and the State Road Commission, to Be Moral Obligations of the State, and Directing Payment Thereof.**—The Legislature has considered the findings of fact and recommendations reported to it by the attorney general concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims versus the Adjutant General:

| | |
|---|---|
| (1) Okey F. Smith | $ 100.00 |
| (2) Norris Barnett | 359.00 |
| (3) The Estate of Jan C. Dennison, deceased | 785.00 |

(b) Claims versus Department of Mental Health:

| | |
|---|---|
| (1) E. H. Bissel | 600.00 |
| (2) Elk Grocery Company | 6,136.09 |

(c) Claims versus Department of Public Institutions:

| | | |
|---|---|---|
| | (1) Lee Lawson, Guardian of Archie Lee Lawson | 1,500.00 |
| | (2) Ralph Keaton | 600.00 |
| | (3) Ilene Pauline Sinsel | 546.12 |
| | (4) The Chesapeake & Potomac Telephone Company of West Virginia | 233.23 |
| | (5) Sandifer's, Inc. | 26.55 |
| | (6) W. B. Cunningham | 500.00 |
| | (7) Capitol Paper Supply | 63.00 |
| | (8) Flat Iron Drug Store | 36.28 |
| | (9) General Electric Company | 301.88 |
| | (10) Hygrade Food Products Corporation | 147.26 |
| | (11) Howard's, Inc. | 1.50 |
| | (12) Parke, Davis & Company | 1,072.49 |
| | (13) Picker X-Ray Corporation | 4.50 |
| | (14) Tug River Lumber Company | 45.19 |
| | (15) Cumberland and Allegheny Gas Company | 2,243.10 |
| | (16) James Donithan, Barbara Sue Donithan, Evelyn Donithan | 2,500.00 |
| (d) | Claims versus Department of Public Safety | |
| | (1) Hinton Hospital | 283.45 |
| (e) | Claims versus State Board of Education, Division of Vocational Rehabilitation: | |
| | (1) Eastern Greyhound Lines | 32.15 |
| | (2) Robert K. Scott, M. D. | 50.00 |
| (f) | Claims versus State Road Commission: | |
| | (1) Cecil Corathers | 100.00 |
| | (2) Rhoda Lane | 300.00 |
| | (3) Raymond Paul Emsweller | 5,000.00 |
| | (4) Louis Dittmar | 101.19 |
| | (5) Mrs. Alfred R. Bowles | 136.12 |
| | (6) Doris Gale Davis | 171.09 |
| | (7) Charles E. Curry | 24.50 |
| | (8) Charles H. Phillips | 7.42 |
| | (9) Leonard A. Porter | 59.63 |
| | (10) William L. Wiles | 4.68 |
| | (11) Hubert Wriston | 35.13 |
| | (12) Coleman Perdue | 47.38 |

| | | |
|---|---|---|
| (13) | Marion Canterbury | 75.00 |
| (14) | Alice E. McClung | 1,440.00 |
| (15) | V. P. Stickley Trading and doing business as V. P. Stickley General Contractor | $ 25,000.00 |

# CHAPTER 3

**(House Bill No. 20—By Mr. Speaker, Mr. Singleton)**

[Passed January 26, 1962; in effect from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending article seven thereof, relating to the executive department of state government.

*Be it enacted by the Legislature of West Virginia:*

**State Executive and Budget Amendment.**

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "State Executive and Budget Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

**Section 1. Submitting an Amendment to the State Constitution.**—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article seven of the constitution of West Virginia be amended to read as follows:

**"Article VII. The Executive.**

**Section 1. Governor.**—The chief executive power of the State shall be vested in a Governor, who shall cause

the laws to be faithfully executed. He may require the Attorney General to institute and prosecute appropriate actions and proceedings in the courts, brought in the name of the State, to enforce compliance with the laws.

**Sec. 2. Elected Officers.**—In addition to a Governor, there shall be an Attorney General, who shall be the chief legal officer of the State, an Auditor, who shall be the chief fiscal officer of the State, a Commissioner of Agriculture, a Secretary of State and a Treasurer. These officers shall be elected by the qualified voters of the State, and the election shall be held at such times and places as may be prescribed by law. Their terms of office shall be four years and until their successors as designated herein have qualified. Their terms shall commence on the first Monday after the second Wednesday of January next after their election. During their terms of office, they shall reside within the county in which the seat of government is located. Unless otherwise provided by law, they shall keep at the seat of government the public records, books and papers pertaining to their respective offices. They shall have such powers and perform such duties as may be prescribed by this constitution or by law.

**Sec. 3. Election Returns; Contests.**—The returns of every election for the officers named in section two of this article shall be sealed and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the House of Delegates, who shall, immediately after the organization of the House, before proceeding to other business, and in the presence of a majority of the members of each House of the Legislature, open and publish the returns. The person having the highest number of votes for each of the offices shall be declared elected; but if two or more shall have the highest and equal number of votes for the same office, one of them shall be chosen for the office by joint vote of a majority of the members of both Houses.

Contested elections for these state elective offices shall be determined in such manner as may be prescribed by law.

**Sec. 4. Eligibility.**—None of the officers named in section two of this article shall hold any other office during the term of his service. A person who has been elected or has served as Governor during all or any part of two consecutive terms shall be ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms.

**Sec. 5. Executive and Administrative Organization.**—Except for the offices of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and governing boards of institutions of higher education, all executive and administrative offices, departments, and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by the Legislature among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. However, temporary commissions for special purposes may be established by law, and such commissions need not be allocated within a principal department.

Except for the offices of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and the governing boards of institutions of higher education, each principal department shall be under the supervision of the Governor. The head of each such principal department shall be a single executive unless otherwise provided by law.

The Legislature, in compliance with these provisions, shall prior to the first day of July, one thousand nine hundred sixty-three, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the state government among and within the principal departments. If such allocation shall not have been completed within the time limited, the Governor shall call an extraordinary session of the Legislature to which he shall submit a plan or plans for consideration to complete such allocation; and no other matters shall be considered at such session.

**Sec. 6. Appointment and Removal of Officers.**—The Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint, to serve at the pleasure of the Governor during their terms of office and until the appointment and qualification of their successors, the heads of the principal departments which are under his supervision, whether the head be a single executive or members of a board, commission, or other body prescribed by law.

Without such advice and consent, unless otherwise provided by law, the Governor shall also appoint all other officers whose offices are established by this Constitution or shall be created by law and whose appointment or election is not otherwise provided; and no such officers, except officers of the Legislature, shall be appointed or elected by the Legislature. Except as otherwise provided by general laws, such officers shall serve at the pleasure of the Governor. He shall also have the power to remove any officer, in the manner prescribed by law, for incompetency, neglect of duty, gross immorality, malfeasance in office, or official misconduct. The Governor shall fill any vacancies in such offices in the manner prescribed by law. Unless removed, such officers shall continue to serve until their successors are appointed and qualified.

**Sec. 7. Governor's Messages.**—The Governor shall, at the beginning of each session, and at such other time as he may deem necessary, give to the Legislature information by message as to the condition and affairs of the State, and shall in like manner recommend such measures as he shall deem desirable or expedient.

**Sec. 8. Extraordinary Legislative Session.**—The Governor may convene the Legislature in extraordinary session whenever, in his opinion, the interest of the State requires it; and it shall be his duty to convene the Legislature on application in writing of three fifths of the members elected to each House. When convened at the Governor's instance, the Legislature shall enter upon no business except that stated in the proclamation by which it was convened.

**Sec. 9. Legislature's Meeting Place.**—The Governor may direct that sessions of the Legislature be held at some convenient place other than the seat of government whenever from the presence of an enemy, or from any other cause, it shall become an unsafe place for the meeting of the Legislature.

**Sec. 10. Commander-in-Chief of Armed Forces.**—The Governor shall be commander-in-chief of the armed forces of the State (except when they shall be called into the service of the United States), and may call the same out to enforce the execution of the laws, suppress insurrection, or repel invasion.

**Sec. 11. Executive Clemency.**—The Governor shall have and may exercise general powers of executive clemency, including the power to commute capital punishment and other sentences, to grant reprieves, to remit fines and penalties in whole or in part, and except where the prosecution has been carried on by the House of Delegates, to grant full or conditional pardons after conviction. The Legislature may by law provide for a board composed of not more than three members, to be appointed by the Governor and to serve during his will and pleasure, to which board he may delegate any or all of his powers of executive clemency, except the power to commute capital punishment. The Governor or the board, as the case may be, shall report to each House of the Legislature at every regular session thereof, and at such other times as required by either House, the particulars of every case in which executive clemency has been granted since the last preceding report. The report shall be in such form and detail as may be prescribed by law.

**Sec. 12. Governor's Approval or Disapproval of Bills Passed by the Legislature.**—Except as otherwise provided in this Constitution, every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and may proceed to reconsider the bill. Upon such re-

consideration, if a majority of the members elected to that House agree to pass the bill, it shall be sent, together with the objections of the Governor to the other House, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law notwithstanding the objections of the Governor: *Provided,* That, if upon such reconsideration the bill be amended and reenacted, then it shall be again sent to the Governor and he shall act upon it as if it were before him for the first time. In all such cases, the vote of each House shall be determined by yeas and nays to be entered on the journal.

Any bill which shall not be returned by the Governor within five days, Sunday excepted, after it shall have been presented to him, shall be a law, in the same manner as if he had signed it, unless the Legislature shall, by adjournment, prevent its return; in which case it shall be filed with his objections in the office of an officer prescribed by law within fifteen days, Sundays excepted, after such adjournment, or become a law.

**Sec. 13. Salaries of Elected Officers.**—The Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer shall each receive for his services a salary to be fixed by law, which shall not be increased or diminished during his official term, and for the performance of any official duty he shall not receive to his own use any fees, costs, perquisites of office or compensation, except his salary. He shall account for and pay over in the manner provided by law all moneys collected by him by virtue of his office.

**Sec. 14. Vacancy in Governorship; Judicial Determination.**—In the event of a vacancy in the office of Governor resulting from death, resignation or removal of a Governor in office, or the death of a Governor-elect or his failure to qualify, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve, first, upon the President of the Senate; second, upon the Speaker of the House of Delegates; and then upon such officers and in such order of succession as may be provided by law; and in any of these cases, except as other-

wise provided herein, the person designated shall serve until a successor shall be elected and qualified as herein provided.

The office of Governor shall be deemed vacant if the Supreme Court of Appeals finds and declares that a Governor in office is unable to discharge the duties of the office by reason of his mental, physical, or other disability: *Provided, however,* That such vacancy shall cease to exist if, prior to the election of a person to fill the vacancy, the court shall find and declare that the inability to discharge the duties of the office by reason of his mental, physical or other disability has ceased to exist.

Upon the filing of a verified petition in writing by one third of the members elected to each House of the Legislature, alleging valid and reasonable grounds for declaring the office of Governor vacant or that the inability which created a vacancy has ceased to exist, the Supreme Court of Appeals shall have original jurisdiction, by quo warranto or other appropriate proceedings, to hear and determine questions concerning a vacancy in the office of Governor. The court may proceed to hearing on such petition and make such findings and determinations as may be warranted. Such proceedings shall have precedence over all other matters before the court, and may be heard in a regular or special term. In the event the court finds that a vacancy does or does not exist, a mandate declaratory thereof shall be issued by the court. The provisions of this section may be implemented by rules of court, but no rule shall impede or unnecessarily delay the expeditious hearing and determination herein contemplated.

**Sec. 15. Other Elective Office Vacancies.**—In the event of a vacancy in the office of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer resulting from death, resignation, or removal of the person in office, or the death of the person elected to the office, or from any other cause, the Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint a person to fill the

vacancy. The appointee shall, upon qualifying, hold the office, unless he be removed, until his successor shall be appointed, or elected, and qualified.

**Sec. 16. Elections to Fill Vacancies.**—Whenever a vacancy shall occur in the office of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer, a successor shall be elected to fill the unexpired term at the general election next succeeding the vacancy, unless the vacancy shall occur within sixty days immediately preceding such general election, in which case a successor shall not be elected to fill the unexpired term.

Notwithstanding the provisions of section three of this article, the returns of an election for any such officer for an unexpired term shall be directed to an officer prescribed by law who shall open and publish the returns, and declare the results in such manner as may be provided by law: *Provided, however,* That if two or more candidates have the highest and equal number of votes for the same office, one of them shall be chosen and declared elected to the office by joint vote of a majority of the members of both Houses of the Legislature in the regular or extraordinary session next succeeding the election.

**Sec. 17. Vacancies Filled in Recess of Legislature.**—In the event of a vacancy, during a recess of the Senate, in any office the appointment to which requires confirmation by the Senate, the Governor shall appoint a person to such office, who, upon qualifying, shall hold the office, unless he be removed, for the time herein provided.

The nomination of the person thus appointed during a recess shall be deemed made to the Senate by the Governor at the time of the appointment, unless the nomination be withdrawn by the Governor prior to confirmation by the Senate. A person so nominated, when confirmed by the Senate (a majority of all the Senators elected concurring by yeas and nays), shall hold the office during the remainder of the term, unless he be removed, and until his successor shall be appointed, or elected, and qualified. If such an interim appointment is not confirmed, it shall expire upon the adjournment of the regular or

extraordinary session of the Legislature next after the appointment or when the appointee has been rejected by the Senate, whichever shall first occur.

If a vacancy in any such office shall exist during a regular or extraordinary session of the Legislature, the Governor shall, if practicable, forward to the Senate before its adjournment the name of the person nominated to fill such vacancy.

No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall a person, whose nomination for an office failed to be confirmed, be eligible, prior to the next regular session of the Legislature, for an interim appointment to the same office.

**Sec. 18. Budget and Supplementary Appropriation Bills.** —The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

**Sub-Section A—Appropriation Bills**

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

**Sub-Section B—Budget Bills**

(2) Within ten days after the convening of the regular session of the Legislature in odd-numbered years, unless such time shall be extended by the Legislature, and on the second Wednesday of January in even-numbered years, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of the fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding

fiscal year; (b) the current assets, liabilities, reserves and surplus or deficit of the State; (c) the debts and funds of the State; (d) an estimate of the State's financial condition as of the beginning and end of the fiscal year covered by the budget; (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the State's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law, (a) for the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the State created in conformity with the Constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the State under the Constitution and laws of the State; (f) for such other purposes as are set forth in the Constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each House the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each House shall promptly cause the bill to be introduced therein, and such bill shall be known as the 'Budget Bill'. The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he may deliver such an amendment or supplement to the presiding officers of both Houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or diminishing the items therein: *Provided, however,* That the Legislature shall not increase the estimate of revenues submitted in the budget without the approval of the Governor: *Provided further,* That, except as otherwise provided in this Constitution, the salary or compensation of any public officer shall not be increased or diminished during his term of office; and the bill when and as passed by both Houses shall be law immediately without further action by the Governor.

(6) The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either House of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

**Sub-Section C—Supplementary Appropriation Bills**

(7) Neither House shall consider other appropriations for the next ensuing fiscal year until the budget bill for such year has been finally acted upon by both Houses, and no such other appropriations whether supplementing the budget for a current fiscal year or the next ensuing fiscal year, shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in the bill unless it appears from such budget that there is sufficient revenue available; (c) no supplementary appropriation bill shall become a law unless it be passed in each House by a vote of a majority of the members present, and the yeas and nays recorded on its final passage. Each supplementary appropriation bill shall be presented to the Governor of the State as provided in section twelve

of this article and thereafter all the provisions of that section shall apply.

**Sub-Section D—General Provisions**

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during the extended session except a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power, and it shall be his duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the legislative department, certified by the presiding officer of each House, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he shall direct, and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments.

(11) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(12) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the Constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the Governor from calling extraordinary ses-

sions of the Legislature, as provided by section eight of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(13) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills."

**Sec. 2. Amendment to Be Known as the "State Executive and Budget Amendment".**—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "State Executive and Budget Amendment".

**Sec. 3. Form of Ballot; Election.**—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

Ballot on "State Executive and Budget Amendment".

☐ For ratification of State Executive and Budget Amendment.

☐ Against ratification of State Executive and Budget Amendment.

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

**Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.**—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at precinct No. ....., in the district of ....., in the county of ....., on the ..... day of ....., one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

"For ratification of State Executive and Budget Amendment ..... votes.

"Against ratification of State Executive and Budget Amendment ..... votes.

"Given under our hands this ..... day of ....., one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books, and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such

result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of ..... ....., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of November, one thousand nine hundred sixty-two, do certify that the results of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of State Executive and Budget Amendment ..... votes.

"Against ratification of State Executive and Budget Amendment ..... votes.

"Given under our hands this ..... day of ..... ....., one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

**Sec. 5. Proclamation of Result of Election by Governor.**—On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

**Sec. 6. Publication of Proposed Amendment by Governor.**—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every

county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

# CHAPTER 4

**(House Bill No. 68—By Mr. Cruikshank and Mr. Myles)**

[Passed February 5, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section three of article nine thereof, relating to terms of office of sheriff.

*Be it enacted by the Legislature of West Virginia:*

**Sheriffs' Succession Amendment**

**Section**

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Sheriffs' Succession Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

**Section 1. Submitting an Amendment to the State Constitution.**—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section three of article nine of the constitution of West Virginia be amended to read as follows:

**"Section 3. Sheriffs; More Than Two Consecutive Terms Prohibited.**—Without limitation on the number of non-

consecutive terms, the same person shall not serve as sheriff by election or appointment for more than two consecutive terms, or any part thereof; nor shall any person who acted as a deputy at any time during the preceding four years be elected or appointed sheriff, nor shall any sheriff act as deputy of his successor; nor shall he, during his term of service, or within one year thereafter, be eligible to any other office. The retiring sheriff shall finish all business remaining in his hands, at the expiration of his term; for which purpose his commission and official bond shall remain in force. The duties of the office of sheriff shall be performed by him in person, or under his superintendence."

**Sec. 2. Amendment to Be Known as the "Sheriffs' Succession Amendment".**—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "Sheriffs' Succession Amendment".

**Sec. 3. Form of Ballot; Election.**—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

Ballot on "Sheriffs' Succession Amendment".

☐ For ratification of Sheriffs' Succession Amendment.

☐ Against ratification of Sheriffs' Succession Amendment.

The said election on the proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election, and all the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as practicable, and not inconsistent with anything herein contained, shall apply to the election held under the pro-

visions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

**Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.**—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at precinct No. ..... , in the district of ....., in the county of ....., on the ..... day of ....., one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

"For ratification of Sheriffs' Succession Amendment .....votes.

"Against ratification of Sheriffs' Succession Amendment .....votes.

"Given under our hands this ..... day of....., one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books, and the

certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of ....., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of November, one thousand nine hundred sixty-two, do certify that the results of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of Sheriffs' Succession Amendment .....votes.

"Against ratification of Sheriffs' Succession Amendment.....votes.

"Given under our hands this .....day of ....., one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

**Sec. 5. Proclamation of Result of Election by Governor.**—On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

**Sec. 6. Publication of Proposed Amendment by Governor.**—The governor shall cause the said proposed amend-

ment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall be in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

# CHAPTER 5

**(House Bill No. 63—By Mr. White)**

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, repealing sections six, eight and nine, and amending sections two, seven and ten of article six thereof, relating to the composition of the Senate and House of Delegates and to representation and apportionment of members of the House of Delegates.

*Be it enacted by the Legislature of West Virginia:*

**Fair Representation Amendment**

**Section**

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Fair Representation Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of votes; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

**Section 1. Submitting an Amendment to the State Constitution.**—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general

election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article six of the Constitution be amended by repealing sections six, eight and nine, and amending sections two, seven and ten thereof to read as follows:

**Composition of Senate and House of Delegates.**

Section 2. The Senate shall be composed of thirty-two members, and the House of Delegates of one hundred members, subject to be increased according to the provisions of section ten of this article.

**Provision for Delegate Representation.**

Sec. 6. This section is hereby repealed.

**Delegate Apportionment after Census.**

Sec. 7. After every census the number of members of which the House of Delegates is composed shall be apportioned among the counties in accordance with the following steps:

(1) Ascertain the ratio of representation for the House of Delegates by dividing the whole population of the state by the number of members of which the House is to consist and rejecting the fraction of a unit, if any, resulting from such division.

(2) Divide the population of every county which has a population equal to or in excess of the ratio ascertained in step (1) by said ratio, and assign to each such county a number of Delegates equal to the quotient obtained by this division, excluding the fractional remainder.

(3) Assign to each county having a population less than the ratio ascertained in step (1) one Delegate.

(4) Any additional Delegates necessary to make up the number of which the House is to consist shall then be assigned on the basis of one Delegate each to those counties having the largest fractions unrepresented as determined in step (2), and not receiving a Delegate in step (3).

**Designation of Delegate Districts.**

Sec. 8. This section is hereby repealed.

**Further Apportionments.**

Sec. 9. This section is hereby repealed.

**Arrangement of Senatorial Districts and Designation and Apportionment of Delegates.**

Sec. 10. The arrangement of the Senatorial Districts, and the designation of the number and apportionment of Delegates shall, notwithstanding the provisions of section twenty-two of this article, hereafter be declared by law only in accordance with sections four and seven of this article insofar as applicable at the first even-year regular session of the Legislature following each succeeding census taken by authority of the United States: *Provided,* That said arrangement, designation and apportionment following the census taken for the year one thousand nine hundred sixty shall be declared by law as aforesaid at the regular session of the Legislature to be held in the year one thousand nine hundred sixty-three.

If the Legislature fails to declare the foregoing arrangement, designation and apportionment three days before the expiration of any such legislative session hereinabove specified, the Governor may, and it shall be his duty to issue a proclamation extending any such session for such further period as may, in his judgment, be necessary for the passage of legislation declaring such arrangement, designation and apportionment; but no other matter shall be considered during such extended session except a provision for the cost of the extended session, and the budget bill, if said session is also extended for consideration of the budget bill in accordance with the provisions of section fifty-one of this article. The action of the Legislature in declaring such arrangement, designation and apportionment shall not be subject to veto by the Governor.

When so declared said arrangement, designation and apportionment shall apply to the first and subsequent general elections for members of the Legislature to be thereafter held until again declared following the succeeding census: *Provided,* That this provision shall not affect the qualification or term of office of any member of the

Senate who was elected at the general election next preceding the declaration of said arrangement.

**Sec. 2. Amendment to Be Known as the "Fair Representation Amendment".**—For convenience in referring to the said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, the said proposed amendment is hereby designated as the "Fair Representation Amendment".

**Sec. 3. Form of Ballot; Election.**—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

Ballot on "Fair Representation" Amendment

☐ For ratification of Fair Representation Amendment.

☐ Against ratification of Fair Representation Amendment.

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

**Sec. 4. Certificates of Election Commissioners; Canvass of Votes; Certifying Result.**—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting shall make out and sign two certificates thereof in the following form or to the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No. ....., in the District of _____, in the County of _____, on the _____ day of November, one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment do hereby certify that the result of the said election is as follows:

"For ratification of Fair Representation Amendment _____ votes.

"Against ratification of Fair Representation Amendment _____ votes.

"Given under our hands this _____ day of November, one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers, or any one of them, as the case may be), shall within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of each result shall be made out and signed by said commissioners as a board of canvassers in the form or to the following effect:

"We, the board of canvassers of the County of _____, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the _____ day of November, one thousand nine hundred sixty-two, do certify that the

results of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of Fair Representation Amendment ..... votes.

"Against ratification of Fair Representation Amendment ..... votes.

"Given under our hands this ..... day of ....., one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of the said election in the state is to be ascertained as hereinafter stated.

**Sec. 5. Proclamation of Result of Election by Governor.**—On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and to declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

**Sec. 6. Publication of Proposed Amendment by Governor.**—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

# CHAPTER 6

**(Com. Sub. for Senate Bill No. 58—Originating in the Senate Committee on the Judiciary)**

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending sections thirteen, twenty-two and thirty-three, article six thereof, relating to eligibility to a seat in the Legislature, to the length of legislative sessions and the business which may be considered in thirty-day sessions, and to the compensation and expenses of members of the Legislature.

*Be it enacted by the Legislature of West Virginia:*

**Legislative Amendment**

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Legislative Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

**Section 1. Submitting an Amendment to the State Constitution.**—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That sections thirteen, twenty-two and thirty-three, article six of the constitution of West Virginia, be amended to read as follows:

**"Section 13. Eligibility to Seat in Legislature.**—No person holding a lucrative office or employment under the state, the United States, or any foreign government; no member of Congress; and no person who is sheriff, con-

stable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

**"Sec. 22. Length of Legislative Session.**—The regular session of the Legislature held in the year one thousand nine hundred sixty-three and every second year thereafter shall not exceed sixty days, and the regular session held in the year one thousand nine hundred sixty-four and every second year thereafter shall not exceed thirty days. During any thirty-day session the Legislature shall consider no other business than the annual budget bill, revenue measures and such business as may be stated by the Legislature on its own motion in a concurrent resolution adopted by a two-thirds vote of the members elected to each house. All sessions may be extended by the concurrence of two thirds of the members elected to each house.

**"Sec. 33. Compensation and Expenses of Members.**—Each member of the Legislature shall receive for his services the sum of fifteen hundred dollars a year, and may receive such additional sum, as may be provided by statute, for expenses for actual attendance while the Legislature is in session, and for mileage for one round trip in connection with any session and for one round trip in connection with attending a party caucus held in advance of the date of the assembly of the Legislature in odd-numbered years for the purpose of selecting candidates for offices of the two houses, the additional sum of ten cents for each mile traveled in going to and returning from the seat of government by the most direct route. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of five dollars a day for each day served as presiding officer. Any member of the Legislature may receive, from appropriations for such purposes, compensation for services rendered in the performance of interim committee or commission assignments. Notwithstanding any other provision of the constitution, the compensation and expenses herein provided for shall be paid to each member of the Legislature on and after the adoption of this amendment."

**Sec. 2. Amendment to Be Known as the "Legislative Amendment".**—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "Legislative Amendment".

**Sec. 3. Form of Ballot; Election.**—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

Ballot on "Legislative Amendment".

☐ For ratification of Legislative Amendment.

☐ Against ratification of Legislative Amendment.

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

**Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.**—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No. ....., in the district of ....., in the

county of ....., on the ..... day of ....., one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

"For ratification of Legislative Amendment..... votes.

"Against ratification of Legislative Amendment ..... votes.

"Given under our hands this ..... day of ....., one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of the county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of ....., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of November, one thousand nine hundred sixty-two, do certify that the results of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"For ratification of Legislative Amendment.....votes.

"Against ratification of Legislative Amendment ..... votes.

"Given under our hands this ..... day of .....
one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

**Sec. 5. Proclamation of Result of Election by Governor.**—On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

**Sec. 6. Publication of Proposed Amendment by Governor.**—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

# CHAPTER 7

**(House Bill No. 6—By Mr. Speaker, Mr. Singleton)**

[Passed January 26, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter thirty-one of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the powers of banking institutions and in particular authorizing a banking institution organized under said chapter thirty-one to invest up to two per cent of its capital and surplus in the capital stock of small business investment companies licensed under an act of Congress known as the "Small Business Investment Act of 1958", as amended.

*Be it enacted by the Legislature of West Virginia:*

That section six, article four, 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 4. Banking Institutions**

**Section**

6. Powers of banking institutions defined.

**Section 6. Powers of Banking Institutions Defined.**—Any banking institution, organized under this chapter, shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes, and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell exchange, bank notes, bullion or coin, loan money on personal or other security, rent safety deposit boxes, and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description. Any banking institution may accept, for payment at a future date, drafts drawn upon it by its customers, and issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time, not exceeding one year.

Any banking institution organized under this chapter may hereafter invest in the capital stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the "Small Business Investment Act of 1958", as amended: *Provided,* That in no event shall any such bank hold shares in small business investment companies in

any amount aggregating more than two per cent of the combined capital and surplus of such banking institution.

Any banking institution may acquire, own, hold, use and dispose of, real estate, which shall in no case be carried on its books at a value greater than the actual cost, subject to the following limitations and for the following purposes:

(a) Such as shall be necessary for the convenient transaction of its business, including, in the same building with its office or banking room, other offices or apartments to rent as a source of income; such investment hereafter made shall not exceed sixty-five per cent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured;

(b) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(c) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings;

(d) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it;

(e) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

Any real estate acquired by any banking institution under clauses (c) and (d) shall be disposed of by the banking institution at the earliest practicable date; but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: *Provided,* That such property shall be disposed of within five years from the time it is acquired by the banking institution unless an extension of time is given in writing by the commissioner of banking.

No banking institution organized and authorized to transact business under this chapter shall hereafter invest more than twenty per cent of the amount of its cap-

ital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it.

# CHAPTER 8

**(Senate Bill No. 7—By Mr. Carson, Mr. President, and Mr. Riley)**

[Passed January 29, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, seven, nine and eleven, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Industrial Development Authority.

*Be it enacted by the Legislature of West Virginia:*

That sections four, seven, nine and eleven, 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 Industrial Development Authority.**

**Section**

**4. Definitions.**
**7. Loans to industrial development agencies.**
**9. Industrial development fund.**
**11. Moneys of the authority.**

**Section 4. Definitions.**—The following terms, whenever used or referred to in this article, shall have the following meanings:

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

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

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

(d) The term "critical economic area" shall mean the area encompassing any municipality or group of munici-

palities, county, group of counties or region of the state reasonably defined by the authority wherein critical conditions of unemployment, economic depression, widespread reliance on public assistance and unemployment compensation are found to exist by the authority. Prior to determination and designation of any area of the state as a critical economic area, the authority shall conduct such investigations of the area and of the records and statistical indices of the department of employment security, department of labor, department of natural resources, department of welfare and other applicable state agencies, as well as the declarations and statistics of any federal agencies as shall be necessary to establish the existence of the above conditions in such area. No area of the state shall be designated a critical economic area without such investigations and findings having been first made and certified to the permanent records of the authority.

(e) The term "federal agency" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the United States of America.

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

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

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

(i) The term "industrial development project" shall mean any site, structure, facility or undertaking comprising or being connected with or being a part of an industrial or manufacturing enterprise established or to be

established by an industrial development agency in a critical economic area.

(j) The term "municipality" shall mean any city or town of the state.

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

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

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

**Sec. 7. Loans to Industrial Development Agencies.**— When it has been determined by the authority upon application of an industrial development agency and upon hearing thereon in the manner hereinafter provided that

the establishment of a particular industrial development project (of such industrial development agency) in a critical economic area has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency an amount not in excess of thirty per cent of the cost, or estimated cost, of such industrial development project, as established or to be established, subject, however, to the following conditions:

(A) Industrial development projects to be established.

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

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

(B) Industrial development projects established with initial authority loan participation.

1. The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than twenty per cent of the cost of establishing the industrial development project; and

2. The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, other funds necessary for payment of all the cost of establishing the industrial development project, and that the industrial development

agency participation and these funds, has been adequate to insure completion and operation of the industrial development project: *Provided, however,* That the proceeds of any loan made by the authority to the industrial development agency pursuant to this subsection (B) shall be used only for the establishment of additional industrial development projects in furtherance of the public purposes of this article.

Any such loan of the authority shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and shall be secured by bond of the industrial development agency and by deed of trust on the industrial development project for which such loan was made, such deed of trust to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the authority to industrial development agencies shall be withdrawn from the industrial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the authority.

All payments of interest on said loans and the principal thereof shall be deposited by the authority in the industrial development fund.

Loans by the authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by loan, grant or otherwise of federal funds. When any federal agency does so participate the authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds, and the authority in such manner as to insure the maximum benefit available to the industrial development agency, the authority, or both, by the par-

ticipation of the federal agency: *Provided, however,* That no such adjustment of such ratios shall cause the authority to grant a loan to the industrial development agency in excess of thirty per cent of the cost or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust the lien of which is junior to the deed of trust of the authority, the authority shall, in such instances, be authorized to take as security for its loan to the industrial development agency a deed of trust junior in lien to that of the federal agency.

**Sec. 9. Industrial Development Fund.**—There is hereby created a special account in the treasury of the state to be known as the industrial development fund to which shall be accredited any appropriation made by the Legislature to the authority, as well as such other deposits as in this section provided.

As often as may be necessary, the authority shall requisition from the industrial development fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purposes of this article. And whenever the authority determines it to be necessary to purchase, at a foreclosure sale, any industrial development project pursuant to section six (p) of this article, in order to protect any loan theretofore made by the authority, the authority may requisition from the industrial development fund such amount as may be necessary to pay the purchase price thereof, notwithstanding the fact that the purchase price may exceed thirty per cent of the original cost of the industrial development project.

The authority shall also requisition, from time to time, from the industrial development fund such amounts as shall be allocated and appropriated by the authority for loans to industrial development agencies for industrial development projects. When and as the amounts so allocated and appropriated by the authority as loans to industrial development agencies are repaid to the authority

pursuant to the terms of the mortgages and other agreements made and entered into by the authority, the authority shall pay such amounts into the industrial development fund, it being the intent of this article that the industrial development fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this article.

Whenever the authority shall determine that the balance in the industrial development fund is in excess of the immediate requirements for loan purposes it may request that such excess funds be invested until needed for loan purposes, in which case such excess funds shall be invested in the manner provided for the investment of other temporary state funds. All interest earned on the money invested pursuant to this section shall be credited to the industrial development fund.

At any time that the authority shall determine that funds held for the credit of the industrial development fund are in excess of the amount needed by the authority to carry out the purposes of this article, the authority shall take such action as shall be required to release such excess from the industrial development fund and transfer the same to the general fund of the state treasury.

**Sec. 11. Moneys of the Authority.**—All moneys accruing to the authority from whatever source derived, except legislative appropriations, shall be collected and received by the treasurer of the authority, who shall pay same into the state treasury in the manner required by section two, article two, chapter twelve of the code of West Virginia, as amended, which shall be credited to the special revolving account known as the industrial development fund.

# CHAPTER 9

**(Com. Sub. for House Bill No. 50—Originating in the House Committee on Counties, Districts and Municipalities)**

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five and sections five-(one) through five-(fifty-four), article one; section two and sections two-(one) through two-(fifty-two), section three and sections three-(one) through three-(fifty-two), and section four, article seven, all of chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of county commissioners, county clerks, circuit clerks and joint clerks of county and circuit courts.

*Be it enacted by the Legislature of West Virginia:*

That section five and sections five-(one) through five-(fifty-four), article one; section two and sections two-(one) through two-(fifty-two), section three and sections three-(one) through three-(fifty-two), and section four, article seven, all of chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article**

1. County Courts Generally.
7. Salaries; Deputies and Assistants and Their Salaries.

## Article 1. County Courts Generally.

**Section**

5. Duties of county commissioners and payment for services other than services in court.
5-(1)—5-(54). Salaries of county commissioners of the various counties of the state.

**Section 5. Duties of County Commissioners and Payment for Services Other than Services in Court.**—It shall be the duty of the county commissioners of each county to visit each quarter and inspect institutions within their county for housing and caring for the poor, to inspect the jails, and to arrange for the feeding and care of the

prisoners therein, and to investigate the conditions of the poor within their county, not housed within such institutions; to visit detention homes for children within their counties, if any, and to visit and inspect bridges and bridge approaches under their control; to provide for and have general supervision over the repair and maintenance of the county courthouse, jails, houses for the poor and other county property, so as to prevent the undue deterioration thereof; to supervise and control the maintenance and operation of airport or airports owned and/or operated by the county court; and to supervise and control the purchase, erection and maintenance of airport facilities; to supervise and control the purchase of furniture, fixtures and equipment, and janitors' and other supplies, for their county; to attend the annual meeting of county assessors, and such district meetings as may be called by the state tax commissioner, on matters pertaining to the work of the county assessors and the county courts as boards of review and equalization; to review and equalize the assessments made by the assessors; to inspect and review the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and to point out to the assessor any property, real or personal, which the said assessors of their respective counties may have overlooked or omitted to place on said tax lists; to call to the attention of the assessor all real estate or personal property belonging to churches, lodges, schools or other charitable institutions which may have been overlooked or omitted by the assessor or his deputies in making up his lists of property for entry on the land and personal property books; to cooperate with the county public assistance council and supervise the general management of the fiscal affairs and business of each county; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect public parks, playgrounds, and recreational facilities, to purchase, lease or rent equipment therefor, and to employ qualified recreational directors and personnel; to construct new Four-H camps on county property; to operate stone quarries and sand deposits on

county-owned or leased property; to construct buildings for or aid in constructing and/or equipping civilian defense buildings on sites approved by state office of civilian defense; and to operate dog pounds for county-municipalities; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect public markets and to purchase, rent or lease equipment therefor, and to employ qualified personnel to operate such public markets.

Compensation shall be allowed and paid out of the county treasury, in the same manner as salaries are paid, to each county commissioner of each county (except as otherwise provided by law for the county of Ohio), for services performed for such county concerning the visiting of the poor, inspection of jails, bridges and bridge approaches, and for visiting detention homes for children; and for providing for and supervising the repair and maintenance of the county courthouse, jails, houses for the poor, and other county property; for supervising and controlling the maintenance and operation of airport or airports owned by and/or operated by the county court, and supervising and controlling the purchase, erection and maintenance of airport facilities; and for supervising and controlling the purchase of furniture, fixtures and equipment and janitors' and other supplies of their county; and for attending the annual meeting of assessors and such district meetings as may be called by the state tax commissioner, on matters pertaining to the work of assessors and county courts as boards of review and equalization; for reviewing and equalizing the assessments made by the assessors; for inspecting and reviewing the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and for pointing out to the assessor any property, real or personal, which the said assessors of their respective counties may have overlooked or omitted to place on said tax lists; for calling to the attention of the assessor all real estate or personal property belonging to churches, lodges, schools or other charitable institutions which may have been overlooked or omitted by the assessor or his deputies in making up his lists of property for entry on

the land and personal property books; and for duties of the county commissioners in cooperating with the county public assistance council; for purchasing, leasing, renting, controlling, supervising, inspecting, maintaining and erecting public parks, playgrounds, and recreational facilities, and the purchasing, leasing, or renting the equipment therefor, and employing qualified recreational directors and personnel therefor; for constructing new Four-H camps on county property; operating stone quarries and sand deposits on county-owned or leased property; constructing buildings for or aiding in construction and/or equipping civilian defense buildings on sites approved by state office of civilian defense; operating dog pounds for county-municipalities; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect public markets and to purchase, rent or lease equipment therefor, and to employ qualified personnel to operate such public markets; for constructing fall-out shelters and aiding individuals to construct fall-out shelters through furnishing available information; and for supervising the general management of the fiscal affairs and business of each county, within their counties, and other business by such commissioners, in addition to compensation for services in court, the sums of money hereinafter provided in the following sections five-(one) to five-(fifty-four), inclusive.

**Sec. 5-(1). Compensation of County Commissioners—Barbour County.**—For the county of Barbour, one hundred dollars per month.

**Sec. 5-(2). Same—Berkeley County.**—For the county of Berkeley, the president of the court one hundred sixty-five dollars and other members of the court one hundred forty dollars per month.

**Sec. 5-(3). Same—Boone County.**—For the county of Boone, one hundred fifty dollars per month.

**Sec. 5-(4). Same—Braxton County.**—For the county of Braxton, the president of the court eighty-five dollars and the other members of the court seventy-five dollars per month.

**Sec. 5-(5). Same—Brooke County.**—For the county of Brooke, one hundred twenty-five dollars per month.

**Sec. 5-(6). Same—Cabell County.**—For the county of Cabell, three hundred dollars per month.

**Sec. 5-(7). Same—Calhoun County.**—For the county of Calhoun, fifty dollars per month.

**Sec. 5-(8). Same—Clay County.**—For the county of Clay, seventy-five dollars per month.

**Sec. 5-(9). Same—Doddridge County.**—For the county of Doddridge, eighty-five dollars per month.

**Sec. 5-(10). Same—Fayette County.**—For the county of Fayette, two hundred fifty dollars per month.

**Sec. 5-(11). Same—Gilmer County.**—For the county of Gilmer, seventy-five dollars per month.

**Sec. 5-(12). Same—Grant County.**—For the county of Grant, sixty dollars per month.

**Sec. 5-(13). Same—Greenbrier County.**—For the county of Greenbrier, one hundred twenty-five dollars per month.

**Sec. 5-(14). Same—Hampshire County.**—For the county of Hampshire, the president of the court one hundred dollars and the other members of the court seventy-five dollars per month.

**Sec. 5-(15). Same—Hancock County.**—For the county of Hancock, two hundred twenty-five dollars per month.

**Sec. 5-(16). Same—Hardy County.**—For the county of Hardy, seventy-five dollars per month.

**Sec. 5-(17). Same—Harrison County.**—For the county of Harrison, four hundred dollars per month.

**Sec. 5-(18). Same—Jackson County.**—For the county of Jackson, one hundred dollars per month.

**Sec. 5-(19). Same—Jefferson County.**—For the county of Jefferson, the president of the court one hundred twenty-five dollars and the other members of the court one hundred dollars per month.

**Sec. 5-(20). Same—Kanawha County.**—For the county of Kanawha, six hundred twenty dollars per month.

**Sec. 5-(21). Same—Lewis County.**—For the county of Lewis, one hundred forty dollars per month.

**Sec. 5-(22). Same—Lincoln County.**—For the county of Lincoln, one hundred twenty-five dollars per month.

**Sec. 5-(23). Same—Logan County.**—For the county of Logan, the president of the court three hundred fifty dollars and the other members of the court two hundred seventy-five dollars per month.

**Sec. 5-(24). Same—Marion County.**—For the county of Marion, four hundred dollars per month.

**Sec. 5-(25). Same—Marshall County.**—For the county of Marshall, one hundred dollars per month.

**Sec. 5-(26). Same—Mason County.**—For the county of Mason, one hundred fifty dollars per month.

**Sec. 5-(27). Same—McDowell County.**—For the county of McDowell, two hundred twenty-five dollars per month.

**Sec. 5-(28). Same—Mercer County.**—For the county of Mercer, the president of the court three hundred fifty dollars and the other members of the court three hundred dollars per month.

**Sec. 5-(29). Same—Mineral County.**—For the county of Mineral, the president of the court one hundred twenty-five dollars and the other members of the court one hundred dollars per month.

**Sec. 5-(30). Same—Mingo County.**—For the county of Mingo, one hundred seventy-five dollars per month.

**Sec. 5-(31). Same—Morgan County.**—For the county of Morgan, seventy-five dollars per month.

**Sec. 5-(32). Same—Monroe County.**—For the county of Monroe, fifty dollars per month.

**Sec. 5-(33). Same—Monongalia County.**—For the county of Monongalia, two hundred dollars per month.

**Sec. 5-(34). Same—Nicholas County.**—For the county of Nicholas, seventy-five dollars per month.

**Sec. 5-(35). Same—Pendleton County.**—For the county of Pendleton, the president of the court sixty-five dollars and the other members of the court forty-five dollars per month.

**Sec. 5-(36). Same—Pleasants County.**—For the county of Pleasants, sixty-five dollars per month.

**Sec. 5-(37). Same—Pocahontas County.**—For the county of Pocahontas, fifty dollars per month.

**Sec. 5-(38). Same—Preston County.**—For the county of Preston, the president of the court seventy-five dollars and other members of the court sixty dollars per month.

**Sec. 5-(39). Same—Putnam County.**—For the county of Putnam, one hundred fifty dollars per month.

**Sec. 5-(40). Same—Raleigh County.**—For the county of Raleigh, the president of the court two hundred fifty dollars and other members of the court two hundred twenty-five dollars per month.

**Sec. 5-(41). Same—Randolph County.**—For the county of Randolph, one hundred twenty-five dollars per month.

**Sec. 5-(42). Same—Ritchie County.**—For the county of Ritchie, sixty dollars per month.

**Sec. 5-(43). Same—Roane County.**—For the county of Roane, ninety dollars per month.

**Sec. 5-(44). Same—Summers County.**—For the county of Summers, seventy-five dollars per month.

**Sec. 5-(45). Same—Taylor County.**—For the county of Taylor, fifty-five dollars per month.

**Sec. 5-(46). Same—Tucker County.**—For the county of Tucker, fifty dollars per month.

**Sec. 5-(47). Same—Tyler County.**—For the county of Tyler, eighty-five dollars per month.

**Sec. 5-(48). Same—Upshur County.**—For the county of Upshur, one hundred dollars per month.

**Sec. 5-(49). Same—Wayne County.**—For the county of Wayne, one hundred seventy-five dollars per month.

**Sec. 5-(50). Same—Webster.**—For the county of Webster, seventy-five dollars per month.

**Sec. 5-(51). Same—Wetzel County.**—For the county of Wetzel, one hundred thirty dollars per month.

**Sec. 5-(52). Same—Wirt County.**—For the county of Wirt, forty dollars per month.

**Sec. 5-(53). Same—Wood County.**—For the county of Wood, three hundred dollars per month.

**Sec. 5-(54). Same—Wyoming County.**—For the county of Wyoming, two hundred dollars per month.

## Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

2. Salaries of county clerks.
2-(1)—2-(52). Salaries of county clerks of the various counties of the state.
3. Salaries of circuit clerks.
3-(1)—3-(52). Salaries of circuit clerks of the various counties of the state.
4. Salaries of joint clerks of county and circuit courts.

**Section 2. Salaries of County Clerks.**—The annual compensation of the clerk of the county court of each county shall, on and after January one, one thousand nine hundred sixty-three, be in the amounts set forth in sections two-(one) to two-(fifty-two), inclusive, of this article.

**Sec. 2-(1). Same—Barbour County.**—For the county of Barbour, three thousand six hundred dollars.

**Sec. 2-(2). Same—Berkeley County.**—For the county of Berkeley, five thousand five hundred dollars.

**Sec. 2-(3). Same—Boone County.**—For the county of Boone, five thousand five hundred dollars.

**Sec. 2-(4). Same—Braxton County.**—For the county of Braxton, four thousand eight hundred dollars.

**Sec. 2-(5). Same—Brooke County.**—For the county of Brooke, four thousand eight hundred dollars.

**Sec. 2-(6). Same—Cabell County.**—For the county of Cabell, eight thousand four hundred dollars.

**Sec. 2-(7). Same—Calhoun County.**—For the county of Calhoun, three thousand four hundred dollars.

**Sec. 2-(8). Same—Clay County.**—For the county of Clay, three thousand nine hundred dollars.

**Sec. 2-(9). Same—Doddridge County.**—For the county of Doddridge, three thousand six hundred dollars.

**Sec. 2-(10). Same—Fayette County.**—For the county of Fayette, five thousand five hundred dollars.

**Sec. 2-(11). Same—Gilmer County.**—For the county of Gilmer, four thousand two hundred dollars.

**Sec. 2-(12). Same—Greenbrier County.**—For the county of Greenbrier, five thousand dollars.

**Sec. 2-(13). Same—Hampshire County.**—For the county of Hampshire, not less than three thousand three hundred dollars nor more than three thousand six hundred dollars.

**Sec. 2-(14). Same—Hancock County.**—For the county of Hancock, six thousand five hundred four dollars.

**Sec. 2-(15). Same—Harrison County.**—For the county of Harrison, seven thousand dollars.

**Sec. 2-(16). Same—Jackson County.**—For the county of Jackson, four thousand one hundred dollars.

**Sec. 2-(17). Same—Jefferson County.**—For the county of Jefferson, four thousand five hundred dollars.

**Sec. 2-(18). Same—Kanawha County.**—For the county of Kanawha, twelve thousand dollars.

**Sec. 2-(19). Same—Lewis County.**—For the county of Lewis, four thousand dollars.

**Sec. 2-(20). Same—Lincoln County.**—For the county of Lincoln, four thousand eight hundred dollars.

**Sec. 2-(21). Same—Logan County.**—For the county of Logan, seven thousand two hundred dollars.

**Sec. 2-(22). Same—Marion County.**—For the county of Marion, seven thousand two hundred dollars.

**Sec. 2-(23). Same—Marshall County.**—For the county of Marshall, six thousand dollars.

**Sec. 2-(24). Same—Mason County.**—For the county of Mason, four thousand eight hundred dollars.

**Sec. 2-(25). Same—McDowell County.**—For the county of McDowell, six thousand eight hundred dollars.

**Sec. 2-(26). Same—Mercer County.**—For the county of Mercer, seven thousand dollars.

**Sec. 2-(27). Same—Mineral County.**—For the county of Mineral, five thousand dollars.

**Sec. 2-(28). Same—Mingo County.**—For the county of Mingo, five thousand eight hundred dollars.

**Sec. 2-(29). Same—Monongalia County.**—For the county of Monongalia, six thousand dollars.

**Sec. 2-(30). Same—Monroe County.**—For the county of Monroe, three thousand dollars.

**Sec. 2-(31). Same—Morgan County.**—For the county of Morgan, three thousand six hundred dollars.

**Sec. 2-(32). Same—Nicholas County.**—For the county of Nicholas, four thousand three hundred dollars.

**Sec. 2-(33). Same—Ohio County.**—For the county of Ohio, eight thousand four hundred dollars.

**Sec. 2-(34). Same—Pleasants County.**—For the county of Pleasants, three thousand eight hundred dollars.

**Sec. 2-(35). Same—Pocahontas County.**—For the county of Pocahontas, three thousand six hundred dollars.

**Sec. 2-(36). Same—Preston County.**—For the county of Preston, five thousand dollars.

**Sec. 2-(37). Same—Putnam County.**—For the county of Putnam, four thousand eight hundred dollars.

**Sec. 2-(38). Same—Raleigh County.**—For the county of Raleigh, seven thousand dollars.

**Sec. 2-(39). Same—Randolph County.**—For the county of Randolph, six thousand dollars.

**Sec. 2-(40). Same—Ritchie County.**—For the county of Ritchie, three thousand six hundred dollars.

**Sec. 2-(41). Same—Roane County.**—For the county of Roane, four thousand two hundred dollars.

**Sec. 2-(42). Same—Summers County.**—For the county of Summers, three thousand six hundred dollars.

**Sec. 2-(43). Same—Taylor County.**—For the county of Taylor, three thousand two hundred dollars.

**Sec. 2-(44). Same—Tucker County.**—For the county of Tucker, three thousand two hundred dollars.

**Sec. 2-(45). Same—Tyler County.**—For the county of Tyler, three thousand six hundred dollars.

**Sec. 2-(46). Same—Upshur County.**—For the county of Upshur, three thousand six hundred dollars.

**Sec. 2-(47). Same—Wayne County.**—For the county of Wayne, five thousand nine hundred dollars.

**Sec. 2-(48). Same—Webster County.**—For the county of Webster, four thousand dollars.

**Sec. 2-(49). Same—Wetzel County.**—For the county of Wetzel, five thousand two hundred dollars.

**Sec. 2-(50). Same—Wirt County.**—For the county of Wirt, two thousand four hundred dollars.

**Sec. 2-(51). Same—Wood County.**—For the county of Wood, six thousand dollars.

**Sec. 2-(52). Same—Wyoming County.**—For the county of Wyoming, six thousand dollars.

**Sec. 3. Salaries of Circuit Clerks.**—The annual compensation of the clerk of the circuit court (or clerk of the circuit and criminal or intermediate or other court of limited jurisdiction) in each county shall, on and after January one, one thousand nine hundred sixty-three, be in the amounts set forth in sections three-(one) to three-(fifty-two), inclusive, of this article.

**Sec. 3-(1). Same—Barbour County.**—For the county of Barbour, three thousand two hundred dollars.

**Sec. 3-(2). Same—Berkeley County.**—For the county of Berkeley, five thousand dollars.

**Sec. 3-(3). Same—Boone County.**—For the county of Boone, five thousand five hundred dollars.

**Sec. 3-(4). Same—Braxton County.**—For the county of Braxton, four thousand eight hundred dollars.

**Sec. 3-(5). Same—Brooke County.**—For the county of Brooke, four thousand eight hundred dollars.

**Sec. 3-(6). Same—Cabell County.**—For the county of Cabell, eight thousand four hundred dollars.

**Sec. 3-(7). Same—Calhoun County.**—For the county of Calhoun, two thousand eight hundred dollars.

**Sec. 3-(8). Same—Clay County.**—For the county of Clay, two thousand seven hundred dollars.

**Sec. 3-(9). Same—Doddridge County.**—For the county of Doddridge, three thousand six hundred dollars.

**Sec. 3-(10). Same—Fayette County.**—For the county of Fayette, five thousand five hundred dollars.

**Sec. 3-(11). Same—Gilmer County.**—For the county of Gilmer, three thousand six hundred dollars.

**Sec. 3-(12). Same—Greenbrier County.**—For the county of Greenbrier, four thousand three hundred dollars.

**Sec. 3-(13). Same—Hampshire County.**—For the county of Hampshire, not less than two thousand six hundred dollars nor more than three thousand dollars.

**Sec. 3-(14). Same—Hancock County.**—For the county of Hancock, four thousand five hundred dollars.

**Sec. 3-(15). Same—Harrison County.**—For the county of Harrison, seven thousand dollars.

**Sec. 3-(16). Same—Jackson County.**—For the county of Jackson, three thousand seven hundred fifty dollars.

**Sec. 3-(17). Same—Jefferson County.**—For the county of Jefferson, four thousand two hundred fifty dollars.

**Sec. 3-(18). Same—Kanawha County.**—For the county of Kanawha, twelve thousand dollars.

**Sec. 3-(19). Same—Lewis County.**—For the county of Lewis, four thousand dollars.

**Sec. 3-(20). Same—Lincoln County.**—For the county of Lincoln, four thousand eight hundred dollars.

**Sec. 3-(21). Same—Logan County.**—For the county of Logan, seven thousand two hundred dollars.

**Sec. 3-(22). Same—Marion County.**—For the county of Marion, seven thousand two hundred dollars.

**Sec. 3-(23). Same—Marshall County.**—For the county of Marshall, five thousand dollars.

**Sec. 3-(24). Same—Mason County.**—For the county of Mason, four thousand two hundred dollars.

**Sec. 3-(25). Same—McDowell County.**—For the county of McDowell, six thousand eight hundred dollars.

**Sec. 3-(26). Same—Mercer County.**—For the county of Mercer, seven thousand dollars.

**Sec. 3-(27). Same—Mineral County.**—For the county of Mineral, five thousand dollars.

**Sec. 3-(28). Same—Mingo County.**—For the county of Mingo, five thousand eight hundred dollars.

**Sec. 3-(29). Same—Monongalia County.**—For the county of Monongalia, six thousand dollars.

**Sec. 3-(30). Same—Monroe County.**—For the county of Monroe, two thousand four hundred dollars.

**Sec. 3-(31). Same—Morgan County.**—For the county of Morgan, two thousand six hundred dollars.

**Sec. 3-(32). Same—Nicholas County.**—For the county of Nicholas, four thousand three hundred dollars.

**Sec. 3-(33). Same—Ohio County.**—For the county of Ohio, eight thousand forty dollars.

**Sec. 3-(34). Same—Pleasants County.**—For the county of Pleasants, three thousand three hundred dollars.

**Sec. 3-(35). Same—Pocahontas County.**—For the county of Pocahontas, three thousand dollars.

**Sec. 3-(36). Same—Preston County.**—For the county of Preston, four thousand five hundred dollars.

**Sec. 3-(37). Same—Putnam County.**—For the county of Putnam, four thousand two hundred dollars.

**Sec. 3-(38). Same—Raleigh County.**—For the county of Raleigh, seven thousand dollars.

**Sec. 3-(39). Same—Randolph County.**—For the county of Randolph, six thousand dollars.

**Sec. 3-(40). Same—Ritchie County.**—For the county of Ritchie, three thousand four hundred dollars.

**Sec. 3-(41). Same—Roane County.**—For the county of Roane, four thousand two hundred dollars.

**Sec. 3-(42). Same—Summers County.**—For the county of Summers, three thousand six hundred dollars.

**Sec. 3-(43). Same—Taylor County.**—For the county of Taylor, three thousand two hundred dollars.

**Sec. 3-(44). Same—Tucker County.**—For the county of Tucker, three thousand two hundred dollars.

**Sec. 3-(45). Same—Tyler County.**—For the county of Tyler, three thousand six hundred dollars.

**Sec. 3-(46). Same—Upshur County.**—For the county of Upshur, three thousand six hundred dollars.

**Sec. 3-(47). Same—Wayne County.**—For the county of Wayne, five thousand seven hundred dollars.

**Sec. 3-(48). Same—Webster County.**—For the county of Webster, three thousand eight hundred dollars.

**Sec. 3-(49). Same—Wetzel County.**—For the county of Wetzel, five thousand dollars.

**Sec. 3-(50). Same—Wirt County.**—For the county of Wirt, one thousand eight hundred dollars.

**Sec. 3-(51). Same—Wood County.**—For the county of Wood, six thousand dollars.

**Sec. 3-(52). Same—Wyoming County.**—For the county of Wyoming, six thousand dollars.

**Sec. 4. Salaries of Joint Clerks of County and Circuit Courts.**—The annual compensation of the clerks of the courts in the counties where both the office of the clerk of the county court and the clerk of the circuit court are held by the same person shall be as follows: Hardy county, four thousand five hundred dollars; Grant county, four thousand two hundred dollars; Pendleton county, four thousand nine hundred dollars.

The salaries now set forth in the code insofar as they affect the salaries enumerated in this bill shall remain in full force and effect until the effective dates herein set out.

# CHAPTER 10

**(House Bill No. 69—By Mr. Haythe and Mr. Goldenberg)**

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the manner in which county or district property can be sold by county courts, and specifically extending the exception to the requirement of public auctions to the sale or disposition of such property for public use to the United States of America, its instrumentalities, agencies or political subdivisions for an adequate consideration.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 3. County Property.**

**Section**

**3. Sale of county or district property.**

**Section 3. Sale of County or District Property.**—In all instances where the county court of a county is by law

authorized to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof, the same shall be sold at public auction, at the front door of the courthouse of the county, and such sale shall be conducted by the president of the county court, but before making any such sale, notice of the time, terms and place of sale shall be given by publication thereof once each week for two consecutive weeks in some newspaper of general circulation in said county, which notice shall contain a brief description of the property to be sold: *Provided, however,* That this section shall not apply to the sale of any one item of property of less value than one thousand dollars: *Provided further,* That the provisions of this section concerning sale at public auction shall not apply to a county court selling or disposing of its property for a public use to the United States of America, its instrumentalities, agencies or political subdivisions or to the state of West Virginia, or its political subdivisions, including county boards of education, for an adequate consideration without considering alone the present commercial or market value of the property.

# CHAPTER 11

**(Senate Bill No. 11—By Mr. Carson, Mr. President, and Mr. McKown)**

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-g, relating to the making, validity and effect of contracts entered into by the state board of education with licensed or certain unlicensed insurers and requiring such unlicensed insurers to become licensed but exempt from premium tax provisions of the licensing laws, and further relating to the validity and effect of contracts or policies of insurance issued thereunder to individuals for

supplemental retirement benefits or for other insurance benefits for persons employed by the state board of education at institutions of higher education.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 2. State Board of Education.**

Section

13-g. Requirements for contracting with insurers; effect thereof; exemption of certain insurers from premium and annuity taxes.

**Section 13-g. Requirements for Contracting with Insurers; Effect Thereof; Exemption of Certain Insurers from Premium and Annuity Taxes.**—In contracting for the group insurance provided for in section thirteen-c and for the supplemental retirement benefits provided for in section thirteen-f of this article, as well as for other insurance benefits for any and all persons employed by it at institutions of higher learning under its control, the state board of education shall solicit proposals for the coverage sought, which proposals shall be obtained by public notice inserted at least twice in a newspaper of statewide circulation at least two weeks before the final date for submitting proposals. The board may also solicit proposals by sending requests by mail to prospective insurers. Upon receipt and consideration of such proposals as may be submitted the board shall have the authority to accept the proposal of and contract with the insurer offering the insurance program or programs determined by the board, in its judgment, to be the most desirable to the beneficiaries thereof, whether such insurer be then licensed as an insurance company in this state or not: *Provided,* That no contract shall be made effective unless and until the insurance company becomes licensed as a life insurance company in accordance with article three, chapter thirty-three of this code, as amended: *Provided further,* That if such insurer shall be a life insurance company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening nonprofit institutions or foundations en-

gaged primarily in education or research, by issuing insurance and annuity contracts only to or for the benefit of such institutions and to individuals engaged in the service of such institutions, it shall be exempt from the payment of premium and annuity taxes provided for by sections fourteen, fourteen-a and fifteen, article three, and any other pertinent premium tax sections, of chapter thirty-three of this code, as amended, as to all annuity or insurance contracts made with educational institutions located within, or relative to subjects of insurance resident in, West Virginia.

# CHAPTER 12

**(Senate Bill No. 2—By Mr. Carson, Mr. President, and Mr. McKown)**

[Passed February 5, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualification of applicants for area vocational educational programs.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 2-b. Area Vocational Educational Program.**

Section

6. Qualifications of applicants to participate as students; rules and regulations governing eligibility of applicants; fee students.

**Section 6. Qualifications of Applicants to Participate as Students; Rules and Regulations Governing Eligibility of Applicants; Fee Students.**—Applicants desirous of participating as students in the area vocational educational programs shall be at least sixteen years of age, residents of the state of West Virginia and shall be certified by the

West Virginia department of employment security that they are not gainfully employed: *Provided,* That applicants for training courses, the completion of which shall fit the applicant for employment in hazardous occupations, which are so found and so declared by the United States department of labor, shall be at least seventeen years of age. The director of vocational education shall establish rules and regulations to determine the eligibility of applicants to participate in the program, in addition to the above requirements, based upon the fitness of the applicant to benefit from the instructions given: *Provided, however,* That persons other than those certified as unemployed may enroll in classes in said instructional centers upon the payment of a fee to be established by the director of vocational education.

# CHAPTER 13

**(House Bill No. 72—By Mr. Speaker, Mr. Singleton, and Mr. Floyd)**

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to job preparation for school dropouts.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 2-c. Job-Preparation Program for School Dropouts.

Section

1. Establishment of job-preparation program.
2. Administration and supervision.
3. Development of job-preparation program.
4. Pilot experiment.

**Section 1. Establishment of Job-Preparation Program.** —Authority is hereby given for the establishment of a job-preparation program for school dropouts, such program to be financed by the state, in cooperation with the counties, and to be based on the following described needs and purposes:

(1) To lessen school dropouts, West Virginia presently having an estimated thirty thousand boys and girls sixteen and seventeen years of age who have quit school before high school graduation.

(2) To provide a planned program of practical job preparation on the basis of interest, aptitude and ability for those who drop out before completing high school.

(3) To make participation in such a program compulsory for all male youth sixteen and seventeen years of age with the view of later extending it to include the female dropouts falling in the same age bracket.

**Sec. 2. Administration and Supervision.**—Subject to such rules and regulations as the state board of education may deem advisable, the administration and supervision of said youth job-preparation program shall be under the state department of education and in cooperation with school officials and boards of education of the respective counties. There shall be selected, by the state superintendent, a supervisor of the program who shall be under the direction of the division of vocational education. It shall be understood that the said supervisor shall be authorized to draw upon the aid and services of such other divisions of the department of education as guidance, counseling and testing; driver education and school transportation; instruction and curriculum; as well as other professional agencies and organizations in or outside of government that may be able to lend help on a voluntary basis.

**Sec. 3. Development of Job-Preparation Program.**— The state department of education, by and with the help of the respective counties, shall develop a practical job-preparation program for all male youth as hereinafter designated. The program shall provide job training, based

upon interest, aptitude and ability of said youth in such areas as the following but not bound by nor limited to the same: Radio and television repair; household equipment repair; gardening (lawn upkeep, shrubbery pruning, etc.); lawn equipment repair; window upkeep and cleaning (business-industrial, residential); general house cleaning (including wall washing, floor renovation, etc.); industrial and household painting; restaurant work (waiter, bus boy, short-order cook, etc.); custodial services; service station attendant; auto repair; carpentry (helper); plastering (helper such as mixing); masonry work (helper); plumbing (helper); helper for air-conditioning installation; electrical wiring; office equipment upkeep and repair; metal work (helper); sign painting; nursing home attendant; hospital orderly, etc.; show card work; construction work (use of various types of equipment); shoe repair; leather crafts; wood crafts; ceramic crafts; stock person in merchandising; furniture refinishing and upholstery; photography (including camera upkeep, repair, etc.); installation, repair and upkeep of public address systems; window display (assistant); checkout in self-service stores; motor boat upkeep and repair; fishing-hunting equipment upkeep and repair; multilith operation, including equipment upkeep and repair; parking meter repair and care; utility meter reading, repair, etc.; hotel services; roof installation, repair and upkeep; auto body repair and painting; delivery services (milk, bread, etc.); various dry-cleaning and laundry services.

Job-preparation instruction shall be financed from state funds, which may be supplemented by county and any available federal funds for further enrichment of the program. The instructional program shall be under the supervision of the county, or area administration where such prevails, subject to the guidance and direction of the state supervisor. County or area directors of the program and teachers of any academic aspects of the program shall be duly certified teachers. For instruction in the common jobs and occupations, persons of practical experience in such may be employed and they shall be classified as job trainers. Nothing shall prevent the use of approved volunteers in this program.

In initiating this job-preparation program, any existing public school buildings and facilities or such as may be provided in the future on an area or county basis, which may be adapted to or useful in such a job-preparation program, shall be made available during the summer months for the said program.

**Sec. 4. Pilot Experiment.**—In order to determine the practicability, effectiveness and cost of the job-preparation program for school dropouts, there shall be established an experimental pilot program in a selected county for the summer months of one thousand nine hundred sixty-two. Also, there shall be an advisory committee comprised of eight members, four of whom shall be selected jointly by the legislative interim committee from their membership and four persons to be selected at large by the governor. This committee shall work in close cooperation with the state department of education and the county officials of the selected pilot county in developing and carrying out the experimental job-preparation program in said pilot county. From time to time, the committee shall make progress reports to the governor and the joint legislative interim committees with its final report and recommendations to be submitted not later than December one, one thousand nine hundred sixty-two. Subsequently, the governor and the joint legislative interim committees shall make their report to the fifty-sixth Legislature as to what steps should be taken in the further implementation of said job-preparation program or its abolition.

By not later than thirty days following the effective date of this article, the state superintendent shall have named the supervisor of the program and, by and with the advice of the advisory committee, shall have selected the pilot county. In the selection of the pilot county, these requisites shall be given consideration: (1) That the county have a reasonably high ratio of school dropouts, (2) that it be within a depressed area of the state, and (3) that the county school officials reflect a genuine interest in developing the experimental program. Any money appropriated for the preliminary study and the

pilot county experimental program shall be allocated to the state department of education for said purpose to be expended under the direction of the state superintendent of schools, by and with the advice of the advisory committee. Expenses for the advisory committee shall be paid from this fund: *Provided, however,* That the job-preparation program and the pilot experiment, all as provided in this article, shall expire January one, one thousand nine hundred sixty-three.

Transportation for the pupils included under said program in said pilot county shall be furnished by the use of said county's school transportation equipment, with the cost of gasoline, oil, maintenance, and drivers being borne out of money appropriated by the state for such pilot county experiment.

Irrespective of the general law relating to pupil transportation, the supervising authority shall make needed rules and regulations for transporting such dropouts.

Notwithstanding the age limit provision set forth in article eight of this chapter, any male youth who has dropped out of school before fully completing his high school education and is within the age bracket of sixteen and seventeen years, inclusive, shall be subject to compulsory participation in said job-preparation program in said pilot county unless regularly employed.

# CHAPTER 14

**(Com. Sub. for Senate Bill No. 24—Originating in the Senate Committee on Finance)**

[Passed February 8, 1962; in effect July 1. 1962. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers' retirement system and definitions of terms used thereunder.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 7-a. State Teachers' Retirement System.**

Section
3. Definitions.

**Section 3. Definitions.**—"Teacher" shall include the following persons, if regularly employed for at least half-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) county superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative, or library staffs of the public schools; (h) the state superintendent of schools, heads, and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the board of governors of West Virginia University, any county board of education, the state department of education or the teachers' retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the state commissioner of public institutions; (1) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

"Members of the administrative staff of the public schools" shall include deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff" of the public schools shall include every agricultural agent, boys' and girls' club agent, and every member of the agricultural ex-

tension staff whose work is not primarily stenographic, clerical, or secretarial.

"Retirement system" shall mean the state teachers' retirement system provided for in this article.

"Present teacher" shall mean any person who was a teacher within the twenty years beginning July first, one thousand nine hundred thirty-nine, and whose membership in the retirement system has been continuous.

"New entrant" shall mean a teacher who is not a present teacher.

"Present member" shall mean a present teacher who is a member of the retirement system.

"Total service" shall mean all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, his credit for prior service, if any.

"Prior service" shall mean all service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to retirement account because he was legally ineligible for membership during such service.

"Average final salary" shall mean the average annual salary earned as a teacher during the last fifteen years of prior service, including military service, as provided herein, or if prior service is less than fifteen years, the average annual salary for that period. If the records for determining each annual salary needed cannot reasonably be established by the retirement board, then the term shall mean the average annual salary of the teacher for years for which records are available.

"Accumulated contributions" shall mean all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" shall mean interest at three per cent compounded annually, or a higher earnable rate if approved by the retirement board.

"Refund interest" shall mean the interest on refunds of the accumulated contributions and deposits payable to

former members or to the beneficiaries of deceased members, as provided in this article. The rate for refund interest shall be the average annual rate of interest, calculated to one decimal place, earned on retirement board investments in effect at the end of the fiscal year for which the interest is due, according to the sworn statement of the fund custodian required by section nineteen of this article.

"Employer" shall mean the agency of and within the state which has employed or employs a member.

"Contributor" shall mean a member of the retirement system who has an account in the teachers' accumulation fund.

"Beneficiary" shall mean the recipient of annuity payments made under the retirement system.

"Refund beneficiary" shall mean the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

"Earnable compensation" shall mean the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation of such members.

"Annuities" shall mean the annual retirement payments for life granted beneficiaries in accordance with this article.

"Member" shall mean a member of the retirement system.

"Public schools" shall mean all publicly-supported schools, including normal schools, colleges, and universities in this state.

"Deposit" shall mean a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be deemed to be seventy years.

# CHAPTER 15

**(Senate Bill No. 5—By Mr. Carson, Mr. President, and Mr. McKown)**

[Passed February 7, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend article nine-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 state aid for increased enrollment.

*Be it enacted by the Legislature of West Virginia:*

That article nine-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 9-a. Allocation of State Aid for Schools.**

**Section**

15. State aid for increased enrollment.

**Section 15. State Aid for Increased Enrollment.**—To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the average total state aid per net pupil multiplied by the total of all of the increases in the net enrollments of the counties made by comparing the most recent reports of net enrollment for the third school month to the immediately previous year's reports for the same school month.

Upon determination of the several increases in the respective counties' net enrollments, as of the close of the third school month, each county showing such increase shall be allocated an amount equal to that county's average per net pupil total state aid multiplied by the increase in that county's net enrollment found as provided heretofore. Such allocations shall be distributed by not later than December thirty-one of each year to the counties having increases in net enrollment as heretofore provided.

If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations, and the allocations as thus adjusted shall be distributed to the counties as provided in this section.

No provision of this section shall be construed to in anyway affect the allocation of moneys for educational purposes to a county under other provisions of law.

# CHAPTER 16

**(Senate Bill No. 33—By Mr. Carson, Mr. President and Mr. McKown)**

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-d, relating to the making, validity and effect of contracts entered into by the board of governors of West Virginia University with licensed or certain unlicensed insurers and requiring such unlicensed insurers to become licensed but exempt from premium tax provisions of the licensing laws, and further relating to the validity and effect of contracts or policies of insurance issued thereunder to individuals for supplemental retirement benefits, or for other insurance benefits, for persons employed by the board of governors of West Virginia University at institutions of higher education.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 11. West Virginia University.

Section

5-d. Requirements for contracting with insurers; effect thereof; exemption of certain insurers from premium and annuity taxes.

**Section 5-d. Requirements for Contracting with Insurers; Effect Thereof; Exemption of Certain Insurers from Premium and Annuity Taxes.**—In contracting for the group insurance provided for in section five-b and for the supplemental retirement benefits provided for in section five-c of this article, as well as for other insurance benefits for any and all persons employed by it, the board of governors of West Virginia University shall solicit proposals for the coverage sought, which proposals shall be obtained by public notice inserted at least twice in a newspaper of statewide circulation at least two weeks before the final date of submitting proposals.

The board may also solicit proposals by sending requests by mail to prospective insurers. Upon receipt and consideration of such proposals as may be submitted the board shall have the authority to accept the proposal of and contract with the insurer offering the insurance program or programs determined by the board, in its judgment, to be the most desirable to the beneficiaries thereof, whether such insurer be then licensed as an insurance company in this state or not: *Provided,* That no contract shall be made effective unless and until the insurance company becomes licensed as a life insurance company in accordance with article three, chapter thirty-three of this code, as amended: *Provided further,* That if such insurer shall be a life insurance company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening nonprofit institutions or foundations engaged primarily in education or research, by issuing insurance and annuity contracts only to or for the benefit of such institutions and to individuals engaged in the service of such institutions, it shall be exempt from the payment of premium and annuity taxes provided for by sections fourteen, fourteen-a and fifteen, article three, and any other pertinent premium tax sections, of chapter thirty-three of this code, as amended, as to all annuity or insurance contracts made with educational institutions

located within, or relative to subjects of insurance resident in, West Virginia.

# CHAPTER 17

**(Senate Bill No. 4—By Mr. Carson, Mr. President, and Mr. Moreland)**

[Passed January 22, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to the continuation and operation of a coal research bureau at West Virginia University.

*Be it enacted by the Legislature of West Virginia:*

That article eleven, 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 nine-a, to read as follows:

**Article 11. West Virginia University.**

**Section**

9-a. Coal research bureau.

**Section 9-a. Coal Research Bureau; Advisory Committee on Coal Research.**—The coal research bureau, heretofore established in the school of mines at West Virginia University, shall be continued. Subject to such rules and regulations as may be prescribed by the board of governors, the director and staff of the bureau, under the supervision and direction of the dean of the school of mines, shall initiate and carry on a program of research designed to discover and develop new uses and new markets for West Virginia coal.

The costs of financing the research program shall be paid from any funds appropriated by the Legislature for the purpose, from any grants or gifts received by the bureau, and from any income received for research car-

ried on by the bureau under contract with any federal or state agency, or with any private corporation, association or individual. Within the limits of available funds, research activities may be conducted by the bureau itself, or under contract with some other research group, corporation or individual whenever this is deemed advisable.

In order to avoid wasteful duplication, the research program shall be carried on in close cooperation with the federal bureau of mines, the state department of mines, the planing and research division of the state department of commerce, and with other appropriate agencies, research organizations and establishments. The bureau shall from time to time publish and distribute to interested persons and agencies reports of its activities, findings and recommendations.

An "Advisory Committee on Coal Research", consisting of not less than four members, shall be appointed by the governor to serve at his will and pleasure. It shall be the duty of the committee to advise and counsel with the university concerning the program of the coal research bureau, and to make such recommendations to the governor and the Legislature concerning the support of the program as the committee may deem advisable.

# CHAPTER 18

**(House Bill No. 73—By Mr. Myles)**

[Passed February 3, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the last day on which a person may file an announcement of his candidacy for nomination to any office, and specifically providing that the fourteenth Saturday preceding the day fixed for the primary election shall be the last day on which a person may file an announcement of his candidacy for

election to a county board of education, except for the year one thousand nine hundred sixty-two.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 6-a. Absentee Voting by Members of Armed Services.**

Section

2. Announcement of candidacy.

**Section 2. Announcement of Candidacy.**—While this article is in effect, the fourteenth Saturday rather than the fifth Saturday preceding the day fixed for the primary election shall be the last day on which a person may file announcement of his candidacy for nomination to any office or for election to a county board of education: *Provided, however,* That with respect to the announcement of candidacy for election to the county board of education in the year one thousand nine hundred sixty-two, the last date for filing shall be the thirteenth Saturday preceding the day fixed for such election. In all other respects, an announcement of candidacy shall be governed by the provisions of sections five-a and six, article four, chapter three of the code.

# CHAPTER 19

**(Com. Sub. for Senate Bill Nos. 28, 31 and 32—Originating in the Senate Committee on the Judiciary)**

[Passed February 5, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five and nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the public uses for which private property may be taken or damaged in the exercise of the right of eminent domain; to restrictions on the location of pipe lines

and storage tanks near dwelling houses; and to crossings, connections, or alteration of works by agreement or civil action, involving companies and other bodies having the right of eminent domain; and relating particularly in these respects to the transportation by common carriers of coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines where such common carriers are engaged in some intrastate pipeline activity in this state.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 1. Right of Eminent Domain.**

Section

2. Public uses for which private property may be taken or damaged.
5. Restrictions as to dwelling houses.
9. Crossings, connections or alteration of works; civil action.

**Section 2. Public Uses for Which Private Property May Be Taken or Damaged.**—The public uses for which private property may be taken or damaged are as follows:

(a) For the construction, maintenance and operation of railroad and traction lines (including extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings, wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for the public use;

(b) For the construction and maintenance of telegraph, telephone, electric light, heat and power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and service lines), when for public use;

(c) For constructing, maintaining and operating pipe lines, plants, systems and storage facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas, and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise, (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), and for underground storage areas and facilities,

and the operation and maintenance thereof, by gas public utilities selling natural gas at retail in West Virginia for the injection, storage and removal of natural gas in subterranean oil and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be condemned and within the limits of the reservoir proposed to be utilized for such purposes, has ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial quantities, when for public use, the extent of the area to be acquired for such purpose to be determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall be construed to interfere with the power of the state and its political subdivisions to enact and enforce ordinances and regulations deemed necessary to protect the lives and property of citizens from the effects of explosions of oil or gas;

(d) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;

(e) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of the municipal corporation, and if not within a municipal corporation, in the name of the county court of the county in which the property is located;

(f) For the reasonable use by an incorporated company

engaged in a public enterprise of which the state or any county or municipality is the sole or a part owner;

(g) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;

(h) For cemeteries, and the extension and enlargement of existing cemeteries: *Provided,* That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;

(i) For public schools, public libraries, and public hospitals;

(j) For the construction and operation of booms (including approaches, landings and ways necessary for such objects), when for a public use;

(k) By the state of West Virginia for any and every other public use, object and purpose not herein specifically mentioned. By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the purview, and subject to the provisions of chapter one of this code;

(l) For constructing, maintaining and operating pipe lines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: *Provided,* That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: *Provided, however,* That, in addition to all other requisites by federal or state constitutions, statute or common law required for the taking of private property for public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to

private property for public use as in this subsection hereinabove provided, is that the public service commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for the public convenience and necessity, and that the public service commission of this state shall not extend a certificate of convenience and necessity or make such finding of public convenience and necessity unless, in addition to the other facts required to support such finding, it shall have been established by the applicant therefor that the patents and other similar rights under which the applicant proposes to construct, maintain or operate such pipe line, plants, systems and storage facilities shall be and shall remain equally available, insofar as said subsequent applicant may determine such availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of convenience and necessity and finding of fact for any other pipe line in West Virginia; for the purpose of making the findings hereinbefore set forth the public service commission shall have and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be subject to judicial review as in other public service commission proceedings.

It is the intention of the Legislature in amending this section by the addition of subsection (1) as set forth above to extend the right of eminent domain to coal pipe lines for public use; to provide for regulation of such coal pipe lines by the public service commission of this state or the interstate commerce commission of the United States of America, or both; to assure that such rights shall be extended only to public utilities or common carriers as distinguished from private carriers or contract carriers; to make patents covering the same equally available to others on fair and reasonable terms; and to prevent monopolistic use of coal pipe lines by any users thereof which would result in any appreciable economic detri-

ment to others similarly situated by reason of any such monopoly.

**Sec. 5. Restrictions as to Dwelling Houses.**—No line for the transportation of natural or artificial gas under pressure or for the transportation of petroleum oil or for the transportation of coal and its derivatives and mixtures and combinations thereof with any substance, and no tank for storing oil or natural gas, shall be laid or constructed within one hundred feet of any occupied dwelling house, without the consent of the owner. This section shall not apply to the territory within municipal corporations.

**Sec. 9. Crossings, Connections or Alteration of Works; Civil Action.**—If any railroad, canal company, company organized for the purpose of transporting carbon oil or natural or manufactured gas, or both, by means of pipes or otherwise, company organized for the purpose of transporting coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes or otherwise, telephone or telegraph company, company operating an electric transmission line, the state road commissioner, or any county court, deem it necessary in the construction of its work, or any branch or siding thereof, to cross any other railroad, canal, pipe line, any state or other public road at grade or otherwise, telephone or telegraph line or electric transmission line, it may do so, provided its works be so constructed as not to impede the passage or transportation of persons, property, or commodities along, over or through the same. If any such company desire that the course of any other railroad, canal, pipe line, state, or other public road, telephone or telegraph line, electric transmission line, or any stream which is not a public highway, should be altered to avoid the necessity of any crossing, or of frequent crossings, or to facilitate the crossing thereof, or the construction of a parallel work, the alteration may be made in such manner as may be agreed between the company desiring such alteration and the other railroad, or canal company, or pipeline company, or state road commissioner in the case of a state road, the owner of the land to be affected by the alteration of the course of such stream, telephone and telegraph com-

pany or the company operating such electric transmission line. In case the parties interested fail to agree upon such crossing or alteration as is desired, the company desiring it may bring a civil action, and in such action the court may, in a proper case, order that such, or any proper crossing, or alteration, may be made upon payment of damages to be ascertained as provided in article two of this chapter and the company desiring such crossing or alteration may thereupon proceed under said article two to obtain the right to make such crossing or alteration. If such crossing or alteration as is allowed by this section shall cause damage to any party or person, or to the owner of any lands, then the railroad, canal, pipeline company, telephone or telegraph company, or company operating such electric transmission line, or state road commissioner or county court, shall pay such damages; but any county-district road may be altered by any such company for the purpose aforesaid, whenever it shall have made an equally convenient road in lieu thereof.

# CHAPTER 20

**(Senate Bill No. 29—By Mr. Carson, Mr. President)**

[Passed February 7, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, to provide that for coal fired steam electric power plants, the output of which is for public use, the public use shall include the construction and maintenance of roads, rail facilities, and other ways and means by which to move fuel coal to such plants for use or consumption therein.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter fifty-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 twelve, to read as follows:

**Article 1. Right of Eminent Domain.**

Section

12. Facilities for moving fuel coal to coal fired steam electric power plants.

**Section 12. Facilities for Moving Fuel Coal to Coal Fired Steam Electric Power Plants.**—The owner or operator of a coal fired steam electric power plant, the output of which plant is for public use, shall have the right to construct, maintain and operate roads and rail facilities for transporting fuel coal to such power plant as a part of said plant and the same shall be considered to be for public use.

# CHAPTER 21

**(House Bill No. 23—By Mr. Speaker, Mr. Singleton, and Mr. Mitchell)**

[Passed February 8, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to coal mining.

*Be it enacted by the Legislature of West Virginia:*

That sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article

1. Administration; Enforcement.
2. Coal Mines.
6. Certification of Coal Miners.

## Article 1. Administration; Enforcement.

Section

5. Eligibility; salary.
7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
8. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

**Section 5. Eligibility; Salary.**—The director of the department of mines shall be a male citizen of West Virginia, shall be a competent person of good repute and temperate habits and shall have had at least fifteen years' experience underground in coal mines, at least ten of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different systems of working, ventilating and draining coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines, or any similarly accredited engineering school shall be counted as two years' working experience. The director shall devote all of his time to the duties of his office, and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the department of mines shall be fourteen thousand dollars per year, and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

**Sec. 7. Mine Inspectors; Districts and Divisions; Employment; Tenure; Oath; Bond.**—Notwithstanding any other provisions of law, mine inspectors shall be selected, serve and be removed as in this article provided.

The director of the department of mines shall divide the state into not more than forty-five mining districts, and not more than five mining divisions, so as to equalize, as far as practical, the work of each inspector. He may assign inspectors to districts, designate and assign not more than one inspector at large to each division and one assistant inspector at large. He shall designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of in-

spectors and assistant inspectors at large, their respective divisions.

Mine inspectors serving as such on the first day of July, one thousand nine hundred fifty-eight, may continue to serve for a probationary period not exceeding one year and if eligible as prescribed by section eight of this article, may qualify for appointment during such probationary period in accordance with the provisions of said section eight: *Provided, however,* That in the event the mine inspectors' examining board is unable to provide an adequate register of certified eligible candidates for appointment prior to the first day of July, one thousand nine hundred fifty-nine, said mine inspectors serving on a probationary basis as aforesaid may at the discretion of the director continue to serve at the will and pleasure of the director until such time as an eligible candidate has been furnished, said additional period of service not to extend beyond midnight on the thirty-first day of December, one thousand nine hundred fifty-nine.

Except as in the next preceding paragraph provided, all mine inspectors appointed after the mine inspectors' examining board has certified to the director of the department of mines an adequate register of qualified eligible candidates in accordance with section eight of this article, so long as such register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the director of the department of mines for a probationary period of not more than one year.

The director of the department of mines shall make each appointment from among the three qualified eligible candidates on the register having the highest grades or from mine inspectors serving on the first day of July, one thousand nine hundred fifty-eight, and since that date on a probationary basis as hereinbefore provided and who qualify according to section eight of this article: *Provided, however,* That the director of the department of mines may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register the

director of the department of mines shall immediately notify in writing each member of the mine inspectors' examining board of his action, together with a detailed statement of the reasons therefor. Thereafter the mine inspectors' examining board, after hearing, if it finds that the action of the director of the department of mines was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the director of the department of mines, a mine inspector shall have permanent tenure until he becomes sixty-five years of age, subject only to dismissal for cause in accordance with the provisions of section eight of this article. No mine inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of his duties as a mine inspector, he shall take the oath of office prescribed by the constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the department of mines, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The district inspectors, inspectors at large and assistant inspectors at large, together with the director, shall make all inspections authorized by articles one and two of this chapter and shall perform such other duties as are imposed upon mine inspectors by articles one, two and six of this chapter.

**Sec. 8. Eligibility for Appointment as Mine Inspector; Qualifications; Salary and Expenses; Removal.**—(a) No person shall be eligible for appointment as a mine inspector after the effective date of this article unless, at the time of his probationary appointment he: (1) Is a citizen of West Virginia, in good health, not less than thirty nor

more than fifty-five years of age, and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in coal mines, at least five years of which, immediately preceding his original appointment, shall have been in mines in this state: *Provided, however,* That graduation from the school of mines of West Virginia University or any other 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 ninety per cent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than seventy-five hundred dollars nor more than eighty-four hundred dollars per annum; assistant inspectors at large not less than eight thousand dollars nor more than eighty-seven hundred dollars per annum; inspectors at large not less than eighty-four hundred dollars nor more than nine thousand dollars per annum, and reasonable traveling expenses. Within the limits provided by law, the salary of each inspector shall be fixed by the director of the department of mines, subject to the approval of the mine inspectors' examining board. In fixing salaries of mine inspectors, the director of the department of mines shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made ex-

cept upon an itemized account of such expenses submitted by the inspector, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) A mine inspector, after having received a permanent appointment shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of a mine inspector may be initiated by the director of the department of mines whenever he has reasonable cause to believe and does believe that adequate cause exists, warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the board by the director of the department of mines, setting forth with particularity the facts alleged. Not less than twenty reputable citizens, who are operators or employees in mines in the state, may petition the director of the department of mines for the removal of a mine inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector, the director of the department of mines shall cause an investigation of the facts to be made. If, after such investigation, the director finds that there is substantial evidence which, if true, warrants removal of the inspector, he shall file a petition with the board requesting removal of the inspector.

On receipt of a petition by the director of the department of mines seeking removal of a mine inspector the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing.

No continuance shall be granted except for good cause shown.

The chairman of the board and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

Any mine inspector who shall wilfully refuse or fail to appear before the board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to waive immunity from prosecution on account of any relevant matter about which he may be asked to testify at any such hearing before the board, shall forfeit his position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

## Article 2. Coal Mines.

Section

5. Ventilation of mines in general.
13. Same; instruction of employees; annual examination of persons using flame safety lamps; records of examination.
55. Protective clothing.
58. Fire protection.
62. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
74. Monthly report by operator of mine.

**Section 5. Ventilation of Mines in General.**—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 mines classified as gassy the quantity of air passing through the last open crosscut between the intake and return in any set of entries shall be not less than six 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: *Provided, however,* That the quantity of air reaching the last crosscut in pillar sections may be less than six thousand cubic feet per minute if at least six thousand cubic feet of air per minute is being delivered to the intake of the pillar line.

In nongassy mines the quantity of air being circulated shall not be less than one hundred fifty cubic feet per man per minute. If animals are used in a mine, five hundred cubic feet per animal per minute must be provided in addition to the minimum volume specified for men. 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 per centum of oxygen, and not more than one per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

As working places advance, crosscuts for air shall be made not to exceed eighty feet apart in pillars, or line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. With the approval of the state department of mines, greater distances than those so specified may be made between crosscuts. 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 material, so as to keep working places well ventilated.

In gassy mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure, shall be made a part of pillar recovery plans projected after the effective date of this article.

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 so long as a minimum of twelve thousand cubic feet of air per minute is delivered to the intake of the pillar line.

Not more than sixty persons shall be permitted to work in the same air current: *Provided,* That a larger number, not exceeding eighty persons, may be allowed by the

director of the department of mines where it is impracticable to comply with the foregoing requirements.

No operator or mine foreman shall permit any persons to work where they are unable to maintain the quantity and quality of the air current as heretofore required: *Provided, however,* That such provision shall not prohibit the employment of men to make places of employment safe.

The ventilation of any mine shall be so arranged by means of airlocks, overcasts, or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a gassy mine they shall be erected in pairs so as to provide a ventilated airlock, unless the doors are operated mechanically: *Provided, however,* That such provision shall not apply to doors in or between panel or room entries. In mines not classified as gassy, single doors may be used, provided such doors are closed promptly after men or equipment have passed through them.

Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

Where practicable, a crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

Rooms, entries, airways, or other working places shall not be driven in advance of air currents. Such provisions shall not prohibit, as the room, entry or aircourse advances, the "necking" of any place for a distance which shall not exceed that actually required for the installation of mining equipment in use at this location: *Provided, however,* That such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

**Sec. 13. Same; Instruction of Employees; Annual Examination of Persons Using Flame Safety Lamps; Records of Examination.**—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 furnished a copy of the mining laws and rules of such mine. Every inexperienced person so employed shall work under the direction of the mine foreman, his assistant, or such other experienced worker as may be designated by the mine foreman or assistant, until he is familiar with the danger incident to his work.

Persons whose duties require them to use a flame safety lamp shall be examined at least annually as to their competence by a certified man and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy furnished to the department of mines.

**Sec. 55. Protective Clothing.**—Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use same where there is a hazard from flying particles, or other eye hazards.

Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

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.

Safety hats and safety-toed shoes shall be worn by all men while in or around a mine.

**Sec. 58. Fire Protection.**—Suitable fire protection shall be provided at surface installations of fans, shops, tipples and preparation plants, substations, hoist rooms and compressor stations.

Underground storage places for lubricating oil and grease in excess of two days' supply shall be of fireproof construction.

Lubricating oil and grease kept in face regions or other underground working places in a mine shall be in portable, closed, metal containers.

At underground shops and oil storage stations oily rags, oily waste and waste paper shall be kept in closed metal containers until removed for disposal.

Suitable underground fire protection shall be provided at stationary substations and compressor stations, shops, pumps, doors, transformer stations, battery charging stations, where oil and grease is stored, at conveyor loading or discharge points and strategic points along rubber belt lines, stables, and on active working sections.

Rock dust in quantities of five hundred pounds or more shall be considered suitable for fire protection at the above-mentioned underground locations, except that a fire extinguisher suitable for the hazards present shall be provided as an additional protection at underground shops, permanent substations, compressor stations, battery charging stations and transformer stations.

Mine openings, where there is danger of fire entering the mine, shall have adequate protection against surface fires or dangerous volumes of smoke entering the mine.

**Sec. 62. No Mine to Be Opened or Reopened without Prior Approval of Director of Department of Mines; Approval Fee; Extension of Certificate of Approval; Certificates Not Transferable; Section to Be Printed on Certificates.**—After the effective date of this section, no mine shall be opened or reopened unless prior approval has been obtained from the director of the department of mines, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator's application for such approval.

Within forty-five days after January first of each year the operator of each mine holding a certificate evidencing approval of the director to open a mine, shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the director, shall be granted as a matter of right and without charge if at the time such application is made the operator is in compliance with the provisions of section seventy-four of this article. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

Certificates of approval issued pursuant to this section shall not be transferable.

The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

**Sec. 74. 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.

## Article 6. Certification of Coal Miners.

Section

1. Certificate of competency and qualification required of miners; apprentices.
2. Mine inspectors to examine and certify competency of miners.
3. Examinations by inspectors; records.
4. Fee for examination.
5. Examination to be practical; certificates not transferable; how certificates to be issued.
6. Refusal to issue certificate; appeal.
7. Limitation of scope of article.
8. Penalties.

**Section 1. Certificate of Competency and Qualification Required of Miners; Apprentices.**—Except as hereinafter provided no person shall be employed or work as a coal miner in any mine in this state, without first having obtained a certificate of competency and qualification.

Any miner holding a certificate may have one person working with him, and under his direction, as an apprentice, and any foreman, assistant foreman or fire boss may have not more than five persons working with him and under his immediate supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining.

For the purposes of this article the term "coal miner" or "miner" shall mean all underground workers in bituminous coal mines, except as hereinafter provided.

**Sec. 2. Mine Inspectors to Examine and Certify Competency of Miners.**—On and after July one, one thousand

nine hundred sixty-two, all duties in connection with examining and certifying the competency and qualification of coal miners shall be vested in and shall be performed by mine inspectors (inspectors at large, assistant inspectors at large and district inspectors). Such duties shall be exercised under the general supervision and direction of the director of the department of mines, except as otherwise provided in this article.

Certificates of competency and qualification issued prior to July one, one thousand nine hundred sixty-two, by the miners' examining board under prior law shall continue to be valid for all purposes.

**Sec. 3. Examinations by Inspectors; Records.**—At such times as mine inspectors make regular inspections of a mine, they shall arrange to sit at some suitable place convenient to the mine for the purpose of examining the qualifications and competency of any person seeking a certificate of qualification and competency. 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 director finds necessary to enable all applicants for certificates to have opportunity to qualify for certification.

Each inspector giving examinations shall keep an accurate record showing a correct detailed account of the examination of each applicant, including questions asked and the answers given. Such records shall be forwarded at least once each month to the director for filing in his office as public records, open to public inspection.

**Sec. 4. Fee for Examination.**—Each applicant for examination shall pay to the examining inspector a fee of one dollar. All such fees shall be promptly transmitted to the director and by him paid into the state treasury.

**Sec. 5. Examination to Be Practical; Certificates Not Transferable; How Certificates to Be Issued.**—All ex-

aminations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of bituminous coal with reasonable safety to himself and his fellow employees. No applicant shall be certified as qualified or competent who (1) has had less than one year's practical experience as a miner or as a miner apprentice, or (2) lacks a sound knowledge of first aid. Evidence of satisfactory completion of a course of instruction in first aid offered by the West Virginia Department of Mines, the Federal Bureau of Mines or by such other sponsor as the director may approve, may be received as proof of competence in first aid without further examination.

Applicants shall be examined under oath and inspectors shall have power to administer oaths to all applicants and witnesses.

If the inspector examining the applicant finds the applicant qualified and competent to be a coal miner, he shall issue to the applicant a certificate of qualification and competency in such form as shall be prescribed by the director, which shall entitle the holder thereof to be employed and work as a coal miner in any mine in this state.

Certificates shall not be transferable and an attempt to transfer a certificate shall be deemed a violation of this article.

**Sec. 6. Refusal to Issue Certificate; Appeal.**—If the inspector who examines an applicant for a certificate of qualification and competency as a miner finds that the 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 a mine inspector in failing or refusing to issue a certificate of qualification and competency may, within ten days of notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing de novo and either affirm the action of the inspector or take such action as the inspector should have taken.

**Sec. 7. Limitation of Scope of Article.**—All persons possessing certificates of qualification issued by the department of mines of this state, entitling them to act as mine foreman, assistant mine foreman, or fire boss, shall be eligible to engage at any time as miners in bituminous 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.

**Sec. 8. Penalties.**—Any person violating any of the provisions of this article shall, upon conviction, be fined not less than twenty-five nor more than one hundred dollars, and in default in the payment of such fine and costs, shall be imprisoned in the county jail for a period not exceeding thirty days.

# CHAPTER 22

**(Senate Bill No. 17—By Mr. Carson, Mr. President, and Mr. Smith)**

**[Passed February 3, 1962; in effect from passage. Approved by the Governor.]**

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traffic regulations by the state road commissioner.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 17. Size, Weight and Load.**

**Section**

11. Permits for excess size and weight.

**Section 11. Permits for Excess Size and Weight.**—(a) The state road commissioner may, in his discretion, upon application in writing and good cause being shown there-

for issue a special permit in writing authorizing, (1) the applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether such operation be continuous or not, provided such applicant shall agree to compensate the state road commissioner for all damages or expenses incurred in connection with such crossing; and (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, except that a permit shall not be issued for continuous operation of a vehicle not in conformity with the provisions of this article relating to weight limitations: *Provided, however,* That specially designed vehicles which can only be used to transport and haul specific liquid or semiliquid products and which were registered in this state prior to the first day of July, one thousand nine hundred fifty-one, shall be exempt from the provisions of this chapter relating to weight limitations until the first day of July, one thousand nine hundred sixty-six, and on and after the latter said date said exemptions shall not apply. In order for the exemption to apply during the period of exemption, the owner or operator shall apply for, and the state road commissioner shall issue, a permit for such vehicle allowing such owner or operator to use the same upon the highways of this state during said period.

(b) The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across such highway and the particular highway or crossing of the highway for which permit to operate is requested, and whether such permit is requested for a single trip or for a continuous operation.

(c) The state road commissioner is authorized to issue or withhold such permit at his discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the

vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require such undertaking, bond or other security as may be deemed necessary to compensate for any injury to any roadway structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the state road commissioner granting such permit, and no person shall violate any of the terms or conditions of such special permit.

# CHAPTER 23

**(Com. Sub. for Senate Bill No. 10—Originating in the Senate Committee on the Judiciary)**

[Passed February 5, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to comprehensive plans by cities and counties for planning and zoning.

*Be it enacted by the Legislature of West Virginia:*

That section sixteen, article five, 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 5. Urban and Rural Planning and Zoning.**

**Section**

16. Comprehensive plan; generally; regional planning and zoning in counties.

**Section 16. Comprehensive Plan; Generally; Regional Planning and Zoning in Counties.**—A planning commission shall make and recommend for adoption to the gov-

erning body of the city or the county court, as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction. Any county plan may include the planning of incorporated towns to the extent to which, in the commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: *Provided, however,* That the plan shall not be considered as a comprehensive plan for any incorporated town without the consent of the planning commission and the governing body of such incorporated town: *And provided further,* That the county plan shall be coordinated with the plans of the state road commission, insofar as it relates to highways or thoroughfares under the jurisdiction of that commission. A county planning commission may prepare, and the county court is authorized and empowered to adopt, a comprehensive plan and zoning ordinance for either the entire county, or for any part or parts thereof which constitute an effective region or regions for planning and zoning purposes without the necessity of adopting a plan and ordinance for any other part. In determining what constitutes an effective region or regions for planning and zoning purposes, due consideration shall be given to such factors as population density, health, general welfare, water and sanitation requirements, and future potential for residential, commercial, industrial or public use. The procedure for the preparation and adoption of a comprehensive plan and zoning ordinance for a part of such county shall be the same as the procedure for the preparation and adoption of a plan and ordinance for the entire county, except that the election provided in section forty-eight of this article shall be restricted to the electors residing within the part or parts affected.

The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show recommendations for the development of the territory covered by the plan and may include, among other things, the general location, character and extent of streets or roads, viaducts, bridges, waterways and waterfront developments, parkways, playgrounds, forests, reservations, parks, airports and other public ways, grounds,

places and spaces; the general location and extent of publicly-owned utilities and terminals, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals; the general character, location and extent of community centers, town sites or housing development; the general location and extent of forests, agricultural areas and open-development areas for the purposes of conservation, food and water supply, sanitary drainage facilities or the protection of urban development; a land-classification and utilization program; the distribution of population, and the uses of land for trade, industry, habitation, recreation, agriculture, forestry, soil and water conservation and other purposes.

In the preparation of a comprehensive plan, a planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions within the territory under its jurisdiction. The comprehensive plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the area which will, in accordance with present and future needs and resources, best promote the health, safety, morals, order, convenience, prosperity or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including, among other things, such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry and other purposes as will tend:

1. To create conditions favorable to health, safety, transportation, prosperity, civic activities and recreational, educational and cultural opportunities;

2. To reduce the wastes of physical, financial or human resources which result from either excessive congestion or excessive scattering of population; and

3. Toward the efficient and economic utilization, conservation and production of the supply of food and water and of drainage, sanitary and other facilities and resources.

# CHAPTER 24

**(House Bill No. 70—By Mr. Gilmore and Mr. Ford)**

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-a, relating to nonresident commercial shooting preserve hunting license.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 2. Game and Fish.**

Section

46-b. Class M nonresident commercial shooting preserve license.

**Section 46-a. Class M Nonresident Commercial Shooting Preserve License.**—A Class M license shall be a nonresident commercial shooting preserve license to hunt stocked game on commercial shooting preserve licensed under section fifty-four. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be three dollars for a period of any five consecutive days.

# CHAPTER 25

**(House Bill No. 30—By Mr. Speaker, Mr. Singleton)**

[Passed February 7, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article two, chapter twenty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the jurisdiction of the public service commission generally and extending its jurisdiction to and supervisory authority over any utility engaged in the transportation of coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 2. Powers and Duties of Public Service Commission.**

Section

1. Jurisdiction of commission.
5. Supervision of public utilities licensed by municipalities, county courts or otherwise; right to enter premises, inspect and correct meters.

**Section 1. Jurisdiction of Commission.**—The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipe line; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipe line; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; toll bridges, wharves, ferries; and any other public service.

**Sec. 5. Supervision of Public Utilities Licensed by Municipalities, County Courts or Otherwise; Right to Enter Premises, Inspect and Correct Meters.**—The commission

shall have general supervision of all public utilities having authority under any charter or franchise of any city, town or municipality, county court, or tribunal in lieu thereof, or otherwise, to lay down and maintain wires, pipes, conduits, ducts or other fixtures in, over or under streets, highways or public places for the purpose of furnishing and distributing gas, or for furnishing and transmitting electricity for light, heat or power, or maintaining underground conduits, or ducts for electrical conductors, or for telegraph or telephone purposes, and for the purpose of furnishing water, either for domestic or power purposes, and shall have general supervision of oil and gas pipe lines, and shall have general supervision over any utility engaged in the transportation of coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines.

The commission may ascertain the quantity of water, or the quality and quantity of gas or electricity supplied by such utilities and examine the methods employed, and shall have power to order such improvements as will best promote the public interests.

The commission shall have power, through its members, inspectors, or employees to enter in, upon and to inspect the property, buildings, plants, fixtures, power houses and offices of any such utilities or municipalities, and shall have power to examine the books and affairs to be investigated by it. The commission shall, when and as necessary, appoint inspectors of gas, electric and water meters. And, when such inspectors are required to act, it shall be their duty to inspect, examine, prove and ascertain the accuracy of any gas, electric, or water meters used or intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished to, by or for the use of any person, firm or corporation, and, when found to be correct, or made correct, the inspector shall stamp or mark each of such meters with some suitable device, which device shall be recorded in the office of the commission. No public utility shall furnish or put in use any gas, electric or water meter which shall not have been inspected, proved

and stamped or marked by an inspector of the commission: *Provided*, That in cases of emergency, gas, electric or water meters may be installed and used before being inspected, but notice thereof shall be immediately given to the public service commission by the public utility installing the same, and such meters shall be inspected, proved and stamped or marked, as soon thereafter as practicable. Every gas, electric and water utility shall provide and keep in and upon its premises suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas, electric and water meters furnished for use by it and by which apparatus every meter may and shall be tested on the written request of the consumer to whom the same shall be furnished, and in his presence if he so desires.

If any person, firm or corporation to or by whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested. If the same on being tested shall be found to be two per cent from being correct, or shall be found to be to the prejudice of the user, the inspector shall order the owner of such meter forthwith to remove the same and to place instead thereof a correct meter. The expense of such inspecting and testing shall be borne by the owner if such meter be found to be incorrect by two per cent or more. If the meter, on being so tested, shall be found to be correct, or within two per cent of being correct, the expense of such inspection and testing shall be borne by the user. A uniform charge and rule shall be fixed by the commission for this service: *Provided,* That nothing in this chapter shall prevent the commission from changing and modifying the method of inspecting meters and adopting such rules and regulations therefor as to the commission may seem just and proper.

# CHAPTER 26

**(Com. Sub. for House Bill No. 22—Originating in the House Committee on the Judiciary)**

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to building and construction notices to be filed with assessors in certain instances, and penalties for noncompliance therewith.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 3. Assessments Generally.**

Section

3-a. Building or real property improvement notice; notice filed with assessors; when not required; penalties.

**Section 3-a. Building or Real Property Improvement Notice; Notice Filed with Assessors; When Not Required; Penalties.**—Any person, corporation, association or other owner of real property, subject to the payment of property tax, who shall hereafter erect any building or structure, or who shall add to, enlarge, move, alter, convert, extend, raze or demolish any building or structure, whereby the value of the said real property shall be improved more than one thousand dollars, shall give notice in writing to the assessor within sixty days after the commencement of the improvement to such property. The notice shall be given upon such forms as may be prescribed by the tax commissioner who shall furnish the same to assessors. The notice shall contain the following information: (1) A statement that improvements are being or have been made; (2) the location or address of the

property; and (3) the name of the owner or owners of the property. The information contained in such notice shall be advisory in nature and may be used by the assessor in performing his duties as otherwise provided by law: *Provided, however,* That a report made by or on behalf of any mine, mill, factory, or other industrial establishment and filed with the assessor on or before June fifteen which discloses with certainty any construction, or improvement made during the previous twelve months, shall be deemed compliance with this section: *And provided further,* That within the area of any county or municipality where a building permit has been obtained prior to beginning such work, the delivery of a copy of the building permit to the assessor by the owner or the issuing authority shall be sufficient notice under this section. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with other courts having jurisdiction for the trial of all misdemeanors arising under this section.

# CHAPTER 27

**(Senate Bill No. 56—By Mr. Kaufman)**

[Passed February 7, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to privilege tax on certain carrier corporations, and in particular to provide a definition of "barrel-miles" in the case of liquid coal or slurry as that term is used in said article, and to provide a measurement of business done in West Virginia by coal pipeline corporations for

the purpose of imposing an additional privilege tax on such corporations.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 12-a. Privilege Tax on Certain Carrier Corporations.

**Section**

1. Definitions.
5. Additional privilege tax on net income of business included in preceding section; computing tax.

**Section 1. Definitions.**—When used in this article the term "company" shall include any partnership, joint adventure, joint stock company or association.

The phrase "motor vehicle carrier" shall mean any person engaged in the transportation of passengers or property, or both, for compensation by motor propelled vehicle for the operation of which a permit or certificate of convenience or convenience and necessity is required by law.

The term "ton-mile" shall be a unit of transportation meaning transportation of one net ton in weight a distance of one mile.

The term "passenger-mile" means the transportation of one passenger a distance of one mile.

The term "car-mile" means the operation of a railroad car over a distance of one mile.

The term "barrel-mile" means the transportation of the equivalent of a barrel of oil or the transportation of the equivalent of a barrel of liquid coal or slurry a distance of one mile.

The phrase "one thousand cubic feet-mile" means the transportation of one thousand cubic feet of gas, measured at sixty degrees Fahrenheit and a pressure of thirty inches of mercury a distance of one mile.

The term "wire-mile" means the equivalent of a single metallic telephone or telegraph conductor one mile in length.

The phrase "motor vehicle mile" means the operation of a motor vehicle carrier over a distance of one mile.

**Sec. 5. Additional Privilege Tax on Net Income of Business Included in Preceding Section; Computing Tax.**—In addition to the tax imposed in the preceding sections, every motor vehicle carrier operating on the public highways of the state and every railroad corporation, railroad car corporation, express corporation or company, pipeline corporation, telephone and telegraph corporation, airline corporation or company, and operator of a steamboat or other watercraft, for the transportation of passengers or freight, doing business in this state shall pay an annual privilege tax for each calendar year for the privilege of doing business in the state, to be determined as follows:

(a) The tax as to motor vehicle carriers shall be equal to one and one-half per cent of the net income earned within the state, such income to be determined by ascertaining a sum bearing the proportion to the total net income of the motor vehicle carrier that its business done in West Virginia, measured in motor vehicle miles of motor vehicle carrier operation, bears to all business done, measured in like fashion;

(b) The tax as to railroad corporations shall be equal to four per cent of the net income earned within the state, such income to be determined by ascertaining a sum bearing the proportion to total net income of the corporation that its business done in West Virginia, measured in ton-miles. bears to all business done, measured in like fashion;

(c) The tax as to railroad car corporations and as to express corporations or companies shall be one and one-half per cent of net income earned within the state, such income to be determined by ascertaining a sum bearing the proportion to the total net income of the corporation or company that its business done in West Virginia, measured in car-miles of car operation, bears to all business done, measured in like fashion: *Provided, however,* That nothing in this act shall be construed as applying

to railroad freight car corporations not owned by railroad corporations or their subsidiaries;

(d) The tax as to pipeline corporations shall be three and one-half per cent of net income earned within the state, such income to be determined by ascertaining a sum bearing the proportion to the total net income of the corporation that its business done in West Virginia, measured in barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, bears to all business done, measured in like fashion;

(e) The tax as to telephone and telegraph corporations shall be two and three-fourths per cent of net income earned within the state as to telephone corporations, and five per cent as to telegraph corporations, such income to be determined by ascertaining a sum bearing the proportion to the total net income of the corporation that its business done in West Virginia, measured in wire-miles, bears to all business done, measured in like fashion;

(f) The tax as to airline corporations and operators of a steamboat or other watercraft, for the transportation of passengers or freight, shall be three per cent of net income earned within the state, such income to be determined by ascertaining a sum bearing the proportion to the total net income of the corporation that its business done in West Virginia, measured in passenger-miles in the case of airline corporations and ton-miles in the case of the operator of a steamboat or other watercraft, bears to all business done, measured in like fashion;

(g) In computing the tax imposed by this section the total net income of a taxpayer, who shall have been taxed under the preceding section, shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer which is the measure of the tax under the preceding section bears to its total gross income from all business done wherever conducted. This section shall not apply to a taxpayer taxed under the preceding section and engaged exclusively in business within this state.

# CHAPTER 28

**(Com. Sub. for House Bill No. 13—Originating in the House Committee on the Judiciary)**

[Passed February 3, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight-c and eight-e, article twelve-a; sections seven-b and eight-a, article thirteen; sections twenty-four-b and twenty-four-f, article fifteen; and section fifteen, article fifteen-a, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain notices required under the carrier corporation privilege tax, business and occupation tax, consumers sales tax and use tax laws, and providing that such notices may be given by certified mail.

*Be it enacted by the Legislature of West Virginia:*

That sections eight-c and eight-e, article twelve-a; sections seven-b and eight-a, article thirteen; sections twenty-four-b and twenty-four-f, article fifteen; and section fifteen, article fifteen-a, all of 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**

12-a. Privilege Tax on Certain Carrier Corporations.
13. Business and Occupation Tax.
15. Consumers Sales Tax.
15-a. Use Tax.

## Article 12-a. Privilege Tax on Certain Carrier Corporations.

**Section**

8-c. Notice of assessment; petition for reassessment; hearing.
8-e. Service of notice required by article.

**Section 8-c. Notice of Assessment; Petition for Reassessment; Hearing.**—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by certified mail, file

with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become due and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final.

**Sec. 8-e. Service of Notice Required by Article.**—Any written notice required by this article shall, unless otherwise specifically provided, be served upon the taxpayer personally or by certified mail.

## Article 13. Business and Occupation Tax.

Section

7-b. Notice of assessment; petition for reassessment; hearing.
8-a. Service of notice.

**Section 7-b. Notice of Assessment; Petition for Reassessment; Hearing.**—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by certified mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent,

having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessment shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final.

**Sec. 8-a. Service of Notice.**—Any written notice required by this article shall, unless otherwise specifically provided, be served upon the taxpayer personally or by certified mail.

## Article 15. Consumers Sales Tax.

**Section**

24-b. Notice of assessment; petition for reassessment; hearing.
24-f. Service of notice.

**Section 24-b. Notice of Assessment; Petition for Reassessment; Hearing.**—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof, (except in the case of jeopardy assessments) either personally or by certified mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to,

together with the reason for such objections, said assessments shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final.

**Sec. 24-f. Service of Notice.**—Any written notice required by this article shall, unless otherwise specifically provided, be served upon the taxpayer personally or by certified mail.

**Article 15-a. Use Tax.**

**Section**

15. Service of notice.

**Section 15. Service of Notice.**—Any notice, except notice of appeal, authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended by certified mail, addressed to such person at the address given in last return filed by him pursuant to the provisions of this article, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of certification and posting of such notice.

# CHAPTER 29

(Senate Bill No. 48—By Mr. Gainer and Mr. Jackson)

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of tax on gasoline used for certain purposes.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 14. Gasoline Tax.

Section

20. Refund of tax on gasoline used for certain purposes.

**Section 20. Refund of Tax on Gasoline Used for Certain Purposes.**—Any person who shall buy in quantities of twenty-five gallons or more, at any one time, gasoline as defined by this article, for the purpose of and the same is actually used (a) as a motor fuel for diesel engines not operated upon the public highways or streets of this state, or (b) as a motor fuel to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the public highways or streets of this state, or (c) by any railway company subject to regulation by the public service commission of West Virginia, for any purpose other than upon the public highways or streets of this state, or (d) in the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the public highways and streets of this state, or (e) as a motor fuel in motor boats or other water craft operated upon the navigable streams of this state, may, if

the gasoline tax imposed by this article shall have previously been paid upon such gasoline, be refunded a sum equal to the amount of such tax, upon presenting to the tax commissioner an affidavit accompanied by original or top copy sales slips or invoices, or certified copies thereof, from the distributor or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline purchased and used by such consumer, other than upon any public highways, streets or alleys of this state, and how used; and the tax commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline purchased and used as aforesaid. The right to receive any refund under the provisions of this article shall not be assignable and any assignment thereof shall be void and of no effect. Nor shall any payment be made to any person other than the original person entitled thereto using gasoline as hereinbefore in this section set forth: *Provided,* That the tax commissioner shall cause refund to be made under authority of this section only when application for refund is filed with the tax commissioner, upon forms prepared and furnished by the tax commissioner, within ninety days from the date of purchase or delivery of the gasoline: *Provided, however,* That any claim for refund not filed within ninety days from the date of purchase or delivery of the gasoline shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment.

# CHAPTER 30

**(Senate Bill No. 26—By Mr. Carson, Mr. President, and Mr. McCourt)**

[Passed January 22, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to taxes to be used for road purposes.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 14. Gasoline Tax.**

Section

22. Taxes to be used for road purposes.

**Section 22. Taxes to Be Used for Road Purposes.**—All taxes collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of the construction, reconstruction, maintenance and repair of roads and highways, payment of the interest and sinking fund on state bonds issued for road purposes and the cost of administration and enforcement of this article by the tax commissioner, which cost of administration and enforcement shall not exceed three fourths of one per cent of the total net gasoline excise tax collections during the fiscal year commencing July one, one thousand nine hundred sixty-two, and each fiscal year thereafter.

Unless necessary for such bond requirements, five fourteenths of the taxes collected under the provisions of this article shall be used for secondary road purposes.

# CHAPTER 31

**(Senate Bill No. 39—By Mr. McCourt)**

[Passed February 1, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional consumers sales tax.

*Be it enacted by the Legislature of West Virginia:*

That section three-a, article fifteen, 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 15. Consumers Sales Tax.**

Section

3-a. Additional consumers sales tax.

**Section 3-a. Additional Consumers Sales Tax.**—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent ($.01) on each one dollar ($1.00) of monetary consideration, or fraction thereof, in excess of one dollar ($1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

It is the intent of the Legislature in imposing this additional tax to provide funds to the governor, the state road commissioner and the state department of natural resources for the emergency relief of unemployment throughout the state of West Virginia.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-three.

# CHAPTER 32

**(Senate Bill No. 38—By Mr. McCourt)**

[Passed February 1, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional use tax; more particularly imposing an additional use tax; making provision relating to its levy, imposition, exemptions, payment, collection, remission and assessment; providing that all moneys derived therefrom shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law, and providing that the provisions of said section two-a shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by chapter thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-one, and that the provisions of said section two-a shall expire on June thirtieth, one thousand nine hundred sixty-three.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 15-a. Use Tax.

Section

2-a. Additional use tax.

**Section 2-a. Additional Use Tax.**—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase

price being exempt for the purpose of computing the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission and assessment of the excise tax imposed by section two of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six of this article, all moneys received from the additional tax imposed by this section shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by chapter thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-one, and the provisions of this section shall expire on June thirtieth, one thousand nine hundred sixty-three.

# CHAPTER 33

**(Senate Bill No. 41—By Mr. McCourt)**

[Passed January 25, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of an additional tax on the sale of cigarettes, and upon the use, consumption or storage of cigarettes in this state, and declaring the purpose thereof.

*Be it enacted by the Legislature of West Virginia:*

That section two-b, article seventeen, and section two, article eighteen, 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**

17. Excise Tax on Sale of Cigarettes.
18. Excise Tax on Use, Consumption or Storage of Cigarettes.

## Article 17. Excise Tax on Sale of Cigarettes.

**Section**

2-b. Additional cigarette tax for support of schools.

**Section 2-b. Additional Cigarette Tax for Support of Schools.**—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June, one thousand nine hundred sixty-two, in addition to the taxes imposed by sections two and two-a of this article, an additional excise tax of two cents on each ten cigarettes, or fractional part thereof, sold within this state. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular excise tax on the sale of cigarettes shall be applicable to the levy, imposition and collection of such additional tax. Notwithstanding other provisions of this article to the contrary, all moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration and operation, shall be paid by the tax commissioner into the general school fund, to be used solely for the support of free schools: *Provided, however,* That the additional one-cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-three.

## Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.

**Section**

2. Levy of tax on cigarettes.

**Section 2. Levy of Tax on Cigarettes.**—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied, on and after midnight of the last day of June, one thousand nine hundred sixty-two, on the use, consumption or storage of cigarettes by

consumers in this state at the rate of three cents on each ten cigarettes or fractional part thereof: *Provided, however,* That the tax shall not apply if the tax levied in article seventeen of this chapter has been paid: *Provided further,* That the additional one-cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-three.

# CHAPTER 34

**(Senate Bill No. 50—By Mr. Handlan)**

[Passed February 7, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the excise tax on the privilege of transferring real property, by extending the exclusions to provide that the term "document" as used in said article shall not include transfers between parent and child and his or her spouse without consideration.

*Be it enacted by the Legislature of West Virginia:*

That section one, article twenty-two, 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 22. Excise Tax on Privilege of Transferring Real Property.

Section

1. Definitions.

**Section 1. Definitions.**—The following words when used in this chapter shall have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

"Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned or conducted by two or more persons.

"Corporation" means a corporation or joint-stock association, organized under the laws of this state, the United States or any other state, territory, or foreign country or dependency, including, but not limited to, banking institutions.

"Commissioner" means the state tax commissioner.

"Document" means any deed, or instrument or writing whereby any real property within this state or any interest therein shall be granted, conveyed or otherwise transferred to the grantee, purchaser or any other person; but does not include wills, transfer of real property where the value of the property transferred is one hundred dollars or less, testamentary or inter vivos trusts, deeds of partition, deeds made pursuant to mergers of corporations, deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock, leases, transfers between husband and wife, transfers between parent and child, or transfers between parent and child and his or her spouse, without consideration, transfers without consideration between a principal and straw party for any purpose, gifts to or transfers from or between voluntary charitable or educational associations or trustees thereof and like nonprofit corporations having the same or similar purposes, quitclaim or corrective deeds without consideration, transfers to or from the United States, the state of West Virginia, or to or from any of their instrumentalities, agencies or political subdivisions, by gift, dedication, deed or condemnation proceedings, or mortgages or deeds of trust given as security for a debt.

"Person" means every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

"Transaction" means the delivering, accepting or presenting for recording of a document.

"Value" means in the case of any document not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens

assumed; in the case of a gift, or any other document without consideration, the actual monetary value of the property conveyed or transferred. In the event any document includes real property or any interest therein lying outside the state of West Virginia or includes personal property, value shall be the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value as herein defined shall be stated in the declaration of consideration or value provided for in section six hereof.

# CHAPTER 35

**(Com. Sub. for Senate Bill No. 42—Originating in the Senate Committee on Finance)**

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxes to be paid by and the financial responsibility of licensees conducting horse racing within the state, and to the regulation and control of horse racing.

*Be it enacted by the Legislature of West Virginia:*

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

## Article 23. Horse Racing.

**Section**

7. Per diem tax on tracks; tax on pool contribution; how taxes paid; financial responsibility of licensees; contents of license.
9. Only pari-mutuel system of wagering permitted; commission of licensee on pari-mutuel pools; minors; auditor.

**Section 7. Per Diem Tax on Tracks; Tax on Pool Contribution; How Taxes Paid; Financial Responsibility of Licensees; Contents of License.**—Any person conducting thoroughbred or running type racing, and/or harness type racing at any horse race track one mile or more in length shall pay each day upon which horse races are run, a license tax of five hundred dollars; any race track less than one mile in length shall pay for each day upon which horse races are run a license tax of two hundred fifty dollars: *Provided,* That the per diem tax shall not apply to horse shows or county fairs at which racing is conducted for not more than six days. Any person licensed by the commission to conduct thoroughbred or running type racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the aforementioned tax, pay to the racing commission of the state of West Virginia a tax of six per cent of the total contribution to all pari-mutuel pools conducted or made at any and every race meeting licensed under this article: *Provided, however,* That on and after the first day of July, one thousand nine hundred sixty-three, said tax shall be reduced to five per cent of said contributions. Such payments shall be made to the commission or its agent after the last race on each day and every day of each and every race meeting, and shall be made from all contributions to all pari-mutuel pools to each and every race of the day, which payment shall be deposited with the treasurer of the state of West Virginia to the credit of the general revenue fund.

Any person licensed by the commission to conduct harness type horse racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the aforementioned license tax, pay to the racing commission of the state of West Virginia, from the commission deducted each day by the licensee from the pari-mutuel pools, as a tax, five per cent of the first one hundred thousand dollars wagered, or any part thereof; six per cent of the next one hundred fifty thousand dollars; and seven per cent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness horse race meeting licensed under this article. Such payments shall be made to the commission

or its agent after the last race on each day and every day of each and every race meeting, and shall be made from all contributions to all pari-mutuel pools to each and every race of the day, which payment shall be deposited with the treasurer of the state of West Virginia to the credit of the general revenue fund.

Any person making application for a license for a meeting to be held on any track in the state of West Virginia, shall, when required, furnish satisfactory evidence to the commission of his or their ability to pay license fees, purses, salaries of officials and other expenses incident to the meeting. In the event the applicant is not able to furnish such satisfactory evidence of his or their ability to pay such expenses and fees, then the commission may require bond or other adequate security for not more than four successive days before such license is issued.

When issuing any license under this article, the commission shall designate upon the face of the license, the kind or type of horse racing for which the same is issued, the number of days the licensee is permitted to conduct horse racing of any kind, the location of the place or track or enclosure at which the horse racing thereby permitted, is to be conducted, and such other provisions and conditions as the commission may wish to prescribe; no kind or type of horse racing shall be conducted by a licensee other than that for which the license is issued.

**Sec. 9. Only Pari-Mutuel System of Wagering Permitted; Commission of Licensee on Pari-Mutuel Pools; Minors; Auditor.**—A person licensed by the commission shall permit only the pari-mutuel system of wagering within the enclosure at which horse racing is held, and the commission deducted by any thoroughbred or running horse race licensee from the said pari-mutuel pools shall not exceed fifteen per cent and the commission deducted by any harness horse race licensee from the said pari-mutuel pools shall not exceed seventeen per cent of the total pari-mutuel pools for the day, including the license fee of the gross amount handled hereinbefore provided for, plus the breakage, which shall be made and calculated to the dime. Such breakage shall be retained by the licensee: ***Provided, however,*** That on and after the first

day of July, one thousand nine hundred sixty-three, the said commission so deducted by any thoroughbred or running horse race licensee shall not exceed fourteen per cent and said commission so deducted by any harness horse racing licensee shall not exceed sixteen per cent.

No holder of such license shall permit or allow any person under the age of twenty-one years to wager thereat, knowing or having reason to believe that such person is under the age of twenty-one years. Any violation of this paragraph shall be punishable by revocation of license.

An auditor of pari-mutuel pools shall be appointed by the commission and shall be compensated by said commission. He shall be an experienced public accountant. Said auditor shall have free access to the space or enclosure where the pari-mutuel pool system of wagering is conducted or calculated at any race meeting to which he shall be assigned for the purpose of ascertaining whether or not said licensee is retaining only the commission provided for in this section. He shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel pool system of wagering, and shall report to the commission in writing, under oath, whether or not the licensee has retained any commissions in excess of those permitted under this article.

# CHAPTER 36

**(House Bill No. 43—By Mr. Speaker, Mr. Singleton, and Mr. Boiarsky)**

[Passed January 29, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional insurance premium tax.

*Be it enacted by the Legislature of West Virginia:*

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

**Article 3. Licensing, Fees and Taxation of Insurers.**

Section

14-a. Additional premium tax.

**Section 14-a. Additional Premium Tax.**—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one per cent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him into the state treasury for the benefit of the state fund.

The provisions of this section shall expire June thirty, one thousand nine hundred sixty-three.

# CHAPTER 37

**(Com. Sub. for Senate Bill No. 59—Originating in the Senate Committee on Roads and Navigation)**

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** authorizing the county court of Mason county to set aside in a special fund for secondary road purposes any surplus in the general county funds.

*Be it enacted by the Legislature of West Virginia:*

Section

1. Mason county road fund.

**Section 1. Mason County Road Fund.**—The county court of Mason county shall have authority to pay any surpluses in the general county fund not needed for general county purposes into a special county road fund. All moneys accumulating in said fund shall, with the consent and approval of the state road commissioner, be expended by the county court of Mason county for the improvement of the secondary roads in Mason county, in the purchase of gravel or crushed stone for said roads and by the purchase of machinery and trucks to crush and transport the stone for said roads, said machinery to be operated by the state road commissioner.

All materials produced or purchased under this act shall meet the standard specifications of the state road commissioner under section 2.15.

# CHAPTER 38

**(House Bill No. 74—By Mr. Speaker, Mr. Singleton)**

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred forty-nine, authorizing the county court of Monongalia county to use unexpended funds or surpluses in any fund of said county for the purpose of creating a special county fund, continuing the special fund heretofore established as a part thereof, enlarging the purpose for which said fund may hereafter be used, prescribing the general purposes for which said fund may hereafter be used, and providing for retransfer of said fund.

*Be it enacted by the Legislature of West Virginia:*

Section

1. Authorizing the county court of Monongalia county to create a special county fund and prescribing purposes for which said fund may be used.
2. Retransfer of funds.

**Section 1. Authorizing the County Court of Monongalia County to Create a Special County Fund and Prescribing Purposes for Which Said Fund May Be Used.**—The county court of Monongalia county is hereby authorized and empowered from year to year to use any unexpended funds of said county and any surplus in any county fund to create a special building and improvement fund. The special fund heretofore created under authority of chapter one hundred eleven, acts of the Legislature, regular session, one thousand nine hundred forty-seven, and chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred forty-nine, shall be transferred to this special fund, become a part thereof, and may be used for the purposes herein authorized.

The special fund created by this act may be used for the construction and equipment of a new courthouse; or for the enlarging, remodeling, repairing and improving the present courthouse; or for the purchase of real estate, to be used for county purposes, from the federal government and its agencies or from other persons and parties; and, if necessary, to supplement other county funds needed to meet county expenses in connection with the reappraisal of property within the county.

The county court is hereby authorized to expend and use this fund, including any amount already accumulated, and any additional or other funds hereafter created for the purpose herein authorized.

**Sec. 2. Retransfer of Funds.**—If found necessary, the county court of Monongalia county is authorized and empowered to retransfer funds from the special fund herein created to the general fund.

# CHAPTER 39

**(Senate Bill No. 37—By Mr. Riley and Mr. Tompos)**

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Board of Commissioners of the County of Ohio to create an airport authority and providing for the membership and purposes of the authority; for the appointment and removal of members; for the acquisition by the authority of real estate and personal property; for the acquisition, construction, improvement, maintenance and operation of a public airport; for corporate existence of the authority; for the issuance of mortgage bonds, revenue bonds, other bonds, debentures, notes and securities, and the giving of security for the payment thereof; for the authority to exercise the power of eminent domain; for tax exemption for the property, funds and obligations of the authority; for acquisition by the authority from the Board of Commissioners of the County of Ohio of the present county airport and the improvement and operation thereof; for the authority to lease the airport; for the Board of Commissioners of the County of Ohio to become the lessee of the airport and pay the rental therefor; for contributions to the funds of the authority by the Board of Commissioners of the County of Ohio and others; for the keeping of the funds and accounts of the authority; for the disposition of any surplus funds; for the covering of the employees of the authority by workmen's compensation; and for dissolution of the authority.

*Be it enacted by the Legislature of West Virginia:*

**Section**

1. Wheeling-Ohio county airport authority authorized.
2. Purposes.
3. Members of the authority.
4. Removal of member.
5. Substitution of members.
6. Qualification of members of the authority.
7. Compensation of members of the authority.
8. Authority to be a public corporation.
9. Powers.
10. Indebtedness of the authority.
11. Agreements in connection with obtaining funds.

12. Authority to have right of eminent domain.
13. Property, bonds and obligations of authority exempt from taxation.
14. County commissioners authorized to convey present airport properties and facilities to the authority.
15. Authority may lease airport and facilities to the board of commissioners of the county of Ohio or other lessee.
16. Disposition of surplus of authority.
17. Contributions to authority by the board of commissioners of the county of Ohio and others; funds and accounts of the authority.
18. Employees to be covered by workmen's compensation.
19. Dissolution of authority.
20. Automatic termination of the right to establish the authority.
21. Liberal construction of act.
22. Provisions severable.

**Section 1. Wheeling-Ohio County Airport Authority Authorized.**—The Board of Commissioners of the County of Ohio is hereby authorized to create and establish a public agency to be known as the "Wheeling-Ohio County Airport Authority" for the purposes and in the manner hereinafter set forth.

**Sec. 2. Purposes.**—The authority is hereby authorized and empowered to acquire, equip, construct, improve, maintain and operate a public airport with all usual and convenient appurtenances and facilities in Ohio and Brooke counties, West Virginia, to serve as a public airport for the convenience and accommodation of the inhabitants of Ohio county and the public generally.

**Sec. 3. Members of the Authority.**—The management and control of the Wheeling-Ohio County Airport Authority, its property, operations, business and affairs, shall be lodged in a board of five persons who shall be known as "Members of the Authority", each of whom shall be appointed for a term of five years, except that as to the first four appointed to the first board appointed, the term of one member shall expire on the first day of July next ensuing and the term of the next member shall expire on the first day of July two years thereafter, the term of another member shall expire on the first day of July three years thereafter and the term of the remaining member shall expire on the first day of July four years thereafter: *Provided, however,* That the county commissioner appointed to serve as a member of the authority, as hereinafter provided, shall not serve for a term as member of the authority which is longer than his term

of office as a member of the Board of Commissioners of the County of Ohio.

All members shall be appointed by the Board of Commissioners of the County of Ohio: *Provided, however,* That one member of the authority shall be a member of the Board of Commissioners of the County of Ohio: *Provided further,* That of the remaining four members of the authority no more than two shall be members of the same political party, nor shall they hold any political office of any nature.

**Sec. 4. Removal of Member.**—The members of the authority shall serve at the will and pleasure of the Board of Commissioners of the County of Ohio: *Provided, however,* That if the Board of Commissioners of the County of Ohio desires to remove a member of the authority it shall notify said member in writing, stating the reasons for the Board of Commissioners of the County of Ohio desiring said removal. Within ten days of the receipt by the member of the authority of the written notice of removal, said member, if he so desires, may have a hearing before the Board of Commissioners of the County of Ohio, and any such hearing shall be held within ten days of the member's written request for said hearing.

**Sec. 5. Substitution of Members.**—If any member of the authority die, or resign, or be removed, or for any other reason cease to be a member of the authority, the Board of Commissioners of the County of Ohio shall appoint another person to fill the unexpired portion of the term of such member.

**Sec. 6. Qualification of Members of the Authority.**—All members of the board of the authority shall be citizens of West Virginia, over thirty years of age, and residents of Ohio county.

**Sec. 7. Compensation of Members of the Authority.**—No member of the board of the authority shall receive any compensation, whether in form of salary, per diem allowances or otherwise, for or in connection with his services as such member. Each member shall, however, be entitled to reimbursement by the authority for any

necessary expenditures in connection with the performance of his general duties as such member.

**Sec. 8. Authority to Be a Public Corporation.**—The authority when created, and the members thereof, shall constitute and be a public corporation under the name of "Wheeling-Ohio County Airport Authority", and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded, and have and use a common seal.

**Sec. 9. Powers.**—The Wheeling-Ohio County Airport Authority is hereby given power and authority as follows:

(1) To make and adopt all necessary by-laws, rules and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating a public airport in Ohio and Brooke counties, West Virginia;

(4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) To apply for, receive and use grants in aid, donations and contributions from any source or sources, including but not limited to the federal government and any agency thereof, and the state of West Virginia, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give

such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that the Wheeling-Ohio County Airport Authority is a "municipal authority" within the definition of that term as used in said article four-a, chapter eight of the code; and

(10) To expend its funds in the execution of the powers and authority herein given.

**Sec. 10. Indebtedness of the Authority.**—The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the Board of Commissioners of the County of Ohio, nor of said county, or a charge against any property of said county. No obligation incurred by the authority shall give any right against any member of the Board of Commissioners of the County of Ohio or any member of the board of the authority. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

**Sec. 11. Agreements in Connection with Obtaining Funds.**—The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

**Sec. 12. Authority to Have Right of Eminent Domain.**—Whenever it shall be deemed necessary by the authority, in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended, and such purposes are hereby declared to be public uses for which private property may be taken or damaged.

**Sec. 13. Property, Bonds and Obligations of Authority Exempt from Taxation.**—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or to any officer or employee of the state or of any subdivisions thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxes.

**Sec. 14. County Commissioners Authorized to Convey Present Airport Properties and Facilities to the Authority.**—The Board of Commissioners of the County of Ohio is hereby authorized to convey to the authority the present airport property owned by the County of Ohio, situate partly in Ohio county and partly in Brooke county, together with all the appurtenances and facilities therewith, such conveyance to be without consideration or for such price and upon such terms and conditions as the Board of Commissioners of the County of Ohio shall deem proper.

**Sec. 15. Authority May Lease Airport and Facilities to the Board of Commissioners of the County of Ohio or Other Lessee.**—The authority may lease its airport and all the appurtenances and facilities therewith to the Board

of Commissioners of the County of Ohio or to any other available lessee at such rental and upon such terms and conditions as to the authority shall seem proper. If the authority determines to lease the airport and its appurtenances and facilities, as a whole, it shall first offer the same to the Board of Commissioners of the County of Ohio upon an annual lease, and it shall not lease the airport and its appurtenances and facilities as a whole to any other lessee until the Board of Commissioners of the County of Ohio has notified the authority that it does not desire to lease said properties, which notice shall be given within thirty days after notice by the authority of a desire on its part to lease the airport as a whole. The Board of Commissioners of the County of Ohio is hereby authorized to enter into a lease with the authority for said airport, appurtenances and facilities at such rental and upon such terms and conditions as it shall deem proper, and the Board of Commissioners of the County of Ohio is hereby authorized to levy taxes as provided by law for the purpose of paying the rent for said airport, appurtenances and facilities. The authority, however, may lease one or more portions of said airport, not including runways and taxiways, without first offering the same to the Board of Commissioners of the County of Ohio. Such lease shall be for some purpose associated with airport activities.

**Sec. 16. Disposition of Surplus of Authority.**—If the authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the maintenance, improvement and operation of the airport and for meeting all required payments on its obligations, it shall set aside such reserve for future operations, improvements and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due; and after all such recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, as aforesaid, and then

pay the residue of such surplus, if any, to the Board of Commissioners of the County of Ohio, to be used by said Board of Commissioners for general county purposes.

**Sec. 17. Contributions to Authority by the Board of Commissioners of the County of Ohio and Others; Funds and Accounts of the Authority.**—Contributions may be made to the authority from time to time by the Board of Commissioners of the County of Ohio and by any persons, firms or corporations that shall desire so to do. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the Board of Commissioners of the County of Ohio containing an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published once a week for two successive weeks in two newspapers of opposite politics published in Ohio county, West Virginia, and of general circulation in Ohio county, West Virginia. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

**Sec. 18. Employees to Be Covered by Workmen's Compensation.**—All employees of the authority eligible thereunder shall be deemed to be within the workmen's compensation act of West Virginia, and premiums shall be paid by the authority to the workmen's compensation fund as required by law.

**Sec. 19. Dissolution of Authority.**—The authority may at any time pay off and discharge in full all of its indebtedness, obligations and liabilities, reconvey the airport properties, appurtenances and facilities to the Board of

Commissioners of the County of Ohio and be dissolved. Before making such reconveyance of its properties, the authority shall first publish notice of its intention so to do and of its intention to be dissolved, once a week for four successive weeks in two newspapers of opposite politics published in, and of general circulation in Ohio county, West Virginia. Certificates from the publishers of the papers showing such publication shall be filed with the Board of Commissioners of the County of Ohio on or before the deed reconveying said properties is delivered. Any funds remaining in the hands of the authority at the time of the reconveyance of said properties shall be by the authority paid over to the Board of Commissioners of the County of Ohio to be used by it for purposes in connection with said airport. Upon the payment of its indebtedness, obligations and liabilities, the publishing of the notices aforesaid, the reconveyance of its properties, and the paying over to the Board of Commissioners of the County of Ohio of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be executed under its name and seal and to be recorded in the office of the clerk of the county court of Ohio county, and thereupon its dissolution shall be complete.

**Sec. 20. Automatic Termination of the Right to Establish the Authority.**—If on or before the first day of July, one thousand nine hundred sixty-two, the Board of Commissioners of the County of Ohio shall not have appointed the members of the authority who are to constitute the board for management of its business and affairs, as provided in section three thereof, all right to create and establish said Wheeling-Ohio County Airport Authority under this act shall automatically terminate.

**Sec. 21. Liberal Construction of Act.**—It is the purpose of this act to provide for the acquisition, construction, improvement, extension, maintenance and operation of a public airport in a prudent and economical manner, and this act shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this act are in addition to and not in derogation of any

power existing in the Board of Commissioners of the County of Ohio under any constitutional or statutory provisions which it may now have, or may hereafter acquire.

**Sec. 22. Provisions Severable.**—The several sections and provisions of this act are severable, and if any section or provision hereof shall be held unconstitutional, all the remaining sections and provisions of this act shall nevertheless remain valid.

# RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1962 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

## HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Speaker, Mr. Singleton)

[Adopted February 3, 1962.]

Creating the honorary title of "West Virginia Centennial Mountaineer."

WHEREAS, On February first, one thousand nine hundred fifty-five, the fifty-second Legislature created the West Virginia Centennial Commission for the purpose of planning and carrying out the celebration of the one hundredth birthday of the State of West Virginia; and

WHEREAS, The West Virginia Centennial Commission, pursuant to the authority conferred upon it by the Legislature, has been organized and, subsequent to its organization, has proposed the honorary title of "West Virginia Centennial Mountaineer," to be conferred at the Centennial celebration in one thousand nine hundred sixty-three; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Centennial Commission is hereby empowered and authorized to bestow the honorary title of "West Virginia Centennial Mountaineer" upon not more than one hundred state and national figures who have rendered distinguished service to the State of West Virginia; and, be it

*Further Resolved,* That the West Virginia Centennial Commission shall have full power and authority to select the persons to be so honored.

## HOUSE CONCURRENT RESOLUTION NO. 13

(By Mr. Rife and Mr. Seibert)

[Adopted January 26, 1962.]

Concerning the observance of National Flag Week.

WHEREAS, Our Flag, when created, was a symbol of the inextinguishable love of freedom and has remained so ever since; and

WHEREAS, We are now in the midst of an era of competing ideologies, of competing systems of government and economic organizations, during which time we must not lose sight of the ideals which are represented by our Flag; and

WHEREAS, The days from June 8 through June 14 have been set aside and designated as National Flag Week; and

WHEREAS, Most citizens are too busy with the material things in life to take time to pause and reflect upon the ideals for which the American Flag was created and for which it now stands; and

WHEREAS, It is incumbent upon all citizens to again pledge their undying allegiance to the Flag and to accord to it the respect which it deserves and to which it is entitled; and

WHEREAS, Such respect can best be expressed by exhibiting the Flag during National Flag Week and impressing upon all fellow citizens the desirability of similar actions; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the members of the West Virginia Legislature, do strongly urge the people of this great State to properly observe the week of June 8 through June 14 as National Flag Week by the exhibition of the American Flag during all of that week, and further urge all West Virginians to emphasize the importance of our Flag at all times by rendering to it the respect to which it is entitled and also by becoming familiar with the history and background of its creation; and, be it

*Further Resolved,* That the Legislature of West Virginia does respectfully request all patriotic, civic, fraternal and veterans organizations in the State of West Virginia, including all units, posts, chapters, lodges, clubs or segments of each in observing Flag Day, 1962, to conduct seminars, schools of instructions, lectures or other appropriate means of disseminating to its own members, and to the general public, where appro-

priate, information concerning proper flag etiquette, the flag code and the proper manner of displaying and otherwise showing proper respect to the Flag of the United States of America to the end that the citizens of our State shall become the best informed of any in the Nation with respect thereto.

## HOUSE CONCURRENT RESOLUTION NO. 16

(By Mr. Brotherton)

[Adopted January 29, 1962.]

Requesting the Joint Committee on Government and Finance to continue the study directed by House Concurrent Resolution No. 5, adopted at the First Extraordinary Session of the Legislature, on June 16, 1961.

WHEREAS, The Joint Committee on Government and Finance was directed to make a study of the Department of Purchases; and

WHEREAS, It appears from a memorandum submitted by the subcommittee appointed to this task that it was unable to submit a comprehensive report of such study before the beginning of this session of the Legislature; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance be directed to continue this study under the provisions as outlined in said House Concurrent Resolution No. 5, until such time as they are able to make a report, either during this session or at the next special or regular session of the Legislature; and, be it

*Further Resolved,* That all other provisions of House Concurrent Resolution No. 5 be extended until such time as the work is completed; and, be it

*Further Resolved,* That the expenses necessary to conduct and complete this study and to make the necessary report, and to draft any proposed bills related thereto, be paid from legislative appropriations made to the Joint Committee on Government and Finance.

## HOUSE CONCURRENT RESOLUTION NO. 21

(By Mr. Frazer)

[Adopted February 7, 1962.]

Relating to National Weights and Measures Week.

WHEREAS, The first Weights and Measures Law was enacted by the Congress of the United States 163 years ago on March 2, 1799; and

WHEREAS, The true meaning of weights and measures is ably set forth in the report of the Honorable John Quincy Adams, Secretary of State, in his report to the United States Senate on February 22, 1821, as follows: "Weights and measures may be ranked among the necessaries of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; to every transaction of trade and commerce; to the labors of the husbandman; to the ingenuity of the artificer; to the studies of the philosopher; to the researches of the antiquarian; to the navigation of the mariner, and the marches of the soldier; to all the exchanges of peace, and all the operations of war. The knowledge of them, as in established use, is among the first elements of education, and is often learned by those who learn nothing else, not even to read and write. This knowledge is riveted in the memory by the habitual application of it to the employments of men throughout life"; and

WHEREAS, This establishment of uniform weights and measures assisted the infant country by promoting commercial relationships among the states and between this country and the outside world; and

WHEREAS, The system of uniform weights and measures, thus established, made possible the development of the United States into one of the giant powers of the world; and

WHEREAS, Weights and measures laws in West Virginia have established consumer business confidence so that all may share the benefits of mass production and handling of commodities; and

WHEREAS, The week of March 1-7 has been set aside to recognize the service of weights and measures and the officials who enforce the laws; therefore, be it

*Resolved by the Legislature of West Virginia:*

That officials of the State and governmental subdivisions, business and commercial agencies, and citizens throughout West Virginia are requested to join in appropriate observance of that week, to the end that the general understanding of weights and measures principles may be enhanced and that cooperation among all interests concerned in or affected by weights and measures administration may be encouraged and promoted; and, be it

*Further Resolved,* That a copy of this resolution be sent to the President of the United States, the Secretary of Commerce, the Director of National Bureau of Standards, the Governor of West Virginia, the West Virginia members of Congress and the West Virginia Commissioner of Labor.

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## HOUSE CONCURRENT RESOLUTION NO. 27

(By Mr. Rollins)

[Adopted February 8, 1962.]

Concerning the establishment of an International Mothers' Day Shrine.

WHEREAS, On May 10, 1908, the first official Mothers' Day observance was held in the Andrews Methodist Church in Grafton, West Virginia; and

WHEREAS, On May 8, 1910, Governor William E. Glasscock of West Virginia, issued the first Mothers' Day Proclamation, which read as follows:

"A PROCLAMATION

"The beautiful custom of setting apart one day in each year to pay just tribute to our mothers should not be abandoned or forgotten. Our days of youth may be over, and the closer the ties that bound us to our mothers may have been loosened, but not a link in the chain of affection that bound her heart to ours

has been broken, and we think of Mother today as we always did, the noblest, sweetest and best of all God's creations.

"In appreciation of the love and devotion of our Mothers, and with an earnest desire to perpetuate the observance of the hallowed custom, I, William E. Glasscock, Governor of the State of West Virginia, request that

SUNDAY, MAY 8, 1910

be observed by all churches as

MOTHER'S DAY

and that all persons attend church on that day and wear a white carnation"; and

WHEREAS, In May, 1914, Representative Heflin of Alabama and Senator Sheppard of Texas introduced a joint resolution which was passed by both Houses of our Federal Congress and was approved by President Woodrow Wilson and proclaimed by William Jennings Bryan, Secretary of State, that the second Sunday in May of each year be the official date set aside for the observance of mothers, this date being the anniversary of the death of the founder's mother, Mrs. Ann Reeves Jarvis; and

WHEREAS, The Andrews Methodist Church is located on Main Street in Grafton, West Virginia, and is in reasonably good state of repair; and

WHEREAS, The Grafton Kiwanis Club and other interested people of Grafton have instituted an organization to purchase said property and other properties lying within the city block located between St. John and Luzadder Streets for the purpose of razing all properties within this block except the Mother's Day Church and to landscape and construct a park for the purpose of accentuating the beautiful sentiment surrounding the church and establish an International Mothers' Day Shrine; and

WHEREAS, When completed, not only will West Virginia have a beautiful and lasting memorial to mothers, regardless of race, creed, color or national origin, but will also have a tourist attraction which will draw thousands of people to our State; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Commissioner of the Department of Commerce be requested and urged to cooperate to the fullest extent of his authority in promoting this project.

## HOUSE CONCURRENT RESOLUTION NO. 28

(By Mr. Liller)

[Adopted February 7, 1962.]

Designating an official state march.

WHEREAS, Bowden D. Ward of Kingwood, West Virginia, has composed a march entitled "W. Va. March—Montani Semper Liberi", which he has dedicated to the State of West Virginia; and has prepared a full band arrangement with conductor's score which will be made available to the public; and

WHEREAS, The following words are printed in the conductor's score and may be sung at will to the trio of the march:

"All hail, West Virginia
Land of strong men and true,
Land of green valleys,
Streams and mountains of blue,
Loyal sons and daughters we will ever be.
Let all the nation know that
Mountaineers are always free."; and

WHEREAS, Mr. Ward holds a master's degree from West Virginia University; has served as music counselor for Mountaineer Boys' State; served as music director in Mannington District, Marion County, from 1927 to 1930; served as music supervisor in Kingwood and Valley districts in Preston County for several years; served as county director of music education in Preston County from 1930 until his retirement January 1, 1960; and has devoted much time toward developing an adequate program of music education in West Virginia; and

WHEREAS, The march composed by Mr. Ward has received wide and favorable approbation by music organizations and in music circles generally; and since it is highly desirable to have an official state march, and especially so at this time when national attention is being focused upon the State because of the centennial celebration; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the march composed by Mr. Ward and entitled "W. Va. March—Montani Semper Liberi" is hereby designated an official state march of the State of West Virginia.

## HOUSE CONCURRENT RESOLUTION NO. 31

(By Mr. Auvil)

[Adopted February 7, 1962.]

Requesting the Department of Natural Resources and the Department of Mines to explore and make recommendations on the use of persons employed under the emergency relief programs in strip-mine area reclamation.

WHEREAS, The strip-mine spoilbank problem contributes greatly to stream pollution and directly affects the water table in these areas; and

WHEREAS, There are approximately twenty-five thousand acres of nonbonded strip-mined area in West Virginia in need of reclamation; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Department of Natural Resources and the Department of Mines are respectfully requested to explore the possibility of using emergency relief funds in the reclamation of these areas, and to report their findings and recommendations to the next session of the Legislature.

## HOUSE CONCURRENT RESOLUTION NO. 32

(By Mr. Edgar)

[Adopted February 6, 1962.]

Declaring the Legislature's approval and support of the objectives of the Pocahontas County Board of Education for a memorial to Pearl Sydenstricker Buck.

WHEREAS, Pearl Buck, author of many books, the earliest and most famous being "The Good Earth", is a native born West Virginian, having been born at Hillsboro, Pocahontas County; and

WHEREAS, She has a distinguished international reputation as a writer, being, along with Sinclair Lewis, William Faulkner, Eugene O'Neill, Ernest Hemingway and others, as winner of the Nobel Prize for literature; and

WHEREAS, She was a winner of the American Pulitzer Prize; and

WHEREAS, In order to demonstrate that she was not writing and selling her books under the established name of Pearl Buck, she has written three selling novels under the pseudonym of John Sedges; and

WHEREAS, Being the one West Virginian to transverse the national and the international in literature; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Governor be requested to offer to Pocahontas County, which has already started a Pearl Buck memorial, all moral assistance, and to consider any advancement of funds to make this memorial a place where all lovers of great literature may stop and pay respect to a great West Virginian; and, be it

*Further Resolved*, That a copy of this resolution be sent to Miss Buck and her publisher, the John Day Company, and to the Pocahontas County Board of Education.

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## HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Frazer and Mr. Myles)

[Adopted February 6, 1961.]

Requesting technical assistance funds from the Area Redevelopment Administration to conduct surveys regarding construction of a North-South Highway in West Virginia, to create a special committee to assist in assembling facts relating to such a highway, and for other purposes.

WHEREAS, A new approach to building a link in the North-South Super-highway System through the State of West Virginia which involves the building of a highway to Interstate Highway System standards from the Weston area to the Beckley area along the route previously considered for the major

North-South Highway has been suggested by U. S. Representative John M. Slack, Jr.; and

WHEREAS, The object of this highway would be to bring about the greater development of the resources and industrial potential of Braxton, Nicholas, Fayette, Raleigh, Webster, Summers, Greenbrier, Clay and adjacent counties; and

WHEREAS, The project should be approached as an important part of the State's current economic development program because first-class highway facilities are a prime need in the development of the aforementioned counties and in the creation of permanent job opportunities for relief of unemployment therein; and

WHEREAS, It has been suggested by Congressman Slack that the project be approached as part of the State's total redevelopment effort and that federal funds might be obtained through participation not only of the Federal Bureau of Public Roads, but also the Area Redevelopment Administration; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature herewith directs the West Virginia Department of Commerce and the State Road Commissioner to prepare and submit, with all deliberate speed, a request for technical assistance funds to undertake a thorough study of the facilities and potential of such highway; and, be it

*Further Resolved,* That a special committee of ten members of the Legislature, five to be appointed by the President of the Senate and five by the Speaker of the House of Delegates, shall be created to assist in the conduct and application of such a study, including the gathering and dissemination of such information to the appropriate federal, state and local agencies; and, be it

*Further Resolved,* That the Legislature does hereby request the Commissioner of Commerce, the State Road Commissioner, and members of the West Virginia delegation in the United States Senate and the House of Representatives to assist in the gathering and dissemination of such information and to urge the fullest possible degree of federal participation; and, be it

*Further Resolved,* That the Clerk of the House of Delegates is hereby directed to provide copies of this resolution, upon approval, to the President of the United States, the Secretary of Commerce, the Administrator of the Area Redevelopment Administration, the Federal Highway Administrator, the Secretary of Interior, the Governor of West Virginia, the Commissioner of Commerce for the State of West Virginia, the State Road Commissioner of West Virginia, and the members of the United States Senate and the United States House of Representatives from West Virginia.

## HOUSE CONCURRENT RESOLUTION NO. 38

(By Mr. Speaker, Mr. Singleton)

[Adopted February 8, 1962.]

Requesting and directing the Legislative Auditor to provide certain additional legislative services under the direction of the Joint Committee on Government and Finance.

WHEREAS, In pursuance of many studies and other directives of the Legislature, it is increasingly apparent that the responsibility of drafting the conclusions of the various committees into workable bills is too long delayed; and

WHEREAS, Continuous law revision, reference and research services for the benefit of the committees, commissions, and for individual members of the Legislature during and between sessions thereof are highly desirable; and

WHEREAS, Such bill drafting services are presently only available during the sessions of the Legislature, and then only to a limited degree; and

WHEREAS, In order to provide for more adequate legislative services of this nature and to provide for more expeditious and efficient study of the financial problems that confront the Legislature; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislative Auditor be requested and directed to provide through the Legislative Auditor's office, and at the direction of the Joint Committee on Government and Finance, additional services as follows:

(1) Part-time or continuous bill drafting, reference and research services, assistance to interim committees, the Legislature and individual members thereof during and between sessions as shall be approved as necessary and advisable to the Joint Committee on Government and Finance.

(2) Such other legislative services as the Joint Committee on Government and Finance deems necessary for rendering assistance in expediting the work of interim committees, the Legislature and the individual members thereof; and

That the expenses of such services be a proper charge against any legislative appropriations for bill drafting, and/or the Joint Committee on Government and Finance.

## HOUSE CONCURRENT RESOLUTION NO. 42

(By Mr. Vickers and Mr. Noll)

[Adopted February 7, 1962.]

Requesting the Congress of the United States to approve the construction of the Allegheny Parkway.

WHEREAS, Senate Bill 1798 introduced by Senator Robert C. Byrd and House Bill H. R. 6986 introduced by Representative Harley O. Staggers propose the construction of a parkway along the Allegheny Mountains extending from Hagerstown, Maryland, to Cumberland Gap, Kentucky, and being the first link in a system of parkways extending from Maine to the Gulf of Mexico; and

WHEREAS, This parkway would transverse the State of West Virginia for approximately 360 miles of its total length of 550 miles and would include two spur roads within this State; and

WHEREAS, The route of such parkway, as proposed, would afford access to the principal scenic attractions of the counties of Jefferson, Berkeley, Morgan, Hampshire, Mineral, Grant, Hardy, Randolph, Pocahontas, Greenbrier, Monroe, Summers, Mercer, McDowell, Mingo, Raleigh and Fayette; and

WHEREAS, The Allegheny Parkway would afford convenient access for the majority of the population of the United States to one of the country's most scenic areas that has been hereto-

fore unavailable due to the lack of adequate highways and would provide an enormous economic surge to the State of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Congress of the United States is hereby requested to authorize the construction of the Allegheny Parkway as currently proposed in Senate Bill 1798 and House Bill H. R. 6986; and, be it

*Further Resolved,* That the Clerk of the House of Delegates transmit a copy of this resolution to the United States Senators and members of the House of Representatives from West Virginia.

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## HOUSE CONCURRENT RESOLUTION NO. 45

(By Mr. Watson)

[Adopted February 8, 1962.]

Requesting the Joint Committee on Government and Finance to make a study of stream pollution and the need for additional legislation to control such pollution and report to the 1963 Session of the Legislature thereon.

WHEREAS, The Water Resources Board and the Division of Water Resources under the State Department of Natural Resources are vested with certain powers and duties relative to the control and elimination of stream pollution; and

WHEREAS, The Water Resources Board and its predecessor, the State Water Commission, has for years studied the problem of stream pollution and taken various steps and actions toward eliminating the same; and

WHEREAS, It is recognized that in dealing with this problem, in fairness to concerns polluting streams, a reasonable time had to be given in order to enable them to install appropriate machinery and take the necessary steps to eliminate pollution, but there is a wide-spread feeling that sufficient time has been given to enable persons and concerns polluting streams to take the necessary steps to eliminate such pollution; and

WHEREAS, It is generally recognized that many of the important streams in West Virginia are still being polluted, including

such waters as the South Branch of the Potomac, Bluestone River, Buffalo Creek in Marion County, Middle Wheeling and Big Wheeling Creek in Ohio County, the Cheat River, the Tygart River, the Middle Fork River and the Buckhannon River; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance make a study of the general problem of stream pollution and the need for additional legislation governing this matter; and report its findings and recommendations to the 1963 Session of the Legislature.

## HOUSE JOINT RESOLUTION NO. 1

(By Mr. White)

[Adopted February 8, 1962.]

Proposing an amendment to the Constitution of the State, repealing sections six, eight and nine, and amending sections two, seven and ten of article six thereof, relating to the composition of the Senate and House of Delegates and to representation and apportionment of members of the House of Delegates.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article six of the Constitution be amended by repealing sections six, eight and nine, and amending sections two, seven and ten thereof to read as follows:

**Composition of Senate and House of Delegates.**

Section 2. The Senate shall be composed of thirty-two members, and the House of Delegates of one hundred members, subject to be increased according to the provisions of section ten of this article.

**Provision for Delegate Representation.**

Sec. 6. This section is hereby repealed.

**Delegate Apportionment after Census.**

Sec. 7. After every census the number of members of which the House of Delegates is composed shall be apportioned among the counties in accordance with the following steps:

(1) Ascertain the ratio of representation for the House of Delegates by dividing the whole population of the State by the number of members of which the House is to consist and rejecting the fraction of a unit, if any, resulting from such division.

(2) Divide the population of every county which has a population equal to or in excess of the ratio ascertained in step (1) by said ratio, and assign to each such county a number of Delegates equal to the quotient obtained by this division, excluding the fractional remainder.

(3) Assign to each county having a population less than the ratio ascertained in step (1) one Delegate.

(4) Any additional Delegates necessary to make up the number of which the House is to consist shall then be assigned on the basis of one Delegate each to those counties having the largest fractions unrepresented as determined in step (2), and not receiving a Delegate in step (3).

**Designation of Delegate Districts.**

Sec. 8. This section is hereby repealed.

**Further Apportionments.**

Sec. 9. This section is hereby repealed.

**Arrangement of Senatorial Districts and Designation and Apportionment of Delegates.**

Sec. 10. The arrangement of the Senatorial Districts, and the designation of the number and apportionment of Delegates shall, notwithstanding the provisions of section twenty-two of this article, hereafter be declared by law only in accordance with sections four and seven of this article insofar as applicable

at the first even-year regular session of the Legislature following each succeeding census taken by authority of the United States: *Provided,* That said arrangement, designation and apportionment following the census taken for the year one thousand nine hundred sixty shall be declared by law as aforesaid at the regular session of the Legislature to be held in the year one thousand nine hundred sixty-three.

If the Legislature fails to declare the foregoing arrangement, designation and apportionment three days before the expiration of any such legislative session hereinabove specified, the Governor may, and it shall be his duty to issue a proclamation extending any such session for such further period as may, in his judgment, be necessary for the passage of legislation declaring such arrangement, designation and apportionment; but no other matter shall be considered during such extended session except a provision for the cost of the extended session, and the budget bill, if said session is also extended for consideration of the budget bill in accordance with the provisions of section fifty-one of this article. The action of the Legislature in declaring such arrangement, designation and apportionment shall not be subject to veto by the Governor.

When so declared said arrangement, designation and apportionment shall apply to the first and subsequent general elections for members of the Legislature to be thereafter held until again declared following the succeeding census: *Provided,* That this provision shall not affect the qualification or term of office of any member of the Senate who was elected at the general election next preceding the declaration of said arrangement.

## HOUSE JOINT RESOLUTION NO. 3

(By Mr. Speaker, Mr. Singleton, by request)

[Adopted February 5, 1962.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section three of article nine thereof, relating to terms of office of sheriffs.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amend-

ment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section three, article nine of the Constitution of the State be amended to read as follows:

**Article IX. County Organization.**

**Section 3. Sheriffs; More Than Two Consecutive Terms Prohibited.**—Without limitation on the number of nonconsecutive terms, the same person shall not serve as sheriff by election or appointment for more than two consecutive terms, or any part thereof; nor shall any person who acted as a deputy at any time during the preceding four years be elected or appointed sheriff, nor shall any sheriff act as deputy of his successor; nor shall he, during his term of service, or within one year thereafter, be eligible to any other office. The retiring sheriff shall finish all business remaining in his hands, at the expiration of his term; for which purpose his commission and official bond shall remain in force. The duties of the office of sheriff shall be performed by him in person, or under his superintendence.

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## SENATE CONCURRENT RESOLUTION NO. 15

(By Mr. Carson, Mr. President)

[Adopted February 2, 1962.]

Extending the time within which the Joint Committee on Government and Finance and the Commission on Interstate Cooperation may conduct certain studies and make the reports heretofore referred to and required of said committee and commission by the Legislature.

WHEREAS, Senate Concurrent Resolution No. 17, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study of the sums expended annually by the State in all of its departments and agencies for insurance premiums to ascertain whether it would be to the best interests of the State for it to become a self-insurer, and to report its findings, conclusions and recommendations

to the regular session of the Legislature, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 18, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study of all special revenue fund accounts and report all such accounts in existence during the current fiscal year; the balance in each of such accounts as of the end of the preceding fiscal year; the receipts and disbursements respecting each of such accounts during the current fiscal year; the balances therein as of the end of the current fiscal year; a detailed statement respecting the sources of such funds and the purposes for which sums were expended therefrom during the current fiscal year, together with its recommendation as to whether such accounts, or any of them, should be altered, eliminated, or transferred to general revenue; and directed the said committee to make its report to the regular session of the Legislature, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 23, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters related to the replacement of our State's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure; and further directed said committee and commission to make a full and complete report of its studies and findings, together with its recommendations for legislative or other action to the Legislature on or before January one, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 5, adopted by the Legislature in the first extraordinary session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study and investigation of the merit system in order to determine the soundness and reasonableness of its policies, practices and procedures in view of the particular circumstances prevailing in the State

of West Virginia; and further directed said committee to report its findings and recommendations to the members of the Legislature on or before the date of the convening of the Legislature, regular session, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 16, adopted by the Legislature in regular session, one thousand nine hundred sixty, directed the Joint Committee on Government and Finance to conduct or cause to be conducted an exhaustive study of the entire area of mental illness; and further directed said committee to make a full report of its study, investigation and recommendations for legislative or other action to the Legislature on or before January first, one thousand nine hundred sixty-one; and

WHEREAS, House Concurrent Resolution No. 34, adopted by the Legislature in regular session, one thousand nine hundred fifty-nine, directed the State Election Commission to make a thorough study, under the direction and supervision of the Joint Committee on Government and Finance, of all laws of West Virginia pertaining to elections and to prepare a recodification thereof; and further directed the said commission in consultation with county and circuit clerks, ballot commissioners, state and county party leaders and other interested citizens to prepare recommendations for changes in the election laws which will permit the conduct of the electoral process with the greatest efficiency; and further directed said commission to present to the Legislature in regular session in the year one thousand nine hundred sixty-one drafts of all of its findings, including the proposed recodification of the election laws and the proposed changes therein; and

WHEREAS, Senate Concurrent Resolution No. 11, adopted by the Legislature in regular session, one thousand nine hundred fifty-seven, directed the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make a thorough study of our institutions of higher education for the purpose of gathering information which will reflect the following:

(a) The present needs and cost as compared to the national average and trend;

(b) Whether or not these needs are being met now; and if not,

(c) The way in which the probable future needs may be met and the cost of same;

(d) The possibility of reducing these determined costs by combining the responsibility, authority and activities of the state agencies now exercising control over the institutions; and further directed said committee and commission to summarize the results of this study in a manual which will, in particular, reflect the needs and costs relative to a five-year program and a ten-year program and in addition will reflect the needs and costs for each year of the five-year program, beginning with the fiscal year one thousand nine hundred fifty-eight—fifty-nine, and that these established needs and costs be itemized under such general budgetary terms as personal services, current expenses, repairs and alterations, equipment and capital expenditures, and that these costs be correlated with program and performance objectives, said study to be completed by November first, one thousand nine hundred fifty-seven; and further directed that the report of the findings and recommendations be submitted to the Legislature, the public in general, and the Governor, with the request that such report and recommendations become an order of business on the agenda of the Legislature at its next regular session, one thousand nine hundred fifty-eight; and

WHEREAS, It appears from the 1961 annual report of the Joint Committee on Government and Finance and Commission on Interstate Cooperation that the hereinbefore described studies have not been completed; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the aforesaid studies be continued by the Joint Committee on Government and Finance or jointly by the Joint Committee on Government and Finance and the Commission on Interstate Cooperation, as the case may be; and, be it

*Resolved Further,* That all provisions of said concurrent resolutions be continued in full force and effect until such time as the studies and work described therein have been completed; and, be it

*Resolved Further,* That all reports, findings, drafts, and recommendations required of said committee or jointly of said committee and commission be made to the Legislature on or before the first day of the regular session, one thousand nine hundred sixty-three.

## SENATE CONCURRENT RESOLUTION NO. 21

(By Mr. McCourt)

[Adopted February 3, 1962.]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the capital improvements which will be needed at our state-supported institutions of higher education in the immediately succeeding years, and make proposed recommendations concerning the financing of those improvements.

WHEREAS, By chapter sixty-five, Acts of the Legislature, regular session, one thousand nine hundred fifty-nine, the Legislature established two special nonrevolving capital improvements funds, one for the schools under the Board of Governors and the other for the schools under the State Board of Education, to be pledged by the respective boards to meet the cost of construction (but not for the servicing of bonds for construction) of capital improvements for schools under their authority; and

WHEREAS, The Legislature by this same act imposed an additional registration fee of fifty dollars per semester upon all full-time students of state institutions of higher education and directed that one third of the proceeds derived from this additional fee go into the State's general revenue and the remaining two thirds of the proceeds be deposited into the aforesaid capital improvement funds; and

WHEREAS, The one thousand nine hundred fifty-nine budget act included an appropriation of one million two hundred thousand dollars from these special capital improvement funds; the one thousand nine hundred sixty budget act included appropriations of one million eight hundred eighty thousand dollars from these funds; the one thousand nine hundred sixty-one budget act included appropriations of one million five hundred seventy-one thousand two hundred fifty dollars from

these funds; and budget requests for appropriations from these funds for the one thousand nine hundred sixty-two—sixty-three fiscal year amount to one million seven hundred seventy thousand seven hundred four dollars; and

WHEREAS, Chapter seven, Acts of the Legislature, regular session, one thousand nine hundred fifty-six, authorized the Board of Governors of West Virginia University to issue revenue bonds of the State, not to exceed ten million dollars in principal amount thereof, to finance the cost of providing new buildings for the college of agriculture, the agricultural experiment station, the agricultural extension division, the college of engineering, the engineering experiment station, and the school of mines of West Virginia; directed that the principal of and interest on such bonds shall be payable solely from a special nonrevolving fund created in the state treasury; and further directed that there shall be paid into such fund all enrollment, tuition and other fees, not paid into other special funds, collected from students at the university other than students in the school of medicine, medical technology, dentistry, dental technology, nursing and pharmacy; and

WHEREAS, Chapter eight, Acts of the Legislature, regular session, one thousand nine hundred fifty-six, as amended, authorized the West Virginia Board of Education to issue revenue bonds of the State, not to exceed one million nine hundred thousand dollars in principal amount thereof, to finance the cost of providing a health and education building for Marshall University; directed that the principal of and interest on such bonds shall be payable solely from a special nonrevolving fund created in the state treasury; and further directed that there shall be paid into such fund all enrollment, tuition and other fees, not paid into other special funds, collected from students at Marshall University; and

WHEREAS, Section one, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the governing board of any state educational institution to impose and collect a student union building fee for the construction and operation of a student union building or combination union student dining hall building, or for the renovation of an existing structure for such use, or for the payment of interest and principal on any bonds

issued to finance part or all of the cost of construction or renovation of any such building; and

WHEREAS, Section five, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the Board of Governors of West Virginia University to expend from excess moneys derived from the operation of the book store, a sum not exceeding two hundred eighty thousand dollars for the construction of a building to house the university book store; and

WHEREAS, Section four, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the governing board of each state educational institution to fix the fees to be charged students and faculty members for room, board and meals at the dormitories, faculty halls, dining halls, and cafeterias operated by the board at the institution; and permits the board to expend receipts, not needed for the operation and maintenance cost of such operations and not needed for sinking fund requirements due on any outstanding revenue bonds for which such receipts may have been pledged, to defray the cost in part or in whole of the construction of any such facility; and

WHEREAS, As of July second, one thousand nine hundred sixty-one, the revenue bonded indebtedness for capital improvements at institutions of higher education in the State amounted to twenty-three million one hundred fifty-eight thousand dollars; and

WHEREAS, Requests for appropriations from surplus revenue for capital improvements at institutions of higher education for the fiscal year one thousand nine hundred sixty-two—sixty-three amount to over forty-three million dollars; and

WHEREAS, A one thousand nine hundred sixty-one report by the subcommittee on higher education study of the Joint Committee on Government and Finance and the Commission on Interstate Cooperation states that practically all available revenue has been or is in the process of being pledged for bonds; that it would appear that funds available from this source will be very limited for the next several years; and that the subcommittee is quite concerned with the capital

improvement needs cited at the various universities and colleges; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance, as a part of its continuing study of our institutions of higher education under Senate Concurrent Resolution No. 11, adopted by the Legislature, regular session, one thousand nine hundred fifty-seven, be hereby directed to specifically make a comprehensive study of the capital improvement needs of our state-supported institutions of higher education in the immediately succeeding years and to make proposals as to how needed improvements should be financed.

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## SENATE CONCURRENT RESOLUTION NO. 25

(By Mr. Carrigan)

[Adopted February 7, 1962.]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the investment of the workmen's compensation fund, state teachers' retirement fund, public employees' retirement system fund, death, disability and retirement of the department of public safety, judges' retirement fund, the state sinking fund, and all other public funds of this state which may be lawfully invested, and to make such proposals and recommendations to the Legislature as may be proper to improve the return on said funds and also to safeguard the investment of said funds.

WHEREAS, There is now held by the State of West Virginia through and by various boards and agencies a number of trust funds and other funds such as workmen's compensation, teachers' retirement, public employees' retirement, judges' retirement, state police retirement, the state sinking fund, and numerous other special and general funds in the amount of at least two hundred thirty-eight million dollars; and

WHEREAS, Various proposals to liberalize and change the investment policy of this State with regard to said funds have been made with a view to obtaining a higher return or yield thereon; and

WHEREAS, The State of West Virginia and its various departments and agencies, including state universities and colleges, are in need of funds for capital improvements; and

WHEREAS, The changing of the investment policy of this State as to the above-mentioned funds in the amount of two hundred thirty-eight million dollars is a matter of serious concern; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Joint Committee on Government and Finance of the West Virginia Legislature make a study of the investment policies of this State so far as they concern the heretofore enumerated funds and any other funds which may be available for long-term investments and make such recommendation to the Legislature, regular session, one thousand nine hundred sixty-three, as may seem wise and proper concerning the investment of said funds, and any changes that might be necessary with respect thereto, and such legislation as may be necessary to accomplish the same.

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## COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 3

(Originating in the Senate Committee on the Judiciary)

[Adopted February 8, 1962.]

Proposing an amendment to the Constitution of the State amending sections thirteen, twenty-two and thirty-three, article six thereof, relating to eligibility to a seat in the Legislature, to the length of legislative sessions and the business which may be considered in thirty-day sessions, and to the compensation and expenses of members of the Legislature.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That sections thirteen, twenty-two and thirty-three, article six of the Constitution of West Virginia, be amended to read as follows:

**Section 13. Eligibility to Seat in Legislature.**—No person holding a lucrative office or employment under the State, the United States, or any foreign government; no member of Congress; and no person who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

**Sec. 22. Length of Legislative Session.**—The regular session of the Legislature held in the year one thousand nine hundred sixty-three and every second year thereafter shall not exceed sixty days, and the regular session held in the year one thousand nine hundred sixty-four and every second year thereafter shall not exceed thirty days. During any thirty-day session the Legislature shall consider no other business than the annual budget bill, revenue measures and such business as may be stated by the Legislature on its own motion in a concurrent resolution adopted by a two-thirds vote of the members elected to each house. All sessions may be extended by the concurrence of two thirds of the members elected to each house.

**Sec. 33. Compensation and Expenses of Members.**—Each member of the Legislature shall receive for his services the sum of fifteen hundred dollars a year, and may receive such additional sum, as may be provided by statute, for expenses for actual attendance while the Legislature is in session, and for mileage for one round trip in connection with any session and for one round trip in connection with attending a party caucus held in advance of the date of the assembly of the Legislature in odd-numbered years for the purpose of selecting candidates for offices of the two houses, the additional sum of ten cents for each mile traveled in going to and returning from the seat of government by the most direct route. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of five dollars a day for each day served as presiding officer. Any member of the Legislature may receive, from appropriations for such purposes, compensation for services rendered in the performance of interim committee or commission assignments. Notwithstanding any other provision of the Constitution, the compensation and expenses herein provided for shall be paid to each member of the Legislature on and after the adoption of this amendment.

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