

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1985

BJW Printers, Beckley, W. Va.



C-641

FOREWORD

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

First Regular Session, 1985

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

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

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

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

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

DONALD L. KOPP
Clerk, House of Delegates

ERRATA

Page 91, Conservation and Development, following—

“72—Geological and Economic Survey,”

insert

“(WV Code Chapter 29)
Acct. No. 5200.”

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MEMBERS OF THE SENATE

REGULAR SESSION, 1985

OFFICERS

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

District	Name	Address
First.....	*John G. Chernenko (D).....	Wellsburg
	John M. Karras (R).....	Wheeling
Second.....	*Thomas E. Loehr (D).....	New Martinsville
	Dan Tonkovich (D).....	Benwood
Third.....	*Keith Burdette (D).....	Parkersburg
	Sam White (R).....	St. Marys
Fourth.....	*Oshel B. Craigo (D).....	Hurricane
	Mike Shaw (R).....	Pt. Pleasant
Fifth.....	Mack C. Jarrell (D).....	Ceredo
	*Robert R. Nelson (D).....	Huntington
Sixth.....	*H. Truman Chafin (D).....	Williamson
	John Pat Fanning (D).....	Jaeger
Seventh.....	*J. R. “Bob” Rogers (D).....	Madison
	Earl Ray Tomblin (D).....	Chapmanville
Eighth.....	*John Si Boettner (D).....	Charleston
	Mario J. Palumbo (D).....	Charleston
Ninth.....	*Ted T. Stacy (D).....	Beckley
	Bruce O. Williams (D).....	Rock View
Tenth.....	*Frederick L. Parker (D).....	Greenville
	Tony E. Whitlow (D).....	Kellysville
Eleventh.....	Robert K. Holliday (D).....	Fayetteville
	*Ralph D. Williams (D).....	Rainelle
Twelfth.....	Jac Spears (D).....	Elkins
	*Larry A. Tucker (D).....	Summersville
Thirteenth.....	*Gino R. Colombo (D).....	Clarksburg
	William R. Sharpe, Jr. (D).....	Weston
Fourteenth.....	Stephen L. Cook (D).....	Morgantown
	*Anthony Yanero (D).....	Fairmont
Fifteenth.....	Gerald W. Ash (D).....	Morgantown
	*C. N. Harman (R).....	Grafton
Sixteenth.....	*Sondra Moore Lucht (D).....	Martinsburg
	Vernon C. Whitacre (D).....	High View
Seventeenth.....	*Darrell E. Holmes (D).....	Charleston
	Tod J. Kaufman (D).....	Charleston

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

* Elected in 1982. All others elected in 1984.

(D) Democrats	30
(R) Republican	4
Total	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1985

OFFICERS

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

District	Name	Address
First	Sam Love, Jr., (D)	Weirton
	Patricia Mastrantoni (D)	Weirton
Second	Roy Givens (D)	Wellsburg
	Bernard V. Kelly (D)	Weirton
Third	Thais Blatnik (D)	Wheeling
	David B. McKinley (R)	Wheeling
	Paul J. Otte (R)	Wheeling
Fourth	Larry Wiedebusch (D)	Glen Dale
	Albert D. Yanni (D)	Glen Dale
Fifth	Robert L. Jones (R)	New Martinsville
Sixth	Larry D. Swann (R)	West Union
Seventh	Gregory K. Smith (D)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	Gene A. Haynes (R)	Parkersburg
	William P. A. Nicely (R)	Parkersburg
	Sandy Rogers (R)	Vienna
Ninth	Marjorie H. Burke (D)	Sand Fork
	Robert H. Kidd (D)	Sutton
Tenth	Bob Ashley (R)	Spencer
Eleventh	Bill Carmichael (R)	Ripley
Twelfth	James M. Casey (D)	Pt. Pleasant
	Deborah F. Phillips (D)	Hurricane
	John H. Reed, III (R)	Hurricane
	Patricia Holmes White (D)	Poca
Thirteenth	Robert "Chuck" Chambers (D)	Huntington
	Sue A. Davis (D)	Huntington
	Phyllis E. Given (D)	Huntington
	Evelyn E. Richards (R)	Huntington
	Jody G. Smirl (R)	Huntington
Fourteenth	Jack R. Traylor, Sr. (R)	Huntington
	Lucian Fry (D)	Wayne
Fifteenth	Walter Rollins (D)	Kenova
	Irvine "KO" Damorn (D)	Lenore
Sixteenth	James B. Simpkins (D)	Meador
	W. E. "Bill" Anderson (D)	Logan
Seventeenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	R. L. "Bob" McCormick (D)	Logan
Eighteenth	Robert L. Mullett (D)	Peytona
Nineteenth	Ernest C. Moore (D)	Thorpe
	Rick Murensky (D)	Welch
Nineteenth	Clayton W. Hale (D)	Pineville
	Ray Woolsey (D)	Pineville

¹ Appointed a member of the House of Delegates January 18, 1985, to fill the vacancy created by the resignation of the Honorable Joe C. Ferrell.

HOUSE OF DELEGATES

Twentieth.....	Gilbert E. Bailey (D).....	Princeton
	Richard D. Flanigan (D).....	Princeton
	James W. McNeely (D).....	Athens
	² Howard L. Wellman (D).....	Bluefield
Twenty-first.....	W. Marion Shiflet (D).....	Union
Twenty-second.....	Paul R. Hutchinson, Jr., (D).....	Beckley
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Fred T. Stacy (D).....	Beckley
	William R. Wooton (D).....	Beckley
Twenty-third.....	Bonnie L. Brown (D).....	South Charleston
	Lee F. Feinberg (D).....	Charleston
	Barbara A. Hatfield (D).....	South Charleston
	³ John R. Hoblitzell (R).....	Charleston
	James F. Humphreys (D).....	Charleston
	Thomas A. Knight (D).....	Charleston
	Charlotte J. Pritt (D).....	Charleston
	F. Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	Walton S. Shepherd, III, (D).....	Sissonville
	Leonard I. Underwood (D).....	St. Albans
	John M. "Slim" Wells (R).....	Charleston
Twenty-fourth.....	Pat R. Hamilton (D).....	Oak Hill
	Tom Louisos (D).....	Oak Hill
	John Pino (D).....	Oak Hill
Twenty-fifth.....	Betty D. Crookshanks (D).....	Rupert
	Sarah Lee Neal (D).....	Rainelle
Twenty-sixth.....	Linda Nelson Garrett (D).....	Webster Springs
	Ralph H. Johnson (D).....	Richwood
Twenty-seventh.....	Charles F. Jordan, Jr., (D).....	Elkins
	Joe Martin (D).....	Elkins
Twenty-eighth.....	Charles R. Shaffer (R).....	Buckhannon
	Donald L. Stemple (R).....	Philippi
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Floyd Fullen (D).....	Bridgeport
	Joseph M. Minard (D).....	Clarksburg
	Kenneth H. Riffle (D).....	Clarksburg
Thirty-first.....	Paul E. Prunty (R).....	Fairmont
	Duane Southern (D).....	Fairmont
	Benjamin N. Springston (R).....	Fairmont
	Cody A. Starcher (D).....	Fairmont
Thirty-second.....	Shelby (Bosley) Leary (D).....	Blacksville
	Elizabeth M. Martin (D).....	Morgantown
	Florence L. Merow (D).....	Morgantown
	Larry E. Schifano (D).....	Morgantown
Thirty-third.....	Fred Peddicord, III (R).....	Kingwood
	Floyd R. Stiles (R).....	Kingwood
Thirty-fourth.....	Marc L. Harman (R).....	Petersburg
	Robert D. Harman (R).....	Keyser
Thirty-fifth.....	Thomas J. Hawse, III, (D).....	Moorefield
Thirty-sixth.....	Daniel L. Shanholtz (R).....	Springfield
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Faircloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	William H. Martin (D).....	Charles Town

² Appointed a member of the House of Delegates December 2, 1984, to fill the vacancy created by the death of the Honorable Donald F. Anello.

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

(D) Democrats.....	73
(R) Republican.....	27
Total.....	<u>100</u>

COMMITTEES OF THE SENATE

Regular Session, 1985

STANDING

Agriculture

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

Banking and Insurance

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

Confirmations

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

Education

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

Energy, Industry and Mining

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

Finance

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

Government Organization

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

Health and Human Resources

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

Interstate Cooperation

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

Judiciary

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

Labor

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

Military

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

Natural Resources

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

Transportation

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

Rules

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

SENATE COMMITTEES

JOINT

Enrolled Bills

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

Government and Finance

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

Rules

Tonkovich (CoChairman), Boettner and Harman.

Rule-Making Review

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

SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

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

COMMISSIONS

Pensions and Retirement

Parker (Chairman), Whitacre and Harman.

Special Investigations

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

**COMMITTEES OF THE
HOUSE OF DELEGATES**

Regular Session, 1985

STANDING

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Welfare

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

Industry and Labor

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

Interstate Cooperation

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

Judiciary

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

Political Subdivisions

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

Roads and Transportation

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

Rules

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

JOINT

Enrolled Bills

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

Government and Finance

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

Rule-Making Review

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

Rules

Albright (Cochairman), Wooton and Swann.

SELECT COMMITTEE ON ECONOMIC POLICY

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

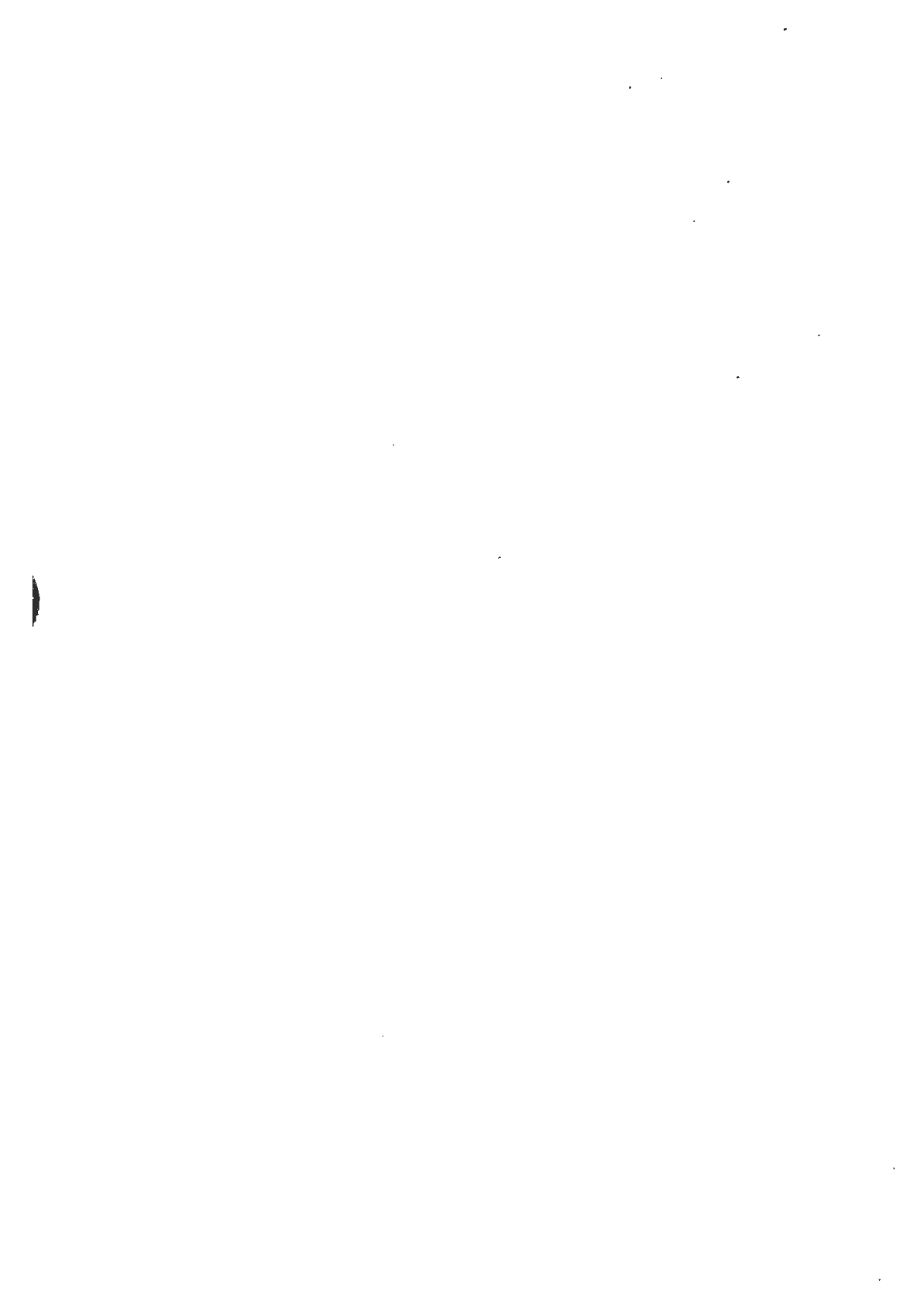
COMMISSIONS

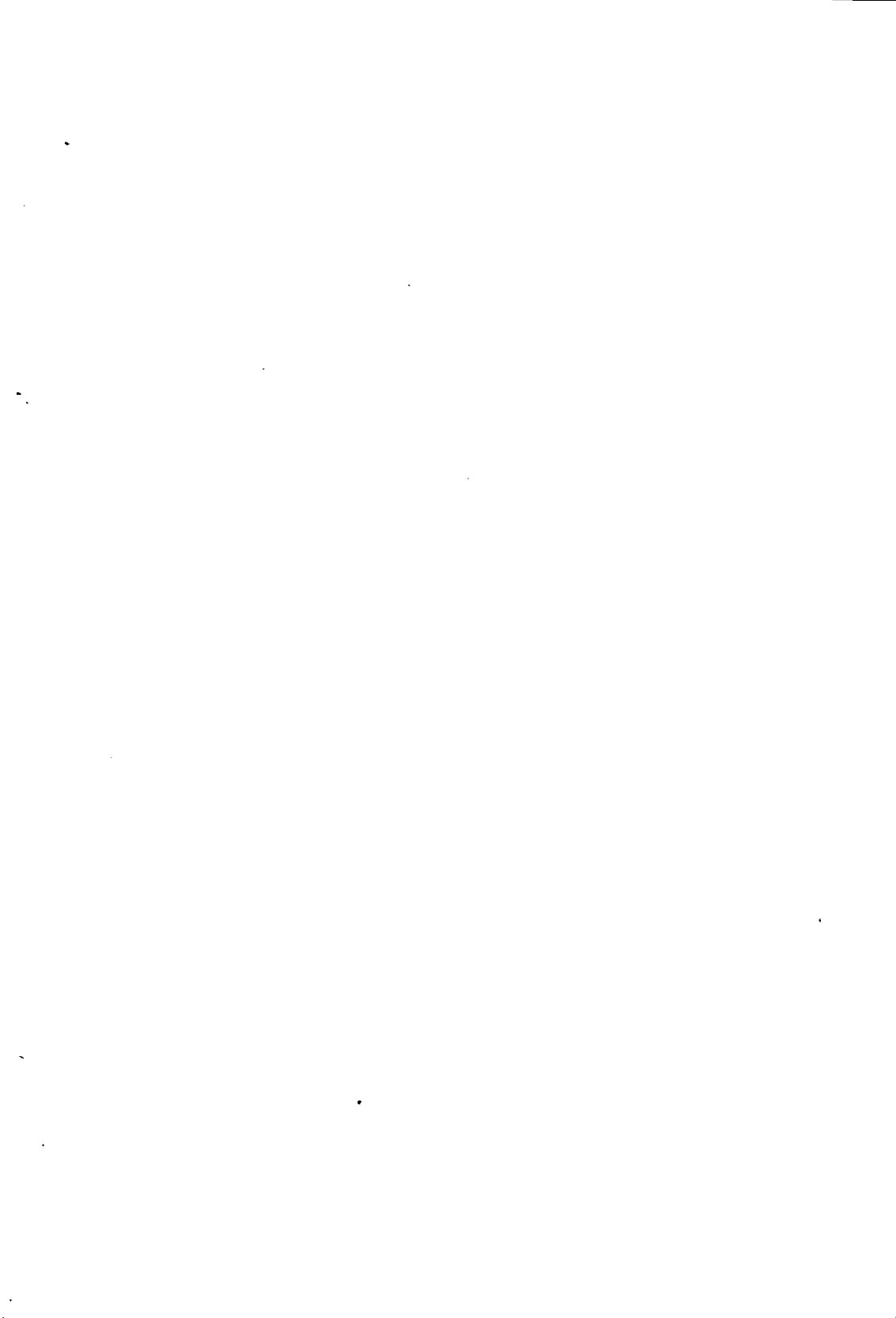
Pensions and Retirement

Murensky (Chairman), Starcher and Swann.

Special Investigations

Albright (Cochairman), Sattes, Wooton, Faircloth and Nicely.





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LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1985

CHAPTER 1

(Com. Sub. for S. B. 60—By Senator Rogers)

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

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

Be it enacted by the Legislature of West Virginia:

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

Article

- 2. **Limitation of Actions and Suits.**
- 7. **Actions for Injuries.**

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

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

- 1 If any action or suit, including an action for wrongful
- 2 death, commenced within due time, in the name of or
- 3 against one or more plaintiffs or defendants, abate as to one
- 4 of them by the return of no inhabitant, or by his or her death

5 or marriage, or if, in an action or suit, including an action
6 for wrongful death, commenced within due time, judgment
7 or decree (or other and further proceedings) for the
8 plaintiffs should be arrested or reversed on a ground which
9 does not preclude a new action or suit for the same cause, or
10 if there be occasion to bring a new action or suit by reason of
11 such cause having been dismissed for want of security for
12 costs, or by reason of any other cause which could not be
13 plead in bar of an action or suit, or of the loss or destruction
14 of any of the papers or records in a former action or suit
15 which was in due time; in every such case, notwithstanding
16 the expiration of the time within which a new action or suit
17 must otherwise have been brought, the same may be
18 brought within one year after such abatement, dismissal or
19 other cause, or after such arrest or reversal of judgment or
20 decree, or such loss or destruction, but not after. The
21 provisions of this section shall not apply to actions brought
22 for the death of any person occurring prior to the first day of
23 July, one thousand nine hundred eighty-two.

ARTICLE 7. ACTIONS FOR INJURIES.

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

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

18 (b) In every such action for wrongful death the jury, or
19 in a case tried without a jury, the court, may award such
20 damages as to it may seem fair and just, and, after making
21 provision for those expenditures, if any, specified in
22 subdivision (2), subsection (c) of this section, may direct in
23 what proportion the remaining net damages shall be
24 distributed to the surviving spouse and children, including
25 adopted children, stepchildren and grandchildren of the
26 deceased, and other persons, if any who were dependent
27 upon the decedent for support, in whole or in part, or if
28 there be none such, then to parents, brothers and sisters of
29 the deceased, or if there be none such, then to such other
30 persons, if any, entitled to inherit pursuant to the provisions
31 of section one, article one, chapter forty-two of this code,
32 unless the jury shall by its verdict allocate the remaining net
33 amount in differing amounts and proportions among any
34 surviving spouse, children, adopted children, stepchildren,
35 grandchildren, other dependents, parents, brothers and
36 sisters of the deceased. Where the matter was tried without
37 a jury the court may find upon just and equitable principles
38 that such net amount recovered should be distributed to
39 such last named persons in different amounts and
40 proportions, in which event the court shall make written
41 findings of fact and then and there order such remaining net
42 damages distributed to those persons in such amounts and
43 proportions as the court finds to be fair, just and equitable.

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

54 (2) In its verdict the jury shall set forth separately the
55 amount of damages, if any, awarded by it for reasonable
56 funeral, hospital, medical and said other expenses incurred
57 as a result of the wrongful act, neglect or default of the
58 defendant or defendants which resulted in death, and any

59 such amount recovered for such expenses shall be so
60 expended by the personal representative.
61 (d) Every such action shall be commenced within two
62 years after the death of such deceased person, subject to the
63 provisions of chapter fifty-five, article two, section
64 eighteen. The provisions of this section shall not apply to
65 actions brought for the death of any person occurring prior
66 to the first day of July, one thousand nine hundred eighty-
67 two.

CHAPTER 2

(S. B. 83—By Senator Whitlow)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

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

1 No person, including a person licensed to practice
2 medicine or dentistry, who in good faith renders emer-
3 gency care at the scene of an accident or to a victim at
4 the scene of a crime, without remuneration, shall be
5 liable for any civil damages as the result of any act or
6 omission in rendering such emergency care.

CHAPTER 3

(Com. Sub. for H. B. 1703—By Delegate Hutchinson and Delegate Roop)

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

AN ACT to amend and reenact sections one, three, four, five, six, eight and nine, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; consent; consent by infants; revocation of consent or relinquishment for adoption; when given; requirements; filing of petition; notice; and proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ADOPTION.

§48-4-1. Definitions.

§48-4-3. Consent.

§48-4-4. Consent by infants.

§48-4-5. Revocation of consent or relinquishment for adoption; when given; professional fees.

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

§48-4-8. Notice.

§48-4-9. Proceedings.

§48-4-1. Definitions.

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

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

8 (b) A "determined father" is, before adoption, a person (1)
9 adjudicated to be the father of a child under the provisions
10 of article seven of this chapter; or (2) who makes an affidavit
11 stating that he is the father of a child and who is identified
12 as the father by the mother in a like affidavit; or (3) who has,

13 at his instance, been otherwise judicially determined to be the
14 biological father of the child entitled to parental rights with
15 respect to the child; or (4) who claims to be the father of the
16 child.

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

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

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

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

§48-4-3. Consent.

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

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

17 (c) If all persons entitled to parental rights of the child
18 sought to be adopted are deceased or have been deprived of
19 the custody of the person of such child by law, then and in
20 such case, the written consent, acknowledged as aforesaid, of
21 the legal guardian of such child or those having at the time
22 the legal custody of the child shall be obtained and so
23 presented, and if there be no legal guardian nor any person
24 having the legal custody of the child, then such consent must
25 be obtained from some discreet and suitable person appointed

26 by the court or judge thereof to act as the next friend of such
27 child in the adoption proceedings.

28 (d) If one of the persons entitled to parental rights of the
29 child sought to be adopted is deceased, only the consent or
30 relinquishment of the surviving person entitled to parental
31 rights shall be required.

32 (e) In addition to the consent required in subsections (a)
33 through (d) of this section, in any case where the child sought
34 to be adopted is twelve years of age or over, the written
35 consent of such child to such adoption, given in the presence
36 of the judge having jurisdiction thereof, must also be obtained
37 and presented before the entry of any order of adoption, unless
38 for extraordinary cause such is waived by court order.

§48-4-4. Consent by infants.

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

**§48-4-5. Revocation of consent or relinquishment for adoption;
when given; professional fees.**

1 (a) Parental consent or relinquishment of legal custody for
2 adoption purposes, whether given by an adult or minor, is
3 irrevocable from the time of execution, except where a court
4 of competent jurisdiction finds that, notwithstanding the terms
5 of the consent or relinquishment, such consent or relinquish-
6 ment was obtained by fraud or duress, if:

7 (1) The consent or relinquishment is executed after the
8 expiration of seventy-two hours after the birth of the child,

9 and the consent so states;

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

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

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

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

36 (c) A consent or relinquishment of legal custody which is
37 revocable pursuant to the provisions of subdivision (b)
38 hereunder, if executed in this state, shall set forth the method
39 by which the same may be revoked, including the name and
40 location of the person to contact in the event the person desires
41 to exercise his or her right of revocation. Notwithstanding any
42 provision of this section to the contrary, any revocable consent
43 which does not so state the method of revocation may be
44 revoked within twenty days of the time of execution and,
45 whether given by an adult or a minor, is irrevocable thereafter
46 except where a court of competent jurisdiction finds that such
47 consent or relinquishment for adoption was obtained by fraud
48 or duress.

49 (d) Notwithstanding any other provision of this section to
50 the contrary, a relinquishment of legal custody for adoption
51 of a child given by a minor to a licensed private child welfare
52 agency or to the state department of human services shall be
53 with section one, article three, chapter forty-nine of this code.

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

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

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

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

§48-4-8. Notice.

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

8 (b) Such notice shall be served on each such person at least
9 twenty days before the date of the final hearing in the adoption
10 proceeding and shall inform the person that his or her parental
11 rights, if any, may be terminated in the proceeding and that
12 such person may appear and defend any such rights within
13 twenty days of such service. In the case of any such person
14 who is a nonresident or whose whereabouts are unknown,
15 service shall be achieved (1) by personal service, (2) by
16 registered or certified mail, return receipt requested, postage

17 prepaid, to the person's last-known address, with instructions
18 to forward, or (3) by publication. If personal service is not
19 acquired, then if the person giving notice shall have any
20 knowledge of the whereabouts of the person to be served,
21 including a last-known address, service by mail shall be first
22 attempted as herein provided. Any such service achieved by
23 mail shall be complete upon mailing and shall be sufficient
24 service without the need for notice by publication. In the event
25 that no return receipt is received giving adequate evidence of
26 receipt of the notice by the addressee or of receipt of the notice
27 at the address to which the notice was mailed or forwarded,
28 or if the whereabouts of the person are unknown, then the
29 person required to give notice shall cause service of such notice
30 by publication as a Class II publication in compliance with
31 the provisions of article three, chapter fifty-nine of the code,
32 and the publication area shall be the county where such
33 proceedings are had, and in the county where the person to
34 be served was last known to reside except in cases of foreign
35 adoptions where the child is admitted to this country for
36 purposes of adoptive placement and the United States
37 Immigration and Naturalization Service has issued the foreign-
38 born child a visa or unless good cause is shown for not
39 publishing in the county where the person was last known to
40 reside. The notice shall state the court and its address but not
41 the names of the adopting parents. In the case of a person
42 under disability, service shall be made on the person and his
43 personal representative, or if there be none, on a guardian ad
44 litem.

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

§48-4-9. Proceedings.

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

5 (1) It determines that no person retains parental rights in

6 such child except the petitioner and the petitioner's spouse, or
7 the joint petitioners;

8 (2) That all applicable provisions of this article have been
9 complied with;

10 (3) That the petitioner is, or the petitioners are, fit persons
11 to adopt the child; and

12 (4) That it is in the best interests of the child to order such
13 adoption.

14 (b) The court or judge thereof may adjourn the hearing of
15 such petition or the examination of the parties in interest from
16 time to time, as the nature of the case may require. Between
17 the time of the filing of the petition for adoption and the
18 hearing thereon, the court or judge thereof shall, unless the
19 court or judge otherwise directs, cause a discreet inquiry to
20 be made to determine whether such child is a proper subject
21 for adoption and whether the home of the petitioner or
22 petitioners is a suitable home for such child. Any such inquiry,
23 if directed, shall be made by any suitable and discreet person
24 not related to either the persons previously entitled to parental
25 rights or the adoptive parents, or by an agency designated by
26 the court, or judge thereof, and the results thereof shall be
27 submitted to the court or judge thereof prior to or upon the
28 hearing on the petition and shall be filed with the records of
29 the proceeding and become a part thereof. The report shall
30 include, but not be limited to, the following:

31 (1) A description of the family members, including medical
32 and employment histories;

33 (2) A physical description of the home and surroundings;
34 and

35 (3) A description of the adjustment of the child and family.

36 (c) If it shall be necessary, under the provisions of this
37 article, that a discreet and suitable person shall be appointed
38 to act as the next friend of the child sought to be adopted,
39 then and in that case the court or judge thereof shall order
40 a notice of the petition and of the time and place when and
41 where the appointment of next friend will be made, to be
42 published as a Class II legal advertisement in compliance with
43 the provisions of article three, chapter fifty-nine of this code,
44 and the publication area for such publication shall be the
45 county where such court is located. At the time and place so

46 named and upon due proof of the publication of such notice,
47 the court or judge thereof shall make such appointment, and
48 shall thereupon assign a day for the hearing of such petition
49 and the examination of the parties interested.

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

CHAPTER 4

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

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

AN ACT to amend and reenact section four-b, article one, chapter
nineteen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to extending the authorization of the commissioner of the department of agriculture to increase certain fees by rules to a maximum.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

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

14 Section six, article two-a (permits for public markets);
15 section ten, article two-a (licensing of weighmen and
16 auctioneers); section eleven, article two-a (grading, classifying
17 or standardizing license); section fourteen, article two-a
18 (testing and inspection of livestock for infectious disease);
19 section four, article two-b (license for commercial slaughterer,
20 etc.); section six, article two-c (auctioneer license); section one,
21 article three (commission merchant license); section four,
22 article five-a (warehouse operations license); section two,
23 article nine-a (permit to feed garbage to swine); section three,
24 article ten-a (certificate to sell eggs); section five, article eleven
25 (permit to manufacture or purchase milk and cream); section
26 nine, article twelve (certificate of nurserymen, etc.); section six,
27 article fourteen (fees for feed inspection); section two, article
28 fifteen (registration fee for commercial fertilizer); section four,
29 article fifteen (inspection fees for commercial fertilizers);

30 section two, article fifteen-a (registration of agricultural liming
31 material); section four, article fifteen-a (inspection fee for
32 liming material); section three, article sixteen (fee for sale of
33 seeds); and section four, article sixteen-a (fees for economic
34 poisons registration).

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

CHAPTER 5

(S. B. 344—By Senator Parker)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. LIVESTOCK DEALERS'S LICENSING ACT.

- §19-10B-1. Short title.
- §19-10B-2. Definitions.
- §19-10B-3. License required; fee.
- §19-10B-4. Applicant to furnish surety bond.
- §19-10B-5. Records of transactions; inspection by commissioner.
- §19-10B-6. Refusals, suspensions or revocation of licenses.
- §19-10B-7. Orders of the commissioner; hearing; review.
- §19-10B-8. Fees paid into special fund in state treasury.
- §19-10B-9. Commissioner to enforce article; rules and regulations.
- §19-10B-10. Penalties.
- §19-10B-11. Construction.

§19-10B-1. Short title.

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

§19-10B-2. Definitions.

- 1 Unless the context clearly indicates otherwise, as used
- 2 in this article:
 - 3 (a) "Bond" means a written instrument issued or
 - 4 executed by a surety or an insurance company licensed
 - 5 to do business in this state, guaranteeing that the person
 - 6 bonded shall faithfully fulfill the terms of the contract
 - 7 of purchase and guarantee payment of the purchase price
 - 8 of all livestock purchased by him, made payable to the
 - 9 commissioner for the benefit of persons sustaining loss
 - 10 resulting from the nonpayment of the purchase price or
 - 11 the failure to fulfill the terms of the contract of purchase.
 - 12 (b) "Commissioner" means the commissioner of agricul-
 - 13 ture of the state of West Virginia and his duly authorized
 - 14 representatives.
 - 15 (c) "Department" means the department of agriculture
 - 16 of the state of West Virginia.
 - 17 (d) "Livestock" means cattle, horses, swine, sheep,
 - 18 goats or any other animal of the bovine, equine, porcine,
 - 19 ovine or caprine specie and domestic poultry.
 - 20 (e) "Livestock dealer" means a person other than a live-
 - 21 stock producer who buys, receives or assembles livestock
 - 22 for resale, either for his own account or that of another
 - 23 person.

24 (f) "Livestock producer" means a person selling live-
25 stock which he has raised or others which he has addi-
26 tionally purchased and summered or wintered.

27 (g) "Person" means an individual, partnership, cor-
28 poration, association or other legal entity.

§19-10B-3. License required; fee.

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

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

1 Before issuing any livestock dealer's license, the com-
2 missioner shall require the applicant to file either:

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

7 (2) A fully executed surety bond in an amount pre-
8 scribed by the commissioner by regulation, but not
9 less than ten thousand dollars for the benefit of the
10 sellers of livestock who have been wronged or damaged
11 by any fraud or fraudulent practices of the livestock
12 dealer, and so adjudged by a court of competent juris-
13 diction and who shall have the right of action for damage
14 for compensation against such bonds.

**§19-10B-5. Records of transactions; inspection by commission-
er.**

1 Every licensed livestock dealer shall make and retain
2 for at least two years written livestock sales records

3 in the form and manner prescribed by the commissioner,
4 including, but not limited to, records indicating the iden-
5 tification numbers or letters, sex, brand and approximate
6 weight of all livestock bought, sold, received, exchanged
7 or otherwise transferred, and the names and addresses of
8 all owners, sellers, consignors or buyers with whom he
9 has in any manner exchanged livestock, with the date of
10 such exchanges.

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

20 The commissioner shall have the authority to enter
21 premises and buildings occupied by a livestock dealer at
22 any reasonable time in order to examine books and rec-
23 ords maintained by the livestock dealer.

24 The commissioner may require livestock dealers to file
25 in such form as he may prescribe, regular or special re-
26 ports, or answers in regard to specific questions, for the
27 purpose of providing information concerning livestock
28 movement and animal disease control.

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

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

5 (a) Where the applicant or licensee has violated the
6 laws of the state or official regulations governing the
7 interstate or intrastate movement, shipment or transpor-
8 tation of livestock.

9 (b) Where there have been false or misleading state-
10 ments as to the health or physical condition of the ani-
11 mals with regard to the official tests or quality of the
12 animals, or the practice of fraud or misrepresentation in

13 connection therewith or in the buying or receiving of
14 animals or receiving, selling, exchanging, soliciting or
15 negotiating the sale, resale, exchange, weighing or ship-
16 ment of animals.

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

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

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

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

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

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

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

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

1 All funds collected under this article shall be paid

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

§19-10B-9. Commissioner to enforce article; rules and regulations.

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

§19-10B-10. Penalties.

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

§19-10B-11. Construction.

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

CHAPTER 6

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year

ending June thirtieth, one thousand nine hundred eighty-five, to the Office of Economic and Community Development, Account No. 1210, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	EXECUTIVE	
4	<i>6—Office of Economic and Community Development</i>	
5	Account No. 1210	
6	15 National Youth Science Camp	\$ 50,000
7	20 Total	\$8,622,559

8 The purpose of this supplementary appropriation bill is
 9 to supplement the aforesaid account and item therein for
 10 expenditure in the current fiscal year 1984-85. Such
 11 amount shall be available for expenditure upon the ef-
 12 fective date of this bill.

CHAPTER 7

(Com. Sub. for H. B. 1946—By Mr. Speaker, Mr. Albright, and Delegate Swann,
By request of the Executive)

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

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

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

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations of federal funds.	
3	<i>6—Office of Economic and Community Development</i>	
4	Acct. No. 1210	
5	18 To local entities	\$35,124,777
6	20 Total	\$46,004,062

7 The purpose of this supplementary appropriation bill is to
8 supplement and amend the designated line item in this account
9 in the amount of \$800,000 to provide federal funds for
10 expenditure in the current fiscal year of 1984-85. Such
11 amounts shall be available for expenditure immediately upon

- 12 the effective date of the bill. Any unexpended balance
13 remaining at the end of such fiscal year is hereby reappro-
14 priated for expenditure in fiscal year 1985-86.

CHAPTER 8

(S. B. 568—Originating in the Senate Committee on Finance)

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 9—*Governor's Office—Civil Contingent Fund*

5 Account No. 1240

6 1 Unclassified—Total\$ — \$500,000

7 The purpose of the bill is to supplement the aforesaid
 8 account and item therein, with such amount being avail-
 9 able for expenditure upon the effective date of this bill
 10 and in the fiscal year 1984-85. Any unexpended balance
 11 remaining at the close of the fiscal year 1984-85, in the
 12 above appropriation is hereby reappropriated for expen-
 13 diture during the fiscal year 1985-86.

CHAPTER 9

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

[Passed March 25, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Department of Corrections-Correctional Units, Account No. 3770, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the

current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	CORRECTIONS		
4	42— <i>Department of Corrections—</i>		
5	<i>Correctional Units</i>		
6	Acct. No. 3770		
7			State
8			General
9			Revenue
10			Fiscal Year
11			1984-1985
12	5a Capital Outlay-		
13	Industrial		
14	5b Home for Youth—		
15	Total	\$ —	\$ 99,000
16	6 Total	\$ —	\$ 20,322,648

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

CHAPTER 10

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

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

AN ACT making a supplementary appropriation of public

money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Department of Human Services, Account No. 4050, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	<i>47—Department of Human Services</i>		
4	Acct. No. 4050		
5	5	Assistance Payments	\$ — \$ 3,306,536
6	20	Total.....	\$ — \$112,945,994

7 The purpose of this supplementary appropriation bill
 8 is to supplement the aforesaid account and item therein
 9 for expenditure in the current fiscal year 1984-85. Such
 10 amounts shall be available for expenditure upon the
 11 effective date of this bill.

CHAPTER 11

(S. B. 491—Originating in the Senate Committee on Finance)

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	HEALTH AND HUMAN SERVICES	
4	50— <i>State Board of Education—Rehabilitation Division</i>	
5	Acct. No. 4400	
6	11a Capital Outlay-Roof Replacement ...	— \$ 315,000
7	12 Total.....	\$— \$10,301,282

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

CHAPTER 12

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

[Passed March 25, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Department of Employment Security, Account No. 4510, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUSINESS AND INDUSTRIAL RELATIONS

4 54—*Department of Employment Security*

5 Acct. No. 4510

6					
7					State
8					General
9					Revenue
10					Fiscal Year
					1984-1985

11 1 Interest Assessment—

12 Total \$ — \$ 6,100,000

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

CHAPTER 13

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

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

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

WHEREAS, The Chief executive has informed the Legislature that

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

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations of federal funds.	
3	CONSERVATION AND DEVELOPMENT	
4	71— <i>Public Land Corporation</i>	
5	Acct. No. 5660	
6		Federal
7		Funds
8		Fiscal Year
9		1984-1985
10	4a Capital Outlay—Blennerhassett	
11	Historical Park Commission—Total . . .	\$ 700,000
12	The purpose of this supplementary appropriation bill is to	
13	appropriate federal funds in accordance with chapter 4, article	
14	11, section 5 of the code to the Blennerhassett Historical Park	
15	Commission for construction and overall capital outlay	
16	purposes. These funds shall be available for expenditure in the	
17	current fiscal year of 1984-85, and upon the effective date of	
18	the bill. Any unexpended balance remaining at the end of such	
19	fiscal year is hereby reappropriated for expenditure in fiscal	
20	year 1985-86.	

CHAPTER 14

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds

remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the state Department of Highways, Account No. 6700, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1984-1985, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 85—State Department of Highways

4 Acct. No. 6700

5 TO BE PAID FROM STATE ROAD FUND

6		Federal	Other
7		Revenue	Revenue
8		Fiscal Year	Fiscal Year
9		1984-1985	1984-1985
10	1 Maintenance Expressway,		
11	2 Trunkline and Feeder	\$ —0—	\$ 49,523,000
12	3 Maintenance, State		
13	4 Local Services	—0—	67,155,000

14	5	Maintenance, Contract		
15	6	Paving and		
16	7	Secondary Road		
17	8	Maintenance	—0—	19,584,000
18	9	Inventory Revolving	—0—	1,425,000
19	10	Equipment Revolving	—0—	4,375,000
20	11	General Operations	—0—	17,674,000
21	12	Debt Service	—0—	80,000,000
22	13	Interstate Construction	—0—	160,000,000
23	14	Other Federal		
24	15	Aid Programs	—0—	128,021,000
25	16	Appalachian Program	—0—	25,406,000
26	17	Nonfederal Aid		
27	18	Construction	—0—	8,189,000
28	19	Total	\$ —0—	\$561,352,000

29 The purpose of this supplementary appropriation bill is to
 30 supplement existing items in the aforesaid account for
 31 expenditure in the fiscal year of 1984-1985, and to reflect the
 32 new total spending authority of the spending unit for such
 33 fiscal year. Such increased amounts shall be available for
 34 expenditure upon the effective date of this bill."

CHAPTER 15

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

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

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

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

available for expenditure in fiscal year 1984-85, a portion of the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.
 2 Section 10. Appropriation from federal block grants.
 3 *124-A—Office of Economic*
 4 *and Community Development—*
 5 *Justice Assistance Act*
 6 Acct. No. 8032
 7 TO BE PAID FROM FEDERAL FUNDS

8 1 To Local Entities—Total \$600,000

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

CHAPTER 16

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

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

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal

funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Crime Victim Reparation, Account No. 8412, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

Be it enacted by the Legislature of West Virginia:

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

1 **TITLE 2. APPROPRIATIONS:**

2 **Section 2. Appropriations of federal funds.**

3 **105—Crime Victim Reparation**

4 **Acct. No. 8412**

	Federal Funds Fiscal Year 1984-85
5 3A Victim Compensation Program	\$ 52,639
6 4 Total	<hr/> \$ 52,639

7 The purpose of this supplementary appropriation bill
8 is to appropriate federal funds in accordance with chap-
9 ter four, article eleven, section five of the code. These
10 funds shall be available for expenditure in the current
11 fiscal year of 1984-85, and upon the effective date of the bill.
12 Any unexpended balance remaining at the end of such fiscal
13 year is hereby reappropriated for expenditure in fiscal year
14 1985-86.

CHAPTER 17

(S. B. 714—Originating in the Senate Committee on Finance)

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

AN ACT supplementing and amending items of the existing appropriation of the Department of Human Services, Account No. 4050, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations of federal funds.	
3	47—Department of Human Services	
4	Account No. 4050	
5	2 Current Expenses	\$ 174,320,722
6	20 Total	\$ 190,865,290

7 The purpose of this supplementary appropriation bill
 8 is to appropriate federal funds in the amount of \$50,500
 9 for the West Virginia Office of Volunteer Services. These
 10 funds became available after passage of chapter twenty-
 11 two, acts of the Legislature, regular session, one thousand
 12 nine hundred eighty-four. These funds will be available
 13 May 1, 1985.

CHAPTER 18

(S. B. 700—Originating in the Senate Committee on Finance)

[Passed April 8, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia College of Osteopathic Medicine, Account No. 2810, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	25—West Virginia College of Osteopathic Medicine	
4	Acct. No. 2810	
5	1 Personal Services	\$— \$ 2,710,057
6	2 Current Expenses	— 1,028,000
7	5 Primary Health Training	— 240,000
8	6 Total	\$— \$ 4,105,057

9 The purpose of this supplementary appropriation bill
10 is to supplement, amend and transfer certain moneys from
11 one item of the existing appropriation to another item
12 of such appropriation for the designated spending unit,
13 with no new moneys being appropriated hereby. The
14 amounts as newly itemized for expenditure during such
15 fiscal year shall be available for expenditure upon the
16 effective date of this bill.

CHAPTER 19

(H. B. 2056—By Delegate Neal and Delegate Flanigan)

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

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 40—Department of Corrections—Central Office

4 Acct. No. 3680

			State General Revenue Fiscal Year 1984-1985
5			
6			
7			
8			
9			
10	5 Adult Female		
11	Offenders Contract	\$	694,646
12	Current Expenses	\$673,742	_____
13	6 Total	\$	1,559,229
14	42—Department of Corrections—Correctional Units		
15	Acct. No. 3770		

		State General Revenue Fiscal Year 1984-1985
16		
17		
18		
19		
20		
21	1 Personal Services	<u>\$11,220,754</u>
22	6 Total	<u>\$20,473,648</u>

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

CHAPTER 20

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

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

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

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4400, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known

as the budget bill, and being prior appropriated federal funds, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations of federal funds.

3 50—State Board of Education—Rehabilitation Division

4 Acct. No. 4400

		Federal Funds Fiscal Year 1984-85
5	1 Personal Services	\$ 10,052,861
6	2 Current Expenses	5,120,131
7	3 Repairs and Alterations	220,736
8	4 Equipment	421,195
9	5 Case Services	2,870,343
10	Total	\$ 26,933,763

11 The purpose of this supplementary appropriation bill
12 is to supplement, amend and transfer certain moneys
13 from one item of the existing appropriation of federal
14 funds for current fiscal year, one thousand nine hundred
15 eighty-five, to another item of such appropriation for the
16 designated spending unit, with no new moneys being
17 appropriated hereby. The amounts as newly itemized for
18 expenditure during such fiscal year shall be available for
19 expenditure upon the effective date of this bill.

CHAPTER 21

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

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Railroad Maintenance Authority, Account No. 5690,

for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 73—*West Virginia Railroad Maintenance Authority*

4 Acct. No. 5690

5		State
6		General
7		Revenue
8		Fiscal Year
9		1984-1985
10	2 Current Expenses.....	\$ 190,000
11	3 Repairs and Alterations	\$ 190,000

12 The purpose of this supplementary appropriation bill is to
 13 supplement, amend and transfer the sum of fifty thousand
 14 dollars, state general revenues, prior appropriated to item
 15 three, "Repairs and Alterations" to item 2, "Current
 16 Expenses", with no new moneys being appropriated hereby.
 17 The amounts as newly itemized for expenditure in such
 18 account, during the current fiscal year, one thousand nine
 19 hundred eighty-five, shall be available for such expenditure
 20 upon the effective date of the bill. Any unexpended balances
 21 remaining in such items 2 and 3, at the close of fiscal year
 22 1984-85, are hereby reappropriated for expenditure in fiscal
 23 year 1985-86.

CHAPTER 22

(S. B. 703—Originating in the Senate Committee on Finance)

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Human Rights Commission, Account No. 5980, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 78—*Human Rights Commission*

4 Acct. No. 5980

*5	1	Personal Services	\$—	\$	436,543
6	2	Current Expenses	—		226,448

*7

8 The purpose of this supplementary appropriation bill
9 is to supplement, amend and transfer certain moneys
10 from one item of the existing appropriation to another
11 item of such appropriation for the designated spending
12 unit, with no new moneys being appropriated hereby.
13 The amounts as newly itemized for expenditure shall be
14 available upon the effective date of this bill.

* Clerk's Note: The Governor reduced the amount appropriated for Personal Services by \$500 and deleted all of Line Item Total.

CHAPTER 23

(Com. Sub. for H. B. 1757—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

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

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 3. Appropriations from other funds.		
3	85— <i>State Department of Highways</i>		
4	Acct. No. 6700		
5	TO BE PAID FROM STATE ROAD FUND		
6		Federal	Other
7		Revenue	Revenue
8		Fiscal Year	Fiscal Year
9		1984-1985	1984-1985
10	1	Maintenance Expressway . . . \$	\$
11	2	Trunkline and Feeder . . .	—0— 48,523,000
12	3	Maintenance, State	
13	4	Local Services	—0— 65,707,000
14	5	Maintenance, Contract,	
15	6	Paving and	
16	7	Secondary Road	
17	8	Maintenance	—0— 12,084,000

18	9	Inventory Revolving	—0—	1,425,000
19	10	Equipment Revolving	—0—	4,125,000
20	11	General Operations	—0—	17,674,000
21	12	Debt Service	—0—	80,000,000
22	13	Interstate Construction	—0—	160,000,000
23	14	Other Federal		
24	15	Aid Programs	—0—	128,021,000
25	16	Appalachian Program	—0—	25,406,000
26	17	Nonfederal Aid		
27	18	Construction	—0—	7,189,000
28	19	Total	\$ —0—	\$550,154,000

29 The purpose of this supplementary appropriation bill is to
 30 supplement, amend and transfer certain moneys from items of
 31 the existing appropriation to other items of such appropriation
 32 for the designated spending unit, and to reflect the total
 33 spending authority of the spending unit for the 1984-1985,
 34 fiscal year with no new moneys being appropriated hereby.
 35 The amounts as newly itemized for expenditure in such fiscal
 36 year shall be available for expenditure upon the effective date
 37 of this bill.

CHAPTER 24

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

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

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

Be it enacted by the Legislature of West Virginia:

That the sum of seven hundred fifty thousand dollars of the balances in Account No. 8421-09, including balances carried forward on the first day of July, one thousand nine hundred eighty-four,

available for expenditure in the current fiscal year 1984-85, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

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

CHAPTER 25

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

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

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of accrued interest, earned through the twenty-eighth day of February, one thousand nine hundred eighty-five, and contained in the accounts, as designated, and in the amounts, as hereinafter specified, of the West Virginia Geological Survey, Account No. 7929-08; of the Treasurer's Office—Abandoned and Unclaimed Property, Account No. 8000-12; of the Treasurer's Office—Investment Pool, Account No. 8004-08; of the Real Estate Commission, Account No. 8010-22; of the Office of Economic and Community Development, Domestic Violence—Operations, Account No. 8026-22; of the Office of Economic and Community Development, Domestic Violence—Administration, Account No. 8026-23; of the Office of Economic and Community Development, Law-Enforcement Training—

Operations, Account No. 8026-24; of the Office of Economic and Community Development, Law-Enforcement Training—Administration, Account No. 8026-25; of the Office of Economic and Community Development—Oil Overcharge Refunds, Account No. 8046-10; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06; of the State Tax Department—Chief Inspector, Account No. 8090-06; of the State Tax Department—Federal Reimbursement, Account No. 8090-07; of the State Tax Department—County Tax Fund, Account No. 8090-08; of the Oil and Gas Conservation Commission—Annual Lease Tax, Account No. 8096-06; of the West Virginia Board of Accountancy, Account No. 8100-05; of the West Virginia Board of Dental Examiners, Account No. 8102-15; of the West Virginia Board of Land Surveyors, Account No. 8103-20; of the West Virginia Board of Pharmacy, Account No. 8105-30; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35; of the West Virginia Board of Registered Nurses, Account No. 8110-55; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10; of the Department of Finance and Administration—Revolving Fund, Account No. 8140-08; of the Department of Finance and Administration—State Agency for Surplus Property, Account No. 8145-45; of the Department of Finance and Administration—Information Systems Services Division, Account No. 8152-07; of the Department of Finance and Administration—Transportation Division, Account No. 8157-07; of the Department of Agriculture—Indirect Cost Funds, Account No. 8185-10; of the Department of Agriculture—Rural Resources, Account No. 8190-13; of the Department of Agriculture—Investment Account, Account No. 8194-16; of the Department of Agriculture, Soil Conservation Committee—Operating Account, Account No. 8195-06; of the Department of Agriculture—Small Watershed Program, Account No. 8195-09; of the Department of Corrections—Prison Industries, Account No. 8222-05; of the State Department of Education—Stonewall Jackson Memorial Fund, Account No. 8240-20; of the State Department of Education—Stonewall Jackson Memorial Fund, Account No. 8240-21; of the State Department of Education—Textbook Adoption, Account No. 8240-46; of the State Department of

Education—FFA-FHA Camp and Conference Center—Room and Board, Account No. 8245-07; of the State Department of Education—FFA-FHA Camp and Conference Center—Crafts Program, Account No. 8245-08; of the Department of Employment Security—Interest on Employers Delinquent Contributions, Account No. 8250-08; of the Department of Veterans Affairs—Veterans Home Improvement, Account No. 8260-11; of the Department of Veterans Affairs—Resident Maintenance Collection, Account No. 8260-13; of the Public Employees Insurance Board—Basic Insurance Premium, Account No. 8265-05; of the Public Employees Insurance Board—Administration Expense, Account No. 8265-06; of the Public Employees Insurance Board—Optional Life Insurance Premiums, Account No. 8265-07; of the State Board of Insurance—Premiums and Self Insured Losses, Account No. 8275-06; of the State Board of Insurance—Professional Liability Trust Fund, Account No. 8275-07; of the State Board of Insurance—Mine Subsidence Insurance Fund, Account No. 8275-08; of the Public Service Commission—Special Revenue Administration, Account No. 8280-08; of the Public Service Commission—Gas Pipeline Division, Account No. 8285-08; of the Public Service Commission—Motor Carrier Division, Account No. 8290-08; of the Department of Natural Resources—Watter's Smith State Park, Account No. 8320-11; of the Department of Natural Resources—Investments, Account No. 8325-09; of the Railroad Maintenance Authority—South Branch Valley Railroad, Account No. 8344-06; of the Department of Public Safety—Purchase of Investments, Account No. 8350-12; of the Department of Public Safety—Purchase of Investments, Account No. 8352-12; of the Department of Public Safety—Drunk Driving Prevention, Account No. 8355-10; of the Department of Banking—Revolving Account, Account No. 8392-06; of the Department of Banking—Purchase of Investments, Account No. 8395-08; of the Secretary of State—Filing Fees, Account No. 8436-06; of the State Health Department—Investments, Account No. 8500-30; of the West Virginia Geological Survey—Publication Sales, Account No. 8590-10; of WPBY-TV—Operating Account, Account No. 8595-05; of WPBY-TV—Grants—Even Fund Years, Account No. 8595-08; of WPBY-TV—Capital Expenditure, Account No. 8595-25; of Grandview Educational TV—Operating Expense, Account No. 8596-06; of WSWP-

TV—Corporation for Public Broadcasting Grant, Account No. 8596-16; of WSWP-TV—Corporation for Public Broadcasting Grant, Account No. 8596-20; of WSWP-TV—Capital Outlay, Account No. 8596-26; of Educational Broadcasting Authority—Statwide Service, Account No. 8597-09; of Educational Broadcasting Authority—Radio Network, Account No. 8597-10; of Educational Broadcasting Authority—Radio Network, Account No. 8597-11; of Educational Broadcasting Authority—WV Public Radio, Account No. 8597-14; of Educational Broadcasting Authority—Microwave Interconnect System, Account No. 8597-17; of Educational Broadcasting Authority—Capital Outlay—Equipment, Account No. 8597-27; of WNPB-TV—C.P.B.—A, Account No. 8598-23; of WNPB-TV—C.P.B.—B, Account No. 8598-28; of the West Virginia Board of Regents—Investments, Account No. 8890-07; of the West Virginia University—Medical Schools, Account No. 9280-12; of the Economic and Community Development—Industrial Development Loan Fund, Account No. 9290-15; of the Economic and Community Development—E.D.A.—Title IX Loan Fund, Account No. 9290-20; of the State Building Commission—Parking Lot Operating, Account No. 9500-08; of the State Building Commission—Operating Expense Capitol Complex, Account No. 9500-09; of the State Building Commission—Cafeteria Operating Account, Account No. 9500-12; of the State Building Commission—Bond Forfeiture, Account No. 9500-15; as heretofore being invested, accruing and appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

That the accrued interest, unexpended and unencumbered,

contained in the accounts, as designated, and in the amounts, as hereinafter specified, earned through the twenty-eighth day of February, one thousand nine hundred eighty-five, and as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended, reduced and caused to expire from such designated accounts and back into the state fund, general revenue of the state, and with such amounts to be thereafter available for other and further appropriation upon the effective date of this bill; Account No. 7929-08—\$4,528.83; 8000-12—\$111,250.21; 8004-11—\$8,160.05; 8010-22—\$77,213.37; 8026-22—\$56,750.69; 8026-23—\$4,709.03; 8026-24—\$147,957.37; 8026-25—\$19,644.57; 8046-10—\$7,837.50; 8079-06—\$180.07; 8090-06—\$240,087.63; 8090-07—\$72,887.35; 8090-08—\$157,850.91; 8096-06—\$5,313.66; 8100-05—\$1,247.40; 8102-15—\$33.82; 8103-20—\$3,317.38; 8105-30—\$29,530.98; 8106-35—\$8,671.63; 8110-55—\$17,259.13; 8130-05—\$3,189.62; 8131-10—\$1,999.92; 8140-08—\$20,146.89; 8145-45—\$109,987.19; 8152-07—\$28,933.16; 8157-07—\$49,660.18; 8185-10—\$11,605.62; 8190-13—\$106,091.74; 8194-16—\$1,700.68; 8195-06—\$86,347.41; 8195-09—\$60,762.87; 8222-05—\$14,232.19; 8240-20—\$19,211.85; 8240-21—\$10,110.32; 8240-46—\$7,547.34; 8245-07—\$1,696.11; 8245-08—\$689.13; 8250-08—\$50,637.97; 8260-11—\$473,737.79; 8260-13—\$69,223.33; 8265-05—\$847,691.96; 8265-06—\$92,326.93; 8265-07—\$1,006,349.59; 8275-06—\$193,316.82; 8275-07—\$172,444.15; 8275-08—\$64,223.09; 8280-08—\$1,194,448.16; 8285-08—\$102,398.31; 8290-08—\$210,019.25; 8320-11—\$34,942.92; 8325-09—\$1,964,846.99; 8344-06—\$6,792.02; 8350-12—\$2,409.48; 8352-12—\$2,813.00; 8355-10—\$9,489.95; 8392-06—\$14,345.16; 8395-08—\$101,486.75; 8436-06—\$2,898.52; 8500-30—\$299,054.54; 8590-10—\$27,087.41; 8595-05—\$4,338.46; 8595-08—\$1,493.80; 8595-25—\$3,475.35; 8596-06—\$2,364.32; 8596-16—\$11,320.17; 8596-20—\$4,377.61; 8596-26—\$2,506.26; 8597-09—\$23,210.38; 8597-10—\$4,139.85; 8597-11—\$519.66; 8597-14—\$12,869.28; 8597-17—\$75,533.14; 8597-27—\$1,230.68; 8598-23—\$27,507.07; 8598-28—\$2,669.60; 8890-07—\$1,128,270.02; 9280-12—\$11,510.84; 9290-15—\$490,660.64; 9290-20—\$8,712.95; 9500-08—\$299,398.87; 9500-09—\$160,880.25; 9500-12—\$41,081.86; 9500-15—\$345.59.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue, certain unexpended and unencumbered amounts of accrued interest contained in the accounts as designated and in the

amounts as specified in this bill and as earned through the twenty-eighth day of February, one thousand nine hundred eighty-five; to be thereafter available for other and further appropriations, upon the effective date of this bill.

CHAPTER 26

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

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

CHAPTER 27

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

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

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

- §1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§4. Method of expenditure.
§5. Maximum expenditures.

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

1 **Sec. 2. Definitions.**—For the purpose of this act: “Govern-
2 nor” shall mean the Governor of the state of West Virginia.

3 “Code” shall mean the code of West Virginia, one thousand
4 nine hundred thirty-one, as amended.

5 “Spending unit” shall mean the department, agency or
6 institution to which an appropriation is made.

7 The “fiscal year one thousand nine hundred eighty-six” shall
8 mean the period from July first, one thousand nine hundred

9 eighty-five through June thirtieth, one thousand nine hundred
10 eighty-six.

11 "From collections" shall mean that part of the total
12 appropriation which must be collected by the spending unit
13 to be available for expenditure. If the authorized amount of
14 collections is not collected, the total appropriation for the
15 spending unit shall be reduced automatically by the amount
16 of the deficiency in the collection. If the amount collected
17 exceeds the amount designated "from collections," the excess
18 shall be set aside in a special surplus fund and may be
19 expended for the purpose of the spending unit as provided by
20 article two, chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

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

8 From appropriations made to the spending units of state
9 government, upon approval of the governor, there may be
10 transferred to a special account an amount sufficient to match
11 federal funds under any federal act.

12 Unless otherwise specified, appropriations for personal
13 services shall include salaries of heads of spending units.

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

17 Funds appropriated for "annual increment" shall be
18 transferred to "personal services" or other designated items
19 only as required.

20 "Current expenses" shall mean operating costs other than
21 personal services and shall not include equipment, repairs and
22 alterations, buildings or lands.

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

26 “Repairs and alterations” shall mean routine maintenance
 27 and repairs to structures and minor improvements to property
 28 which do not increase the capital assets.

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

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

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

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

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

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

1 **Sec. 5. Maximum expenditures.**—No authority or require-
 2 ment of law shall be interpreted as requiring or permitting an
 3 expenditure in excess of the appropriations set out in this act.

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§2. Appropriations of federal funds.

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§15. Appropriations for refunding erroneous payment.

§16. Sinking fund deficiencies.

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

§18. Appropriations for local governments.

§19. Total appropriations.

§20. General school fund.

1 **Section 1. Appropriations from general revenue.**—From
2 the state fund, general revenue, there is hereby appropriated
3 conditionally upon the fulfillment of the provisions set forth
4 in article two, chapter five-a of the code, the following
5 amounts, as itemized, for expenditure during the fiscal year
6 one thousand nine hundred eighty-six.

1 **Sec. 2. Appropriations of federal funds.**—In accordance
2 with article eleven, chapter four, federal funds are hereby

3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in article two, chapter five-a of the code,
 5 the following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred eighty-six.

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

LEGISLATIVE

1—Senate

Acct. No. 1010

	Federal Funds Fiscal Year 1985-1986	General Revenue Fund Fiscal Year 1985-1986
1 Compensation of Members	\$ —	\$ 300,000*
2 Compensation and Per Diem of		
3 Officers and Employees	—	985,000
4 Expenses of Members	—	215,000
5 Current Expenses and		
6 Contingent Fund	—	425,000
7 Printing Blue Book	—	175,000
8 Total	\$ —	\$ 2,100,000

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

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

14 The appropriations for the senate for the fiscal year 1984-
 15 85 are to remain in full force and effect, and are hereby
 16 reappropriated to June 30, 1986.

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

19 Upon written request of the clerk of the senate, the auditor
 20 shall transfer amounts between items of the total appropriation

21 in order to protect or increase the efficiency of the service.

22 The clerk of the senate, with approval of the president, is
 23 authorized to draw his requisition upon the state auditor,
 24 payable out of the Current Expenses and Contingent Fund of
 25 the senate, for any bills for supplies and services that may have
 26 been incurred by the senate and not included in the
 27 appropriation bill, for supplies and services incurred in
 28 preparation for the opening, the conduct of the business and
 29 after adjournment of any regular or extraordinary session, and
 30 for the necessary operation of the senate offices, the requisition
 31 for same to be accompanied by the bills to be filed with the
 32 state auditor.

33 The clerk of the senate, with written approval of the
 34 president, or the president of the senate shall have authority
 35 to employ such staff personnel during any session of the
 36 Legislature as shall be needed in addition to staff personnel
 37 authorized by the senate resolution adopted during any such
 38 session. The clerk of the senate with written approval of the
 39 president, or the president of the senate shall have authority
 40 to employ such staff personnel between sessions of the
 41 legislature as shall be needed, the compensation of all staff
 42 personnel during and between sessions of the legislature,
 43 notwithstanding any such senate resolution, to be fixed by the
 44 president of the senate. The clerk is hereby authorized to draw
 45 his requisitions for the payment of all such staff personnel
 46 upon the state auditor, payable out of the appropriation for
 47 Compensation and Per Diem of Officers and Employees or
 48 Current Expenses and Contingent Fund of the senate for such
 49 services.

50 For duties imposed by law and the senate, the clerk of the
 51 senate shall be paid a monthly salary as provided in senate
 52 resolution adopted February, 1985 and payable out of the
 53 amount appropriated for Compensation and Per Diem of
 54 Officers and Employees.

2—House of Delegates

Acct. No. 1020

1	Compensation of Members	\$	—	\$	850,000*
2	Compensation and Per Diem of				
3	Officers and Employees	—			446,000

4	Expenses of Members	—	620,000
5	Current Expenses and		
6	Contingent Fund	—	975,000
7	Total	\$ —	\$ 2,891,000

* Includes basic salary of legislator at \$6,500 per annum.

8 The appropriations for the house of delegates for the fiscal
9 year 1984-85 are to remain in full force and effect and are
10 hereby reappropriated to June 30, 1986.

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

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

17 The clerk of the house of delegates, with approval of the
18 speaker, is authorized to draw his requisitions upon the state
19 auditor, payable out of the Current Expenses and Contingent
20 Fund of the house of delegates, for any bills for supplies and
21 services that may have been incurred by the house of delegates
22 and not included in the appropriation bill, for bills for services
23 and supplies incurred in preparation for the opening of the
24 session and after adjournment, and for the necessary operation
25 of the house of delegates offices, the requisition for the same
26 to be accompanied by bills to be filed with the state auditor.

27 The speaker of the house of delegates, upon approval of the
28 house committee on rules, shall have authority to employ such
29 staff personnel during and between sessions of the legislature
30 as shall be needed, in addition to personnel designated in the
31 house resolution, and the compensation of all personnel shall
32 be as fixed in such house resolution, for the session, or fixed
33 by the speaker, with the approval of the house committee on
34 rules, during and between sessions of the legislature,
35 notwithstanding such house resolution. The clerk of the house
36 is hereby authorized to draw requisitions upon the state
37 auditor, payable from the Compensation and Per Diem of
38 Officers and Employees fund or the Current Expenses and
39 Contingent Fund of the house of delegates for such services.

40 For duties imposed by law and by the house of delegates,
41 including salary allowed by law as keeper of the rolls, the clerk

42 of the house of delegates shall be paid a monthly salary as
 43 provided in the house resolution, unless increased between
 44 sessions under the authority of the speaker, with approval of
 45 the house committee on rules, and payable from the
 46 Compensation and Per Diem of Officers and Employees item
 47 or the Current Expenses and Contingent Fund item of the
 48 house of delegates.

3—Joint Expenses

Acct. No. 1030

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

8 The appropriation for Joint Expenses for the fiscal year
 9 1984-85 are to remain in full force and effect and are hereby
 10 reappropriated to June 30, 1986. Any balances so reappropriated
 11 may be transferred and credited to the 1985-86 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

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

* Includes salaries of supreme court justices at \$55,000 per annum.

9 This appropriation shall be administered by the Adminis-
 10 trative Director of the Supreme Court of Appeals who shall
 11 draw his requisitions for warrants in payment in the form of
 12 payrolls making deductions therefrom, as required by law, for
 13 taxes and other items.

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

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

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor.....	\$	—	\$	72,000
2	Other Personal Services.....		—		1,004,429
3	Annual Increment.....		—		11,844
4	Current Expenses.....		—		366,285
5	Equipment.....		—		4,340
6	Total.....	\$	—	\$	1,458,898

6—Office of Community and Industrial Development

Acct. No. 1210

1	Personal Services.....	\$	481,118	\$	1,674,687
2	Annual Increment.....		5,413		20,795
3	Current Expenses.....		954,585		1,069,609
4	Equipment.....		12,850		16,500
5	Economic Development				
6	Loan Fund.....		—		1,000,000
7	W. Va. Automobile				
8	Assistance Corporation.....		—		50,000

9	W. Va. Jobs Development Corporation.....	—	50,000
11	W. Va. Public Energy Authority.....	—	55,000
13	Regional Council	—	220,000
14	A.R.C. Assessment.....	—	210,000
15	Partnership Grants.....	—	3,000,000
16	Fire Departments	—	500,000
17	Civil Air Patrol.....	—	89,000
18	Aeronautics Commission—		
19	Airport Matching.....	—	300,000
20	Emergency Assistance	—	100,000
21	Coal Development	—	—0—
22	Annual Increment.....	—	—0—
23	National Youth Science Camp ..	—	100,000
24	To Local Entities	10,525,755	—
25	Transfer to State		
26	Spending Units	843,900	—
27	Total.....	\$12,823,621	\$ 8,455,591

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

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

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

(WV Code Chapter 5)

Acct. No. 1220

1 Any unexpended balance remaining in the appropriation
 2 “Emergency Jobs Program Public Service Jobs”, “Vocational
 3 Centers Computer Network”, and “Emergency Jobs Pro-

- 4 gram—Parks” at the close of the fiscal year 1984-85 is hereby
5 reappropriated for expenditure during the fiscal year 1985-86.

8—*Governor's Office—Custodial Fund*

(WV Code Chapter 5)

Acct. No. 1230

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

9—*Governor's Office—Civil Contingent Fund*

(WV Code Chapter 5)

Acct. No. 1240

- 1 Unclassified—Total \$ — \$ 1,000,000
2 From this appropriation there may be expended, at the
3 discretion of the Governor, an amount not to exceed \$1,000
4 as West Virginia's contribution to the interstate oil compact
5 commission.
6 Any unexpended balance remaining in this appropriation at
7 the close of the fiscal year 1984-85 is hereby reappropriated
8 for expenditure during the fiscal year 1985-86.

10—*Department of Commerce*

Acct. No. 1250

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

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

- 4 Any unexpended balance remaining in the appropriation for
5 Chief Logan State Park and Cacapon State Park—Capital
6 Outlay at the close of the fiscal year 1984-85 is hereby
7 reappropriated for expenditure during the fiscal year 1985-86.

11—*Office of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services	\$ 288,460	\$ 264,183*
2	Annual Increment.....	1,091	5,411
3	Current Expenses	227,383	44,371
4	Repairs and Alterations.....	27,500	6,500
5	Equipment.....	100,900	—
6	To Local Entities	675,000	—
7	Transfer to State Spending		
8	Units.....	176,796	
9	Total.....	\$ 1,497,130	\$ 320,465

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

FISCAL

12—*Auditor's Office—General Administration*

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of State Auditor	\$ —	\$ 46,800
2	Other Personal Services.....	—	1,581,128
3	Annual Increment.....	—	25,560
4	Current Expenses	—	671,527
5	Equipment.....	—	55,650
6	Microfilm.....	—	20,000
7	Total.....	\$ —	\$ 2,400,665

13—*Auditor's Office—Social Security*

(WV Code Chapter 12)

Acct. No. 1510

1	To Match Contributions		
2	of State Employees for		
3	Social Security—Total.....	\$ —	\$ 20,188,846

4 The above appropriation is intended to cover the state's
 5 share of social security costs for those spending units operating
 6 from the general revenue fund. The state department of
 7 highways, department of motor vehicles, workers' compensa-
 8 tion commissioner, public service commission, and other
 9 departments operating from special revenue funds and/or

10 federal funds shall pay their proportionate share of the social
11 security cost for their respective divisions.

12 Any unexpended balance remaining in the appropriation for
13 Auditor's Office—Social Security at the close of the fiscal year
14 1984-85 is hereby reappropriated for expenditure during the
15 fiscal year 1985-86.

14—*Auditor's Office—Unemployment Compensation*

(WV Code Chapter 12)

Acct. No. 1520

1 Unclassified—Total \$ — \$ 1,000,000

2 The above appropriation is intended to cover to state's share
3 of unemployment compensation costs for those spending units
4 operating from the general revenue fund. The state department
5 of highways, department of motor vehicles, workers' compen-
6 sation commissioner, and other departments operating from
7 special revenue funds and/or federal funds shall pay their
8 proportionate share of the unemployment compensation cost
9 for their respective divisions.

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

15—*Treasurer's Office*

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of State Treasurer	\$	—	\$	50,400
2	Other Personal Services		—		771,078
3	Annual Increment		—		7,000
4	Current Expenses		—		302,835
5	Equipment		—		30,000
6	Microfilm Program		—		10,000
7	Total	\$	—	\$	1,171,313

16—*Treasurer's Office—School Building Sinking Fund*

(WV Code Chapter 12)

Acct. No. 1650

1	Total.....	\$	—	\$	15,046,500
2	Any unexpended balance remaining in the appropriation for				
3	“Treasurer's Office—School Building Sinking Fund” at the				
4	close of the fiscal year 1984-85 is hereby reappropriated for				
5	expenditure during the fiscal year 1985-86.				

17—*Municipal Bond Commission*

(WV Code Chapter 13)

Acct. No. 1700

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

18—*State Tax Department*

(WV Code Chapter 11)

Acct. No. 1800

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

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

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

- 14 Any unexpended balance remaining in Acct. No. 1850-06
 15 (fiscal year 1981) shall expire June 30, 1985.

19—*Department of Finance and Administration*
 (WV Code Chapter 5A)

Acct. No. 2100

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

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

- 19 The workers' compensation commissioner, department of
 20 human services, public service commission, department of
 21 natural resources, department of motor vehicles, state
 22 department of highways, state health department and state tax
 23 department—income tax division shall reimburse the Postage
 24 appropriation of the department of finance and administration
 25 monthly for all meter service. Any spending unit operating
 26 from special revenue or receiving reimbursement for postage
 27 costs from the federal government shall refund to the Postage
 28 account of the department of finance and administration such
 29 amounts. Should this appropriation for postage be insufficient
 30 to meet the mailing requirements of the state spending units
 31 as set out above, any excess postage meter service requirements
 32 shall be a proper charge against the units, and each spending
 33 unit shall refund to the Postage appropriation of the
 34 department of finance and administration any amounts

35 required for the department for postage in excess of this
36 appropriation.

37 Any unexpended balance remaining in the Postage account
38 at the close of the fiscal year 1984-85 is hereby reappropriated
39 for expenditure during the fiscal year 1985-86.

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

20—*State Board of Insurance*

(WV Code Chapter 29)

Acct. No. 2250

1	Personal Services	\$	—	\$	92,516
2	Annual Increment		—		648
3	Current Expenses		—		37,900
4	Equipment		—		3,000
5	Premiums, Claims and				
6	Other Expenses		—		4,000,000
7	Total	\$	—	\$	4,134,064

8 The above appropriation on line 5-6 is for the purpose of
9 paying premiums, self-insurance losses, loss adjustment
10 expenses and loss prevention engineering fees for property,
11 casualty and fidelity insurance for the various state agencies.
12 Should this appropriation be insufficient to meet the
13 requirements of the state spending units, any excess costs shall
14 be a proper charge against the units and each spending unit
15 shall reimburse to the board of insurance any amounts
16 required for that department for costs in excess of this
17 appropriation.

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

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

LEGAL

21—Attorney General

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1	Salary of Attorney General	\$	—	\$	50,400
2	Other Personal Services		—		1,858,454
3	Annual Increment		—		15,904
4	Current Expenses		—		401,965
5	Equipment		—		63,815
6	Publication of Reports				
7	and Opinions		—		20,000
8	To Protect the Resources or				
9	Tax Structure of the State				
10	in Controversies or Legal				
11	Proceedings Affecting Same . .		—		3,250
12	Consumer Protection		—		305,380
	Personal Services		—		(232,271)
	Annual Increment		—		(1,692)
	Current Expenses		—		(62,977)
	Equipment		—		(8,440)
13	Total	\$	—	\$	2,719,168

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

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

22—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total	\$	—	\$	12,000
2	To pay expenses of members of the commission on uniform				
3	state laws.				

INCORPORATING AND RECORDING

23—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary of State	\$	—	\$	43,200
2	Other Personal Services		—		488,629
3	Annual Increment		—		5,256
4	Current Expenses		—		249,820
5	Equipment		—		30,000
6	Certification of Primary and				
7	General Elections		—		—0—
8	Publication of State Register . . .		—		98,778
9	Annual Increment		—		576
10	Election Training Presentation . .		—		5,000
11	Total	\$	—	\$	921,259

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

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

EDUCATIONAL

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

(WV Code Chapter 18)

Acct. No. 2790

1	Personal Services	\$	—	\$126,729,154
2	Personal Services—			
3	Marketing Conditions		—	300,000
4	Annual Increment		—	—0—
5	Current Expenses		—	23,717,125
6	Repairs and Alterations		—	1,309,000
7	Equipment		—	1,124,000
8	Bureau of Coal Research		—	1,205,000
9	National Research Center for			
10	Coal and Energy		—	1,600,000
11	Doctoral Research—W.V.U. . . .		—	25,000

12	Agricultural and Forestry		
13	Experiment Station—W.V.U.	—	2,151,657
	Personal Services	—	(1,870,782)
	Current Expenses	—	(280,875)
14	Total	\$ —	\$158,160,936

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

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

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

25—*West Virginia Board of Regents*

(WV Code Chapter 18)

Acct. No. 2800

1	Personal Services	\$ —	\$ 845,639
2	Annual Increment	—	10,000
3	Current Expenses	—	378,000
4	Equipment	—	7,000
5	Higher Education Grant		
6	Program	—	3,500,000
7	Tuition Contract Programs	—	710,000
8	Total	\$ —	\$ 5,450,639

26—*West Virginia College of Osteopathic Medicine*

(WV Code Chapter 18)

Acct. No. 2810

1	Personal Services	\$ —	\$ 2,830,750
2	Annual Increment	—	—0—
3	Current Expenses	—	1,118,000

4	Repairs and Alterations	—	50,000
5	Equipment	—	64,000
6	Primary Health Training	—	240,000
7	Total	\$ —	\$ 4,302,750

27—Marshall University—Medical School

(WV Code Chapter 18)

Acct. No. 2840

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

28—West Virginia University—Medical School

(WV Code Chapter 18)

Acct. No. 2850

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

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

29—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services	\$ —	\$ 2,279,940
2	Annual Increment	—	36,949
3	Current Expenses	5,800	1,219,077

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

30—*Education Employees Grievance Board*

Acct. No. 2860-25

1	Unclassified—Total	\$ —	\$ 100,000
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31—*State Department of Education—School Lunch Program*

(WV Code Chapters 18 and 18A)

Acct. No. 2870

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

32—*State Board of Education—Vocational Division*
(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services	\$ 761,264	\$ 671,612
2	Annual Increment.....	11,972	13,122
3	Current Expenses	600,186	149,962
4	Repairs and Alterations.....	2,000	—
5	Equipment.....	81,912	4,000
6	Vocational Aid	—	9,588,345
7	Adult Basic Education.....	—	1,248,800
8	Start-Up Funds and Equipment		
9	for New and Existing Facilities	—	1,250,000
10	New and Expanding Industries..	—	175,052
11	To Local Entities	7,175,976	—
12	Capital Outlay		
13	(Construction).....	—	1,800,000
14	Total.....	\$ 8,633,310	\$ 14,900,893

15 Any unexpended balance remaining in the appropriation for
17 New and Expanding Industries at the close of the fiscal year
18 1984-85 is hereby reappropriated for expenditure during the
19 fiscal year 1985-86.

33—*Educational Broadcasting Authority*

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services	\$ —	\$ 92,290
2	Annual Increment.....	—	288
3	Current Expenses	80,000	41,500
4	Equipment	1,592,141	15,000
5	Regional ETV and Radio	—	4,492,556
6	Annual Increment.....	—	32,598
7	Capital Outlay—Equipment	—	342,000
8	Total.....	\$ 1,672,141	\$ 5,016,232

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

11 Funds appropriated for Regional ETV and Radio may be
12 transferred to special revenue accounts for matching college,

13 university, city, county, federal and/or other generated
14 revenue.

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

34—*State Department of Education—State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2930

1	Professional Educators	\$	—	\$	—0—
2	Service Personnel		—		—0—
3	Fixed Charges		—		—0—
4	Total	\$	—	\$	—0—

35—*State Department of Education—State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2940

1	Salary Equalization—Total . . .	\$	—	\$	—0—
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36—*State Department of Education—State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Professional Educators	\$	—	\$461,445,783
2	Service Personnel		—	163,308,742
3	Fixed Charges		—	70,222,389
4	Transportation		—	25,507,853
5	Administration		—	4,383,733
6	Other Current Expenses		—	40,609,033
7	Improve Instructional Programs		—	27,120,013
8	Basic Foundation Allowances . . .		—	792,597,546
9	Less Local Share		—	103,648,187
10	Total Basic State Aid		—	688,949,359
11	Loss Reduction		—	2,699,443
12	Staffing Improvement		—	1,461,181
	Professional Edu-			
	cators		—	(702,918)
	Service Personnel		—	(758,263)

13	Increased Enrollment	—	200,000
14	Total	\$ —	\$693,309,983

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

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Personal Services	\$ 426,902	\$ 335,255
2	Annual Increment	5,368	3,294
3	Current Expenses	775,596	226,020
4	Equipment	25,971	16,022
5	Out-of-State Instruction	—	428,000
6	Aid-to-Counties	252,992	7,533,136
	County Grant		
	Awards	—	(6,054,303)
	Regional Education		
	Service Agency		
	Grants	—	—0—
	Special State		
	Projects	—	(209,397)
	Regional Education		
	Service Agency		
	Evaluations	—	—0—
	Medley Educational		
	Programs	(252,992)	(1,191,458)
	Summer Camp for		
	Gifted Children	—	(77,978)
7	To Local Entities	19,303,787	—
8	PreSchool Handicapped Fund ..	—	1,000,000
9	Total	\$ 20,790,616	\$ 9,541,727

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

14 The appropriation for Aid-to-Counties may be expended by
 15 county boards of education for the initiation, maintenance
 16 and/or improvement of special education programs including
 17 employment of special professional education personnel solely

18 serving exceptional children; training of educational personnel
 19 to work with exceptional children; and supportive costs such
 20 as materials, transportation, contracted services, minor
 21 renovation and other costs directly related to the special
 22 education delivery process prescribed by the state board of
 23 education.

24 The appropriation for Special State Projects may be
 25 expended to support (1) an instructional materials center for
 26 visually handicapped children at the West Virginia schools for
 27 the deaf and the blind, (2) the state special olympics program,
 28 (3) the West Virginia advisory council for the education of
 29 exceptional children at the West Virginia college of graduate
 30 studies, and (4) statewide training activities or other programs
 31 benefitting exceptional children.

38—*Teachers' Retirement Board*

(WV Code Chapter 18)

Acct. No. 2980

1	Teachers' Retirement Fund	\$	—	\$	33,200,000
2	Supplemental Benefits for				
3	Annuitants		—		6,400,000
4	Total	\$	—	\$	39,600,000

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

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Personal Services	\$	—	\$	3,801,943
2	Current Expenses		—		898,800
3	Repairs and Alterations		—		396,200
4	Equipment		—		223,100
5	Total	\$	—	\$	5,320,043

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

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services	\$	—	\$	144,439
2	Annual Increment		—		2,584

3	Current Expenses	—	93,700
4	Repairs and Alterations.....	—	19,000
5	Equipment	—	5,250
6	Total.....	\$ —	\$ 264,973

41—*West Virginia Library Commission*

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services	\$ 90,771	\$ 1,056,257
2	Annual Increment.....	900	22,140
3	Current Expenses	56,000	220,500
4	Repairs and Alterations.....	5,000	4,100
5	Equipment	50,000	10,000
6	Per-Capita Grants	55,000	5,812,964
7	Library Matching Fund		
8	(Construction)	250,940	20,000
9	Books, Periodicals and Films ...	—	250,000
10	To Local Entities	543,615	—
11	Total.....	\$ 1,061,226	\$ 7,395,961

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

42—*Department of Culture and History*

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services	\$ 188,020	\$ 1,106,689*
2	Annual Increment.....	324	11,736
3	Current Expenses	100,364	287,899
4	Repairs and Alterations.....	—	30,100
5	Equipment	4,000	51,900
6	Arts and Humanities Fund	453,703	868,832
	Personal Services	—	(189,181)
	Annual Increment.....	—	(1,800)
	Current Expenses	(7,500)	(601)
	Grants and Contractual		
	Services	(446,203)	(677,250)
7	Department Programming		
8	Funds	—	480,400

	Outreach and Educa-		
	tion	—	(92,570)
	Technical Assistance	—	(92,830)
	Cultural Center		
	Programs	—	(295,000)
9	Historical Preservation	69,051	150,751
10	Washington Carver Camp	—	140,226
11	Grants, Fairs and Festivals	—	655,000
12	Independence Hall	—	80,000
13	Total	\$ 815,462	\$ 3,863,533

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

14 The above appropriations for Arts and Humanities Fund,
 15 Department Programming Funds, Grants, Fairs and Festivals
 16 and Washington Carver Camp shall be expended only upon
 17 authorization of the department of culture and history and in
 18 accordance with the provisions of chapter five-a and article
 19 three, chapter twelve of the code.

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

26 Any unexpended balance remaining in the appropriation for
 27 Washington Carver Camp at the close of the fiscal year 1984-
 28 85 is hereby reappropriated for expenditure during the fiscal
 29 year 1985-86.

CORRECTIONS

43—*Probation and Parole Board*

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members of Board		
2	of Probation and Parole	\$ —	\$ 81,000*
3	Other Personal Services	—	50,552
4	Annual Increment	—	864
5	Current Expenses	—	25,000
6	Repairs and Alterations	—	300
7	Equipment	—	1,600
8	Total	\$ —	\$ 159,316

* Three members at \$27,000 per annum each.

44—*Department of Corrections—Central Office*

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

Acct. No. 3680

1	Personal Services	\$	—	\$	473,838*
2	Annual Increment.....		—		2,484
3	Current Expenses		—		213,418
4	Repairs and Alterations.....		—		1,500
5	Equipment		—		100,000
6	Adult Female				
7	Offenders Contract.....		—		945,901
	Personal Services		—		(21,848)
	Annual Increment.....		—		(311)
	Current Expenses		—		(923,742)
8	Total.....	\$	—	\$	1,737,141

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

45—*West Virginia Penitentiary*

Acct. No. 3750

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

46—*Department of Corrections—Correctional Units*

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

Acct. No. 3770

1	Personal Services	\$	—	\$	11,564,665
2	Annual Increment.....		—		156,271
3	Current Expenses		—		6,698,394
	Inmate Medical				
	Expenses		—		(1,586,887)
	Other		—		(5,111,507)
4	Repairs and Alterations.....		—		239,500
5	Equipment		—		115,000
6	Capital Outlay.....		—		2,000,000
7	Pruntytown Facility—				
8	(Unclassified).....		—		1,000,000
9	Total.....	\$	—	\$	21,773,830

10 The commissioner of corrections, prior to the beginning of
 11 the fiscal year, shall file with the legislative auditor an
 12 expenditure schedule for each formerly separate spending unit
 13 which has been consolidated into the above account and which
 14 receives a portion of the above appropriation. He shall also,
 15 within fifteen days after the close of each six-month period
 16 of said fiscal year, file with the legislative auditor an itemized
 17 report of expenditures made during the preceding six-month
 18 period. Such report shall include the total of expenditures
 19 made under each of the lines 1, 2, 3, 4 and 5 above.

HEALTH AND HUMAN SERVICES

47—State Health Department—Central Office

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services	\$ 2,132,101	\$ 6,998,249*
2	Annual Increment	28,908	121,104
3	Current Expenses	19,858,256	4,728,830
4	Repairs and Alterations	30,000	4,000
5	Equipment	91,352	130,104
6	Reimbursement to Community		
7	Mental Health and Mental		
8	Retardation Centers	—	19,351,508
9	MH/MR Special Projects—		
10	Current Expenses	—	1,000,000
11	Reimbursement to Community		
12	Behavioral Health Programs		
13	for Social Services	—	1,613,632
14	Special Olympics	—	28,000
15	State Aid to Local Agencies	—	6,077,898
16	Grants to Counties and		
17	EMS Entities	—	1,870,000
18	Maternal and Child Health		
19	Clinics, Clinicians and Medical		
20	Contracts and Fees	—	2,430,000
21	Foster Grandparents		
22	Stipends/Travel	—	62,370
23	Hemophiliac Assistance Program	—	124,212
24	Annual Increment	—	720

25	Placement Programs for the		
26	Developmentally Disabled ...	—	3,842,750
27	Primary Care Contracts to		
28	Community Health Centers ..	—	1,831,500
29	Agent Orange	—	204,117
30	Annual Increment.....	—	468
31	Alcohol, Drug Abuse, and D.D.	—	2,436,000
32	Corporate Nonprofit Community		
33	Health Centers F.M.H.A.		
34	Mortgage Finance	—	105,913
35	Rural Consortia Development Fund		
36	for Community Health Centers	—	500,000
37	Total.....	\$22,140,617	\$ 53,461,375

* Includes salary of director at \$54,500 per annum.

38 Funds appropriated on line 24 for Annual Increment shall
39 be transferred to line 23, Hemophiliac Assistance Program,
40 only as required.

41 Funds appropriated on line 30 for Annual Increment shall
42 be transferred to line 29, Agent Orange, only as required.

43 Any unexpended balance remaining in the appropriation for
44 Placement Programs for the Developmentally Disabled and
45 Agent Orange at the end of the fiscal year 1984-85 is hereby
46 reappropriated for expenditure during the fiscal year 1985-86.

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

48—*Department of Veterans Affairs—Veterans Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Personal Services	\$	—	\$	1,154,472
2	Annual Increment.....		—		13,716
3	Current Expenses		624,143		—

4	Equipment	13,900	—
5	Total	\$ 638,043	\$ 1,168,188

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

49—*Solid Waste Disposal*

(WV Code Chapter 16)

Acct. No. 4020

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

50—*Department of Veterans' Affairs*

(WV Code Chapter 9A)

Acct. No. 4040

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

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

10 Moneys in lines 7-8 above are to be expended subject to
11 the approval of the department of veterans' affairs upon
12 presentation of satisfactory plans by the Grafton G.A.R. Post,
13 American Legion, Veterans of Foreign Wars and Sons of
14 Veterans.

51—*Department of Human Services*

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services	\$17,447,232	\$ 11,072,685*
2	Annual Increment.....	387,984	458,875
3	Current Expenses	205,757,809	4,201,724
4	Repairs and Alterations.....	—	17,000
5	Equipment	104,250	56,757
6	Assistance Payments	—	22,203,306
7	Social Security		
8	Matching Fund	—	774,965
9	Indigent Burials	—	620,000
10	Social Services	—	20,075,465
11	Emergency Assistance	—	1,000,000
12	Medical Services	—	58,141,731
13	T.R.I.P.	—	605,000
14	Food Stamps (Value).....	150,000,000†	—
15	Government Donated		
16	Food (Value)	28,000,000†	—
17	Public Employees		
18	Retirement Matching	—	547,417
19	Public Employees Health		
20	Insurance	—	420,004
21	Total	\$223,697,275	\$120,194,929

† For information only—not included in Total.

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

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

52—*State Commission on Aging*

(WV Code Chapter 29)

Acct. No. 4060

1	Personal Services	\$ 309,851	\$ 145,453
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2	Annual Increment.....	3,461	2,668
3	Current Expenses	214,361	68,000
4	Equipment	9,000	—
5	Programs for Elderly	—	3,197,000
6	Golden Mountaineer Program ..	—	106,506
	Personal Service	—	(47,822)
	Annual Increment.....	—	(684)
	Other Expenses	—	(58,000)
7	Silver Haired Legislature.....	—	20,000
8	To Local Entities	8,277,155	—
9	Senior Citizens Centers—Land		
10	Acquisition, Construction,		
11	Repairs and Alterations.....	—	150,000
12	Total.....	\$ 8,813,828	\$ 3,689,627

13 Any unexpended balance remaining in the appropriation for
 14 Senior Citizen Centers—Land Acquisition, Construction,
 15 Repairs and Alterations, at the close of the fiscal year 1984-
 16 85 is hereby reappropriated for expenditure during the fiscal
 17 year 1985-86.

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

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

53—*State Health Department—Medical Facilities (Control)*

(WV Code Chapter 16)

Acct. No. 4180

1	Personal Services	\$ —	\$ 44,363,978
2	Annual Increment.....	—	1,052,830
3	Current Expenses	—	13,369,075
4	Repairs and Alterations.....	—	667,850
5	Equipment	—	385,593
6	Student Nurse Affiliation		
7	Program (Huntington).....	—	82,368
8	Psychiatric Training Center—		
9	Student Nurses (Weston).....	—	250,048

10	Annual Increment.....	—	2,592
11	Total.....	\$ —	\$ 60,174,334

12 The director of health, prior to the beginning of the fiscal
 13 year, shall file with the legislative auditor an expenditure
 14 schedule for each formerly separate spending unit which has
 15 been consolidated into the above account and which receives
 16 a portion of the above appropriation. He shall also, within
 17 fifteen days after the close of each six-month period of said
 18 fiscal year, file with the legislative auditor an itemized report
 19 of expenditures made during the preceding six-month period.
 20 Such report shall include the total of expenditures made under
 21 each of the lines 1, 2, 3, 4 and 5 above.

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

54—*State Board of Education—Rehabilitation Division*

(WV Code Chapter 18)

Acct. No. 4405

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

BUSINESS AND INDUSTRIAL RELATIONS

55—*Bureau of Labor and Department of*

Weights and Measures

(WV Code Chapter 21)

Acct. No. 4500

1	Personal Services	\$214,103	\$ 1,140,835*
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2	Annual Increment.....	2,736	13,680
3	Current Expenses.....	99,842	319,300
4	Repairs and Alterations.....	2,500	900
5	Equipment.....	5,000	4,600
6	Labor Management		
7	Advisory Council.....	—	26,832
8	Total.....	\$ 324,181	\$ 1,506,147

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

56—*Department of Employment Security*

Acct. No. 4510

1	Interest Assessment—Total.....	\$ —	\$ 1,900,000
2	The above appropriation is intended to pay the federal		
3	government interest due on loan advances made to the state		
4	of West Virginia for payment of unemployment compensation		
5	benefits.		

57—*Department of Mines*

(WV Code Chapters 20 and 22)

Acct. No. 4600

1	Personal Services.....	\$ —	\$ —0—
2	Annual Increment.....	—	—0—
3	Current Expenses.....	—0—	—0—
4	Equipment.....	—0—	—0—
5	Miner Training, Education		
6	and Certification.....	—	—0—
7	Annual Increment.....	—	—0—
8	Board of Coal Mine Health		
9	and Safety.....	—	—0—
10	Gas Well Certification.....	—	—0—
11	Annual Increment.....	—	—0—
12	Development of Mine Safety		
13	Program.....	—	—0—
14	Annual Increment.....	—	—0—
15	Total.....	\$ —0—	\$ —0—

16 Funds appropriated on line 7 for Annual Increment shall
17 be transferred to line 5-6, Miner Training, Education and

- 18 Certification, only as required.
- 19 Funds appropriated on line 11 for Annual Increment shall
20 be transferred to line 10, Gas Well Certification, only as
21 required.
- 22 Funds appropriated on line 14 for Annual Increment shall
23 be transferred to line 12-13, Development of Mine Safety
24 Program, only as required.

58—*Department of Energy*

(WV Code Chapter 22)

Acct. No. 4700

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

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

59—*Interstate Commission on Potomac River Basin*

Acct. No. 4730

1 West Virginia's contribution
2 to Potomac River Basin
3 Interstate Commission \$ — \$ 20,300

60—*Ohio River Valley Water Sanitation Commission*

Acct. No. 4740

1 West Virginia's contribution to
2 Ohio River Valley Water
3 Sanitation Commission \$ — \$70,490

61—*West Virginia Air Pollution Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1 Personal Services \$ 778,661 \$ 603,489
2 Annual Increment 5,760 6,444

3	Current Expenses	386,870	177,512
4	Equipment	17,500	1,000
5	Total	\$ 1,188,791	\$ 788,445

62—*State Athletic Commission*

(WV Code Ch. 29)

Acct. No. 4790

1	Unclassified—Total	\$ —	\$ 5,500
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63—*West Virginia State Aeronautics Commission*

Acct. No. 4850

- 1 Any unexpended balance remaining in the appropriation
 2 Airport Matching at the close of the fiscal year 1984-85 is
 3 hereby reappropriated for expenditure during the fiscal year
 4 1985-86.

64—*West Virginia Nonintoxicating Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

1	Personal Services	\$ —	\$ 341,270*
2	Annual Increment	—	4,428
3	Current Expenses	—	76,200
4	Equipment	—	300
5	Total	\$ —	\$ 422,198

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

65—*West Virginia Racing Commission*

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services	\$ —	\$ 1,078,546
2	Annual Increment	—	8,028
3	Current Expenses	—	118,700
4	Equipment	—	10,000
5	Total	\$ —	\$ 1,215,274

AGRICULTURE

66—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of Commissioner	\$	—	\$	46,800
2	Other Personal Services		240,651		2,132,468
3	Annual Increment		396		46,080
4	Current Expenses		150,861		1,051,037
5	Equipment		65,000		241,859
6	Multiflora Rose Eradication				
7	Program		—		115,000
8	Gypsy Moth Program		—		300,000
9	Forestry Division—				
10	(Unclassified)		358,188		2,057,841*
11	Total	\$	815,096	\$	5,991,085

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

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

67—*Farm Management Commission*

(WV Code Chapter 19)

Acct. No. 5110

1	Personal Services	\$	—	\$	1,077,133
2	Annual Increment		—		19,584
3	Current Expenses		—		987,200
4	Repairs and Alterations		—		265,000
5	Equipment		—		293,000
6	Livestock Purchase		—		273,000
7	Total	\$	—	\$	2,914,917

68—*Department of Agriculture—**Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services	\$	—	\$	362,276
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2	Annual Increment.....	—	7,776
3	Current Expenses.....	—	122,699
4	Watershed Expenses.....	—	150,000
5	Mud River Flood		
6	Control Project.....	—	500,000
7	Wellsburg Flood Control	—	85,000
8	Total.....	\$ —	\$ 1,227,751

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

69—*Department of Agriculture—
 Division of Rural Resources*

(*Matching Fund*)

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services	\$ —	\$ 833,185
2	Annual Increment.....	—	13,680
3	Current Expenses	—	222,287
4	Equipment.....	—	47,000
5	Total.....	\$ —	\$ 1,116,152

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

70—*Department of Agriculture—Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Personal Services	\$ 420,992	\$ 414,252
2	Annual Increment.....	7,110	7,110
3	Current Expenses	294,161	183,446
4	Equipment.....	2,500	2,395
5	Total.....	\$ 724,763	\$ 607,203

- 6 Any part or all of the appropriation from general revenue
7 may be transferred to special revenue fund for the purpose of
8 matching federal funds for the above named program.

71—*Department of Agriculture—Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards.....	\$	—	\$	70,000
2	Fairs and Festivals.....		—		168,950
3	Total.....	\$	—	\$	238,950

CONSERVATION AND DEVELOPMENT

72—*Geological and Economic Survey*

1	Personal Services.....	\$	127,549	\$	1,388,095
2	Annual Increment.....		1,044		15,192
3	Current Expenses.....		68,581		304,612
4	Repairs and Alterations.....		1,500		20,888
5	Equipment.....		2,500		14,000
6	Special Studies.....		—		61,197
7	To Secure Federal and				
8	Other Contracts.....		—		50,000
9	Total.....	\$	201,174	\$	1,853,984

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

73—*Water Resources Board*

Acct. No. 5640

1	Unclassified—Total.....	\$	—	\$	116,276
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74—*Department of Natural Resources*

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services.....	\$	3,868,923	\$	4,131,358*
2	Annual Increment.....		52,884		64,350
3	Current Expenses.....		2,051,730		983,830

4	Repairs and Alterations.....	126,869	97,400
5	Equipment.....	880,745	89,500
6	Fire Prevention Control.....	—	—0—
	Personal Services.....	—	—0—
	Annual Increment.....	—	—0—
	Other Expenses.....	—	—0—
7	Reclamation Board		
8	of Review.....	—	—0—
9	Annual Increment.....	—	—0—
10	Debt Service.....	—	—0—
11	Grave Creek Mound State Park	—	—0—
12	To Local Entities.....	—0—	—0—
13	Transfer To State		
14	Spending Units.....	301,386	—0—
15	Land and Buildings.....	300,000	—
16	Total.....	\$ 7,582,537	\$ 5,366,438

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

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

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

75—Public Land Corporation

(WV Code Chapter 20)

*Acct. No. 5660

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

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

* Clerk's Note: The Governor reduced Current Expenses from \$156,400.

76—*Water Development Authority*

(WV Code Chapter 20)

Acct. No. 5670

1	Capital Outlay.....	\$	—	\$	237,790	
2	Flatwoods-Canoe run PSD (Water)		—		68,000	
3	Marshall County PSD No. 1 (Sewer)		—		50,000	
4	Total.....	\$	—	\$	355,790	
5	Any unexpended balance remaining in the appropriation for					
6	Capital Outlay, Phase III Hardship Grants, Construction					
7	Grants Phase III, Hardship Grants, Bolair PSD, McMechen					
8	Water Project, Loan and Grant Program, Capital Outlay—					
9	Sewer and Capital Outlay—Water, at the close of the fiscal					
10	year 1984-85 is hereby reappropriated for expenditure during					
11	the fiscal year 1985-86.					

77—*West Virginia Railroad Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services	\$	—	\$	547,401	
2	Annual Increment.....		—		3,924	
3	Current Expenses		—		150,000	
4	Repairs and Alterations.....		100,000		170,000	
5	Unclassified		—		100,000	
6	Total.....	\$	100,000	\$	971,325	
7	Any unexpended balance remaining in the appropriation for					
8	Current Expenses and Repairs and Alterations at the close of					
9	the fiscal year 1984-85 is hereby reappropriated for expendi-					
10	ture during the fiscal year 1985-86.					

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

PROTECTION

78—*Department of Public Safety*

(WV Code Chapter 15)

Acct. No. 5700

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

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

79—*Adjutant General—State Militia*

(WV Code Chapter 15)

Acct. No. 5800

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

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

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

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

BOARDS AND COMMISSIONS

80—*West Virginia Civil Service System*

(WV Code Chapter 29)

Acct. No. 5840

1	Personal Services.....	\$ —	\$ 908,321*
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2	Annual Increment.....	—	15,372
3	Current Expenses	—	264,500
4	Equipment	—	64,000
5	Total.....	\$ —	\$ 1,252,193

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

6 The director shall maintain accurate records reflecting the
 7 cost of administering the provisions of this appropriation. At
 8 the close of each quarter-year period, the director shall
 9 summarize the cost and shall bill each department, commis-
 10 sion, board or agency which receives support from any funds
 11 other than general revenue fund for a pro rata share of the
 12 administrative cost based on the relationship between the
 13 quarterly-average number of employees in the service of such
 14 department, commission, board or agency and the quarterly-
 15 average number of employees in the service of all the
 16 departments, commissions, boards and agencies of the state for
 17 the appropriate calendar quarter.

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

81—*West Virginia Public Legal Services Council*

(WV Code Chapter 29)

Acct. No. 5900

1	Council and Central office	\$ —	\$ 195,201
2	Annual Increment.....	—	558
3	Appointed Counsel Fees	—	3,748,881
4	Public Defender Operations	—	427,300
5	Criminal Law Research Center		
6	Appellate Division	—	130,178
7	Total.....	\$ —	\$ 4,502,118

8 Any unexpended balance remaining in the appropriation
 9 Appointed Counsel Fees at the close of the fiscal year 1984-
 10 85 is hereby reappropriated for expenditure during the fiscal
 11 year 1985-86.

- 12 Funds appropriated on line 2 for Annual Increment shall
 13 be transferred to line 1, Council and Central Office, only as
 14 required.

82—*Human Rights Commission*

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services	\$ 195,285	\$ 451,787
2	Annual Increment.....	144	5,292
3	Current Expenses	65,999	233,948
4	Equipment	—	11,708
5	Total.....	\$ 261,428	\$ 702,735

83—*Women's Commission*

(WV Code Chapter 29)

Acct. No. 6000

1	Personal Services	\$ —	\$ 52,374
2	Annual Increment.....	—	527
3	Current Expenses	—	22,300
4	Equipment	—	3,700
5	Total.....	\$ —	\$ 78,901

84—*West Virginia Public Employees Retirement Board*

(WV Code Chapter 5)

*Acct. No. 6140

1	Employers Accumulation Fund	\$ —	\$ 12,561,966
2	Expense Fund	—	70,000
3	Supplemental Benefits For		
4	Annuitants.....	—	2,232,000
5	Total.....	\$ —	\$ 14,863,966

- 6 The above appropriation is intended to cover the state's
 7 share of West Virginia public employees retirement coverage
 8 for those departments operating from the general revenue
 9 fund. The state department of highways, department of motor
 10 vehicles, workers' compensation commissioner, public service

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

11 commission and other departments operating from special
 12 revenue funds and/or federal funds shall pay their proportion-
 13 ate share of the retirement costs for their respective divisions.
 14 When specific appropriations are not made, such payments
 15 may be made from the balance in the various special revenue
 16 funds in excess of specific appropriations.

85—*West Virginia Public Employees Insurance Board*

(WV Code Chapter 5)

Acct. No. 6150

1	Personal Services	\$	—	\$	351,380
2	Annual Increment.....		—		5,868
3	Public Employees Health Insurance				
4	State Contributions		—		78,442,568
5	Total.....	\$	—	\$	78,799,816

6 The above appropriation is intended to cover the state's
 7 share of public employees health insurance costs for those
 8 spending units operating from the general revenue fund. The
 9 state department of highways, department of motor vehicles,
 10 workers' compensation commissioner, public service commis-
 11 sion and other departments operating from special revenue
 12 funds and/or federal funds shall pay their proportionate share
 13 of the public employees health insurance cost for their
 14 respective divisions. When specific appropriations are not
 15 made, such payments may be made from the balances in the
 16 various special revenue fund in excess of specific
 17 appropriations.

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

86—*Insurance Commissioner*

(WV Code Chapter 33)

Acct. No. 6160

1	Personal Services	\$	—	\$	692,495*
2	Annual Increment.....		—		7,812
3	Current Expenses		—		225,400

4	Equipment	—		15,000
5	Total	\$	—	\$ 940,707

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

87—*State Fire Commission*

(WV Code Chapter 29)

Acct. No. 6170

1	Personal Services	\$	—	\$ 655,974
2	Annual Increment		—	9,540
3	Current Expenses		—	295,175
4	Repairs and Alterations		—	3,151
5	Equipment		—	36,374
6	Total	\$	—	\$ 1,000,214

1 **Sec. 3. Appropriations from other funds.**—From the funds
 2 designated there is hereby appropriated conditionally upon the
 3 fulfillment of the provisions set forth in article two, chapter
 4 five-a of the code, the following amounts, as itemized, for
 5 expenditure during the fiscal year one thousand nine hundred
 6 eighty-six.

1 **Sec. 4. Appropriations of federal funds.**—In accordance
 2 with chapter four, article eleven, federal funds are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in article two, chapter five-a of the code,
 5 the following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred eighty-six.

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

88—*State Department of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

		Federal Funds		Other Funds
		Fiscal Year 1985-86		Fiscal Year 1985-86
1	Maintenance Expressway			
2	Trunkline and Feeder	\$	—	\$ 51,480,000

3	Maintenance, State Local Services	—	69,586,000
4	Maintenance, Contract Paving and		
5	Secondary Road Maintenance	—	10,754,000
6	Inventory Revolving.....	—	1,510,000
7	Toll Road Examination.....	—	1,000,000
8	Equipment Revolving	—	4,597,000
9	General Operations	—	18,555,656*
10	Annual Increment.....	—	178,344
11	Debt Service	—	76,750,000
12	Interstate Construction	—	139,739,000
13	Other Federal Aid Programs....	—	125,159,000
14	Appalachian Program	—	28,440,000
15	Nonfederal Aid Construction ...	—	4,257,000
16	Total.....	\$ —	\$532,006,000

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

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

20 The above commissioner of highways shall have the
 21 authority to operate revolving funds within the state road fund
 22 for the operation and purchase of various types of equipment
 23 used directly and indirectly in the construction and mainte-
 24 nance of roads and for the purchase of inventories and
 25 materials and supplies.

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

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

89—Department of Motor Vehicles

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ —	\$ 2,590,841*
2	Annual Increment.....	—	44,316

3	Current Expenses	—	3,590,457
4	Equipment	—	73,900
5	Purchase of License Plates	—	567,180
6	Social Security Matching	—	184,848
7	Public Employees Retirement		
8	Matching	—	247,332
9	Public Employees Health		
10	Insurance	—	349,237
11	Total	\$ —	\$ 7,648,111

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

90—*Department of Education—Veterans Education*

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$72,083	\$ —
2	Annual Increment	1,620	—
3	Current Expenses	50,793	—
4	Equipment	500	—
5	Total	\$ 124,996	\$ —

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

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

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

*Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 58,821
2	Annual Increment	—	576
3	Current Expenses	—	48,795
4	Total	\$ —	\$ 108,192

* The Governor reduced Personal Services from \$138,821 and Current Expenses from \$68,795.

92—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	163,295
2	Annual Increment		—		1,836
3	Current Expenses		—		161,665
4	Equipment		—		5,000
5	Total	\$	—	\$	331,796

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

93—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	—	\$	5,000
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2 The total amount of this appropriation shall be paid from
3 Special Revenue Fund out of collections of license fees and
4 fines as provided by law.

5 No expenditures shall be made from this amount except for
6 hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

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

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

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

95—*Department of Finance and Administration—
Division of Purchasing—Revolving Fund*

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	858,359
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2	Annual Increment	—	14,616
3	Current Expenses	—	490,300
4	Equipment	—	60,000
5	Social Security Matching	—	61,377
6	Public Employees Retirement		
7	Matching	—	82,124
8	Public Employees Health		
9	Insurance	—	97,700
11	Total	\$ —	\$ 1,664,476

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

15 The above appropriation includes salaries and operating
 16 expenses.

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

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

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 2,973,543
2	Annual Increment	—	46,908
3	Current Expenses	—	5,596,344
4	Equipment	—	207,000
5	Social Security Matching	—	213,661
6	Public Employees Retirement		
7	Matching	—	285,885
8	Public Employees Health		
9	Insurance	—	358,300
10	Total	\$ —	\$ 9,681,641

11 The total amount of this appropriation shall be paid from
 12 special revenue fund out of collections made by the department
 13 of finance and administration as provided by law.

97—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	434,694
2	Annual Increment		—		7,128
3	Current Expenses		—		23,390
4	Social Security Matching		—		31,315
5	Public Employees Retirement				
6	Matching		—		41,901
7	Public Employees Health				
8	Insurance		—		31,000
9	Total	\$	—	\$	569,428
10	The total amount of this appropriation shall be paid from				
11	special revenue fund out of collections made by the department				
12	of agriculture as provided by law.				

98—*General John McCausland Memorial Farm*

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

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

99—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	141,849
2	Annual Increment		—		2,844
3	Current Expenses		—		108,700
4	Equipment		—		1,600
5	Total	\$	—	\$	254,993
6	The total amount of this appropriation shall be paid from				
7	special revenue fund out of collections made by the state				
8	committee of barbers and beauticians as provided by law.				

100—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 54,180	\$ 3,499,856*
2	Annual Increment.....	—	37,620
3	Current Expenses	22,127	1,287,700
4	Equipment	—	70,500
5	Social Security Matching	—	250,887
6	Public Employees Retirement		
7	Matching	—	335,694
8	Public Employees Health		
9	Insurance	—	296,200
10	Total.....	\$ 76,307	\$ 5,778,457

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

11 The total amount of this appropriation shall be paid from
 12 special revenue fund out of collections for special license fees
 13 from public service corporations as provided by law.

14 Any unexpended balance remaining in the appropriation for
 15 Headquarters Building Development at the close of fiscal year
 16 1984-85 is hereby reappropriated for expenditure during the
 17 fiscal year 1985-86.

101—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 28,219	\$ 162,950*
2	Annual Increment.....	—	973
3	Current Expenses	15,841	68,600
4	Equipment	—	1,500
5	Social Security Matching	—	11,636
6	Public Employees Retirement		
7	Matching	—	15,569
8	Public Employees Health		
9	Insurance	—	14,000
10	Total.....	\$ 44,060	\$ 275,228

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

11 The total amount of this appropriation shall be paid from
 12 special revenue fund out of receipts collected for or by the
 13 public service commission pursuant to and in the exercise of
 14 regulatory authority over pipeline companies.

15 Any unexpended balance remaining in the appropriation for
 16 Headquarters Building Development at the close of fiscal year
 17 1984-85 is hereby reappropriated for expenditure during the
 18 fiscal year 1985-86.

102—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	1,070,964*
2	Annual Increment.....		—		12,312
3	Current Expenses		60,000		348,000
4	Equipment.....		—		5,000
5	Social Security Matching		—		76,755
6	Public Employees Retirement				
7	Matching		—		102,701
8	Public Employees Health				
9	Insurance		—		94,000
10	Total.....	\$	60,000	\$	1,709,732

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

11 The total amount of this appropriation shall be paid from
 12 special revenue fund out of receipts collected for or by the
 13 public service commission pursuant to and in the exercise of
 14 regulatory authority over motor carriers.

15 Any unexpended balance remaining in the appropriation for
 16 Headquarters Building Development at the close of fiscal year
 17 1984-85 is hereby reappropriated for expenditure during the
 18 fiscal year 1985-86.

103—*Public Service Commission—Consumer Advocate*

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Consumer Advocate ..	\$	—	\$	38,000
2	Other Personal Services.....		—		241,784
3	Annual Increment.....		—		756
4	Current Expenses		—		289,000

5	Equipment	—	6,800
6	Social Security Matching	—	20,186
7	Public Employees		
8	Retirement Matching	—	27,010
9	Public Employees Health		
10	Insurance	—	26,400
11	Total	\$ —	\$ 649,936

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

104—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 3,822,485
2	Annual Increment	—	102,852
3	Current Expenses	—	2,955,794
4	Repairs and Alterations	—	242,630
5	Equipment	—	451,046
6	Land Purchase and Buildings ...	—	710,000
7	Total	\$ —	\$ 8,284,807

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

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

105—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 434,516
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2	Annual Increment	—	1,296
3	Current Expenses	—	188,124
4	Repairs and Alterations.....	—	1,000
5	Equipment.....	—	12,000
6	Total.....	\$ —	\$ 636,936

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

106—*Department of Public Safety—
 Drunk Driving Prevention Fund*

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses	\$ —	\$ 595,000
2	Equipment.....	—	5,000
3	Total.....	\$ —	\$ 600,000

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

107—*Department of Banking*

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 646,651*
2	Annual Increment.....	—	5,472
3	Current Expenses	—	610,586
4	Equipment.....	—	6,000
5	Total.....	\$ —	\$ 1,268,709

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

108—*Crime Victim Reparation*

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 120,750
2	Current Expenses	—	27,000

3	Equipment	—	8,000
4	Total	\$ —	\$ 155,750

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

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

Acct. No. 8500

TO BE PAID FROM SPECIAL REVEUNE FUND

1	Administrative	\$ —	\$ 109,500
	Personal Services	—	(71,650)
	Current Expenses	—	(37,850)
2	Colin Anderson Center		
3	West Virginia Behavioral		
4	Health Care Delivery System		
5	Plan Capital Outlay and		
6	Renovations	—	400,000
7	Contingency for		
8	Repairs and Alterations,		
9	Equipment, Emergency		
10	Services and Miscellaneous ...	—	500,000
11	Adolescent Group Home		
12	West Virginia Behavioral		
13	Health Care Delivery System		
14	Plan Capital Outlay and		
15	Renovations	—	300,000
16	Greenbrier Center—Capital		
17	Outlay and Renovations for		
18	Certification, Life Safety,		
19	and Energy Conservation	—	660,000
20	DD and Chronic Mentally Ill		
21	Group Homes—		
22	West Virginia Behavioral		
23	Health Care Delivery System		
24	Plan Capital Outlay and		
25	Renovations	—	1,111,000
26	Welch Emergency Hospital—		
27	Contingency for Operating		
28	and Miscellaneous	—	2,000,000

29	Contingency for		
30	Repairs and Alterations,		
31	Equipment, Emergency		
32	Services and Miscellaneous . . .	—	500,000
33	DD and Chronic Mentally Ill		
34	Group Homes—		
35	West Virginia Behavioral		
36	Health Care Delivery		
37	System Plan Capital		
38	Outlay and Renovations	—	2,000,000
39	Hopemont Hospital—		
40	Capital Outlay and Renovations for		
41	Certification, Life Safety		
42	and Energy Conservation	—	577,000
43	Lakin Hospital—Capital		
44	Outlay and Renovation for		
45	Certification, Life Safety		
46	and Energy Conservation	—	30,000
47	Denmar Hospital—Capital		
48	Outlay and Renovations for		
49	Certification, Life Safety,		
50	and Energy Conservation	—	185,000
51	Pinecrest Hospital—Capital		
52	Outlay and Renovations for		
53	Certification, Life Safety,		
54	and Energy Conservation	—	55,000
55	Huntington Hospital—Capital		
56	Outlay and Renovations	—	75,000
57	Fairmont Emergency Hospital—		
58	Capital Outlay		
59	and Renovations	—	37,000
60	Huntington Hospital—		
61	West Virginia Behavioral		
62	Health Care Delivery		
63	System Plan Capital		
64	Outlay and Renovations	—	1,300,000
65	Total	\$ —	\$ 9,839,500

66 The total amount of this appropriation shall be paid from
67 the hospital services revenue account special fund created in
68 section fifteen-a, article one, chapter sixteen of the code.

69 Projects are to be paid on a cash basis and made available
 70 from the date of passage. Items and projects of this
 71 appropriation are to begin as funds become available in the
 72 special fund. Projects are to begin in the listed order of priority
 73 herein, except implementation costs, not to exceed ten percent
 74 of each appropriation, and shall be made available from the
 75 date of passage.

76 Any unexpended balances remaining at the close of the fiscal
 77 year 1984-85 for the prior-appropriated and brought-forward
 78 items of this accounts are hereby reappropriated for expen-
 79 diture in the fiscal year 1985-86 except for the following: Acct.
 80 No. 8500-05 (fiscal year 1982), 8500-14 (fiscal year 1982), 8500-
 81 15 (fiscal year 1982) and 8500-20 (fiscal year 1984).

110—*Health Care Cost Review Authority*

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	96,695	\$	625,792
2	Annual Increment.....		756		3,168
3	Current Expenses		166,730		486,919
4	Equipment		—		25,143
5	Total.....	\$	264,181	\$	1,141,022

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

111—*West Virginia Hospital Finance Authority*

Acct. No. 8525

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	1,000
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2 The total amount of this appropriation shall be paid from
 3 special revenue fund out of fees and collections as provided
 4 by article twenty-nine-a, chapter sixteen of the code.

5 Special funds in excess of the amount herein appropriated

6 may be made available by budget amendments upon request
 7 of the commissioner of finance and administration and the
 8 approval of the governor.

112—*Geological and Economic Survey*

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 40,000

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

113—*Board of Regents—
 Special Capital Improvement Fund*

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ — \$ 545,000

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

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

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

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

9 The total amount of this appropriation shall be paid from
 10 the special capital improvement fund created by section four,
 11 article twenty-four, chapter eighteen of the code. Projects are

12 to be paid on a cash basis and made available from the date
 13 of passage.

14 Any unexpended balances remaining in prior years and
 15 1984-85 appropriations at the close of the fiscal year 1984-85
 16 are hereby reappropriated for expenditure during the fiscal
 17 year 1985-86.

115—*Board or Regents—Special Capital Improvement Fund*

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ — \$ 1,640,000

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

116—*Board of Regents—State System Registration Fee—
 Revenue Bond Construction Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1984-85 appropriations are hereby reappropriated for expen-
 3 diture during fiscal year 1985-86.

117—*Board of Regents—State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)*

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	3,830,000
2	Building and Campus Renewal..		—		9,000,000
3	Planning Fund		—		1,000,000
4	(To be used for project				
5	planning and design)				
6	West Virginia University				
7	Campus Development		—		3,700,000

8	(Medical Center Chiller		
9	Replacement)		
10	Marshall University	—	2,000,000
11	(Fine Arts Center		
12	Experimental Theatre)		
13	Marshall University		
14	Campus Development	—	4,500,000
15	(Science Building Renovation-		
16	Phase III)		
17	Fairmont State College		
18	Campus Development	—	750,000
19	(Colebank Hall Renovation-		
20	Supplement)		
21	Concord College		
22	Campus Development	—	750,000
23	(Administration/Science		
24	Building Renovation-		
25	Supplement)		
26	West Virginia Northern		
27	Community College		
28	Campus Development	—	500,000
29	(Hazel Atlas Building Renova-		
30	tion—Supplement)		
31	Glenville State College		
32	Campus Development	—	200,000
33	(Gas Well)		
34	Bluefield State College		
35	Campus Development	—	800,000
36	(Dickinson Hall/Greenbrier		
37	Center Renovations)		
38	Jacksons Mill—		
39	Capital Outlay.....	—	200,000
40	(Building Repairs		
41	and Renovations		
42	Total.....	\$ —	\$ 27,230,000

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

47 Any unexpended balances remaining in prior years' and in

48 the 1984-85 appropriations are hereby reappropriated for
49 expenditure during the fiscal year 1985-86.

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

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1	West Virginia University		
2	Engineering Research		
3	Center (Phase I)	—	\$ 9,000,000
4	College of Mineral and		
5	Energy Resources Building ...	—	10,200,000
6	College of Business and		
7	Economics	—	8,250,000
8	Marshall University		
9	Fine Arts Facility	—	10,400,000
10	Glennville State College		
11	Art and Music Building	—	4,000,000
12	Shepherd College		
13	Health and Physical		
14	Education Building	—	9,000,000
15	WV Institute of Technology		
16	Science Laboratory		
17	Facilities	—	8,500,000
18	West Virginia State College		
19	Science Laboratory		
20	Facilities	—	7,000,000
21	Parkersburg Community		
22	College Building Addition	—	2,500,000
23	Southern WV Community		
24	College Logan Building		
25	Addition	—	2,500,000
26	WV College of Graduate		
27	Studies Instructional		
28	Telecommunications System ..	—	650,000
29	Potomac State College		
30	Physical Education		
31	Building	—	1,000,000
32	Total	\$ —	\$ 73,000,000

33 The total amount of this appropriation shall be paid from
34 the sale of revenue bonds pursuant to the provisions of article
35 twelve-b, chapter eighteen of the code.

117—*Workers' Compensation Commissioner*

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services	\$	—	\$	8,188,343
2	Annual Increment.....		—		102,636
3	Current Expenses		—		5,148,689
4	Equipment		—		234,450
5	Social Security Matching		—		585,353
6	Public Employees Retirement				
7	Matching		—		783,219
8	Public Employees Health				
9	Insurance		—		774,927
10	Employees Excess Liability Fund		—		558,405
	Personal Services		—		(127,337)
	Annual Increment.....		—		(540)
	Current Expenses		—		(369,586)
	Equipment		—		(21,850)
	Social Security Matching		—		(9,021)
	Public Employees Retire— ment Matching		—		(12,071)
	Public Employees Health Insurance		—		(18,000)
11	Total.....	\$	—	\$	16,376,022

12 There is hereby authorized to be paid out of the above
 13 appropriation for Current Expenses the amount necessary for
 14 the premiums on bonds given by the state treasurer as bond
 15 custodian for the protection of the workers' compensation
 16 fund. This sum shall be transferred to the board of insurance.

120—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	9,283,283
2	Annual Increment.....		—		200,556
3	Current Expenses		—		5,771,157
4	Repairs and Alterations.....		—		72,800
5	Equipment		—		109,000
6	Social Security Matching		—		667,402

7	Public Employees Retirement		
8	Matching	—	893,002
9	Public Employees Health		
10	Insurance	—	1,220,000
11	Total	\$ —	\$ 18,217,200

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

14 The above appropriations include the salary of the
15 commissioner, salaries of store personnel and store inspectors,
16 store operating expenses and equipment, and salaries, expenses
17 and equipment of administration offices.

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

121—*West Virginia University—Medical School*

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ —	\$ 8,071,000
2	Current Expenses	—	3,837,000
3	Repairs and Alterations	—	774,000
4	Equipment	—	797,000
5	WVU Family Practice		
6	Program	—	432,000
7	Capital Outlay	—	1,000,000
8	Total	\$ —	\$ 14,911,000

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

1 **Sec. 5. Awards for claims against the state.**—There is
2 hereby appropriated, for the remainder of the fiscal year 1984-
3 85 and to remain in effect until June 30, 1986, from the fund
4 as designated, in the amounts as specified, and for the
5 claimants as named in Enrolled Committee Substitute for
6 House Bill No. 1567, acts, Legislature, regular session, 1985—

7 crime victim reparation fund of \$182,656.60 for payment of
8 claims against the state.

9 There are hereby appropriated, for the remainder of the
10 fiscal year 1984-85 and to remain in effect until June 30, 1986,
11 from the funds as designated, in the amounts as specified, and
12 for the claimants as named in Enrolled Committee Substitute
13 for House Bill No. 1568 and No. 1569, acts, Legislature, regular
14 session, 1985—total general revenue funds of \$213,065.76, state
15 road funds of \$1,794,209.71, special revenue funds of
16 \$15,935.28 and federal funds of \$5,904.35 for payments of
17 claims against the state. The total of general revenue funds
18 above does not include payment from the Supreme Court—
19 General Judicial, Acct. No. 1110, specifically made payable
20 from the appropriation for the current fiscal year 1984-85.

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\$ 0,000,000

1 **Sec. 7. Supplemental and deficiency appropriation.—**
2 From the state fund, general revenue, except as otherwise
3 provided, there are hereby appropriated the following
4 amounts, as itemized, for expenditure during the fiscal year
5 one thousand nine hundred eighty-five to supplement the 1984-
6 85 appropriations, and to be available for expenditure upon
7 date of passage.

* Clerk's Note: The Governor struck out all language which appeared as
Sec. 6 and reduced Salary Equalization from \$7,000,000.

123—*Office of Economic and Community Development*

Acct. No. 1210

1 National Youth Science Camp .. \$ — \$ —0—

124—*State Lottery Commission*

Acct. No. 1216

1 Unclassified—Total \$ — \$ 250,000

125—*Governor's Office—Civil Contingent Fund*

Acct. No. 1240

1 Unclassified—Total \$ — \$ —0—

126—*State Board of Insurance*

Acct. No. 2250

1 Premiums, Claims and
 2 Other Expenses—Total \$ — \$ —0—

127—*Department of Corrections—Correctional Units*

Acct. No. 3770

1 Capital Outlay—Industrial
 2 Home for Youth—Total \$ — \$ —0—

128—*Department of Human Services*

Acct. No. 4050

1 Public Assistance Grants \$ — \$ —0—

129—*State Board of Education—Rehabilitation Division*

Acct. No. 4405

1 Capital Outlay—
 2 Roof Replacement \$ — \$ —0—

130—*Department of Employment Security*

Acct. No. 4510

1 Interest Assessment—Total \$ — \$ —0—

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

131—*West Virginia Public Legal Services Council*

Acct. No. 5900

1 Appointed Council Fees \$ — \$ 627,000

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

132—*Department of Culture and History*

Acct. No. 9750

1 Oglebay Park—Lights \$ 75,000
 2 Farm Museum 50,000
 3 Delf Norona 50,000

133—*Department of Agriculture*

Acct. No. 9771

1 General John McCausland Farm \$ 10,000

134—*Department of Human Services*

Acct. No. 9777

1 Juvenile Detention Center—Wheeling..... \$ 350,000

135—*Office of Economic and Community Development*

Acct. No. 9792

1 Airport Matching —0—
 2 Milton Volunteer Fire Station 40,000

136—*Department of Finance and Administration*

Acct. No. 9793

1 Building Repairs—Total \$ 587,329

1 **Sec. 9. Reappropriations.**—Any unexpended balances
 2 under Title II, Section I, remaining at the close of the fiscal
 3 year 1984-85 in Acct. No. 4201-18, Reimbursement to
 4 Community Mental Health and Mental Retardation Centers,
 5 are hereby reappropriated for expenditure during fiscal year
 6 1985-86.

1 **Sec. 10. Reappropriations—Revenue Sharing Trust Fund.**—
 2 Any unexpended balances to appropriations made by the 1973,
 3 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983 and
 4 1984 Budget Acts and any supplementary transfers, or
 5 redesignation made by the above listed budget acts for revenue
 6 sharing trust fund at the close of the fiscal year 1984-85 are
 7 hereby reappropriated for expenditure during the fiscal year
 8 1985-86, with the exception of Acct. No. 9720-05 (fiscal year
 9 1974), 9771-14 (fiscal year 1981), 9790-01 (fiscal year 1984),
 10 9725-34 (fiscal year 1975), 9725-48 (fiscal year 1975), 9725-54
 11 (fiscal year 1980), 9725-42 (fiscal year 1977), 9725-57 (fiscal
 12 year 1981) and 9771-17 (fiscal year 1981), which shall expire
 13 June 30, 1985.

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

137—*Office of Economic and Community Development—
 Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	129,255
2	Annual Increment.....		—		1,287
3	Current Expenses		—		198,172
4	Equipment		—		3,277
5	To Local Entities		—		16,772,700
6	Total.....	\$	—	\$	17,104,691

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

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	1,169,918
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2	Annual Increment.....	—	15,912
3	Current Expenses.....	—	1,150,114
4	Equipment.....	—	20,000
5	To Local Entities.....	—	25,509,853
6	Transfer to State		
7	Spending Units.....	—	8,238,264
8	Total.....	\$ —	\$ 36,104,061

139—*Office of Economic and Community Development—
Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services.....	\$ —	\$ 102,161
2	Annual Increment.....	—	972
3	Current Expenses.....	—	102,093
4	Equipment.....	—	2,000
5	To Local Entities.....	—	3,834,023
6	Total.....	\$ —	\$ 4,041,249

140—*Office of Economic and Community Development—
Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1	To Local Entities—Total.....	\$ —	\$ 600,000
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141—*State Department of Education—Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services.....	\$ —	\$ 900,872
2	Annual Increment.....	—	15,084
3	Current Expenses.....	—	351,997
4	Repairs and Alterations.....	—	100
5	To Local Entities.....	—	34,987,520
6	Total.....	\$ —	\$ 36,255,573

142—*State Health Department—Maternal and Child Health*
Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	716,041
2	Annual Increment		—		8,604
3	Current Expenses		—		6,260,046
4	Equipment		—		62,007
5	Total	\$	—	\$	7,046,698

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

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	381,899
2	Annual Increment		—		2,736
3	Current Expenses		—		5,006,287
4	Equipment		—		30,000
5	Total	\$	—	\$	5,420,922

144—*State Health Department—Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	335,840
2	Annual Increment		—		3,060
3	Current Expenses		—		1,070,784
4	Equipment		—		16,340
5	Total	\$	—	\$	1,426,024

145—*Department of Human Services—Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	1,154,914
2	Annual Increment		—		45,086
3	Current Expenses		—		20,500,000
4	Transfer to State Spending Units		—		—0—
5	Total	\$	—	\$	21,700,000

146—Department of Human Services—Social Services

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	8,970,295
2	Annual Increment.....		—		202,205
3	Current Expenses		—		13,727,500
4	Equipment		—		100,000
5	Total.....	\$	—	\$	23,000,000

1 **Sec. 12. Special revenue appropriations.**—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred eighty-six, appropriations made by
4 general law from special revenue which are not paid into the
5 state fund as general revenue under the provisions of section
6 two, article two, chapter twelve of the code: *Provided*, That
7 none of the moneys so appropriated by this section shall be
8 available for expenditure except in compliance with and in
9 conformity to the provisions of articles two and three, chapter
10 twelve and article two, chapter five-a of the code, unless the
11 spending unit has filed with the state director of the budget,
12 the state auditor and the legislative auditor prior to the
13 beginning of each fiscal year:

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

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

1 **Sec. 13. State improvement fund appropriations.**—
2 Bequests or donations of nonpublic funds, received by the
3 Governor on behalf of the state during the fiscal year one
4 thousand nine hundred eighty-six, for the purpose of making
5 studies and recommendations relative to improvements of the
6 administration and management of spending units in the
7 executive branch of state government, shall be deposited in the
8 state treasury in a separate account therein designated state
9 improvement fund.

10 There is hereby appropriated all moneys so deposited during
11 the fiscal year one thousand nine hundred eighty-six, to be
12 expended as authorized by the governor, for such studies and

13 recommendations which may encompass any problems of
14 organization, procedures, systems, functions, powers or duties
15 of a state spending unit in the executive branch, or the
16 betterment of the economic, social, educational, health and
17 general welfare of the state or its citizens.

1 **Sec. 14. Specific funds and collection accounts.**—A fund
2 or collection account, which by law is dedicated to a specific
3 use, is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and shall
5 be expended according to the provisions of article three,
6 chapter twelve of the code.

1 **Sec. 15. Appropriations for refunding erroneous pay-**
2 **ment.**—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it
4 was paid, for refund to the proper person.

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

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

15 The state municipal bond commission shall reimburse the
16 state of West Virginia through the governor from the first
17 remittance collected from the West Virginia housing develop-
18 ment fund or from any state agency or local taxing district
19 for which the governor advanced funds, with interest at the

20 rate carried by the bonds for security or payment of which
21 the advance was made.

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

1 **Sec. 18. Appropriations for local governments.**—There is
2 hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations
5 and which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 19. Total appropriations.**—Where only a total sum is
2 appropriated to a spending unit, that total sum shall include
3 personal services, current expenses and capital outlay, except
4 as otherwise provided in Sec. 3, TITLE I.

1 **Sec. 20. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is approp-
4 riated for expenditure in accordance with section sixteen,
5 article nine-a, chapter eighteen of the code.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
2 of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branches of
4 the state government are conditioned upon the compliance by
5 the spending unit with the requirements of article two, chapter
6 five-a of the code.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legislature,

9 it is the intent of this act that reappropriation shall be to the
10 succeeding or later spending unit created unless otherwise
11 indicated.

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

CHAPTER 28

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

1 The commissioner of banking shall be appointed by the
2 governor, by and with the advice and consent of the
3 Senate. He shall serve at the will and pleasure of the
4 governor for the term for which the governor was elected

5 and until his successor is appointed and qualified, unless
6 earlier removed from office for cause as provided by law.

7 Any person appointed as commissioner shall have had
8 within the fifteen years next preceding his first appoint-
9 ment at least five years' experience as an active officer of
10 a bank in this state or a minimum of nine years' experience
11 in a bank examining or supervisory capacity for this state,
12 for other states or for the federal government, or a com-
13 bination thereof, or a minimum of nine years' combined
14 experience as such active bank officer and in such examin-
15 ing or supervisory capacity. The commissioner's salary
16 shall be set by appropriation in accord with general law.

17 Before entering upon the discharge of his duties as
18 commissioner, he shall take and subscribe to the oath of
19 office prescribed in section five, article four of the
20 constitution of West Virginia and shall enter into a bond
21 in the penal sum of one hundred thousand dollars, with a
22 corporate surety authorized to engage in business in this
23 state, conditioned upon the faithful discharge and per-
24 formance of the duties of his office. The premium of
25 such bond shall be payable from the state treasury out of
26 funds allocated to the department of banking. The exe-
27 cuted oath and bond shall be filed in the office of the
28 secretary of state.

CHAPTER 29

(S. B. 498—By Senator Tucker)

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

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

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter thirty-one-a of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

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

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

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

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

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

27 (c) In the case of an application for the board's approval
28 to incorporate and organize a banking institution in this
29 state, as provided in subdivision (3), subsection (b), section
30 two of this article, the board shall, upon receipt of any such
31 application, provide notice to all banking institutions,
32 which in the manner hereinafter provided, have requested
33 notice of any such action. The request by any such banking
34 institution to receive such notice shall be in writing and
35 shall request the board to notify it of the receipt by the

36 board of any application to incorporate and organize a
37 banking institution in this state. A banking institution may,
38 within ten days after receipt of such notice, file a petition to
39 intervene and shall, if it so files such petition, thereupon
40 become a party to any hearing relating thereto before the
41 board.

42 (d) The board shall have the power and authority to
43 issue subpoenas and subpoenas duces tecum, administer
44 oaths and examine any person under oath in connection
45 with any subject relating to duties imposed upon or powers
46 vested in the board.

47 (e) Whenever the board shall find that extraordinary
48 circumstances exist which require immediate action, it may
49 forthwith without notice or hearing enter an order taking
50 any action permitted by subdivisions (1), (2), (4) and (5),
51 subsection (b), section two of this article. Immediately upon
52 the entry of such order, certified copies thereof shall be
53 served upon all persons affected thereby and upon demand
54 such persons shall be entitled to a hearing thereon at the
55 earliest practicable time.

56 (f) Whenever the board shall find that the financial
57 condition of a state banking institution or a national
58 banking association constitutes an imminent peril to its
59 depositors, savings account holders, other customers or
60 creditors, it may forthwith without notice or hearing enter
61 an order taking any action permitted by subdivisions (7)
62 and (8), subsection (b), section two of this article.
63 Immediately upon entry of such order, certified copies
64 thereof shall be served upon all persons affected thereby and
65 upon demand such persons shall be entitled to a hearing
66 thereon at the earliest practicable time.

67 (g) Whenever the board shall find that the financial
68 condition of a state banking institution or national banking
69 association constitutes an imminent peril to its depositors,
70 savings account holders, other customers or creditors, it
71 may forthwith without compliance with the provisions of
72 section six or seven, article four of this chapter and without
73 notice or hearing enter an order approving or disapproving
74 an application to incorporate a state banking institution
75 which is being formed to purchase the business and assets
76 or assume the liabilities of, or both, or merge or consolidate

77 with, such state banking institution or national banking
78 institution the financial condition of which constitutes an
79 imminent peril to its depositors, savings account holders,
80 other customers or creditors. Immediately upon the entry of
81 such order, certified copies thereof shall be served upon all
82 persons affected thereby and upon demand such persons
83 shall be entitled to a hearing thereon at the earliest
84 practicable time.

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

100 (i) Definitions:

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

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

114 (3) A banking institution or bank holding company is
115 "insolvent" when it is unable to pay its debts to its
116 depositors and other creditors in the ordinary and usual
117 course of business.

CHAPTER 30

(S. B. 696—By Senators Tucker and Palumbo)

[Passed April 4, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-b, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the installation and operation of customer bank communication terminals permitted; limitation removed for employee assistance of customers using off-premises terminals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

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

- 1 (a) Any banking institution as defined in section two,
- 2 article one of this chapter, individually or jointly with one
- 3 or more other banking institutions or other federally
- 4 insured financial institutions having their principal offices
- 5 in this state, or any combination thereof, may upon thirty
- 6 days prior written notice filed with the commissioner,
- 7 install, operate and engage in banking business by means of
- 8 one or more customer bank communication terminals. Any
- 9 banking institution which installs and operates a customer
- 10 bank communication terminal:
 - 11 (1) Shall make such customer bank communication
 - 12 terminal available for use by other banking institutions;
 - 13 and
 - 14 (2) May make such customer bank communication
 - 15 terminal available for use by other federally insured
 - 16 financial institutions, all in accordance with regulations
 - 17 promulgated by the commissioner. Such customer bank
 - 18 communication terminals shall not be considered to be

19 branch banks or branch offices, agencies or places of
20 business or off-premises walk-in or drive-in banking
21 facilities; nor shall the operation of such customer bank
22 communication terminals to communicate with and permit
23 financial transactions to be carried out through a
24 nonexclusive access interchange system be considered to
25 make any banking institution which is part of such a
26 nonexclusive access interchange system to have illegal
27 branch banks or branch offices, agencies or places of
28 business or off-premises walk-in or drive-in banking
29 facilities.

30 (b) Notwithstanding the provisions of subdivision (1),
31 subsection (a) of this section, a customer bank
32 communication terminal located on the premises of the
33 principal office or branch bank of a banking institution or
34 on the premises of an authorized off-premises facility need
35 not be made available for use by any other banking
36 institution or its customers.

37 (c) For the purposes of this section, "customer bank
38 communication terminal" means any electronic device or
39 machine, together with all associated equipment,
40 structures and systems, including, without limitation, point
41 of sale terminals, through or by means of which a customer
42 and a banking institution may engage in any banking
43 transactions, whether transmitted to the banking
44 institution instantaneously or otherwise, including,
45 without limitation, the receipt of deposits of every kind, the
46 receipt and dispensing of cash, requests to withdraw money
47 from an account or pursuant to a previously authorized line
48 of credit, receiving payments payable at the bank or
49 otherwise transmitting instructions to receive, transfer or
50 pay funds for a customer's benefit. All transactions
51 initiated through a customer bank communication terminal
52 shall be subject to verification by the banking institution.

53 (d) For the purposes of this section, "point of sale
54 terminal" means a customer bank communication terminal
55 used for the primary purpose of either transferring funds to
56 or from one or more deposit accounts in a banking
57 institution or segregating funds in one or more deposit
58 accounts in a banking institution for future transfer, or
59 both, in order to execute transactions between a person and

60 his customers incident to sales, including, without
61 limitation, devices and machines which may be used to
62 implement and facilitate check guaranty and check
63 authorization programs.

64 (e) Except for customer bank communication terminals
65 located on the premises of the principal office or a branch
66 bank of the banking institution or on the premises of an
67 authorized off-premises walk-in or drive-in banking
68 facility, a customer bank communication terminal shall be
69 unattended or attended by persons not employed by any
70 banking institution utilizing the terminal: *Provided*, That

71 (1) Employees of the banking institution may be present
72 at such terminal not located on the premises of an
73 authorized off-premises facility solely for the purposes of
74 installing, maintaining, repairing and servicing same; and

75 (2) A banking institution may provide an employee to
76 instruct and assist customers in the operation thereof:
77 *Provided*, That such employee shall not engage in any other
78 banking activity.

79 (f) The commissioner shall prescribe by regulation the
80 procedures and standards regarding the installation and
81 operation of customer bank communication terminals,
82 including, without limitation, the procedure for the sharing
83 thereof.

CHAPTER 31

(H. B. 1706—By Delegate Flanigan and Delegate Phillips)

[Passed March 27, 1985; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

That section four, article eight-a, chapter thirty-one-a of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

1 (a) It shall be unlawful, prior to ninety days following the
2 date of the submission to the board of complete, true and
3 accurate copies of the reports required under federal laws or
4 regulations pursuant to Title 12, United States Code, §§1841-
5 1850 (being the act of Congress entitled the Bank Holding
6 Company Act of 1956, as amended), and the payment of an
7 examination and investigation fee to the board of two
8 thousand five hundred dollars:

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

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

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

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

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

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

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

27 (1) Shares acquired by a bank:

28 (A) In good faith in a fiduciary capacity, except where
29 shares are held under a trust that constitutes a company as
30 defined in section two of this article and except as provided

31 in subdivisions (2) and (3), subsection (b), section three of this
32 article; or

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

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

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

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

67 (2) The action would have the effect in any section of the
68 state of substantially lessening competition, or would tend to
69 create a monopoly or in any other manner would be in

70 restraint of trade, unless the anticompetitive effects of the
71 proposed action are clearly outweighed in the public interest
72 by the probable effect of the action are clearly outweighed in
73 the public interest by the probable effect of the action in
74 meeting the convenience and needs of the community to be
75 served; or

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

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

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

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

CHAPTER 32

(H. B. 1816—By Delegate Pritt)

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

AN ACT to amend and reenact section two, article fourteen, chapter

sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers and beauticians; and sale and demonstration of cosmetics and related products not within the practice of beauty culture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. BARBERS AND BEAUTICIANS.

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

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

12 "Beauty culture" shall mean any one or combination of the
13 following acts, when done on the human body, and not for
14 the treatment of disease, to wit: The care, preservation and
15 beautification of the hands and nails, commonly called
16 manicuring; the cleansing, curling, waving, permanent waving,
17 straightening, arranging, dressing, bleaching, tinting, coloring
18 and shaping the hair, including such cutting of the hair as is
19 necessary for the purposes mentioned in this paragraph; the
20 application to, or treatment and massage of, the scalp, face,
21 neck, arms, hands, or upper part of the body with oils, creams,
22 lotions, powders, clays, cosmetics, antiseptics or other
23 preparations; and any such acts when done to encourage the
24 use or sale of articles of trade, or for pay, reward or other
25 compensation, whether to be received directly or indirectly.
26 The retail sale or the trial demonstration by application to the
27 skin for the purpose of making retail sale of cosmetics,
28 preparations, tonics, antiseptics, creams or lotions shall not be
29 considered the practice of beauty culture.

30 "Manicuring," when done on the human body and not for
31 the treatment of disease, shall mean the care, preservation and
32 beautification of the hands and nails only.

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

CHAPTER 33

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

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

1 Except as provided otherwise in section twenty-two of this
2 article, during the period of a license, the total value of all
3 prizes awarded by a licensee, shall not exceed in value seventy-
4 five percent of the gross proceeds collected during such period
5 or the sum of one hundred seventy-five thousand dollars as
6 determined and assigned under this section whichever amount
7 shall be less: *Provided*, That notwithstanding the foregoing
8 limitation, the total prizes awarded by a licensee, or in the
9 aggregate by two or more limited occasion licensees holding
10 a joint bingo occasion, for any bingo occasion held pursuant
11 to an annual or limited occasion license may not exceed in
12 value seven thousand five hundred dollars.

- 13 Prizes may be money or merchandise other than beer,
14 nonintoxicating beer, wine, spirits or alcoholic liquor as
15 defined in section five, article one, chapter sixty of this code.
16 If the prizes are merchandise, the value assigned to them is
17 their fair market value at the time of purchase.

CHAPTER 34

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. BLANNERHASSETT HISTORICAL PARK COMMISSION.

§29-8-7. Issuance of revenue bonds.

- 1 The issuance of bonds under the provisions of this article
2 shall be authorized by a resolution of the commission. The
3 resolution shall recite an estimate by the commission of the
4 cost of the proposed undertaking, the estimated cost thereof,
5 the amount, rate or rates of interest, the time and place of
6 payment and other details in connection with the issuance of
7 the bonds. Such bonds shall be in such form and shall be
8 negotiated and sold in such manner and upon such terms as
9 the commission may by resolution specify. The bonds shall be

10 signed by the governor and by the chairman of the commis-
11 sion, under the great seal of the state and attested by the
12 secretary of state. All such bonds and the interest thereon, and
13 all properties and revenues and income derived from the
14 proposed undertaking, shall be exempt from all taxation by
15 this state or any county, municipality, political subdivision or
16 agency thereof. Such bonds shall bear interest at a rate per
17 annum set by the commission, payable at such times and shall
18 be payable as to principal at such times, not exceeding thirty
19 years from their date and at such place or places, within or
20 without the state, as shall be prescribed in the resolution
21 providing for their issuance. Such resolution shall also declare
22 that a statutory mortgage lien shall exist upon the property
23 so to be acquired, constructed, established, extended or
24 equipped, fix rates or charges for use of the undertaking prior
25 to the payment of all of said bonds and shall pledge the
26 revenues derived from the undertaking for the purpose of
27 paying such bonds and interest thereon, which pledge shall
28 definitely fix and determine the amount of revenues which
29 shall be necessary to be set apart and applied to the payment
30 of the principal of and interest upon the bonds and the
31 proportion of the balance of such revenues, which are to be
32 set aside as a proper and adequate depreciation account, and
33 the remainder shall be set aside for the reasonable and proper
34 maintenance and operation thereof. The rates or charges to
35 be charged for the services from such undertaking shall be
36 sufficient at all times to provide for the payment of interest
37 upon all bonds and to create a sinking fund to pay the
38 principal thereof as and when the same become due and
39 reasonable reserves therefor; and to provide for the repair,
40 maintenance and operation of the undertaking, to provide an
41 adequate depreciation fund and to make any other payments
42 which shall be required or provided for in the resolution
43 authorizing the issuance of said bonds.

44 Bonds herein provided for shall be issued in such amounts
45 as may be necessary to provide sufficient funds to pay all costs
46 of acquisition, construction, establishment, extension or
47 equipment, including engineering, legal and other expenses,
48 together with interest to a date six months subsequent to the
49 estimated date of completion. Bonds issued under the
50 provisions of this article are hereby declared to be negotiable

51 instruments, and the same shall be executed by the proper
52 legally constituted authorities of the commission, and be sealed
53 with the seal of the commission, and in case any of the officers
54 whose signatures appear on the bonds or coupons shall cease
55 to be such officers before delivery of such bonds, such
56 signatures shall nevertheless be valid and sufficient for all
57 purposes the same as if they had remained in office until such
58 delivery. All signatures on the bonds or coupons and the seal
59 of the commission may be mechanically reproduced if
60 authorized in the resolution authorizing the issuance of the
61 bonds.

CHAPTER 35

(Com. Sub. for H. B. 1759—By Delegate Wooton)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL AND COMMERCIAL DEVELOPMENT BONDS.

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

1 Any two or more governmental bodies may jointly acquire
2 by construction and purchase, or by either, or finance one or
3 more industrial projects or commercial projects or additions
4 thereto by the issuance and delivery of revenue bonds in which
5 case such governmental bodies shall jointly exercise all the
6 rights, authority, power and duties herein conferred upon a
7 county commission or a municipality when acting singly and

8 they shall also be subject to the same limitations, restrictions
9 and conditions as are herein imposed on a single governmental
10 body in connection with the acquisition or financing of an
11 industrial project or commercial project: *Provided*, That
12 notwithstanding the signing and sealing requirements set forth
13 in section seven of this article, the respective governing bodies
14 may provide by agreement among themselves, approved by
15 resolution, that any one of such governing bodies may sign
16 and seal bonds issued pursuant to this article on both its own
17 behalf and on behalf of all other participating governing
18 bodies, and signature in the manner set forth in the said
19 section seven by one governing body shall be effective as to
20 all other participating governing bodies. The respective
21 governing bodies, acting jointly, may also provide by
22 agreement among themselves, any other terms and conditions
23 of such joint participation.

CHAPTER 36

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

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

AN ACT to amend article two-c, chapter thirteen 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 generally to the issuance of private activity industrial development and commercial development bonds generally, the state-wide ceiling applicable thereto; the allocation of such ceiling to the state and the several counties thereof; the manner of apportioning such allocation among the several counties; providing for the reservation of funds on a first come, first serve basis and certain procedures relating thereto; placing a time limit on all such reservations and the expiration and forfeiture of such funds so reserved; exceptions to such expirations and forfeitures in certain cases; the carry over of certain reservations as to qualified projects from one year to another; and the reverting of funds from the

county allocation to the state allocation of unreserved funds after the first day of October in each year.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

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

23 (c) The director of the governor's office of economic and
24 community development shall notify each clerk of the county

25 commission of that county's apportionment from the county
26 allocation. All apportionments made to any county from the
27 county allocation shall be for issues of the county commission
28 of that county and for issues of all municipalities within that
29 county.

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

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

49 (1) The date of the notice of reservation of funds;

50 (2) The identity of the governmental body issuing the bonds;

51 (3) The date of inducement and the prospective date of
52 issuance;

53 (4) The name of the entity for which the bonds are to be
54 issued;

55 (5) The amount of the bond issue;

56 (6) The type of issue; and

57 (7) A description of the project for which the bonds are to
58 be issued.

59 (f) (1) Upon receipt of the notice of reservation of funds by
60 the governor's office of economic and community develop-
61 ment, such office shall immediately note upon the face of such

62 notice the date and time the same was so received and shall
63 within ten days certify to the governmental body submitting
64 the same (A) that the statewide ceiling has not been exceeded,
65 if such be the case, and (B) that the amount of the bond issue
66 has been allocated and reserved in the name of such
67 governmental body for the project for which the bonds are to
68 be issued and, thereafter, the amount of such bond issue shall
69 be so allocated and reserved.

70 (2) In the event the amount requested in the notification of
71 reservation of funds, as provided for in subdivision (1) of this
72 subsection, exceeds the apportionment available to that county
73 from the county allocation, the governor's office of economic
74 and community development shall immediately notify the
75 governmental body proposing to issue such bonds of that fact
76 and such body may apply to such office for an apportionment
77 to the extent of such excess from the state allocation.

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

100 (h) Any amount of the county allocation remaining
101 unreserved on the first day of October in any calendar year

- 102 (which amount shall be determined by the director of the
103 governor's office of economic and community development)
104 shall revert to the state allocation for the remainder of that
105 year.

CHAPTER 37

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

- §29-19-2. Definitions.
§29-19-3. Commission on charitable organizations; powers and duties.
§29-19-5. Registration of charitable organizations; fee.
§29-19-6. Certain persons and organizations exempt from registration.
§29-19-7. Filing of solicitation contracts.
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.
§29-19-13. Prohibited acts.
§29-19-15. Enforcement and penalties.

§29-19-2. Definitions.

1 As used in this article:

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

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

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

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

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

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

56 (7) "Professional solicitor" means any person who, for a
57 financial or other consideration, solicits contributions for,
58 or on behalf of a charitable organization, whether such
59 solicitation is performed personally or through said
60 person's agents, servants or employees specially employed
61 by, or for a charitable organization, who are engaged in the
62 solicitation of contributions under the direction of such
63 person, or a person who plans, conducts, manages, carries
64 on, advises or acts as a consultant to a charitable
65 organization in connection with the solicitation of
66 contributions but does not qualify as "professional fund-
67 raising counsel" within the meaning of this article. A bona
68 fide salaried officer or employee of a charitable
69 organization maintaining a permanent establishment
70 within the state is not a professional solicitor.

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

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

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

- 1 (a) The commission on charitable organizations, herein
- 2 referred to as the "commission," consists of seven members,
- 3 including the secretary of state or his designate, who shall

4 be the chairman, the attorney general or his designate, the
5 commissioner of welfare or his designate, the director of the
6 state department of health or his designate, and three
7 members to be appointed by the governor who shall serve at
8 his will and pleasure.

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

12 (1) To hold hearings and make adjudications as
13 provided in section nine and section fifteen of this article;

14 (2) To advise and make recommendations to the
15 secretary of state on policies and practices to effect the
16 purposes of this article;

17 (3) To request that the attorney general, and, when
18 appropriate, the prosecuting attorney of any county, take
19 action to enforce this article or protect the public from any
20 fraudulent scheme or criminal act;

21 (4) To meet at the request of the secretary of state or
22 pursuant to regulations promulgated by him. Minutes of
23 each meeting shall be public records and filed with the
24 secretary of state.

25 (c) The secretary of state shall administer this article,
26 prescribe forms for registration or other purposes, and
27 promulgate rules and regulations in furtherance of this
28 article in accordance with the provisions of chapter twenty-
29 nine-a of this code.

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

1 (a) Every charitable organization which intends to
2 solicit contributions within this state or to have funds
3 solicited on its behalf shall, prior to any solicitation, file a
4 registration statement with the secretary of state upon
5 forms prescribed by him, which shall be good for one full
6 year and which shall be refiled in the next and each
7 following year in which such charitable organization is
8 engaged in solicitation activities. It shall be the duty of the
9 president, chairman or principal officer of such charitable
10 organization to file the statements required under this
11 article. Such statements shall be sworn to and shall contain
12 the following information:

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

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

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

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

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

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

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

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

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

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

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

55 (12) The names of the individuals or officers of the
56 organization who will have final responsibility for the

57 custody of the contributions; and
58 (13) The names of the individuals or officers of the
59 organization responsible for the final distribution of the
60 contributions.

61 (b) Each chapter, branch or affiliate, except an
62 independent member agency of a federated fund-raising
63 organization, may separately report the information
64 required by this subsection, or report the information to its
65 parent organization which shall then furnish such
66 information as to its West Virginia affiliates, chapters and
67 branches in a consolidated form to the secretary of state. An
68 independent member agency of a federated fund-raising
69 organization, as hereinbefore defined, shall comply with
70 the provisions of this article independently, unless
71 specifically exempted from doing so.

72 (c) The registration forms and any other documents
73 prescribed by the secretary of state shall be signed by an
74 authorized officer or by an independent public accountant
75 and by the chief fiscal officer of the charitable organization
76 and shall be verified under oath.

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

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

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

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

9 (2) Persons requesting contributions for the relief of any
10 individual specified by name at the time of the solicitation

11 when all of the contributions collected without any
12 deductions whatsoever are turned over to the named
13 beneficiary for his use;

14 (3) Charitable organizations which do not intend to
15 solicit and receive and do not actually raise or receive
16 contributions from the public in excess of seven thousand
17 five hundred dollars during a calendar year or do not
18 receive contributions from more than ten persons during a
19 calendar year, if all of their functions, including fund-
20 raising activities, are carried on by persons who are unpaid
21 for their services and if no part of their assets or income
22 inures to the benefit of or is paid to any officer or member.
23 Charitable organizations which do not intend to solicit and
24 receive in excess of seven thousand five hundred dollars,
25 but do receive in excess of that amount from the public,
26 shall file the annual registration statement within thirty
27 days after contributions in excess of seven thousand five
28 hundred dollars are received;

29 (4) Hospitals which are nonprofit and charitable;

30 (5) Organizations which solicit only within the
31 membership of the organization by the members thereof:
32 *Provided*, That the term "membership" shall not include
33 those persons who are granted a membership upon making
34 a contribution as the result of solicitation; or

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

45 (b) Any charitable organization claiming to be exempt
46 from the registration provisions of this section and which
47 is about to or does solicit charitable contributions shall
48 submit, annually, to the secretary of state on forms to be
49 prescribed by him the name, address and purpose of the
50 organization and a statement setting forth the reason for the
51 claim for exemption. If exempted, the secretary of state shall
52 issue, annually, a letter of exemption which may be exhibited

53 to the public. No registration fee shall be required of any
54 exempt organization.

§29-19-7. Filing of solicitation contracts.

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

5 (b) Every written contract or agreement between a
6 professional solicitor and a charitable organization shall be
7 filed with the secretary of state within ten days after such
8 agreement is concluded. In the absence of a written contract
9 or agreement between a professional solicitor and a
10 charitable organization, a written statement of the nature
11 of the arrangement to prevail in lieu thereof shall be filed.

12 (c) Each statement must clearly provide the amount,
13 percentage or other method of compensation to be received
14 by the professional solicitor or professional fund-raising
15 counsel as a result of the contract or arrangement. If it does
16 not so provide, the secretary of state shall disapprove the
17 contract or arrangement within ten days after its filing. No
18 registered charitable organization or professional solicitor
19 shall carry out or execute a disapproved contract or
20 arrangement or perform services, or receive or make
21 payments, pursuant to a disapproved contract or
22 arrangement. Any party to a disapproved contract or
23 arrangement shall, upon written request made within thirty
24 days of disapproval, be given a hearing before the
25 commission within thirty days after such request is filed.

26 (d) For purposes of this section, the total moneys, funds,
27 pledges or other property raised or received shall not
28 include the actual cost to the charitable organization or
29 professional solicitor of goods sold or services provided to
30 the public in connection with the soliciting of
31 contributions.

**§29-19-9. Registration of professional fund-raising counsel
and professional solicitor; bonds; records; books.**

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable
3 organization subject to the provisions of this article, unless
4 he has first registered with the secretary of state.

5 Applications for such registration shall be in writing under
6 oath or affirmation in the form prescribed by the secretary
7 of state and contain such information as he may require.
8 The application for registration by professional fund-
9 raising counsel or professional solicitor shall be
10 accompanied by an annual fee in the sum of fifty dollars. A
11 partnership or corporation, which is a professional fund-
12 raising counsel or professional solicitor, may register for
13 and pay a single fee on behalf of all its members, officers,
14 agents and employees. However, the names and addresses
15 of all officers, agents and employees of professional fund-
16 raising counsel and all professional solicitors, their officers,
17 agents, servants or employees employed to work under the
18 direction of a professional solicitor must be listed in the
19 application.

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

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

41 (d) The secretary of state or his designate shall examine
42 each application, and if he finds it to be in conformity with
43 the requirements of this article and all relevant rules and
44 regulations and the registrant has complied with the
45 requirements of this article and all relevant rules and
46 regulations, he shall approve the registration. Any

47 applicant who is denied approved registration may, within
48 fifteen days from the date of notification of such denial,
49 request, in writing, a hearing before the commission, which
50 hearing shall be held within fifteen days from the date of the
51 request.

**§29-19-11. Records to be kept by charitable organizations,
professional fund-raising counsel and
professional solicitors.**

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

§29-19-13. Prohibited acts.

1 (a) No charitable organization, professional fund-
2 raising counsel or professional solicitor subject to the
3 provisions of this article who is required to register with the
4 secretary of state pursuant to the provisions of this article
5 whose registration has been cancelled, suspended or refused
6 may solicit contributions from the public.

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

17 (c) No person may, in connection with the solicitation of
18 contributions for or the sale of goods or services of a person
19 other than a charitable organization, misrepresent to or
20 mislead anyone by any manner, means, practice or device

21 whatsoever, to believe that the person on whose behalf such
22 solicitation or sale is being conducted is a charitable
23 organization or that the proceeds of such solicitation or sale
24 will be used for charitable purposes, if such is not the fact.

25 (d) No person may in connection with the solicitation of
26 contributions or the sale of goods or services for charitable
27 purposes represent to or lead anyone by any manner, means,
28 practice or device whatsoever, to believe that any other
29 person sponsors or endorses such solicitation of contribu-
30 tions, sale of goods or services for charitable purposes or
31 approves of such charitable purposes of a charitable
32 organization connected therewith when such other person
33 has not given consent to the use of his name for these
34 purposes: *Provided*, That any member of the board of
35 directors or trustees of a charitable organization or any
36 other person who has agreed either to serve or to participate
37 in any voluntary capacity in the campaign shall be deemed
38 thereby to have given his consent to the use of his name
39 in said campaign.

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

47 (f) No professional solicitor may solicit in the name of or
48 on behalf of any charitable organization unless such
49 solicitor:

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

56 (2) Carries such authorization on his person when
57 making solicitations and exhibits the same on request to
58 persons solicited or police officers or agents of the secretary
59 of state.

§29-19-15. Enforcement and penalties.

1 (a) If any charitable organization, professional fund-
2 raising counsel or professional solicitor fails to file any
3 registration application or statement, report or other
4 information required to be filed by the secretary of state
5 under this article, or otherwise violates the provisions of
6 this act, the secretary of state shall notify the delinquent
7 charitable organization, professional fund-raising counsel
8 or professional solicitor by mailing a notice by registered or
9 certified mail, with return receipt requested, to its or his
10 last-known address. If the required registration application
11 or statement, annual report or other information is not filed
12 or if the existing violation is not discontinued within two
13 weeks after the formal notification or receipt of such notice,
14 the secretary of state may cancel, suspend or refuse to
15 accept the registration of such delinquent charitable
16 organization, professional fund-raising counsel or
17 professional solicitor.

18 (b) The secretary of state, upon his own motion, upon
19 request of the commission, or upon complaint of any person,
20 may, if he finds reasonable ground to suspect a violation,
21 investigate any charitable organization, professional fund-
22 raising counsel or professional solicitor to determine
23 whether such charitable organization, professional fund-
24 raising counsel or professional solicitor has violated the
25 provisions of this article or has filed any application or
26 other information required under this article which
27 contains false or misleading statements. If the commission
28 finds that any application or other information contains
29 false or misleading statements, or that a registrant under
30 this article has violated the provisions thereof, it may
31 recommend to the secretary of state that the registration be
32 suspended or canceled and the secretary of state may so
33 order.

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

40 (d) All administrative proceedings under this article,

41 including the promulgation of rules and regulations, shall
42 be conducted in accordance with the provisions of chapter
43 twenty-nine-a of this code and all commission
44 adjudications shall be subject to review and appeal as
45 provided therein.

46 (e) In addition to the foregoing, any person who
47 willfully and knowingly violates any provisions of this
48 article, or who shall willfully and knowingly give false or
49 incorrect information to the secretary of state in filing
50 statements or reports required by this article, whether such
51 report or statement is verified or not, shall be guilty of a
52 misdemeanor, and, upon conviction thereof, shall be fined
53 upon first conviction thereof in an amount not less than one
54 hundred dollars nor more than five hundred dollars, or be
55 imprisoned in the county jail for not more than six months,
56 or be both fined and imprisoned, and for the second and any
57 subsequent offense to pay a fine of not less than five
58 hundred dollars nor more than one thousand dollars, or be
59 imprisoned for not more than one year, or be both fined and
60 imprisoned.

61 (f) Whenever the attorney general or any prosecuting
62 attorney has reason to believe that any charitable
63 organization, professional fund-raising counsel or
64 professional solicitor is operating in violation of the
65 provisions of this article, or has knowingly and willfully
66 made any false statement in any registration application or
67 statement, report or other information required to be filed
68 by this article, or whenever a charitable organization,
69 professional fund-raising counsel or professional solicitor
70 has failed to file a registration statement required by this
71 article, or whenever there is employed or is about to be
72 employed in any solicitation or collection of contributions
73 for a charitable organization any device, scheme or artifice
74 to defraud or to obtain money or property by means of any
75 false pretense, representation or promise, or whenever the
76 officers or representatives of any charitable organization,
77 professional fund-raising counsel or professional solicitor
78 have refused or failed after notice to produce any records of
79 such organization, or whenever the funds raised by
80 solicitation activities are not devoted or will not be devoted
81 to the charitable purposes of the charitable organization, in

82 addition to all other actions authorized by law, the attorney
83 general or prosecuting attorney may bring an action in the
84 name of the state against such charitable organization and
85 its officers, such professional fund-raising counsel or
86 professional solicitor or any other person who has violated
87 this article or who has participated or is about to
88 participate in any solicitation or collection by employing
89 any device, scheme, artifice, false representation or
90 promise, to defraud or obtain money or other property, to
91 enjoin such charitable organization or professional fund-
92 raising counsel or professional solicitor or other person
93 from continuing such violation, solicitation or collection, or
94 from engaging therein or from doing any acts in furtherance
95 thereof and for such other relief as the court deems
96 appropriate.

97 (g) In addition to the foregoing, any charitable
98 organization, professional fund-raising counsel or
99 professional solicitor who willfully and knowingly violates
100 any provisions of this article by employing any device,
101 scheme, artifice, false representation or promise with intent
102 to defraud or obtain money or other property shall be guilty
103 of a misdemeanor, and, upon conviction thereof, for a first
104 offense, shall be fined not less than one hundred dollars nor
105 more than five hundred dollars, or be confined in the county
106 jail not more than six months, or be both fined and
107 imprisoned; and for a second and any subsequent offense,
108 shall be fined not less than five hundred dollars nor more
109 than one thousand dollars, or confined in the county jail not
110 more than one year, or be both fined and imprisoned.

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

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

121 If the court finds that: (1) It is impossible to obtain the
122 names of over one half the persons who were solicited and in

123 violation of this article, or (2) if the majority of individual
124 contributions was of an amount less than five dollars, or (3)
125 if the cost to the state of returning these contributions is
126 equal to or more than the total sum to be refunded, the court
127 shall order the money to be placed in the custody and
128 control of a general receiver appointed pursuant to the
129 provisions of article six, chapter fifty-one of this code. The
130 general receiver shall maintain this money pursuant to the
131 provisions of article eight, chapter thirty-six of this code.

CHAPTER 38

(Com. Sub. for H. B. 1567—By Delegate Murensky and Delegate Wells)

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

AN ACT finding and declaring certain claims for reparations of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

REPARATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for reparation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of fact and
2 recommendations for awards reported to it by the court of
3 claims in respect to the following named claimants who were
4 innocent victims of crime within this state and entitled to
5 reparations; and in respect to each of such named claims the
6 Legislature adopts those findings of fact as its own, hereby
7 declares it to be the moral obligation of the state to pay each
8 such claimant in the amount specified below, and directs the
9 auditor to issue warrants for the payment thereof out of any
10 fund appropriated and available for the purpose.

11 **Claims for crime victims reparation awards:**

12 (TO BE PAID FROM CRIME VICTIMS REPARATION FUND)

13	(1)	Atwell, Malinda A.	\$ 300.75
14	(2)	Baker, Ricky E.	\$ 8,070.20
15	(3)	Basham, Fred, as administrator	
16		of the estate of Fred	
17		Arthur Basham	\$ 693.17
18	(4)	Bess, Jan E.	\$ 1,017.65
19	(5)	Broyles, Chester A., III	\$ 4,979.90
20	(6)	Carkin, Maria A.	\$ 7,573.73
21	(7)	Carter, Kenneth W.	\$ 7,884.05
22	(8)	Clinebell, Thomas S.	\$ 3,889.80
23	(9)	DeBrular, Eileen M.	\$ 5,711.50
24	(10)	DeBrular, Eileen M., as	
25		guardian of Michael Lee West	\$ 9,288.50
26	(11)	DeFoe, Kevin Todd	\$ 1,809.15
27	(12)	Dempsey, Brenda J.	\$ 1,203.20
28	(13)	Eccleston, Eugene C., Jr.	\$ 11,433.58
29	(14)	Elliott, Donald L.	\$ 371.50
30	(15)	Gill, Margaret J.	\$ 1,355.65
31	(16)	Haley, G. Richard F.	\$ 2,532.15
32	(17)	Hitt, Thelma E.	\$ 1,477.25
33	(18)	Holcomb, James M.	\$ 20,000.00
34	(19)	Kegley, Donald B.	\$ 520.08
35	(20)	Kelley, Randall L.	\$ 246.87
36	(21)	Lavin, Gene A.	\$ 20,000.00
37	(22)	Logston, Brenda K.	\$ 20,000.00
38	(23)	Malone, Garnet M.	\$ 7,924.80
39	(24)	Martin, Phillip G.	\$ 63.50
40	(25)	McNeal, Otis M. L., Jr.	\$ 107.50
41	(26)	Miller, James B.	\$ 20,000.00
42	(27)	Moore, Harold R.	\$ 143.20
43	(28)	Moore, Linda Elaine	\$ 1,283.00
44	(29)	Sellards, Danny C.	\$ 97.00
45	(30)	Shear, Dorothy I.	\$ 361.00
46	(31)	Sweatte, Gwendolyn Y.	\$ 243.65
47	(32)	Taylor, Keith W.	\$ 14,746.52
48	(33)	Thacker, Katherine Kaye,	
49		as guardian of Kathy Ann	
50		Thacker, a minor	\$ 1,643.00

51	(34)	Thacker, Katherine Kaye,	
52		as guardian of John Edward	
53		Thacker, a minor	\$ 147.75
54	(35)	Turner, Mark Wayne.....	\$ 781.00
55	(36)	Walker, Ike	\$ 2,800.00
56	(37)	Walker, Orville E.	\$ 706.00
57	(38)	White, Woodrow W.	\$ 1,250.00
58		TOTAL	\$182,656.60

59 The Legislature finds that the above moral obligations and
60 the appropriations made in satisfaction thereof shall be the full
61 compensation for all claimants herein; provided that any
62 claimant herein who, subsequent to the payment of an award,
63 receives or recovers benefits or advantages for the economic
64 loss not prior considered by the court of claims in the course
65 of and in reduction of the award of reparations, shall inform
66 the court of claims and crime victims reparation fund of such
67 recovery for determination of the amounts thereof and
68 requirement for the deposit thereof in the crime victims
69 reparation fund.

CHAPTER 39

(H. B. 1568—By Delegate Murensky and Delegate Wells)

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

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of corrections; the farm management commission; and the state fire marshal, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities and

3 services rendered by certain claimants herein and has
 4 considered claims against the state, the department of
 5 corrections, the farm management commission and the state
 6 fire marshal, agencies thereof, which have arisen due to over-
 7 expenditures of the departmental appropriations by officers of
 8 such state spending unit, such claims having been previously
 9 considered by the court of claims which also found that the
 10 state has received the benefit of the commodities and services
 11 rendered by each claimant, but were denied by the court of
 12 claims on the purely statutory grounds that to allow such
 13 claims would be condoning illegal acts contrary to the laws
 14 of the state. The Legislature pursuant to its findings of fact
 15 and also by the adoption of the findings of fact by the court
 16 of claims as its own, and, while not condoning such illegal acts,
 17 hereby declares it to be the moral obligation of the state to
 18 pay each such claim in the amount specified below, and directs
 19 the auditor to issue warrants upon receipt of a properly
 20 executed requisition supported by an itemized invoice,
 21 statement or other satisfactory document as required by
 22 section ten, article three, chapter twelve of the code of West
 23 Virginia, one thousand nine hundred thirty-one, as amended,
 24 for the payment thereof out of any fund appropriated and
 25 available for the purpose.

26 (a) *Claims against the Department of Corrections:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28	(1)	FCI Alderson	\$118,352.21
29	(2)	Raleigh Orthopedic	
30		Association, Inc.....	\$ 250.00
31	(3)	Wheeling Hospital	\$ 1,385.10

32 (b) *Claims against the Farm Management Commission:*

33 (TO BE PAID FROM GENERAL REVENUE FUND)

34	(1)	Bush Industries Feed & Grain	\$ 2,805.00
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35 (c) *Claims against the State Fire Marshal:*

36 (TO BE PAID FROM SPECIAL REVENUE FUND NO. 8002-24)

37	(1)	Dunlow Volunteer	
38		Fire Department.....	\$ 2,744.39

CHAPTER 40

(Com. Sub. for H. B. 1569—By Delegate Murensky and Delegate Wells)

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

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; beer commission; board of regents; department of corrections; department of education; department of health; department of highways; department of mines; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; governor's office of economic and community development; human rights commission; supreme court of appeals; and treasurer, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the court of claims
3 concerning various claims against the state and agencies
4 thereof, and in respect to each of the following claims the
5 Legislature adopts those findings of fact as its own, and hereby
6 declares it to be the moral obligation of the state to pay each
7 such claim in the amount specified below, and directs the
8 auditor to issue warrants for the payment thereof out of any
9 fund appropriated and available for the purpose.

10 (a) *Claims against the Alcohol Beverage*
11 *Control Commissioner:*

12 (TO BE PAID FROM SPECIAL REVENUE FUND)

13	(1) Appalachian Power Company	\$ 229.17
14	(2) Central Beverage Distributors, Inc.	\$ 7,659.76

15 (b) *Claim against the Attorney General:*

16 (TO BE PAID FROM GENERAL REVENUE FUND)

17	(1) Norval D. Goe, Executor of the Estate	
18	of William Robert Goe, dec.	\$ 7,569.42

19 (c) *Claim against the Beer Commission:*

20 (TO BE PAID FROM GENERAL REVENUE FUND)

21	(1) Central Distributing Co., Inc.	\$ 505.10
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22 (d) *Claims against the Board of Regents:*

23 (TO BE PAID FROM GENERAL REVENUE FUND)

24	(1) Mary Ann Babich	\$ 540.00
25	(2) Elliott A. Bigelow	\$ 497.90
26	(3) Department of Employment Security....	\$ 436.53
27	(4) Janet Dooley	\$ 7,886.00
28	(5) Karl Van Hildebrand	\$ 287.20
29	(6) Terry A. Johnson	\$ 120.54
30	(7) Richard D. Koval	\$ 65.44
31	(8) John Vincent Lacey, Jr.	\$ 459.36
32	(9) Elizabeth D. Morgan	\$ 766.00
33	(10) Danny R. Sinclair	\$ 696.57
34	(11) Timothy E. Smith	\$ 239.52
35	(12) Alfred D. Yoppi, Jr.	\$ 231.48
36	(13) Nickolas F. Zara	\$ 207.90

37 (TO BE PAID FROM SPECIAL REVENUE FUND)

38	(1) Chapman Printing Company.....	\$ 205.00
39	from Acct. No. 8623-11	
40	(2) The Lawhead Press, Inc.	\$ 576.00
41	from Acct. No. 8600-40	
42	(3) Barbara Ann McCabe	\$ 269.47
43	from Acct. No. 9280-00	
44	(4) Moore Business Forms, Inc.	\$ 490.07
45	from Acct. No. 8641-11	
46	(5) Steven Gerard Noonan.....	\$ 60.00
47	from Acct. No. 8610-13	
48	(6) Anita Faye Wickline.....	\$ 98.85
49	from Acct. No. 8627-32	
50	(7) Beverly Pisegna Fulmer	\$ 228.00
51	from Acct. No. 9280-00	

52 (e) *Claims against the Department of Corrections:*

53 (TO BE PAID FROM GENERAL REVENUE FUND)

54	(1)	Baysal & Associates, Inc.	\$ 130.00
55	(2)	W. Auvil Godwin	\$ 2,700.00
56	(3)	Grafton Sanitary Sewer Board	\$ 1,725.00
57	(4)	D. Verne McConnell.....	\$ 22.00
58	(5)	Medical Dental Bureau, Inc. (Agent for	
59		Ohio Valley Medical Center, Inc.)	\$ 186.76
60	(6)	Richard F. Terry, M.D., Inc.....	\$ 735.00
61	(7)	Virginia Electric and	
62		Power Company	\$ 110.00
63	(8)	Wheeling Electric Company	\$ 4,602.64

64 (f) *Claim against the Department of Education:*

65 (TO BE PAID FROM GENERAL REVENUE FUND)

66	(1)	AM International Inc., Debtor in	
67		Possession Varsity Division	\$ 524.00

68 (g) *Claims against the Department of Health:*

69 (TO BE PAID FROM GENERAL REVENUE FUND)

70	(1)	Dental Arts Laboratory, Inc.....	\$ 135.20
71	(2)	Leonard J. Gwiazdowsky	\$ 502.50
72	(3)	Holzer Clinic	\$ 105.00
73	(4)	Holzer Hospital Foundation, d/b/a/	
74		Holzer Medical Center	\$ 476.25
75	(5)	Kellogg Sales Company	\$ 137.50
76	(6)	Parke-Davis	\$ 6,864.00
77	(7)	Pfizer, Inc.	\$ 3,748.56
78	(8)	St. Joseph's Hospital	\$ 317.27
79	(9)	Stonewall Jackson Memorial Hospital ..	\$ 1,085.79
80	(10)	3M Company.....	\$ 565.09
81	(11)	Xerox Corporation	\$ 5,006.13
82	(12)	Sophia Clark	\$ 2,613.00

83 (h) *Claim against the Department of Health—*
84 *Office of the Chief Medical Examiner:*

85 (TO BE PAID FROM GENERAL REVENUE FUND)

86	(1)	Jeffry S. Life	\$ 35.00
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87 (i) *Claims against the Department of Highways:*

88 (TO BE PAID FROM STATE ROAD FUND)

89	(1)	American Bridge Division of United	
90		States Steel Corporation	\$593,088.75
91	(2)	American National Property & Casualty,	
92		Subrogee of Charles R. Hart	\$ 644.25
93	(3)	Anderson Equipment Company	\$ 2,453.34
94	(4)	William F. Angel	\$ 224.93
95	(5)	Bates & Rogers	
96		Construction Corporation	\$ 11,424.65
97	(6)	Carroll L. Bolyard	\$ 535.24
98	(7)	Shirley G. Burbridge	\$ 122.89
99	(8)	Sylvia A. Cadle	\$ 8,630.00
100	(9)	Carl E. Stephens Construction	
101		Company, Inc.	\$ 1,000.00
102	(10)	Myrtle Craddock	\$ 224.62
103	(11)	Engineered Products, Inc.	\$ 13,139.81
104	(12)	Erie Insurance Exchange, Subrogee of	
105		Joseph E. Martin & Goldie J. Martin	\$ 4,980.00
106	(13)	Richard R. Fisher	\$ 2,477.65
107	(14)	Max B. Harbert	\$ 50.00
108	(15)	Thomas J. Hiddemen, Jr.	\$ 150.75
109	(16)	Dianna Rinehart Jones	\$ 100.00
110	(17)	Joseph H. Justice	\$ 815.06
111	(18)	L. G. De Felice, Inc.	\$743,451.06
112	(19)	Joseph E. Martin & Goldie J. Martin ...	\$ 100.00
113	(20)	Mid-Atlantic Paving Company, Inc.	\$ 3,929.25
114	(21)	Herbert Midkiff	\$ 3,679.00
115	(22)	Jack E. Murray	\$ 287.47
116	(23)	Regina M. Rhoads	\$ 100.00
117	(24)	Theresa Ritz	\$ 21,418.80
118	(25)	Dennis L. Sanders and	
119		Nancy J. Sanders	\$ 505.00
120	(26)	Carl Eugene Shockey, d/b/a	
121		Gene's Mobile Homes	\$ 500.00
122	(27)	Amelio J. White	\$ 133.36
123	(28)	Harry L. White	\$ 1,707.85
124	(29)	James K. White and Barbara White	\$ 579.04
125	(30)	Harry E. Wilmoth	\$ 250.00
126	(31)	L. R. Skelton & Company	\$340,800.44

127	(32)	Barbara M. Neri	\$ 11,040.00
128	(33)	Fred Staffilino, Jr. and	
129		Linda Staffilino	\$ 14,000.00
130	(34)	Tucker's Used Cars, Inc.	\$ 10,778.82
131	(j)	<i>Claim against the Department of Mines:</i>	
132		(TO BE PAID FROM GENERAL REVENUE FUND)	
133	(1)	Xerox Corporation	\$ 913.98
134	(k)	<i>Claim against the Department of Mines—</i>	
135		<i>Office of Oil & Gas:</i>	
136		(TO BE PAID FROM GENERAL REVENUE FUND)	
137	(1)	Xerox Corporation	\$ 1,691.83
138	(l)	<i>Claims against the Department</i>	
139		<i>of Motor Vehicles:</i>	
140		(TO BE PAID FROM STATE ROAD FUND)	
141	(1)	Hamilton Business Systems	\$ 39.43
142	(2)	Xerox Corporation	\$ 848.25
143	(m)	<i>Claims against the Department of</i>	
144		<i>Natural Resources:</i>	
145		(TO BE PAID FROM GENERAL REVENUE FUND)	
146	(1)	Johnson Controls, Inc.	\$ 15,326.67
147	(2)	Xerox Corporation	\$ 8,500.00
148		(TO BE PAID FROM FEDERAL REVENUE FUND)	
149	(1)	The Goodyear Tire & Rubber Company	\$ 401.00
150		from Acct. No. 7930-79	
151	(2)	Keizer Saw & Mower	\$ 309.95
152		from Acct. No. 7930-79	
153	(n)	<i>Claims against the Department of</i>	
154		<i>Public Safety:</i>	
155		(TO BE PAID FROM GENERAL REVENUE FUND)	
156	(1)	Aarom Boonsue, M.D., Inc.	\$ 290.00
157	(2)	AM International Inc., Debtor in	
158		Possession Varytyper Division	\$ 600.00
159	(3)	City of Wellsburg	\$ 22.50

160	(4)	Consolidated Business Forms Company	\$	178.49
161	(5)	Doctor's Urgent Care, Inc.....	\$	55.00
162	(6)	Eagle Aviation, Inc.	\$	3,577.00
163	(7)	The Goodyear Tire & Rubber Co.	\$	2,764.50
164	(8)	Greenbrier Physicians, Inc.	\$	50.00
165	(9)	The James & Law Company	\$	182.90
166	(10)	Jordan Chiropractic Clinic, Inc.	\$	130.00
167	(11)	Kanawha Valley Radiologist, Inc.	\$	100.00
168	(12)	Marjorie Garden Associates	\$	210.00
169	(13)	Means Charleston Center.....	\$	137.84
170	(14)	Putnam General Hospital	\$	1,533.40
171	(15)	Roentgen Diagnostics, Inc.	\$	39.00
172	(16)	St. Joseph's Hospital	\$	6.00
173	(17)	Three Community Cable TV	\$	164.00
174	(18)	3M Company.....	\$	246.16
175	(o)	<i>Claims against the Division of</i>		
176		<i>Vocational Rehabilitation:</i>		
177		(TO BE PAID FROM FEDERAL REVENUE FUND)		
178	(1)	Krown Research, Inc.	\$	194.00
179		from Acct. No. 7873-79		
180	(2)	St. Joseph's Hospital	\$	4,999.40
181		from Acct. No. 7873-79		
182	(p)	<i>Claim against the Governor's Office of</i>		
183		<i>Economic and Community Development:</i>		
184		(TO BE PAID FROM SPECIAL REVENUE FUND)		
185	(1)	West Virginia Utility		
186		Contractors' Association	\$	3,374.57
187		from Acct. No. 8024-26		
188	(q)	<i>Claim against the Human Rights Commission:</i>		
189		(TO BE PAID FROM GENERAL REVENUE FUND)		
190	(1)	Department of Employment Security....	\$	424.00
191				
192	(r)	<i>Claim against the Supreme Court of Appeals:</i>		
193		(TO BE PAID FROM SUPREME COURT GENERAL JUDICIAL FUND,		
194		ACCOUNT NO. 1110-00, FROM APPROPRIATION		
195		FOR CURRENT FISCAL YEAR 1984-85)		
196	(1)	The Sheriff and Treasurer of		
197		Kanawha County	\$	200,016.15

198 (s) *Claim against the Treasurer:*

199 (TO BE PAID FROM GENERAL REVENUE FUND)

200 (1) Bob Dalton Investigations, Inc. \$ 294.53

201 The Legislature finds that the above moral obligations and
 202 the appropriations made in satisfaction thereof shall be the full
 203 compensation for all claimants, and that prior to the payments
 204 to any claimant provided for in this bill, the court of claims
 205 shall receive a release from said claimant releasing any and
 206 all claims for moral obligations arising from the matters
 207 considered by the Legislature in the finding of the moral
 208 obligations and the making of the appropriations for said
 209 claimant. The court of claims shall deliver all releases obtained
 210 from claimants to the department against which the claim was
 211 allowed.

CHAPTER 41

(Com. Sub. for S. B. 196—By Mr. Tonkovich, Mr. President, et al.)

[Passed April 16, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nineteen, article one and all of article four, chapter twenty of said code; to repeal article one-c, chapter twenty-one of said code; to repeal article seven, chapter twenty-six of said code; to amend said code by adding thereto three new chapters, designated chapters five-b, five-c and five-d; to amend chapter twelve of said code by adding thereto a new article, designated article one-a; to amend chapter nineteen of said code by adding thereto a new article, designated article one-a; to amend and reenact sections nine and fourteen, article one, chapter twenty; to amend and reenact section one, article seven, chapter twenty; to amend and reenact sections six, nine and twenty-one, article fifteen, chapter thirty-one of said code; and to further amend article fifteen by adding thereto sixteen new sections, designated sections seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j,

seven-k, seven-m, seven-n, seven-o, seven-p, seven-q and seven-r, all relating to economic development generally; establishing "The Economic Development Act of 1985"; setting forth legislative findings; construction of chapter; creating the department of commerce; providing for a commissioner of commerce, division directors and deputy commissioners; setting forth general powers of the department; creating the various divisions within said department; authorizing the commissioner to establish additional divisions; authorizing the governor to transfer divisions, duties, functions and appropriations between the department of commerce and the office of community and industrial development; providing for an expiration date of such authority; assigning or transferring certain employees to the department of commerce or the office of community and industrial development; protecting the employment, employment classification and other employment conditions of certain persons; providing for exceptions; requiring the department to submit an annual program and policy action statement to the joint committee on government and finance; providing for the division of tourism and setting forth its purpose, powers and general duties; providing for the division of advertising and promotion and setting forth its purpose, powers and general duties; providing for the division of research and strategic planning and setting forth its purpose, powers and general duties; providing for the division of product marketing and setting forth its purpose, powers and general duties; providing for the division of small business development and setting forth its purpose, powers and general duties; establishing small business innovation centers; creating the state small business innovation network center board; setting forth the functions and duties of regional small business innovation centers; confidentiality of certain information; mandating the director to adopt certain rules and regulations; transferring the duties, powers, functions and all documents and equipment of the division of parks and recreation within the department of natural resources to the department of commerce; retaining legal title to such properties within the department of natural resources; transferring existing contractual obligations and remaining appropriations to the department of commerce; requiring

the commissioner of commerce and the director of natural resources to cooperate in effectuating such transfer; providing for the division of parks and recreation and setting forth its purpose, powers and general duties; law enforcement duties to remain the responsibility and function of the department of natural resources; continuing the Berkeley Springs sanitarium as a state recreational facility within the department of commerce; transferring the Washington Carver camp to the jurisdiction of the commissioner of commerce; requirements of commissioner; providing definitions; providing for the issuance of park development revenue bonds; duties and authority of commissioner; authorizing the commissioner to promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to control uses of the parks and recreation system; prohibiting public hunting, the exploitation of minerals or harvesting of timber for commercial purposes in any state park; preserving the authority of the director of the department of natural resources with respect to public lands; limitations on expenditure of revenues; authorizing the commissioner to issue park development revenue bonds and setting forth other powers of the commissioner; exempting park development projects, certain properties and income from taxation, except inheritance taxation; providing for the investment in notes, bonds and security interests; disclaimer of state liability; providing for a trustee for bondholders; proceeds of park development revenue bonds, grants and gifts; authorizing the commissioner to pledge revenue as security for any bonds issued; setting forth duties of the department with respect to the maintenance and control of projects; requiring observation of the constitution and other laws; authorizing the commissioner to operate commissaries, restaurants and other facilities; authorizing the commissioner to enter into certain contracts; providing for the acquisition, development, protection, operation and maintenance of the Greenbrier river trail; providing certain limitations thereof; requiring the correlation of projects and services; sunset provision; abolishing the office of economic and community development; mandating the governor to transfer the functions, personnel, property and relative liens thereto, from said office to the office of community and

industrial development or to the department of commerce; existing contracts to remain in full force and effect; creating the office of community and industrial development; providing for a director thereof; authorizing the director to promulgate rules and regulations; exempting such rules and regulations from the provisions of chapter twenty-nine-a; creating divisions within said office; authorizing the governor to transfer duties, functions or appropriations to the department of commerce; authorizing the governor, at the director's request, to create additional or abolish existing divisions; providing for a limit on such gubernatorial authority; requiring the office to conduct certain feasibility studies and report to the Legislature; defining certain terms; providing for the West Virginia export development authority; setting forth legislative findings; definitions; creating the said authority and setting forth its purpose; providing for a board of directors; qualifications and duties of board members; setting forth general powers of the authority; empowering the authority to provide guaranteed funding for eligible export loans; setting forth qualifications for such loans; providing for participating banking organizations and setting forth qualifications thereof; requiring the submission of an annual report and an annual audit; interpretation of powers; exempting authority from taxation; setting forth when conflict of interest exists with respect to members, officers, agents or employees of the authority; consequences of any such conflicts; exempting members or any persons acting on behalf of the authority from personal liability; authorizing the authority to issue bonds; such bonds to be payable solely from revenues; providing for the execution, form, delivery, conditions and sale of such bonds; exempting such bonds from certain taxation; exempting security agreements and financing agreements from stamp and transfer taxes; authorizing the authority to create an insurance fund; setting forth requirements of such funds; permitting the authority to use bond funds to purchase such insurance; when insurance may be pledged as security; providing that bonds, debenture, notes or other evidence of indebtedness of the authority are securities which may be invested or deposited by the appropriate persons or entities; exempting certain confidential information from disclosure; provisions

to be cumulative; severability of provisions; continuing the West Virginia labor-management advisory council; renaming said council; increasing the membership of said council; present members to complete terms of office; providing that additional organizations should submit recommendations for membership to the governor; increasing the minimum number of meetings each year and the number of members constituting a quorum; setting forth objectives of the council; enumerating the powers, duties and functions thereof; requiring the council to submit an annual report to the joint committee on government and finance; setting forth authorizations and restrictions with respect to appropriations, gifts, bequests or grants; funds to be deposited with state treasurer; requiring the council to designate regions and to establish regional advisory councils therein; setting forth duties and requirements of such councils; providing for the compensation of members and employment of staff; duration of council; creating the "West Virginia Basic Assistance for Industry and Trade Act"; setting forth legislative purpose and intent; definitions; severability; creating the West Virginia automobile industry assistance corporation; powers and duties generally; providing for a board of directors of such corporation; setting forth qualifications and duties of the board; requiring the board to manage and control the corporation; exempting directors and officers from personal liability; authorizing the board to employ certain persons; restricting the salary of employees; requiring all contracts of employment to contain prevailing rate of wages; how prevailing rate of wages determined; specifying powers of the corporation; authorizing the governor to provide for the transfer of the use, possession and control of real or personal property of the state to the corporation; providing for a principal office; requiring the maintenance of records; requiring board members to take oath of office; providing that the board of investments shall be ex officio a board of investments for public employees retirement system funds for purposes of article; authorizing the board of investments to invest moneys, securities and other assets of such system in the form of interest bearing loans; setting forth restrictions on such loan authority; specifying requirements of such loans; setting forth limitation on loan authority;

specifying terms and conditions of loans; requiring an annual audit of a borrower's account; authorizing the board to request a report of an independent audit; prohibiting the making of loans without a written agreement of the borrower to provide the board with such reports; authorizing the board to take necessary action to enforce rights; providing certain tax credits to borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such reports; providing a termination date for the board's authority to make such loans; creating the West Virginia industrial and trade jobs development corporation; definitions; purposes of corporation; providing for a board of directors; number, appointment, terms of office, qualifications and compensation of members; prohibiting members from having certain financial interests; providing for criminal penalties; specifying the duties of the board; exempting corporate directors and officers from personal liability; authorizing the board to employ staff personnel; limitation on salaries; requiring all contracts to contain minimum wage provisions; determination of minimum wage; specifying the powers of such corporation; creating an investment fund; providing how such fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest in qualified securities; setting forth requirements for such investment; limiting the amount of total investment; exceptions; exempting such transactions from the provisions of the uniform securities act; authorizing the corporation to finance development projects; setting forth restrictions on such financing; limiting the amount of financing; exceptions; requiring security for such investments; exempting such transactions from the provisions of the uniform securities act; authorizing the governor to transfer to the corporation the use, possession and control of real or personal property of the state; providing the location of a principal office; maintaining records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio a board of investments for public employees retirement system funds for investment in accordance with the provisions of this article; setting forth the authority of the

board of investments to invest moneys; requirements of loans limitations on such loan authority; setting forth terms and conditions of loans; authorizing the board of investments to take necessary action to enforce certain rights; permitting a tax credit for borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such report; providing for the termination of the board's authority to make such loans; authorizing certain inspections, audits and investigations; creating the public energy authority; providing for a short title; setting forth purposes and intent; legislative findings; definitions; creating the West Virginia public energy authority board; providing for the appointment, terms of office, qualifications, compensation, duties and expenses of board members; providing for a director; requiring the board to report annually to the governor and the Legislature; audit; setting forth powers of the authority; providing for general powers, duties, authority and responsibilities of authority; expenses of authority; restrictions on use of funds; authorizing the board to invest funds in specified securities; providing for the maintenance, operation and repair of projects; providing that bonds shall be lawful investments; exempting the operation and maintenance of projects from taxation; empowering the authority to acquire property; authorizing other governmental agencies to lease, lend, grant or convey property to the authority; setting forth terms thereof; authorizing the authority to acquire property or property rights of other property owners; authorizing governmental agencies to lease, lend, grant or convey property to the authority; authority not to be deemed a public utility; authority exempted from jurisdiction of the public service commission; authority subject to provisions governing gas pipeline safety; providing for the transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers; prohibiting officers, members or employees of the authority from having financial interests; exceptions; criminal penalty; exempting directors or other persons acting on behalf of the authority from personal liability; requiring meetings and records of authority to be public; exceptions; liberal construction to be given; severability; creating a

linked deposit program: definitions; legislative findings; limitations on investments in linked deposits; applications for loan priority; loan package to be submitted to state treasurer; authorizing the state treasurer to accept or reject such loan package; requiring a deposit agreement between the lending institution and state treasurer; specifications of the deposit agreement; providing for the loan rate; certification of compliance; monitoring of compliance by the state treasurer; setting forth duties of the state treasurer and the industrial development authority; requiring the state treasurer to report quarterly to the governor and the joint committee on government and finance; contents of reports; exempting the state and the state treasurer from liability; division of forestry; legislative findings; purposes; transferring the division of forestry from the department of natural resources to the department of agriculture; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account; additional duties of director; creating a forestry commission; qualifications and appointment of director; powers and duties generally; providing for the fiscal management of the department of natural resources; removing the requirements that the director of natural resources establish and maintain bookkeeping and internal auditing systems for all state parks; removing specifications thereof; setting forth divisions within the department of natural resources; removing the division of parks and recreation as a division within said department; authorizing the chief conservation officer of the department of natural resources to supervise and direct the department's law-enforcement policies, practices and programs; duties and authorities of such chief conservation officer; providing for other conservation officers, including emergency conservation officers; selection of such officers; authorizing the chief conservation officer to select and appoint full-time civil service employees as special conservation officers; removing requirement that such officers be chosen from among employees of the department of natural resources; setting forth powers and duties of special conservation officers; limitation on jurisdiction; specifying other authorities and jurisdiction of the chief conservation officer; setting forth the general

powers of the economic development authority; providing the authority with additional power to issue bonds, at the request of the governor or an appropriate state agency or authority, for the construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, or for export development, farm development, jobs development or forest development, or for the West Virginia automobile assistance corporation or the West Virginia industrial and trade jobs development corporation; requiring that any such bonds issued for the construction of electrical power generating facilities, natural gas transmission lines or other energy projects be first approved by an act of general law, after public notice and hearing; loans for construction of facilities and projects; issuance of bonds and notes; trustee for bondholders; contents of trust agreement; relating to bonds issued; use of funds by authority; restrictions; relating to certain projects; security for bonds and notes issued; enforcement of payment and validity of bonds and notes issued; pledges; time; liens; recordation; refunding; bond; purchase and cancellation of notes or bonds; vested rights; impairment; providing that bonds shall not be debts; expenses; negotiability of bonds and notes; legal investments; exemption from taxation; exemption from personal liability; cumulative authority; applicability of other statutes and charters; authorizing the authority to make equipment loans; qualifications of such loans; permitting the authority to make such loans based on an unconditional letter of credit; real estate as a security interest; permitting the authority to determine the necessity, terms and amount of additional security; and increasing the economic development authority's authorized limit on borrowing and the board of investment's authorized limit on investments.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one and all of article four, chapter twenty of said code be repealed; that article one-c, chapter twenty-one of said code be repealed; and that article seven, chapter twenty-six of said code be repealed;

that said code be amended by adding thereto three new chapters, designated chapters five-b, five-c and five-d; that chapter twelve of said code be amended by adding thereto a new article, designated article one-a; that chapter nineteen of said code be amended by adding thereto a new article, designated article one-a; that sections nine and fourteen, article one and section one, article seven, chapter twenty be amended and reenacted; that sections six, nine and twenty-one, article fifteen, chapter thirty-one be amended and reenacted; and that said article fifteen be further amended by adding thereto sixteen new sections, designated sections seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-m, seven-n, seven-o, seven-p, seven-q and seven-r, all to read as follows:

Chapter

- 5B. Economic Development Act of 1985.**
- 5C. Basic Assistance for Industry and Trade.**
- 5D. Public Energy Authority Act.**
- 12. Public Moneys and Securities.**
- 19. Agriculture.**
- 20. Natural Resources.**
- 31. Corporations.**

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article.

- 1. Short title.**
- 2. Office of Community and Industrial Development.**
- 3. West Virginia Export Development Authority.**
- 4. Labor-Management Council.**

ARTICLE 1. DEPARTMENT OF COMMERCE.

- §5B-1-1. Short title.**
- §5B-1-2. Legislative findings.**
- §5B-1-3. Construction of chapter.**
- §5B-1-4. Department created; appointment, compensation and qualifications of commissioner.**
- §5B-1-5. General powers of the department.**
- §5B-1-6. Divisions created; continuation of civil service coverage for persons employed in the former office of economic and community development and the department of natural resources.**
- §5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.**
- §5B-1-7. Division of tourism; purpose; powers and duties generally.**
- §5B-1-8. Division of advertising and promotion; purpose; powers and duties generally.**

- §5B-1-9. Division of research and strategic planning; purpose; powers and duties generally.
- §5B-1-10. Division of product marketing; purpose; powers and duties generally.
- §5B-1-11. Division of small business development; purpose; powers and duties generally.
- §5B-1-11a. Regional small business innovation centers; locations; authority.
- §5B-1-11b. State small business innovation center board created; membership; regional center directors.
- §5B-1-11c. Functions and duties of regional centers.
- §5B-1-11d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.
- §5B-1-11e. Rules and regulations.
- §5B-1-12. Division of parks and recreation created; duties, records and equipment transferred from the department of natural resources; funds.
- §5B-1-13. Division of parks and recreation; purpose; powers and duties generally.
- §5B-1-13a. Definitions; state parks and recreation system.
- §5B-1-13b. Authority of commissioner to issue park development revenue bonds; grants and gifts.
- §5B-1-13c. Tax exemption.
- §5B-1-13d. Investment in notes, bonds and security interests.
- §5B-1-13e. Disclaimer of any liability of state of West Virginia.
- §5B-1-13f. Trustee for holders of park development revenue bonds.
- §5B-1-13g. Proceeds of park development revenue bonds, grants and gifts.
- §5B-1-13h. Authority of commissioner to pledge revenue from recreational facilities as security.
- §5B-1-13i. Management and control of project.
- §5B-1-13j. Provisions of construction and law observed; what approval required.
- §5B-1-14. Restaurants and other facilities.
- §5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal option of commissioner; termination of contract by the commissioner.
- §5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.
- §5B-1-17. Correlation of projects and services.
- §5B-1-18. Sunset provision.

§5B-1-1. Short title.

- 1 This chapter shall be known and may be cited as "The
- 2 Economic Development Act of 1985."

§5B-1-2. Legislative findings.

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding:

- 3 (a) That seriously high unemployment exists in many
4 areas of the state;
- 5 (b) That economic insecurity due to unemployment
6 undermines the health, safety and general welfare of the
7 people of the entire state;
- 8 (c) That the absence of employment and business
9 opportunities for youth is a serious threat and has resulted
10 in families leaving the state to find opportunities elsewhere,
11 adversely affecting the tax base of the state, counties and
12 municipalities;
- 13 (d) That the present and future welfare of the people of
14 the state require as a public purpose a renewed effort
15 toward the promotion and development of business
16 enterprises with potential to help;
- 17 (e) That the legislative and executive branches of state
18 government must seek out and recruit exceptionally
19 qualified individuals and organizations to administer,
20 advise and manage the state's economic development
21 programs;
- 22 (f) That the state's leaders of business, labor, education
23 and government must cooperate and advance together on
24 common ground, with the common purpose of the economic
25 revitalization of our state; and
- 26 (g) That the industrial products and natural resources
27 of the state need to be more thoroughly managed, developed
28 and promoted and the various industries better coordinated
29 and developed to provide a healthy industry environment
30 that will decrease unemployment, promote the use of, while
31 also protecting the renewable natural resources of West
32 Virginia, and otherwise provide for the economic
33 revitalization of our state.
- 34 In recognition of these findings, it is in the best interest of
35 the citizens of this state to transfer the management and
36 responsibility of the division of parks and recreation to the
37 department of commerce and to unite the management and
38 responsibility for renewable forest resources by
39 transferring the division of forestry from the department of
40 natural resources to the department of agriculture. These
41 transfers of divisions' management and responsibility will
42 unite and realign the various governmental activities in the
43 areas of commercial, industrial, recreational and forestry
44 management and development so as to promote the

45 expansion of industry and the use of renewable forestry
46 resources and enhance the development of nonrenewable
47 resources to assure the greatest benefit to the people of West
48 Virginia.

§5B-1-3. Construction of chapter.

1 The provisions of this chapter being remedial in nature
2 and designed for the benefit and well being of the people of
3 the state, such provisions shall be given a liberal
4 construction to ensure the fulfillment of the purposes and
5 intent of this chapter.

**§5B-1-4. Department created; appointment, compensation
and qualifications of commissioner.**

1 Effective the first day of July, one thousand nine hundred
2 eighty-five, there is hereby created in the executive branch
3 of state government a department of commerce and the
4 office of commissioner of commerce. The commissioner
5 shall be the chief executive officer of the department with
6 control and supervision of its operations and shall be
7 appointed by the governor with the advice and consent of
8 the Senate and shall be paid a salary of sixty-five thousand
9 dollars a year. The commissioner of commerce shall have
10 control and supervision of the department of commerce and
11 shall be responsible for the work of each of its divisions.
12 Under the control and supervision of the commissioner of
13 commerce, each division director shall be responsible for
14 the work of his division. The commissioner of commerce
15 shall have the authority to employ such assistants as may be
16 necessary for the efficient operation of the department.
17 The commissioner may appoint such deputy
18 commissioners and assign them such duties as may be
19 necessary for the efficient management and operation of the
20 department.

§5B-1-5. General powers of the department.

1 (a) The department of commerce shall have the
2 authority and the duty to:

3 (1) Promote, encourage and facilitate the expansion and
4 development of markets for West Virginia products and
5 services and the state's national and international image

- 6 and prestige by any and all reasonable methods;
- 7 (2) Promote and encourage the location and
8 development of new business in the state and the
9 maintenance and expansion of existing business;
- 10 (3) Investigate and study conditions affecting West
11 Virginia business, industry and commerce; collect and
12 disseminate information, and engage in technical studies,
13 scientific investigations, statistical research and
14 educational activities necessary or useful for the proper
15 execution of the powers and duties of the department;
- 16 (4) Plan and develop an effective economic information
17 service that will directly assist business, education and
18 labor and also encourage businesses outside the state to use
19 industrial office facilities, professional, labor, financial and
20 recreational facilities, services and products from within
21 the state;
- 22 (5) Encourage and develop commerce with other states
23 and nations and devise methods of removing trade barriers
24 that hamper the free flow of commerce between this and
25 other states and nations and for these purposes cooperate
26 with governmental, quasi-public and private organizations
27 in formulating and promoting the adoption of compacts and
28 agreements helpful to commerce and labor;
- 29 (6) Conduct or encourage research designed to further
30 new and more extensive uses of the natural, human,
31 professional, technical and other resources of the state with
32 a view to the development of new products, industrial
33 processes, services and markets;
- 34 (7) Compile periodically a census of business and
35 industry in the state, in cooperation with other agencies,
36 and analyze and publish the information in such form as to
37 be most valuable to business and industry;
- 38 (8) Compile periodically a census of the crafts, trades,
39 skills and occupations of all adult persons in the state, in
40 cooperation with other agencies, and analyze and publish
41 the information in such form as to be most valuable to
42 business and industry;
- 43 (9) Study long-range trends and developments in the
44 industries, commerce and economic health of the state, and
45 analyze the reasons underlying such trends; study costs and
46 other factors affecting successful operation and location of
47 businesses within the state;

48 (10) Advertise and publicize the material, economic
49 quality of life, recreational and other advantages of the
50 state which render it a desirable place for commerce and
51 residence;

52 (11) Collect, compile and distribute information and
53 literature concerning the advantages and attractions of the
54 state, its historic and scenic points of interest and the
55 highway, transportation and other facilities of the state;

56 (12) Plan and carry out a program of information and
57 publicity designed to attract to West Virginia tourists,
58 visitors and other interested persons from outside the state;

59 (13) Initiate, promote and conduct, or cause to be
60 conducted, research designed to further new and more
61 extensive uses and consumption of natural and other
62 resources and their by-products; and for such purposes, to
63 enter into contracts and agreements with research
64 laboratories maintained by educational or endowed
65 institutions in this state;

66 (14) Manage the state's park and recreation system for
67 the benefit of the people of this state, and effectively
68 promote and advertise the same to increase public
69 knowledge and use thereof;

70 (15) Make recommendations to the governor and the
71 Legislature of any legislation deemed necessary to facilitate
72 the carrying out of any of the foregoing powers and duties,
73 and to exercise any other power that may be necessary or
74 proper for the orderly conduct of the business of the
75 department and the effective discharge of the duties of the
76 department; and

77 (16) To cooperate and assist in the production of motion
78 pictures and television and other communications.

**§5B-1-6. Divisions created; continuation of civil service
coverage for persons employed in the former office
of economic and community development and the
department of natural resources.**

1 There is hereby created within the department of
2 commerce:

3 (1) The division of tourism;

4 (2) The division of advertising and promotion;

5 (3) The division of research and strategic planning;

6 (4) The division of product marketing;

7 (5) The division of small business development; and

8 (6) The division of parks and recreation.

9 Each said division shall be under the control of a director
10 to be appointed by the commissioner who shall be qualified
11 by reason of exceptional training and experience in the field
12 of activities of his respective division and shall serve at the
13 will and pleasure of the commissioner. The commissioner
14 shall have authority to establish such additional divisions
15 as may be determined necessary to carry out the purposes of
16 this chapter.

17 The governor may, by executive order, transfer any of the
18 divisions, duties, functions or appropriations of the
19 department of commerce to the office of community and
20 industrial development created by article two of this
21 chapter; and, he may, by executive order, transfer any of the
22 divisions, duties, functions or appropriations of the office of
23 community and industrial development to the department
24 of commerce, as he, from time to time, deems necessary to
25 carry out the purposes of this chapter. The authority to
26 make such transfers, as provided by this section, shall
27 expire on January first, one thousand nine hundred eighty-
28 six.

29 All persons employed on the effective date of this chapter
30 in the governor's office of economic and community
31 development and the division of parks and recreation in the
32 department of natural resources, the duties and functions of
33 which have been transferred either to the department of
34 commerce or the office of community and industrial
35 development created by virtue of the provisions of the
36 economic development act of one thousand nine hundred
37 eighty-five, are hereby assigned and transferred to either
38 the department of commerce or the office of community and
39 industrial development, as the case may be, and no person's
40 employment shall be eliminated, nor shall any person's
41 salary, benefits or position classification be reduced or
42 diminished by reason of the provisions of this chapter. All
43 persons affected shall retain their coverage under the civil
44 service system and all matters relating to job classification,
45 job tenure, salary and conditions of employment shall
46 remain in force and effect from and after the effective date
47 of this chapter: *Provided*, That nothing herein shall
48 prohibit the disciplining or dismissal of any employee for

49 cause, or the dismissal of any nonclassified supervising
50 employees appointed by the governor and serving at the will
51 and pleasure of the governor.

§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.

1 The department of commerce shall prepare and submit to
2 the joint committee on government and finance on/or
3 before the first day of December, one thousand nine
4 hundred eighty-five, and each year thereafter, a program
5 and policy action statement which shall outline in specific
6 detail according to the purpose, powers and duties of the
7 office or division, its procedure, plan and program to be
8 used in accomplishing its goals and duties as required under
9 this article.

10 The joint committee on government and finance shall
11 prescribe the content and the form of such statements
12 required under this section.

§5B-1-7. Division of tourism; purpose; powers and duties generally.

1 It shall be the duty of the division of tourism:

2 (a) To promote and enhance the tourist industry and
3 improve tourist facilities and attractions;

4 (b) To compile a listing of all tourist facilities in this
5 state, whether public or private, including, but not limited
6 to, state parks and forests, camping grounds, back-packing
7 and hiking trails, public and private hunting areas
8 (including the game or fowl indigenous thereto), fishing
9 lakes, ponds, rivers and streams (including the type of fish
10 indigenous thereto; and the dates of the stocking thereof),
11 ski resorts and areas, ice skating rinks or facilities, rifle and
12 pistol target practice areas, skeet and other shooting
13 facilities, archery ranges, swimming pools, lakes, ponds,
14 rivers and streams, hotels, motels, resorts and lodges
15 (including any attendant restaurant, banquet, meeting or
16 convention facilities or services), health spas or mineral
17 water or spring water health facilities, museums, cultural
18 centers, live-performance theaters, colleges, schools,
19 universities, technical centers, airports, railroad stations,
20 bus stations, river docks, boating areas, government or
21 military installations (which are not restricted to public

22 access), historical places, markers or places of events,
23 birthplaces of famous West Virginians, or any other thing of
24 like kind and nature, and to develop relative thereto a series
25 of films, videotapes, pamphlets, brochures and other
26 advertising or promotional media, and to distribute the
27 same in such a manner as to enhance the public's knowledge
28 about West Virginia and its many attractions;

29 (c) Develop a plan for tourist facility expansion and new
30 development, including financing;

31 (d) To develop a system, means and mechanism to
32 distribute the promotional media described in subdivision
33 (b) of this section, both nationally and internationally; and
34 to make the same available to travel agents, tour groups,
35 senior citizen organizations, airlines, railroads, bus
36 companies, newspapers, magazines, radio and television
37 stations, and the travel editors thereof; to develop, in
38 cooperation with the department of highways, a series of
39 information stations along interstate and other major
40 highways of this state, utilizing existing rest stop areas and
41 other areas at or near the main points of egress and ingress
42 of this state for the purpose of making said information
43 available to the public at large;

44 (e) To develop and implement a marketing strategy,
45 employing radio, television, magazine and newspaper
46 advertising, or any combination thereof, in those major
47 metropolitan areas of the nation, in order to attract the
48 residents thereof to visit and enjoy the tourist facilities of
49 this state;

50 (f) To encourage, cooperate with and participate in, any
51 group or organization, including regional travel councils,
52 the purpose of which is to promote and advertise, or
53 encourage the use of, tourist facilities in West Virginia;

54 (g) To provide professional assistance, technical advice
55 or marketing strategies to any privately owned facility or
56 attraction, as described in subdivision (b) of this section,
57 which is open and available to the general public, which has
58 developed or is attempting to develop its own advertising
59 program;

60 (h) To employ, train and supervise a corps of
61 information specialists or tour guides who possess, or
62 through their employment and training will possess,
63 specific knowledge and information about the historic,

64 scenic, cultural, industrial, educational, governmental,
65 recreational and geographical significance of the state and
66 the various facilities or attractions described in subdivision
67 (b) of this section. In hiring the information specialists
68 herein provided, special preference shall be given to senior
69 citizens (those over sixty-two years of age) and college
70 students who are bona fide residents of the state and
71 enrolled in any college or university of this state, whether
72 public or private, all of whom shall be hired on a part-time
73 basis and whose periods of employment may be seasonable;

74 (i) To provide to any tour group, travel agency, public
75 carrier or other entity of like kind or nature, who is or which
76 is offering tours, visits or vacations in West Virginia the
77 services of the information specialists provided for in
78 subdivision (g) of this section, without cost or fee to said
79 entity requesting said service;

80 (j) To assist tour groups, travel agencies, public carriers
81 or other entities of like kind or nature in developing a
82 program of preplanned tours, visits or vacations in West
83 Virginia; and, in conjunction therewith, to coordinate the
84 activities of said tour groups, travel agencies, public
85 carriers or other entities with the services offered by any of
86 the facilities set forth in subdivision (b) of this section; and
87 to encourage said facilities to offer special or discount rates
88 to any party traveling with said tour groups, travel
89 agencies, public carriers or other entities of like kind or
90 nature; and

91 (k) To cooperate with the department of highways, in
92 developing a system of informational highway signing
93 relating to the recreational, scenic, historic and
94 transportational facilities and attractions of the state that
95 comply with the current federal and state regulations as
96 related to outdoor advertising and signing as required by
97 the Manual of Uniform Traffic Control Devices.

**§5B-1-8. Division of advertising and promotion; purpose;
powers and duties generally.**

1 It shall be the duty of the division of advertising and
2 promotion:

3 (a) Based upon the information, statistics, facts, studies
4 and conclusions produced by or for the division of strategic
5 planning, to develop a program of advertising strategies

6 and plans to inform the public at large and specific target
7 groups about various aspects of the state of West Virginia,
8 including, but not limited to, agriculture, natural resources,
9 timber and timber byproducts, coal, oil, gas and their
10 byproducts, existing industries and existing and proposed
11 industrial sites, educational, research and technical
12 institutions, the labor force, transportation, public utilities,
13 navigable waterways, rivers, lakes and streams, taxation,
14 revenue bonding availability and assistance, governmental
15 rules and regulations relative to business and industry, and
16 any other fact, statistic or item of information which is or
17 may be helpful to or of interest to any corporation,
18 partnership, association, individual or individuals who or
19 which is or may be interested in engaging in business in the
20 state of West Virginia;

21 (b) To develop such films, videotapes, computer
22 software, phonograph records, tape recordings, pamphlets,
23 brochures, booklets, information sheets, radio, television or
24 newspaper advertising, magazine inserts, advertisements
25 or supplements, billboards or any other thing of like kind or
26 nature which is, or may be, likely to inform the public at
27 large or any specifically targeted group or industry about
28 the benefits of living in, investing in, producing in, buying
29 from, contracting with, or in any other way related to, the
30 state of West Virginia or any business, industry, agency,
31 institution or other entity therein;

32 (c) To employ or contract with such professional or
33 technical experts or consultants as may be necessary to
34 create and produce the items set forth in subdivision (b) of
35 this section;

36 (d) To spend such sums of money as may be necessary,
37 within legislative appropriation therefor, to purchase
38 advertising time or space in or upon any medium generally
39 engaged or employed for said purpose to distribute or
40 disseminate the items of advertising described in
41 subdivision (b) of this section;

42 (e) To provide professional assistance, technical advice
43 or marketing strategies to any privately owned business or
44 industry in this state which has developed or is attempting
45 to develop its own advertising program;

46 (f) To cooperate with, or participate in, any group or
47 organization, whether public or private, the purpose of

48 which is to promote, enhance or develop a positive image of
49 the state of West Virginia or any business, industry,
50 institution or facility therein;

51 (g) To use such resources as are available to it to
52 distribute the items of advertising and promotion described
53 in subdivision (b) of this section, to such group or groups,
54 audience or audiences, corporations, partnerships,
55 associations, including public and private colleges and
56 universities, and to individuals, who or which are, or may
57 be, interested in some aspect of the state of West Virginia;

58 (h) To engage in, participate in, promote or sponsor,
59 such trade shows, fairs, information seminars or
60 symposiums, or other event or events of like kind and
61 nature, including privately funded trade shows, fairs,
62 information seminars or symposiums, or other event or
63 events of like kind and nature, whether located within or
64 without this state, or beyond the borders of the United
65 States, to promote generally the state of West Virginia or to
66 assist any business, industry or other entity, whether public
67 or private, in promoting, advertising or advancing the
68 reputation of the state of West Virginia or any corporation,
69 association, partnership, institution, business, industry or
70 other entity which is, or may be, likely to produce
71 additional employment or employment opportunities,
72 business or business opportunities in the state of West
73 Virginia; and

74 (i) To perform such other duties or functions, or to
75 engage in such other activities, as the commissioner may
76 from time to time direct.

**§5B-1-9. Division of research and strategic planning; purpose;
powers and duties generally.**

1 (a) The division of research and strategic planning shall
2 have the following powers and duties with respect to
3 research:

4 (1) To establish, in cooperation with the appropriate
5 college or colleges, school or schools, of West Virginia
6 University, a center for economic analysis and statistics.
7 The center shall be under the control and supervision of a
8 director, who shall be appointed by the president of West
9 Virginia University. The center shall employ such staff
10 economists or statisticians, such research assistants and

11 secretaries, each of whom shall serve on a part-time basis
12 and may be members of the faculty or staff of West Virginia
13 University. In addition, the center may employ student
14 interns.

15 (2) The center shall provide the commissioner of
16 commerce, the director of the division of strategic planning,
17 and the Legislature, with an analysis of the quality of
18 economic data pertaining to West Virginia. The center shall
19 recommend ways to obtain additional information
20 necessary to better understand the state's economy and to
21 devise better economic development strategies. The center
22 shall publish results of its research, maintain a
23 comprehensive library with supporting computer data
24 bases and shall, upon request, provide a review of the
25 economy and major policy issues to the joint committee on
26 government and finance.

27 (3) During its first year of operation, the center shall
28 include in its research topics the desirability of establishing
29 a detailed gross state product series, modeled after the
30 national income and products accounts and the desirability
31 of constructing a periodic input/output table for the state. It
32 shall review the quality of current statistics relating to
33 employment and prices and statistics relating to poverty
34 and the distribution of income and wealth. The center may
35 study the feasibility of, and based upon such study
36 establish, a West Virginia econometric model project.

37 (4) Where deficiencies are found in existing data
38 sources, the center shall publish conclusions regarding the
39 benefits to be derived from gathering additional or better
40 information and shall make operational recommendations
41 on the best possible methods for obtaining the desired
42 information.

43 (5) The director of the center or members of its staff
44 shall meet on a regular basis with the commissioner of the
45 department of commerce, other officials of the department
46 and members of the Legislature to provide the results of its
47 research and to provide policy advice and analysis.

48 (6) The center shall cooperate with and maintain an
49 inventory of research efforts of universities and colleges
50 and other institutions or businesses within the state and a
51 register of scientific and technological research facilities in
52 the state.

53 (b) The division of research and strategic planning shall
54 develop a strategic plan for the economic development of
55 the state, its regions and specific industries including
56 tourism, manufacturing, timber, agriculture and other
57 rural development, coal, oil, gas and other extractive
58 resources, retail, service, distribution and small businesses.
59 Such a plan shall emphasize a coordinated effort of the
60 public and private sector toward balanced growth for the
61 state. Such plan shall include, but is not limited to, the
62 following:

63 (1) Assessing the state's economic strengths and
64 weaknesses;

65 (2) Developing and recommending short, intermediate
66 and long-term economic goals and plans, together with
67 options;

68 (3) Identifying barriers to economic growth and
69 diversification in the state;

70 (4) Recommending implementation procedures and
71 options utilizing and maximizing existing public and
72 private mechanism;

73 (5) Fostering and supporting scientific and
74 technological research in this state in cooperation with the
75 federal government, the various offices and divisions of the
76 department of commerce and other state and local
77 government agencies, educational institutions, nonprofit
78 institutions and organizations, business enterprises and
79 others concerned with scientific and technological research
80 development;

81 (6) Developing a program to attract investment in
82 research and development in high technology industries;

83 (7) Conducting a series of studies to determine the
84 feasibility of constructing natural gas transmission lines,
85 electric power generating facilities and coal processing
86 plants to be owned, either in whole or in part, or to be
87 operated, either in whole or in part, by the state of West
88 Virginia; and

89 (8) Maintaining a library of research materials,
90 including computer data bases, to accomplish the goals of
91 the division.

92 The division shall, based upon the data it collects and
93 analyzes as set forth in subdivisions (1) through (8) of this
94 section, and in cooperation with the other divisions of the

95 department, develop a set of specific plans and programs,
96 and recommend to the Legislature, on an annual basis,
97 appropriate legislation to implement and carry out such
98 plans, for the purpose of effectuating the purposes of this
99 article.

§5B-1-10. Division of product marketing; purpose; powers and duties generally.

1 It shall be the duty of the division of product marketing:

2 (a) To develop such programs as are necessary for the
3 promotion and marketing of West Virginia arts, crafts and
4 products, and to implement said program in this state, in
5 the United States and in other countries;

6 (b) To design, develop and create, or to provide for the
7 design, development and creation of, such films,
8 videotapes, pamphlets, brochures, and other advertising
9 and promotional media, and to distribute the same in such a
10 manner as to enhance the public's knowledge of West
11 Virginia arts, crafts and products;

12 (c) To sponsor or participate in trade shows, trade fairs
13 or other events the purpose of which is to display, sell or
14 increase public awareness of, West Virginia arts, crafts and
15 products;

16 (d) To design and implement a program of direct sales of
17 West Virginia arts, crafts and products; and to provide for
18 the publication and distribution of a catalog which
19 adequately displays and describes the arts, crafts and
20 products being offered for sale, employing such direct mail
21 or other means of distribution as the director deems
22 appropriate;

23 (e) To cooperate with artists, craftsmen, guilds,
24 cooperatives and other organizations, the purposes of
25 which are to enhance or promote West Virginia arts, crafts
26 and products, and to assist said artists, craftsmen, guilds,
27 cooperatives and organizations in the development of their
28 own marketing programs;

29 (f) To develop markets in West Virginia, other states and
30 other nations for said arts, crafts and products by
31 employing persons who shall act as sales agents for said
32 arts, crafts and products;

33 (g) To cooperate with other governmental departments,

34 and with other groups, guilds, cooperatives or other
35 entities, whether public or private, the purpose of which is
36 to further enhance and promote the sale, use, distribution or
37 public knowledge of West Virginia arts, crafts and
38 products; and

39 (h) To perform such other duties or functions, or to
40 engage in such other activities, as the director may from
41 time to time direct.

**§5B-1-11. Division of small business development; purposes;
powers and duties generally.**

1 It shall be the duty of the division of small business
2 development to establish a statewide small business
3 innovation center network to be located on the campuses or
4 operated in conjunction with the colleges and universities
5 of West Virginia.

6 The director shall be responsible for the management and
7 operation of the center network, subject to the program
8 policies adopted by the center network board of directors.

9 The center network shall:

10 (a) Serve as a liaison between the department of
11 commerce and the state regional small business innovation
12 center board;

13 (b) Provide direction, guidance and assistance to
14 regional small business innovation centers;

15 (c) Conduct feasibility studies regarding the
16 establishment or certification of new regional small
17 business innovation centers;

18 (d) Conduct conferences and seminars for regional
19 small business innovation centers to promote and
20 encourage the utilization of sound and innovative
21 approaches to the discharge of the functions and duties of
22 the regional small business innovation centers; and

23 (e) Prepare and submit such reports, plans, suggestions
24 and recommendations to the department on jobs and
25 economic development as may from time to time be
26 required.

27 To the extent practicable, the director shall utilize
28 student interns and qualified new and innovative business
29 vendors, including, but not limited to, private management
30 consultants, private consulting engineers and private

31 testing laboratories, to provide services described in this
32 section.

33 The director is further authorized and empowered to
34 apply for and receive appropriations, gifts, bequests or
35 grants of money, services, material, real estate or other
36 things of value from any agency of the United States
37 government, any agency of the state of West Virginia, any
38 municipality or county within this state, any school board
39 or college or university supported in whole, or in part, by
40 this state or any other person, firm, partnership, association
41 or corporation, within or without this state, and any agency
42 of the state of West Virginia, any municipality or county
43 within this state, or any school board or college or
44 university supported in whole, or in part, by this state and is
45 hereby authorized and empowered to make appropriations
46 or grants to the regional small business innovation centers,
47 to assist in achieving the public purpose of this section. All
48 funds received by the director to carry out the provisions
49 herein shall be deposited with the state treasurer and
50 disbursed by the director to be used exclusively for carrying
51 out the provisions herein. Any appropriations, gifts,
52 bequests or grants received by the director with any
53 restriction or restrictions on the use thereof shall be
54 expended by the director in accordance with such
55 restriction or restrictions.

56 The director of the state business innovation center in
57 addition to such reports as may be required by the
58 department of commerce shall publish an annual report by
59 the first day of December of each year for distribution to the
60 governor, the Legislature, the department and the general
61 public. Such report shall describe the activities undertaken
62 by the state center and the regional centers pursuant to
63 these provisions in the preceding year.

**§5B-1-11a. Regional small business innovation centers;
locations; authority.**

1 (a) Upon the recommendation of the state director and a
2 demonstration for the need thereof, the state board of
3 directors may certify and provide funding for such number
4 of regional small business innovation centers as it may
5 consider necessary or desirable and within available
6 appropriations. Such regional small business innovation

7 centers shall be affiliated with institutions of higher
8 education, either public or private, and may be located at
9 such places where need exists for such centers.

10 (b) It is recognized that there exists at the present time
11 programs for the development of and assistance to small
12 businesses in the statewide network of the West Virginia
13 small business development center with regional centers
14 operating at the University of Charleston, West Virginia
15 University, West Virginia Northern Community College,
16 Parkersburg Community College, Southern Community
17 College of West Virginia, Concord College, Salem College,
18 Alderson-Broadus College, College of Graduate Studies
19 and West Virginia Institute of Technology. These existing
20 programs are hereby established as regional small business
21 innovation centers.

22 (c) Each regional business innovation center shall be
23 authorized and permitted to employ such strategies,
24 techniques and innovations as it shall deem desirable in
25 accomplishing the purposes of sections eleven through
26 eleven-e of this article.

27 (d) The president of each institution of higher education
28 establishing a regional small business innovation center
29 shall appoint a director for such center who shall serve at
30 the will and pleasure of such president.

**§5B-1-11b. State small business innovation center board
created; membership; regional center directors.**

1 There is hereby created the state small business
2 innovation network board which shall be composed of one
3 member representing each of the regional centers to be
4 named by the president of the respective colleges or
5 universities, and the state director of the small business
6 innovation center network who shall serve as chairman of
7 the board.

§5B-1-11c. Functions and duties of regional centers.

1 It shall be the function of regional small business
2 innovation centers to:

3 (a) Establish programs to identify entrepreneurs with
4 marketable ideas and to support the organization and
5 development of new business and innovative businesses,
6 including technologically oriented enterprises;

- 7 (b) Conduct conferences and seminars to provide new
8 and innovative businesses with access to individuals and
9 organizations with specialized expertise;
- 10 (c) Develop and maintain a source file and an
11 information program to establish a statewide network of
12 public, private and educational resources to assist the
13 organization and development of new and innovative
14 businesses, and to furnish centralized services with regard
15 to public services and governmental programs;
- 16 (d) Provide new and innovative businesses with access
17 to managerial and technical expertise and to provide
18 assistance in resolving problems encountered by such
19 businesses;
- 20 (e) Conduct planning and research, including feasibility
21 studies and market research in cooperation with the
22 department;
- 23 (f) Assist in the identification and development of new
24 and innovative business opportunities;
- 25 (g) Foster the establishment and strengthening of business
26 service agencies, including trade associations and coopera-
27 tives, which provide services to new and innovative bus-
28 inesses;
- 29 (h) Implement the furnishing of business counseling,
30 management training and other related services, with
31 special emphasis on the development of management
32 training programs using the resources of the business
33 community, the state labor-management council and state
34 and private colleges and universities, and with emphasis
35 upon providing management training of sufficient scope
36 and duration to develop entrepreneurial and managerial
37 self-sufficiency on the part of the new and innovative
38 businesses served;
- 39 (i) Provide access to business analysts who can refer
40 new and innovative businesses to available experts;
- 41 (j) Conduct studies, research and counseling concerning
42 the managing, financing and operation of new and
43 innovative businesses;
- 44 (k) Foster and support scientific and technological
45 research for the development and application of new
46 technologies identified as having significant potential for
47 economic growth in the state or designed to further new and
48 more extensive uses of the natural and other resources of

- 49 the state, and to assist in technology transfer, research and
50 coupling from existing sources to new and innovative
51 businesses;
- 52 (l) Organize, conduct, sponsor or cooperate in and assist
53 the conducting of institutes, conferences, demonstrations
54 and studies relating to the stimulation and formulation of
55 new and innovative businesses;
- 56 (m) Assist new and innovative businesses in solving
57 problems concerning operations, manufacturing,
58 engineering, technology exchange and development,
59 personnel administration, marketing, sales,
60 merchandising, finance, accounting, business strategy
61 development and other disciplines required for business
62 growth and expansion, increased productivity and
63 management improvement;
- 64 (n) Provide access to professional specialists to conduct
65 research or to provide counseling assistance to new and
66 innovative businesses whenever the need arises;
- 67 (o) Determine the availability of financial resources and
68 recommend methods for delivery of financial assistance to
69 new and innovative businesses, including methods of
70 securing equity capital;
- 71 (p) Cooperate with other regional business innovation
72 centers for the purpose of coordinating efforts;
- 73 (q) Provide, whenever practicable, feasible and
74 desirable, housing for new and innovative businesses in
75 order to better accomplish the purposes set forth herein;
- 76 (r) Assist businesses participating in the program to
77 develop comprehensive business plans with specific
78 business targets, objectives and goals;
- 79 (s) Provide for such other nonfinancial services as
80 deemed necessary for the establishment, preservation and
81 growth of participating businesses, including, but not
82 limited to, loan packaging, financial counseling,
83 accounting and bookkeeping assistance, marketing
84 assistance and management assistance;
- 85 (t) Assist participating businesses in obtaining equity
86 and debt financing;
- 87 (u) Establish regular performance monitoring and
88 reporting systems for participating businesses to assure
89 compliance with their business plans;

- 90 (v) Analyze and report the causes of success and failure
91 of new and innovative businesses participating in the
92 program;
- 93 (w) Provide counseling and assist with technology
94 development when necessary to help new and innovative
95 businesses find solutions for complying with
96 environmental, energy, health, safety and other federal,
97 state and local laws and regulations;
- 98 (x) Apply for and receive gifts or grants in money or in
99 kind from any person, organization, governmental agency
100 or entity whatsoever which shall be exclusively utilized by
101 the regional business innovation center receiving such gifts
102 or grants; and
- 103 (y) Prepare an annual report by the first day of
104 September of each year detailing the operation of the center
105 for the previous year and submit the same to the director of
106 the state business innovation center, and, as to regional
107 business innovation centers existing and incorporated by
108 virtue of these provisions, prepare and submit by the first
109 day of September, one thousand nine hundred eighty-five, a
110 report to the same authorities detailing a preliminary plan
111 for the implementation of the program, including
112 coordination and expansion of the various original
113 programs.

**§5B-1-11d. Documentary materials concerning trade secrets;
commercial or financial information;
confidentiality.**

1 Any documentary material or data made or received by
2 any public body for the purpose of furnishing assistance to a
3 new and innovative business, to the extent that such
4 material or data consists of trade secrets or commercial or
5 financial information regarding the operation of such
6 businesses, shall not be considered public records, and shall
7 be exempt from disclosure pursuant to the provisions of
8 chapter twenty-nine-b of this code. Any discussion or
9 consideration of such trade secrets or commercial or
10 financial information may be held by the public body in
11 executive session closed to the public, notwithstanding the
12 provisions of article nine-a, chapter six of this code.

§5B-1-11e. Rules and regulations.

1 The director of the state small business innovation center
2 shall make and adopt rules and regulations for the
3 establishment, operation and maintenance of any regional
4 business innovation center established including such
5 rules, regulations and standards as may be necessary for
6 compliance with any federal statute pertaining to grants-
7 in-aid, and such other rules and regulations as may be
8 necessary to effectuate the purposes set forth herein,
9 including regulations establishing any fee to be charged for
10 services provided pursuant hereto.

§5B-1-12. Division of parks and recreation created; duties, records and equipment transferred from the department of natural resources; funds.

1 (a) The duties, powers and functions of the division of
2 parks and recreation within the department of natural
3 resources are hereby transferred to the department of
4 commerce.

5 (b) All books, papers, maps, charts, plans, literature and
6 other records, and all equipment in the possession of the
7 division of parks and recreation within the department of
8 natural resources shall be delivered or turned over to the
9 department of commerce.

10 (c) The department of commerce shall have the duty and
11 authority to administer those properties which are a part of
12 the state parks and public recreation system, but the legal
13 title to such properties shall remain with the department of
14 natural resources.

15 (d) All existing contracts and obligations of the division
16 of parks and recreation shall remain in full force and effect
17 and any existing contracts and obligations relating to parks
18 and recreation shall be performed by the department of
19 commerce.

20 (e) The unexpended balance existing on the effective
21 date of this chapter in any appropriation made to the
22 division of parks and recreation within the department of
23 natural resources is hereby transferred and appropriated to
24 the department of commerce for the use of the division of
25 parks and recreation for the fiscal period ending the

26 thirtieth day of June, one thousand nine hundred eighty-
27 five.

28 The director of the department of natural resources and
29 the commissioner of commerce shall cooperate fully and
30 exercise their powers to facilitate the development of new
31 or the expansion of existing park facilities, including, but
32 not limited to, the authorities as set forth in this chapter
33 relating to the department of commerce, and as set forth in
34 section twenty, article one, chapter twenty of this code,
35 relating to the department of natural resources, as amended
36 from time to time.

**§5B-1-13. Division of parks and recreation; purpose; powers
and duties generally.**

1 It shall be the duty of the division of parks and recreation
2 to have within its jurisdiction and supervision:

3 (a) All state parks and state recreation areas, including
4 all lodges, cabins, swimming pools, motorboating and all
5 other recreational facilities therein, except the roads
6 therein which, by reason of section one, article four, chapter
7 seventeen, are transferred to the state road system and to
8 the responsibility of the commissioner of highways with
9 respect to the construction, reconstruction and
10 maintenance of the roads or any future roads for public
11 usage on publicly owned lands in future state parks, state
12 forests and public hunting and fishing areas;

13 (b) The authority and responsibility to do the necessary
14 cutting and planting of vegetation along road rights-of-way
15 in state parks and recreational areas;

16 (c) The administration of all laws and regulations
17 relating to the establishment, development, protection, use
18 and enjoyment of all state parks and state recreational
19 facilities consistent with the provisions of this article:
20 *Provided*, That nothing herein shall be construed to assign
21 to the division of parks and recreation of the department of
22 commerce the law-enforcement duties set forth in article
23 seven, chapter twenty of this code, which duties shall
24 remain the responsibility of the department of natural
25 resources.

26 (d) The Berkeley Springs sanitarium in Morgan County
27 shall be continued as a state recreational facility under the

28 jurisdiction and supervision of the department of commerce
29 and shall be managed, directed and controlled as prescribed
30 here in this article and in article one, chapter twenty of the
31 code.

32 The commissioner shall have and is hereby granted all of
33 the powers and authority and shall perform all of the
34 functions and duties with regard to Berkeley Springs
35 sanitarium that were previously vested in and performed by
36 the director of the department of natural resources, who
37 shall no longer have such power and authority and whose
38 power and authority with regard to Berkeley Springs
39 sanitarium is hereby abolished;

40 (e) The Washington Carver camp in Fayette County is
41 hereby transferred from the department of natural
42 resources to the commissioner who shall have the
43 jurisdiction and supervision of the camp subject to the
44 jurisdiction and authority of the department of culture and
45 history as provided under section thirteen, article one,
46 chapter twenty-nine of this code. The commissioner shall
47 manage the Washington Carver camp as a state recreational
48 facility and a component of the state park system; and

49 (f) The commissioner of the department of commerce
50 shall be primarily responsible for the execution and
51 administration of the provisions herein as an integral part
52 of the parks and recreation program of the state and shall
53 organize and staff his division for the orderly, efficient and
54 economical accomplishment of these ends.

§5B-1-13a. Definitions; state parks and recreation system.

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

3 "Bonds" shall mean bonds issued by the commissioner.

4 "Cost of project" shall embrace the cost of construction,
5 the cost of all land, property, material and labor which are
6 deemed essential thereto, cost of improvements, financing
7 charges, interest during construction, and all other
8 expenses, including legal fees, trustees', engineers' and
9 architects' fees which are necessarily or properly incidental
10 to the project.

11 "Project" shall be deemed to mean collectively the
12 acquisition of land, the construction of any buildings or

13 other works, together with incidental approaches,
14 structures and facilities, reasonably necessary and useful in
15 order to provide new or improved recreational facilities.

16 "Recreational facilities" shall mean and embrace cabins,
17 lodges, swimming pools, golf courses, restaurants,
18 commissaries and other revenue producing facilities in any
19 state park.

20 "Rent or rental" shall include all moneys received for the
21 use of any recreational facility.

22 In addition to the powers and duties vested in the
23 commissioner elsewhere in this chapter, he shall have the
24 power and duty to establish and maintain a state park and
25 public recreation system, and to do all things necessary and
26 incident to the development and administration thereof.
27 Individual projects of such system may be financed from
28 any moneys of the department available for such purposes,
29 or by the issuance of park development revenue bonds as
30 provided in this section.

31 The purposes of such system shall be to promote
32 conservation by preserving and protecting natural areas of
33 unique or exceptional scenic, scientific, cultural,
34 archaeological or historic significance, and to provide
35 outdoor recreational opportunities for the citizens of this
36 state and its visitors. In accomplishing such purposes the
37 commissioner shall, insofar as is practical, maintain in their
38 natural condition lands that are acquired for and
39 designated as state parks. The commissioner may
40 promulgate rules and regulations to control such uses,
41 subject to the provisions of chapter twenty-nine-a of this
42 code, and may further provide for the construction and
43 operation of cabins, lodges, resorts, restaurants and other
44 developed recreational and service facilities. The
45 commissioner shall not permit public hunting, the
46 exploitation of minerals or the harvesting of timber for
47 commercial purposes in any state park: *Provided*, That
48 nothing herein shall be construed so as to limit the authority
49 of the director of the department of natural resources with
50 respect to public lands, including state parks, the title to
51 which is vested in him by virtue of the provisions of chapter
52 twenty of this code.

53 All revenue derived from the operation of the state park

54 and public recreation system shall be expended by the
55 director solely for operating, maintaining and improving the
56 system, or for the retirement of park development revenue
57 bonds.

**§5B-1-13b. Authority of commissioner to issue park
development revenue bonds; grants and gifts.**

1 The commissioner, with the approval of the governor, is
2 hereby empowered to raise the cost of any project, as
3 defined hereinabove, by the issuance of park development
4 revenue bonds of the state, the principal of and interest on
5 which bonds shall be payable solely from the special fund
6 herein provided for such payment. Such bonds shall be
7 authorized by order of the commissioner, approved by the
8 governor, which shall recite an estimate by the
9 commissioner of the cost of the project, and shall provide
10 for the issuance of bonds in an amount sufficient, when sold
11 as hereinafter provided, to produce such cost, less the
12 amount of any grant or grants, gift or gifts received, or in the
13 opinion of the commissioner expected to be received from
14 the United States of America or from any other source. The
15 acceptance by the commissioner of any and all such grants
16 and gifts, whether in money or in land, labor or materials, is
17 hereby expressly authorized. All such bonds shall have and
18 are hereby declared to have all the qualities of negotiable
19 instruments under the provisions of article eight, chapter
20 forty-six of this code. The commissioner shall have the
21 power:

22 (a) To issue negotiable bonds, security interests or notes
23 and to provide for and secure the payment thereof, and to
24 provide for the rights of the holders thereof, and to
25 purchase, hold and dispose of any of its bonds, security
26 interests or notes.

27 (b) To sell, at public or private sale, any bond or other
28 negotiable instrument, security interests or obligation of
29 the commissioner in any manner and upon such terms as the
30 commissioner deems would best serve the purposes set forth
31 herein.

32 (c) To issue its bonds, security interests and notes
33 payable solely from the revenues or funds available to the
34 commissioner therefor; and the commissioner may issue its
35 bonds, security interests or notes in such principal amounts

36 as it shall deem necessary to provide funds for any purposes
37 herein, including:

38 (i) The payment, funding or refunding of the principal
39 of, interest on, or redemption premiums on any bonds,
40 security interests or notes issued by it whether the bonds,
41 security interests, notes or interest to be funded or refunded
42 have or have not become due.

43 (ii) The establishment or increase of reserves to secure
44 or to pay bonds, security interests, notes or the interest
45 thereon and all other costs or expenses of the commissioner
46 incident to and necessary or convenient to carry out its
47 purposes and powers. Any bonds, security interests or notes
48 may be additionally secured by a pledge of any revenues,
49 funds, assets or moneys of the special fund herein provided.

50 (d) To issue renewal notes, or security interests, to issue
51 bonds to pay notes or security interests and, whenever it
52 deems refunding expedient, to refund any bonds by the
53 issuance of new bonds, whether the bonds to be refunded
54 have or have not matured except that no such renewal notes
55 shall be issued to mature more than ten years from date of
56 issuance of the notes renewed, and no such refunding bonds
57 shall be issued to mature more than twenty-five years from
58 the date of issuance.

59 (e) To apply the proceeds from the sale of renewal notes,
60 security interests or refunding bonds to the purchase,
61 redemption or payment of the notes, security interests or
62 bonds to be refunded.

63 (f) To accept gifts or grants or property, funds, security
64 interests, money, materials, labor, supplies or services from
65 the United States of America or from any governmental
66 unit or any person, firm or corporation, and to carry out the
67 terms or provisions of, or make agreements with respect to,
68 or pledge, any gifts or grants, and to do any and all things
69 necessary, useful, desirable or convenient in connection
70 with the procuring, acceptance or disposition of gifts or
71 grants.

72 (g) To the extent permitted under its contracts with the
73 holders of bonds, security interests or notes of the authority,
74 to consent to any modification of the rate of interest, time of
75 payment of any installment of principal or interest, security
76 or any other term of any bond, security interest, note or

77 contract or agreement of any kind to which the
78 commissioner is a party.

79 (h) The commissioner shall determine the form of such
80 bonds, including coupons to be attached thereto to evidence
81 the right of interest payments, which bonds shall be signed
82 by the commissioner, under the great seal of the state,
83 attested by the secretary of state, and the coupons attached
84 thereto shall bear the facsimile signature of the
85 commissioner. In case any of the officers whose signatures
86 appear on the bonds or coupons shall cease to be such
87 officers before the delivery of such bonds, such signatures
88 shall nevertheless be valid and sufficient for all purposes
89 the same as if they had remained in office until such
90 delivery.

91 (i) The commissioner shall fix the denominations of the
92 bonds, the principal and interest of which shall be payable
93 at the office of the treasurer of the state of West Virginia, at
94 the capitol of the state, or, at the option of the holder, at
95 some bank or trust company in the city of New York to be
96 named in the bonds in such medium as may be determined
97 by the commissioner.

98 (j) The commissioner may provide for the registration of
99 such bonds in the name of the owner as to principal alone,
100 and as to both principal and interest under such terms and
101 conditions as the commissioner may determine, and shall
102 sell such bonds in such manner as he may determine to be
103 for the best interest of the state, taking into consideration
104 the financial responsibility of the purchaser, and the terms
105 and conditions of the purchase, and especially the
106 availability of the proceeds of the bonds when required for
107 payment of the cost of the project.

108 (k) The proceeds of such bonds shall be used solely for
109 the payment of the cost of the project, and shall be deposited
110 and checked out as provided by section thirteen-g of this
111 article, and under such further restrictions, if any, as the
112 commissioner may provide.

113 (l) If the proceeds of such bonds, by error in calculation
114 or otherwise, shall be less than the cost of the project,
115 additional bonds may in like manner be issued to provide
116 the amount of the deficiency, and unless otherwise provided
117 for in the trust agreement hereinafter mentioned, shall be
118 deemed to be of the same issue, and shall be entitled to

119 payment from the same fund, without preference or priority
120 as the bonds before issued.

121 (m) If the proceeds of bonds issued for the project shall
122 exceed the cost thereof, the surplus shall be paid into a
123 special fund to be established for payment of the principal
124 and interest of such bonds as specified in the trust
125 agreement provided for in the following section. Such fund
126 may be used for the purchase of any of the outstanding
127 bonds payable from such fund at the market price, but at
128 not exceeding the price, if any, at which such bonds shall in
129 the same year be redeemable, and all bonds redeemed or
130 purchased shall forthwith be cancelled, and shall not again
131 be issued. Prior to the preparation of definitive bonds, the
132 commissioner may, under like restrictions, issue temporary
133 bonds with or without coupons, exchangeable for definitive
134 bonds upon the issuance of the latter. Such revenue bonds
135 may be issued without any other proceedings or the
136 happening of any other conditions or things than those
137 proceedings, conditions and things which are specified and
138 required herein or by the constitution of the state.

§5B-1-13c. Tax exemption.

1 The exercise of the powers granted to the commissioner
2 herein will be in all respects for the benefit of the people of
3 the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 recreational opportunities and is a public purpose. As the
6 operation and maintenance of park development projects
7 will constitute the performance of essential government
8 functions, the commissioner shall not be required to pay
9 any taxes or assessments upon any park development
10 projects or upon any property acquired or used by the
11 commissioner or upon the income therefrom. Such bonds
12 and notes and all interest and income thereon shall be
13 exempt from all taxation by this state, or any county,
14 municipality, political subdivision or agency thereof,
15 except inheritance taxes.

§5B-1-13d. Investment in notes, bonds and security interests.

1 The notes, bonds and security interests of the com-
2 missioner are hereby made securities in which the state
3 board of investments, all insurance businesses, all banking

4 institutions, trust companies, building and loan
5 associations, savings and loan associations upon which the
6 notes, security interests or bonds become subject to
7 redemption plus accrued interest to such date. Upon such
8 purchase such notes, security interests or bonds shall be
9 cancelled.

§5B-1-13e. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of
3 indebtedness of the commissioner and such notes, security
4 interests or bonds or other evidence of indebtedness shall
5 not be a debt of the state of West Virginia, and such notes,
6 security interests or bonds or other evidence of indebtedness
7 shall contain on the face thereof a statement to such effect.

**§5B-1-13f. Trustee for holders of park development revenue
bonds.**

1 The commissioner may enter into an agreement or
2 agreements with any trust company, or with any bank
3 having the powers of a trust company, either within or
4 outside the state, as trustee for the holders of bonds issued
5 hereunder, setting forth therein such duties of the state and
6 of the commissioner in respect to acquisition, construction,
7 improvement, maintenance, operation, repair and
8 insurance of the project, the conservation and application
9 of all moneys, the insurance of moneys on hand or on
10 deposit, and the rights and remedies of the trustee and the
11 holders of the bonds, as may be agreed upon with the
12 original purchasers of such bonds, and including therein
13 provisions restricting the individual right of action of
14 bondholders as is customary in trust agreements respecting
15 bonds and debentures of corporations, protecting and
16 enforcing the rights and remedies of the trustee and the
17 bondholders, and providing for approval by the original
18 purchaser of the bonds of the appointment of consulting
19 architects, and of the security given by those who contract
20 to construct the project, and by any bank or trust company
21 in which the proceeds of bonds or rentals shall be deposited,
22 and for approval by the consulting architects of all
23 contracts for construction. All expenses incurred in

24 carrying out such agreement may be treated as a part of the
25 cost of maintenance, operation and repair of the project.

**§5B-1-13g. Proceeds of park development revenue bonds,
grants and gifts.**

1 The proceeds of all bonds sold for any park development
2 project and the proceeds of any grant or gift received by the
3 commissioner for any project financed by the issuance of
4 park development revenue bonds shall be paid to the
5 treasurer of the state of West Virginia, who shall not
6 commingle such funds with any other moneys, but shall
7 deposit them in a separate bank account or accounts. The
8 moneys in such accounts shall be paid out on check of the
9 treasurer on requisition of the commissioner, or of such
10 other person as the commissioner may authorize to make
11 such requisition. All deposits of such moneys shall, if
12 required by the treasurer or the commissioner, be secured
13 by obligation of the United States, of the state of West
14 Virginia, or of the commissioner, of a market value equal at
15 all times to the amount of the deposit, and all banking
16 institutions are authorized to give such deposits.

**§5B-1-13h. Authority of commissioner to pledge revenue from
recreational facilities as security.**

1 The commissioner, with the approval of the governor,
2 shall have authority to pledge all revenue derived from any
3 project as security for any bonds issued to defray the cost of
4 such project. In any case in which the commissioner may
5 deem it advisable, he shall also have the authority to pledge
6 the revenue derived from any existing recreational facilities
7 under his control, or any state park or forest, as additional
8 security for the payment of any bonds issued under the
9 provisions of this article to pay the cost of any park
10 development project.

§5B-1-13i. Management and control of project.

1 The department shall properly maintain, repair, operate,
2 manage and control the project, fix the rates of rental, and
3 establish bylaws and rules and regulations for the use and
4 operation of the project, and may make and enter into all
5 contracts or agreements necessary and incidental to the

6 performance of its duties and the execution of its powers
7 hereunder.

§5B-1-13j. Provisions of constitution and law observed; what approval required.

1 It shall not be necessary to secure from any officer or
2 board not named in this article any approval or consent, or
3 any certificate or finding, or to hold an election, or to take
4 any proceedings whatever, either for the construction of
5 any project, or the improvement, maintenance, operation or
6 repair thereof, or for the issuance of bonds hereunder,
7 except such as are prescribed by these provisions or are
8 required by the constitution of this state.

9 Nothing contained herein shall be so construed or
10 interpreted as to authorize or permit the incurring of state
11 debt of any kind or nature as contemplated by the
12 provisions of the constitution of the state in relation to state
13 debt.

§5B-1-14. Restaurants and other facilities.

1 The commissioner may, on all areas under his jurisdiction
2 and control, operate commissaries, restaurants and other
3 establishments for the convenience of the public. For these
4 purposes the commissioner may purchase equipment,
5 foodstuffs, supplies and commodities, according to law.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal at option of commissioner; termination of contract by the commissioner.

1 When it is deemed necessary by the commissioner to enter
2 into a contract with a person, firm or corporation for the
3 operation of a commissary, restaurant, recreational facility
4 or other such establishment within the state parks and
5 public recreation system, such contract shall be for a
6 duration not to exceed five years, but a contract so made
7 may provide for an option to renew at the commissioner's
8 discretion for an additional term or terms not to exceed five
9 years at the time of renewal.

10 Any contract entered into by the commissioner shall
11 provide an obligation upon the part of the operator that he

12 maintain a level of performance satisfactory to the
13 commissioner, and shall further provide that any such
14 contract may be terminated by the commissioner in the
15 event he determines that such performance is
16 unsatisfactory and has given the operator reasonable notice
17 thereof.

§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.

1 (a) The commissioner may acquire from the West
2 Virginia railroad maintenance authority approximately
3 seventy-five miles of right-of-way along the former
4 Greenbrier subdivision of the Chessie Railroad System
5 between Caldwell in Greenbrier County and Cass in
6 Pocahontas County to be developed as the "Greenbrier
7 River Trail." The acquired property shall be operated under
8 the authority of the department of commerce and used for:

9 (1) The construction and maintenance of barriers for the
10 protection of the trail from motorized vehicular traffic and
11 for the protection of adjacent public and private property;
12 and

13 (2) The development, construction, operation and
14 maintenance of bicycle and hiking trails, horseback trails,
15 primitive camping facilities and other compatible
16 recreational facilities to be so designated by the
17 commissioner.

§5B-1-17. Correlation of projects and services.

1 The commissioner of the department of commerce shall
2 correlate and coordinate his park and recreation programs,
3 projects and developments with the functions and services
4 of other offices and divisions of the department and other
5 agencies of the state government so as to provide, consistent
6 with the provisions of this chapter, suitable and adequate
7 facilities, landscaping, personnel and other services at and
8 about all state parks and public recreation facilities under
9 his jurisdiction.

§5B-1-18. Sunset provision.

1 Unless sooner terminated by law, the department of

2 commerce shall terminate on the first day of July, one
 3 thousand nine hundred ninety-one, in accordance with the
 4 provisions of article ten, chapter four of this code.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-1. Office of economic and community development abolished; records and property of the office of economic and community development transferred to the office of community and industrial development and department of commerce.

§5B-2-2. Office of community and industrial development created; appointment of director; compensation; rules and regulations.

§5B-2-3. Divisions created.

§5B-2-4. Office to conduct certain feasibility studies; reports to the Legislature; definitions.

§5B-2-1. Office of economic and community development abolished; records and property of the office of economic and community development transferred to the office of community and industrial development and department of commerce.

1 The office of economic and community development is
 2 hereby abolished and the governor shall, by executive
 3 order, transfer to the office of community and industrial
 4 development or the department of commerce, the functions,
 5 personnel and property, with any liens relative thereto, of
 6 the office of economic and community development, as he
 7 may deem necessary.

8 All books, papers, maps, charts, plans, literature and
 9 other records of all equipment and property in the
 10 possession of the office of economic and community
 11 development or of any officer or employee thereof, upon the
 12 effective date of this chapter, shall be turned over or
 13 delivered to the office of the governor.

14 All existing contracts and obligations of the office of
 15 economic and community development shall remain in full
 16 force and effect and shall be performed by the governor.

§5B-2-2. Office of community and industrial development created; appointment of director; compensation; rules and regulations.

1 There is hereby created within the office of the governor
 2 the office of community and industrial development. A

3 director of the office shall be appointed by, and shall serve
4 at the will and pleasure of, the governor and shall be paid a
5 salary as fixed by the governor within legislative
6 appropriation. The director shall have administrative
7 control and supervision of the office.

8 The director shall promulgate rules and regulations to
9 carry out the purposes and programs of the office, to include
10 generally the programs available, and the procedure and
11 eligibility of application relating to assistance under such
12 programs; these rules and regulations shall not be subject to
13 the provisions of chapter twenty-nine-a of this code, but
14 shall be filed with the secretary of state.

§5B-2-3. Divisions created.

1 There are hereby created within the office of community
2 and industrial development:

- 3 (1) The division of community development;
- 4 (2) The division of financial and technical assistance;
- 5 (3) The division of administration;
- 6 (4) The division of industrial development;
- 7 (5) The division of small business; and
- 8 (6) The division of employment and training.

9 Each said division shall be under the control of a director
10 to be appointed by the director of the office of community
11 and industrial development and who shall be qualified by
12 reason of exceptional training and experience in the field of
13 activities of his respective division and shall serve at the
14 will and pleasure of the director.

15 In accordance with the provisions of section six, article
16 one of this chapter, the governor may, by executive order,
17 transfer any of the duties or functions of, or appropriations
18 made to, the office of the department of commerce; and, he
19 may, by executive order, and at the request of the director,
20 create such additional divisions or abolish such existing
21 divisions as he deems necessary to carry out the provisions
22 of this chapter. The authority hereby vested in the governor
23 shall expire on January one, one thousand nine hundred
24 eighty-six.

§5B-2-4. Office to conduct certain feasibility studies; reports to the Legislature; definitions.

1 The director shall assign to an appropriate division of the

2 office the duty and responsibility to conduct studies to
3 determine the feasibility of establishing programs or
4 recommending legislation for the establishment of
5 programs relative to coal processing, farm development,
6 enterprise zones, forest resources and jobs development.
7 Such division may conduct inquiries and hold hearings
8 regarding such programs in order to provide interested
9 persons the opportunity to comment, and shall report to the
10 Legislature regarding its findings and policies with respect
11 to each of these areas not later than the first day of the
12 regular session of the Legislature in the year one thousand
13 nine hundred eighty-six, and every two years thereafter.

14 For the purposes of this section:

15 (a) The term "coal processing" means the process by
16 which coal is converted to coke of the non-by-product
17 variety;

18 (b) The term "farm development" means the promotion,
19 encouragement and development of farming and farm-
20 lands;

21 (c) The term "enterprise zones" means any area of a city
22 or county which has a continuous boundary; is an area of
23 pervasive poverty, unemployment and economic distress;
24 the average rate of unemployment in such area for the most
25 recent eighteen-month period for which data are available
26 was at least one and one-half times the average national
27 rate of unemployment for such eighteen-month period; at
28 least seventy percent of the residents living in the area have
29 incomes below eighty percent of the median income of the
30 residents of the city or county in which it is located; the
31 population of all census tracts in the area decreased by ten
32 percent or more between the two most recent decennial
33 United States census and the city or county in which said
34 area is located establishes that either: (i) Chronic
35 abandonment or demolition of commercial or residential
36 structures exist in the area; or (ii) substantial tax
37 delinquencies relating to ad valorem real property taxes of
38 commercial or residential structures exist in the area;

39 (d) The term "forest resources development" means a
40 program to: (i) Improve the business climate for forest
41 industries and the general awareness of forestry potential;
42 (ii) develop a strong state forestry agency; (iii) improve
43 forest resources data; (iv) improve the transportation

44 system for wood products; and (v) improve forestry
45 knowledge and practices of private landowners; and
46 (e) The term "jobs development" means a program to
47 maintain existing employment, and to promote new
48 employment opportunities for the people of this state,
49 particularly in areas of high unemployment.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

- §5B-3-1. Legislative findings.
- §5B-3-2. Definitions.
- §5B-3-3. West Virginia export development authority—Creation and purposes.
- §5B-3-4. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
- §5B-3-5. General powers.
- §5B-3-6. Stimulation and facilitation of funding for West Virginia exports.
- §5B-3-7. Annual report and audits.
- §5B-3-8. Powers to be interpreted broadly.
- §5B-3-9. Tax exemption.
- §5B-3-10. Conflict of interests.
- §5B-3-11. Personal liability of members or persons acting on behalf of the authority.
- §5B-3-12. Financing of the authority; bonds payable solely from revenues; bonds not state debt; execution, form, delivery, conditions and sale of bonds.
- §5B-3-13. Bonds, income therefrom, security agreements, financing agreements are exempt from certain taxes.
- §5B-3-14. Insurance fund; purchase of insurance by authority.
- §5B-3-15. Bonds and notes of the authority legal investments for fiduciaries.
- §5B-3-16. Exemption from disclosures of confidential information.
- §5B-3-17. Provisions as cumulative.
- §5B-3-18. Severability.

§5B-3-1. Legislative findings.

- 1 It is hereby found and declared that:
- 2 (a) The economy of the state of West Virginia and
3 opportunities for employment within the state are
4 increasingly dependent upon the international exports of
5 West Virginia manufactured goods and services and the
6 growth of international export markets for those
7 manufactured goods and services;
- 8 (b) Other states have utilized, or are preparing to utilize,
9 the resources of their state governments to stimulate,
10 facilitate and promote international exports;
- 11 (c) One in seven manufacturing jobs in the state of West
12 Virginia are attributable to exporting;

13 (d) The export of services has become vital to the growth
14 and stability of the state of West Virginia's economy;

15 (e) The position of West Virginia as an exporting state is
16 threatened by aggressive government supported export
17 development policies of foreign countries;

18 (f) Competition among businesses and countries will
19 endure and intensify as more countries seek to expand their
20 international export capacities;

21 (g) Financial assistance offered by the federal
22 government to exporters is insufficient to meet the
23 competition offered by foreign countries;

24 (h) West Virginia exporters find it increasingly difficult
25 to compete with foreign exporters which benefit from their
26 governmentally supported financing programs;

27 (i) Companies seeking to enter foreign markets face
28 severe problems financing and insuring their transactions;

29 (j) Expanding international export markets is essential
30 in order to maintain a vigorous and growing economy and to
31 provide adequate job opportunities for citizens of this state;

32 (k) The state of West Virginia has a responsibility to
33 create employment opportunities by encouraging and
34 stimulating the development of international export sales
35 and markets by West Virginia companies; and

36 (l) Increased export sales may best be stimulated by
37 making financial assistance available to West Virginia
38 businesses to develop and expand international export
39 markets and to ensure the competitiveness of West Virginia
40 products and services in foreign markets, thereby
41 increasing employment opportunities available to the
42 citizens of the state of West Virginia.

43 It is hereby declared to be the policy of the state of West
44 Virginia, in the interest of promoting the general welfare of
45 all of the people of the state, to increase job opportunities
46 through stimulating the expansion of international export
47 markets of West Virginia products and services, by
48 providing financial assistance through the authority
49 hereinafter created for that purpose.

§5B-3-2. Definitions.

1 The following words, as used in this article, shall have the
2 meanings set forth below, unless the context clearly
3 requires otherwise:

- 4 (a) "Authority" means "The West Virginia Export
5 Development Authority" created by this article;
- 6 (b) "Board" means the board of directors of the
7 authority;
- 8 (c) "Bond" means any type of interest bearing
9 obligation, including, without limitation, any bond, note,
10 bond anticipation note, or other evidence of indebtedness
11 whether general or special, whether negotiable or
12 nonnegotiable in form, whether in bearer or registered
13 form, whether in temporary or permanent form, whether
14 with or without interest coupons, and regardless of the
15 source of payment;
- 16 (d) "Director" means a member of the board;
- 17 (e) "Commercial loss" means the failure of the buyer to
18 pay to the West Virginia exporter when due all or part of the
19 gross invoice value as denominated in United States
20 currency of an eligible export loan due to the insolvency of
21 the buyer or failure of the buyer to pay to the West Virginia
22 exporter all or part of the gross invoice value as
23 denominated in United States currency of an eligible export
24 loan on the due date; and
- 25 (f) "Political loss" means the losses incurred by a West
26 Virginia exporter on an eligible export loan from dollar
27 transfer delays, war, revolution, license revocation,
28 diversion of goods and similar politically related incidents
29 occurring in the buyer's country that cause a loss to the
30 West Virginia exporter.

**§5B-3-3. West Virginia export development authority—
Creation and purposes.**

- 1 There is hereby created "The West Virginia Export
2 Development Authority," a body politic and corporate,
3 hereinafter referred to as the "Authority."
- 4 The purpose of this authority shall be to:
- 5 (a) Assist, promote, encourage, develop and advance
6 economic prosperity and employment throughout this state
7 by fostering the expansion of exports of manufactured
8 goods and services to foreign purchasers;
- 9 (b) Cooperate and act in conjunction with other
10 organizations, public and private, the objects of which are
11 the promotion and advancement of export trade activities
12 in the state of West Virginia;

- 13 (c) Establish a source of funding credit guarantees and
14 insurance to support export development not otherwise
15 available to West Virginia and medium sized businesses;
16 and
17 (d) Provide financial counseling to potential and
18 existing exports.

§5B-3-4. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

1 (a) The governing and administrative powers of the
2 authority shall be vested in a board of directors consisting
3 of nine members who shall be appointed by the governor
4 with the advice and consent of the Senate. The governor or
5 his designated representative shall be the chairman of the
6 authority. No more than five members appointed by the
7 governor may be of the same political party.

8 All directors of the authority shall be residents of the
9 state of West Virginia. The directors shall annually elect one
10 of their members as vice chairman, one as secretary and one
11 as treasurer. The board may elect such other officers as it
12 deems proper. Appointments to fill a vacancy of one of the
13 appointed members shall be made in the same manner as
14 the original appointment.

15 (b) Each member of the board shall be a person of
16 recognized ability and experience in one of the following
17 areas: Finance; international trade; business management;
18 and economics.

19 (c) The governor shall appoint three members of the
20 board whose term shall expire on the third Monday in June,
21 one thousand nine hundred eighty-six; three members of
22 the board whose term shall expire on the third Monday in
23 June, one thousand nine hundred eighty-seven; three
24 members of the board whose term shall expire on the third
25 Monday in June, one thousand nine hundred eighty-eight.
26 Their respective successors shall be appointed for terms of
27 three years from the third Monday in June of the year of
28 appointment. Each member shall serve until his successor is
29 appointed and qualified.

30 (d) Each director before entering upon his duties shall
31 take and subscribe to the oath or affirmation required by
32 the West Virginia Constitution. A record of each such oath

33 or affirmation shall be filed in the office of the secretary
34 of state.

35 (e) Members of the board shall not be entitled to
36 compensation for their services as members, but shall be
37 entitled to reimbursement for all necessary expenses
38 incurred in connection with the performance of their duties
39 as members.

40 (f) Five members of the board shall constitute a quorum
41 and the affirmative vote of the majority of members present
42 at a meeting of the board shall be necessary and sufficient
43 for any action taken by the board, except that the
44 affirmative vote of at least five members shall be required
45 for the approval of any resolution authorizing the issuance
46 of any bonds pursuant to this article.

47 (g) No vacancy in the membership of the board shall
48 impair the right of a quorum to exercise all rights and
49 perform all the duties of the board. Any action taken by the
50 board may be authorized by resolution at any regular or
51 special meeting and shall take effect upon the date the
52 chairman certifies the action of the authority by affixing his
53 signature to the resolution unless some other date is
54 otherwise provided in the resolution.

55 (h) The board may delegate to one or more of its
56 members or to its officials, agents or employees such powers
57 and duties as it may deem proper.

§5B-3-5. General powers.

1 The authority shall possess all the powers of a body
2 politic and corporate necessary and convenient to
3 accomplish the purposes of this article, including, without
4 any intended limitation upon the other powers hereby
5 conferred, the following:

6 (a) To borrow money and otherwise incur indebtedness
7 for any of its purposes; to issue bonds, debentures, notes or
8 other evidence of indebtedness, whether secured or
9 unsecured, therefor;

10 (b) To purchase, discount, sell, negotiate with or
11 without guaranty notes, other evidence of indebtedness,
12 and to sell and guarantee securities;

13 (c) To procure insurance to guarantee, insure, coinsure
14 and reinsure against political and commercial risk of loss,

15 and such other insurance as the authority may deem
16 necessary;

17 (d) To provide financial counseling services to West
18 Virginia businesses;

19 (e) To procure insurance to secure the payment of
20 principal and interest on any bonds, notes or other
21 obligations of the authority;

22 (f) To accept gifts, grants or loans from and enter into
23 contracts or other transactions with any federal or state
24 agency, any municipality, any private organization or any
25 other source;

26 (g) To adopt, and from time to time amend or rescind
27 such bylaws, rules and regulations as may be necessary or
28 convenient for the performance of its functions, powers and
29 duties under this article;

30 (h) To sue and be sued;

31 (i) To purchase, receive, take by grant, gift, devise,
32 bequest or otherwise, lease, or otherwise acquire, own,
33 hold, improve, employ, use and otherwise deal in and with,
34 real or personal property, or any interest therein, wherever
35 situated;

36 (j) To sell, convey, lease, exchange, transfer or otherwise
37 dispose of, all or any of its property or any interest therein,
38 wherever situated;

39 (k) To adopt and use a seal; and

40 (l) To exercise all other powers and functions necessary
41 or appropriate to carry out the duties and purposes set forth
42 in this article.

**§5B-3-6. Stimulation and facilitation of funding for West
Virginia exports.**

1 (a) The authority is empowered to provide guaranteed
2 funding, as defined in subsection (c) below, for any eligible
3 export loan, as defined in subsection (b) below, through a
4 participating banking organization, as defined in
5 subsection (d) below.

6 (b) An eligible export loan shall consist of a loan from
7 the authority to any participating banking organization
8 located within the state of West Virginia to finance an
9 international preexport or export from the state which, in
10 the judgment of the authority, will:

11 (1) Create or maintain employment in West Virginia;
12 and

13 (2) Shall contain at least twenty-five percent of the
14 value of manufactured goods, coal products, lumber and
15 wood products or services whose final processing occurs in
16 West Virginia. An eligible export loan may include a pool of
17 individual exports, all of which, in the judgment of the
18 authority, meet the foregoing conditions.

19 (c) Guaranteed funding shall consist of a guarantee
20 against political or commercial loss in whole or in part of
21 principal and interest on an eligible export loan. Such a
22 guarantee may include, without limitation, insurance
23 against loss up to a stated amount. The maximum amount
24 payable under any guarantee, herein called the
25 "Guaranteed Amount," shall be specifically set forth in
26 writing, executed by the chairman and secretary of the
27 board, at the time any such guarantee is entered into by the
28 authority. Any guarantee entered into by the authority
29 hereunder shall not constitute a general obligation of the
30 state of West Virginia. Any guarantee made by the authority
31 hereunder shall not be terminated, cancelled or otherwise
32 revoked except in accordance with the terms thereof; shall
33 be conclusive evidence that such guarantee complies fully
34 with the provisions of this article; and shall be valid and
35 incontestable in the hands of a holder in due course of a
36 guaranteed eligible export loan.

37 (d) A participating banking organization shall be any
38 organization as defined by the state banking acts of West
39 Virginia; any agency or branch of a foreign banking
40 corporation licensed by the commissioner of banking; any
41 national bank, federal savings and loan association and
42 federal credit union located within this state who has been
43 approved by the board of directors of the authority to
44 participate in any eligible export loan or guaranteed
45 funding within the purposes of this article.

46 The authority may charge reasonable fees for providing
47 any eligible export loan or guaranteed funding pursuant to
48 this section to a participating banking organization.

49 (e) Prior to providing an eligible export loan or
50 guaranteed funding hereunder, the participating banking
51 organization shall make an investigation of a line of credit
52 to the exporter in order to determine its viability, the

53 economic benefits to be derived therefrom, the prospects for
54 repayment, and such other facts as it deems necessary in
55 order to determine that such an eligible export loan or
56 guaranteed funding is consistent with the purposes of this
57 article. The authority shall provide guaranteed funding
58 only if, and to the extent that, it determines, in its sole
59 discretion, that:

60 (1) Such guaranteed funding is reasonably necessary in
61 order to stimulate or facilitate the making of the eligible
62 export loan including, without limitation, the making of the
63 eligible export loan upon terms which will enable the loan
64 to be reasonably competitive with loans in other states or in
65 foreign countries; or

66 (2) Such guaranteed funding is reasonably necessary in
67 order to stimulate or facilitate the resale of such eligible
68 export loan to a holder in due course which would not
69 otherwise purchase such eligible export loan: *Provided,*
70 That the eligible export loan or guaranteed funding
71 provided by the authority to the participating banking
72 organization shall be loaned to the exporter at a fixed
73 interest rate and term as the authority may from time to
74 time require. The authority may condition the provision of
75 an eligible export loan or guaranteed funding hereunder
76 upon such other terms and conditions as it may deem
77 desirable to carry out the purposes of this article.

§5B-3-7. Annual report and audits.

1 On the first day of January of each year the authority
2 shall report on its operations for the preceding fiscal year to
3 the governor and the state Legislature. Such report shall
4 include a summary of the activities of the authority and a
5 complete operating and financial statement. The West
6 Virginia export development authority shall cause an
7 annual audit to be made by a resident certified public
8 accountant or a registered public accountant of its books,
9 accounts and records, with respect to its receipts,
10 disbursements and all other matters related to its financial
11 operations. The person performing such audit shall also
12 furnish copies of the audit report to the Speaker of the
13 House of Delegates, the President of the Senate and the
14 majority and minority leaders of both houses, and the
15 legislative auditor.

§5B-3-8. Powers to be interpreted broadly.

1 The powers enumerated in this article shall be
2 interpreted broadly to effectuate the purposes thereof and
3 shall not be construed as a limitation of powers.

§5B-3-9. Tax exemption.

1 The authority shall be and hereby is exempt from all
2 franchise, corporate, business and taxes of every nature
3 levied by the state: *Provided*, That nothing herein shall be
4 construed to exempt from any such taxes any person
5 receiving an eligible export loan or guaranteed funding
6 with the authority hereunder.

§5B-3-10. Conflict of interests.

1 (a) No member of the authority or officer, agent or
2 employee thereof shall, in his or her own name or in the
3 name of a nominee, hold an ownership interest of more than
4 seven and one-half percent in any association, trust,
5 corporation, partnership or other entity which is, in its own
6 name or in the name of a nominee, a party to a contract or
7 agreement upon which the member or officer, agent or
8 employee may be called upon to act or vote.

9 (b) With respect to any direct or any indirect interest,
10 other than an interest prohibited in subsection (a), in a
11 contract or agreement upon which the member or officer,
12 agent or employee may be called upon to act or vote, a
13 member of the authority or officer, agent or employee
14 thereof shall disclose the same to the secretary of the
15 authority prior to the taking of final action by the authority
16 concerning such contract or agreement and shall so disclose
17 the nature and extent of such interest and his or her
18 acquisition thereof, which disclosure shall be publicly
19 acknowledged by the authority and entered upon the
20 minutes of the authority. If a member of the authority or
21 officer, agent or employee thereof holds such an interest, he
22 or she shall refrain from any further official involvement in
23 regard to such contract or agreement, from voting on any
24 matter pertaining to such contract or agreement, and from
25 communicating with other members of the authority or its
26 officers, agents and employees concerning said contract or
27 agreement. Notwithstanding any other provision of law,

28 any contract or agreement entered into in conformity with
29 this subsection shall not be void or invalid by reason of
30 the interest described in this subsection, nor shall any
31 person so disclosing the interest and refraining from further
32 official involvement as provided in this subsection be guilty
33 of an offense, be removed from office or be subject to any
34 other penalty on account of such interest.

35 (c) Any contract or agreement made in violation of
36 subsection (a) or (b) of this section shall be null and void
37 and give rise to no action against the authority.

§5B-3-11. Personal liability of members or persons acting on behalf of the authority.

1 (a) No director or any person acting on behalf of the
2 authority executing any contracts, commitments or
3 agreements issued pursuant to this article shall be liable
4 personally upon such contracts, commitments or
5 agreements or be subject to any personal liability or
6 accountability by reason thereof.

7 (b) No director or any person acting on behalf of the
8 authority shall be personally liable for damage or injury
9 resulting from the performance of his duties hereunder.

§5B-3-12. Financing of the authority; bonds payable solely from revenues; bonds not state debt; execution, form, delivery, conditions and sale of bonds.

1 (a) The authority is hereby authorized to issue, sell and
2 provide for the retirement of bonds in the amount of fifty
3 million dollars to provide funds for the creation and
4 operation of the authority. Such bonds shall be limited
5 obligations of the authority, the principal of and interest on
6 which shall be payable solely out of the revenues derived by
7 the authority. Bonds issued under authority of this section
8 shall never constitute an indebtedness of the state of West
9 Virginia or the authority within the meaning of any state
10 constitutional provision or statutory limitation, but such
11 bonds shall be indebtedness payable solely from a revenue
12 producing source or from a special source, which source
13 does not include revenues from any tax or license, and shall
14 never constitute nor give rise to a pecuniary liability of the
15 state of West Virginia or the authority or a charge against
16 the general credit of the authority or the state or taxing

17 powers of the state, and such fact shall be plainly stated on
18 the face of each bond. Such bonds may be executed and
19 delivered at any time as a single issue or from time to time as
20 several issues, may be in such form and denominations, may
21 be of such tenor, shall be in coupon or registered form, may
22 be payable in such installments and at such time or times
23 not exceeding five years from their date, may be subject to
24 such terms of redemption, may be payable at such place or
25 places, may bear interest at such rate or rates payable at
26 such place or places and evidence in such manner, and may
27 contain such provisions not inconsistent herewith, all of
28 which shall be provided in the resolution of the authority
29 authorizing the bonds. Any bonds issued under the
30 authority of this section may be sold at public or private sale
31 at such price and in such manner and from time to time as
32 may be determined by the authority to be most
33 advantageous. The authority may pay all expenses,
34 premiums, insurance premiums and commissions which the
35 authority may deem necessary or advantageous in
36 connection with the authorization, sale and issuance
37 thereof from proceeds of the bonds.

38 (b) The resolution under which such bonds are
39 authorized to be issued or any security agreement,
40 including an indenture or trust indenture to be entered into
41 in connection therewith, may contain any agreements and
42 provisions customarily contained in instruments securing
43 bonds, including, without limiting the generality of the
44 foregoing, provisions respecting the fixing and collection of
45 obligations, the creation and maintenance of special funds,
46 and the rights and remedies available, in the event of
47 default, to the bondholders or to the trustee under such
48 security agreement, all as the authority shall deem
49 advisable and as shall not be in conflict with the provisions
50 of this article: *Provided*, That in making any such
51 agreements or provisions the authority shall not have the
52 power to obligate itself except with respect to eligible
53 export loans and shall not have the power to incur a
54 pecuniary liability or a charge upon the general credit of the
55 authority or of the state or against the taxing powers of the
56 state. The resolution of the authority authorizing any bonds
57 hereunder and any security agreement securing such bonds
58 may provide that, in the event of default in payment of the

59 principal of or the interest on such bonds or in the
60 performance of any agreement contained in such
61 proceedings or security agreement, such payment and
62 performance may be enforced by mandamus or by the
63 appointment of a receiver in equity with power to charge
64 and collect any obligations and to apply any revenues
65 pledged in accordance with such proceedings or the
66 provisions of such security agreement. Any such security
67 agreement may provide also that in the event of default in
68 payment or the violation of any agreement contained in the
69 security agreement, it may be foreclosed by proceedings at
70 law or in equity, and may provide that any trustee under the
71 security agreement or the holder of any of the bonds secured
72 thereby may become the purchaser at any foreclosure sale,
73 if he is the highest bidder. No breach of any such agreement
74 shall impose any pecuniary liability upon the state of West
75 Virginia or the authority or any charge upon the general
76 credit of the authority or of the state or against the taxing
77 power of the state.

78 The trustee or trustees under any security agreement, or
79 any depository specified by such security agreement, may
80 be such persons or corporations as the authority shall
81 designate, notwithstanding that they may be a nonresident
82 of West Virginia or incorporated under the laws of the
83 United States or any state thereof.

84 (c) Any bonds issued hereunder and at any time
85 outstanding may at any time and from time to time be
86 refunded by the authority, by the issuance of its refunding
87 bonds in such amount as the authority may deem necessary
88 but not exceeding an amount sufficient to refund the
89 principal of the bonds to be refunded, together with any
90 unpaid interest thereon and any premiums, expenses and
91 commissions necessary to be paid in connection therewith.
92 Any such refunding may be effected whether the bonds to
93 be refunded have matured or shall thereafter mature, either
94 by sale of the refunding bonds to be refunded, or by
95 exchange of the refunding bonds for the bonds to be
96 refunded thereby: *Provided*, That the holders of any bonds
97 to be refunded shall not be compelled without their consent
98 to surrender their bonds for payment or exchange prior to
99 the date on which they are payable, or, if they are called for
100 redemption, prior to the date on which they are by their

101 terms subject to redemption. All refunding bonds issued
102 under the authority of this section shall be payable in the
103 same manner and under the same terms and conditions as
104 are herein provided for the issuance of bonds.

105 (d) The proceeds from the sale of any bonds issued under
106 authority of this section shall be applied only for the
107 purpose for which the bonds were issued: *Provided*, That
108 any premium and secured interest received in any such sale
109 shall be applied to the payment of the principal of or the
110 interest on the bonds sold: *Provided, however*, That if for
111 any reason any portion of the proceeds shall not be needed
112 for the purpose for which the bonds were issued, such
113 unneeded portion of the proceeds shall be applied to the
114 payment of the principal of or the interest on the bonds.

115 (e) The proceeds of the export development bonds shall
116 be kept in a separate fund to be known as the "Export
117 Development Bond Fund." All other moneys received by the
118 authority shall also be deposited in such fund. The treasurer
119 may, with the approval of the board of directors of the
120 authority, invest and reinvest all moneys in such fund from
121 time to time in such obligations of the United States
122 government or such other governmental or corporate
123 issuers as the treasurer, with the approval of the board of
124 directors of the authority, deems appropriate. All earnings
125 upon such investment shall be added to such fund. The
126 authority is authorized to use moneys deposited in the fund
127 expressly for the purposes specified in and according to the
128 procedures established by this article.

**§5B-3-13. Bonds, income therefrom, security agreements,
financing agreements are exempt from certain
taxes.**

1 The bonds authorized pursuant to this article and the
2 income therefrom shall be exempt from all taxation in the
3 state of West Virginia except for inheritance, estate or
4 transfer taxes; and all security agreements and financing
5 agreements made pursuant to the provisions of this article
6 shall be exempt from West Virginia stamp and transfer
7 taxes.

§5B-3-14. Insurance fund; purchase of insurance by authority.

1 The authority is authorized to create an insurance fund

2 consisting solely of funds from the export development
3 bond fund. Such insurance fund shall be held in the custody
4 of one or more banks or trust companies having a principal
5 place of business in this state. The insurance fund shall be
6 held as security for the holders of bonds issued under this
7 article. It shall be governed by a trust agreement entered
8 into by the authority with the trustees. The trust agreement
9 may contain such provisions and limitations as to the
10 investment and disbursement of moneys in the insurance
11 fund, the payment of expenses of the insurance fund, the
12 appointment, resignation and discharge of trustees, the
13 delegation of enforcement and collection powers under the
14 insurance agreements to the trustee, the duties of the
15 trustees, amendments of the trust agreement and such other
16 lawful provisions and limitations as may be deemed
17 appropriate by the authority. The trust agreement may
18 pledge premiums and other moneys which may be deposited
19 in the insurance fund. Such pledge shall be valid and
20 binding from the time when the pledge is made. The
21 premiums and other moneys so pledged and thereafter
22 received by the insurance fund or by the trustees in its
23 behalf shall immediately be subject to the lien of such
24 pledge and shall be valid and binding as against all parties
25 having claims of any kind against the insurance fund,
26 irrespective of whether such parties have notice thereof.

27 The authority may also use export development bond
28 funds to purchase insurance which shall be pledged for the
29 security of the holders of any bonds issued under this
30 article. In any case in which insurance is pledged as
31 security, whether obtained through the insurance funds
32 authorized to be created under this section or purchased
33 with export development bond funds, any description of
34 such insurance shall expressly indicate the limitation of the
35 liability of the authority and that neither the credit nor
36 taxing power of the state of West Virginia or any political
37 subdivision thereof shall be available to satisfy any
38 obligations with respect thereto.

**§5B-3-15. Bonds and notes of the authority legal investments
for fiduciaries.**

1 The bonds, debentures, notes or other evidence of
2 indebtedness of the authority are hereby made securities in

3 which all public officers and bodies of the state of West
4 Virginia and all municipalities and municipal subdivisions,
5 all insurance companies and associations and other persons
6 carrying on an insurance business, all banks, bankers, trust
7 companies, savings banks, savings associations, including
8 savings and loan associations and building and loan
9 associations, investment companies and other persons
10 carrying on a banking business, all administrators,
11 guardians, executors, trustees and other fiduciaries, and all
12 other persons whatsoever who are now or who may
13 hereafter be authorized to invest in bonds or other
14 obligations of the state of West Virginia, may properly and
15 legally invest funds including capital in their control or
16 belonging to them. Notwithstanding any other provision of
17 law, the bonds, debentures, notes or other evidence of
18 indebtedness of the authority are also hereby made
19 securities which may be deposited with and may be received
20 by all public officers and bodies of this state and all
21 municipalities and municipal subdivisions for any purpose
22 for which the deposit of bonds or other obligations of this
23 state are now or may hereafter be authorized.

§5B-3-16. Exemption from disclosure of confidential information.

1 Any information submitted to or compiled by the
2 authority in connection with the authority's
3 responsibilities with respect to the identity, background,
4 finance, marketing plans, trade secrets or any other
5 commercially sensitive information of persons, firms,
6 associations, partnerships, agencies, corporations or other
7 entities, shall be confidential, except to the extent that the
8 person or entity which provided such information consents
9 to disclosure.

§5B-3-17. Provisions as cumulative.

1 Neither this article nor anything herein contained shall
2 be construed as a restriction or limitation upon any powers
3 which the authority might otherwise have under any laws of
4 this state, but shall be construed as cumulative.

§5B-3-18. Severability.

1 If for any reason any section or provision of this article

- 2 shall be held to be invalid or unconstitutional, such holding
- 3 shall not affect the validity or applicability of the
- 4 remainder of this article.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

- §5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.
- §5B-4-2. Objectives of the council.
- §5B-4-3. Powers, duties and functions of the council; annual reports.
- §5B-4-4. Regional advisory committee; composition; functions.
- §5B-4-5. Compensation of members of council and committees; employment of staff; expenses of council.
- §5B-4-6. Duration of council.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

1 The West Virginia labor-management advisory council,
2 heretofore created under the provisions of article one-c,
3 chapter twenty-one of this code, shall be continued and be
4 so designated as the West Virginia labor-management
5 council. The council shall consist of twenty-six members.
6 One member of the council shall be the commissioner of
7 labor, one member of the council shall be a member of the
8 economic development authority, one member of the
9 council shall be the employment security commissioner or
10 his designated representative, one member of the council
11 shall be the state superintendent of schools, one member of
12 the council shall be a member of the economic development
13 board to be selected by it annually, and one member of the
14 council shall be a member of the board of regents to be
15 selected by it annually, all of whom shall be ex officio
16 nonvoting members of the council. The other members of
17 the council shall be appointed by the governor by and with
18 the advice and consent of the Senate for terms of four years
19 or until their successors have been appointed and have
20 qualified. The members of the council appointed by the
21 governor shall include one president of a state university,
22 one president of a state college or community college, and
23 two persons representing public secondary schools in the
24 state, who shall be appointed for terms of two, three and
25 four years, respectively, as designated by the governor at
26 the time of their appointment, and until their successors
27 have been appointed and have qualified. The present

28 members of the council shall continue to serve out the terms
29 to which they were appointed.

30 Vacancies shall be filled by appointment by the governor
31 for the unexpired term of the member whose office is vacant
32 and the appointment shall be made within sixty days of the
33 occurrence of the vacancy.

34 In making appointments to the council, the governor shall
35 consider names of persons recommended to him by the West
36 Virginia chamber of commerce, the West Virginia coal
37 association, the West Virginia manufacturers' association,
38 the West Virginia retailers' association, utilities, other
39 industrial groups in this state, the West Virginia labor
40 federation, the united mine workers union, the West
41 Virginia building trades council, other labor organizations
42 in the state, the institutional boards of advisors for state
43 colleges and universities, the state board of education, and
44 the West Virginia school board association. Membership
45 shall be composed of, in addition to those of the state or
46 other government agencies and educational institutions, no
47 less than eight members from industry and eight from labor.
48 The council shall elect one of its members as chairman and
49 may elect such other officers as the council may deem
50 necessary or desirable. Such persons shall serve as such for
51 one year or until their successors are elected and shall be
52 eligible for reelection.

53 The council shall meet at least four times each year and at
54 other times on call of the chairman or a majority of the
55 members. Thirteen members of the council shall constitute
56 a quorum for the transaction of business.

§5B-4-2. Objectives of the council.

1 It is the object of this article to improve labor-
2 management relations within this state, in order both to
3 improve the present convenience and welfare of the citizens
4 of the state, and to attract and encourage new and existing
5 industry in the state. To this end, the council shall act as
6 advisor and consultant to state government, and to labor
7 and management within this state, to promote better labor-
8 management relations within the state; develop and
9 encourage methods of improved communications and
10 mutual respect between labor and management; endeavor
11 to narrow idealogical differences between labor and

12 management; develop and encourage innovative
13 techniques to resolve labor-management conflicts through
14 cooperative teamwork rather than confrontation; and
15 encourage both labor and management to recognize their
16 common ground and common purpose.

§5B-4-3. Powers, duties and functions of the council; annual reports.

1 On or before the first day of September, one thousand
2 nine hundred eighty-five, the council shall submit to the
3 joint committee on government and finance a preliminary
4 plan for the implementation of programs designed to
5 improve labor-management relations within the state.
6 Such plan shall include, but need not be limited to,
7 programs to:

8 (a) Conduct seminars and other programs designed to
9 promote better labor-management relations and greater
10 productivity, including the provision of training in
11 specialized skills required by management and by employee
12 representatives, in cooperation with institutions of higher
13 and secondary education within the state;

14 (b) Develop a resource network through which labor
15 and management can be made aware of available experts
16 and other resources for resolving labor-management
17 disputes and improving labor-management relations;

18 (c) Develop a method of compiling, analyzing and
19 publicizing fair and honest information about the
20 characteristics of the workforce in this state, including its
21 productivity and loyalty, in cooperation with the
22 commission on employment security, the West Virginia
23 promotion and development foundation and other state
24 agencies and educational institutions;

25 (d) Conduct and publicize, in cooperation with the West
26 Virginia promotion and development foundation, case
27 studies which identify examples of successful business
28 operations in the state with excellent labor-management
29 relations, and which document the specific characteristics
30 of labor-management relations in each such business;

31 (e) Establish forums for dialogue between labor and
32 management, including an annual state conference on labor-
33 management relations;

34 (f) Hold public hearings, and solicit comment and
35 suggestions from interested parties and the public in
36 general, concerning the development of a long-term plan
37 for improving labor-management relations within the
38 state;

39 (g) Develop a long-term plan for improving labor-
40 management relations within this state;

41 (h) Submit a preliminary operation report to the joint
42 committee on government and finance by the first day of
43 September, one thousand nine hundred eighty-five, at such
44 other times as the council may find desirable, or as directed
45 by the commission or the board, which report shall reflect
46 the plan of operation of the council and contain such
47 recommendations as it shall see fit as to structure, functions
48 and financing; and

49 (i) Cooperate with other agencies, organizations and
50 institutions, both public and private, and in particular with
51 institutions of higher and secondary education within the
52 state and with the regional advisory committees established
53 by this article in performing the duties and functions of the
54 council and is authorized to enter into agreements with any
55 such agencies, organizations and institutions for the
56 purpose of carrying out the provisions of this article.

57 The council is authorized and empowered to apply for,
58 receive and utilize appropriations, gifts, bequests or grants,
59 in money or in kind, from any person, organization,
60 governmental agency or entity whatsoever to assist in
61 achieving the public purposes of this article. The council
62 may decline to receive gifts, bequests or grants from private
63 sources which are restricted in a manner which to the
64 opinion of the council would benefit either labor or
65 management over the other. All funds received by the
66 council shall be deposited with the state treasurer of West
67 Virginia and dispersed by the council to be used exclusively
68 for carrying out the provisions of this article: *Provided,*
69 That any appropriations, gifts, bequests or grants received
70 by the council with any restriction or restrictions on the use
71 thereof shall be expended by the council in accordance with
72 such restriction or restrictions.

§5B-4-4. Regional advisory committees; composition; functions.

1 The council shall designate at least five regions,
2 representing the northern, southern, eastern, western and
3 central geographic areas of the state, and shall appoint a
4 regional advisory committee for each such region, to advise
5 and consult with the council and to address problems of
6 common interest within the region. The council shall
7 determine the number of members to serve on each regional
8 committee. In making appointments to the committee, the
9 council shall consider names of persons recommended by
10 business, labor and educational organizations and
11 institutions within the respective region and shall endeavor
12 to appoint persons with a commonality of interest in labor-
13 management relations. Committee members shall serve for
14 a term of four years and until their successors have been
15 appointed and have qualified, except that the members first
16 appointed shall be for two, three and four years,
17 respectively, as designated by the council at the time of
18 their appointment, and until their successors have been
19 appointed and have qualified. Vacancies shall be filled by
20 appointment by the council for the unexpired term of the
21 member whose office is vacant and the appointment shall
22 be made within sixty days of the occurrence of the vacancy.

23 Each regional advisory committee shall meet at least two
24 times each year and at other times on call of the chairman or
25 a majority of the members or as the council may direct. Each
26 committee shall elect a chairman from among its members,
27 and the chairman shall cause a summary of the proceedings
28 of each committee meeting, as well as any recommendations
29 made by the committee, to be delivered to the council.

30 The regional advisory committees shall review the plans
31 prepared by the council pursuant to section three of this
32 article, and shall make such recommendations as they deem
33 appropriate. The committees shall participate in the
34 programs established by the council, and also may establish
35 programs to improve labor-management relations within
36 their respective regions.

37 The council may enter into an agreement with a state
38 university, college or community college, county
39 governments or boards of education within each region to

40 provide space sufficient to enable the regional advisory
41 committee to carry out its functions.

§5B-4-5. Compensation of members of council and committees; employment of staff; expenses of council.

1 The labor-management council and the regional advisory
2 committees shall be supplied with necessary staff and
3 supplies within the limits of appropriation by the
4 commissioner of labor as well as funds for reimbursing each
5 member of the council and of the regional advisory
6 committees for reasonable and necessary expenses at the
7 rate of one hundred dollars per diem for each meeting
8 attended.

§5B-4-6. Duration of council.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to
3 section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the West
5 Virginia labor-management advisory council heretofore
6 established under the provisions of article one-c, chapter
7 twenty-one of this code, should be continued and
8 reestablished. Accordingly, notwithstanding the provisions
9 of section four, article ten, chapter four of this code, the
10 West Virginia labor-management advisory council shall
11 continue to exist until the first day of July, one thousand
12 nine hundred ninety-one.

**CHAPTER 5C. BASIC ASSISTANCE FOR
INDUSTRY AND TRADE.**

Article.

1. West Virginia Automobile Assistance Corporation.
2. West Virginia Industrial and Trade Jobs Development Corporation.

ARTICLE I. WEST VIRGINIA AUTOMOBILE ASSISTANCE CORPORATION.

- §5C-1-1. General provisions.
§5C-1-2. Purpose and intent.
§5C-1-3. Definitions.
§5C-1-4. Severability.
§5C-1-5. Creation of the West Virginia automobile industry assistance corporation.

- §5C-1-6. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.
- §5C-1-7. Management and control of corporation; officers; liability.
- §5C-1-8. Officers and employees; wages of laborers and mechanics.
- §5C-1-9. Corporate powers.
- §5C-1-10. Transfer of state property to corporation.
- §5C-1-11. Principal office of the corporation; account books; directors' oath of office.
- §5C-1-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.
- §5C-1-13. Authority of the board of investments.
- §5C-1-14. Requirements of loan.
- §5C-1-15. Limitations on loan authority.
- §5C-1-16. Terms and conditions of loans.
- §5C-1-17. Audits; audit reports.
- §5C-1-18. Enforcement of rights accruing to the state.
- §5C-1-19. Tax credit for borrowers.
- §5C-1-20. Reports to the Legislature.
- §5C-1-21. Termination.

§5C-1-1. General provisions.

- 1 This chapter shall be known and may be cited as the
- 2 "West Virginia Basic Assistance for Industry and Trade
- 3 Act."

§5C-1-2. Purpose and intent.

1 The Legislature finds and declares that West Virginia's
2 economy can be rejuvenated; that bringing new industry
3 and trade to the state will serve as a catalyst for reviving
4 and restoring steel, aluminum, coal and other industrial
5 and commercial activities within the state; that increasing
6 such activities will form the nucleus for growing and
7 prosperous communities, offering new job opportunities
8 both in industry and trade; and that new jobs and
9 investments, higher income and profits, and rising property
10 values will support better education and superior public
11 services.

12 Therefore, it is the intent of the Legislature to create
13 authorities for the purpose of enhancing the establishment
14 or renewal of industry and trade in the state of West
15 Virginia.

§5C-1-3. Definitions.

- 1 For the purpose of this article:

- 2 (1) The term "automobile manufacturer" means a
3 business entity, the subsidiaries and affiliates, whose
4 primary business is the production and sale of motor
5 vehicles;
- 6 (2) The term "board of investments" means the board of
7 investments established by article six, chapter twelve of
8 this code;
- 9 (3) The term "borrower" means an automobile
10 manufacturer, any of its subsidiaries or affiliates, or any
11 other entity the board of investments may designate from
12 time to time which borrows funds for the benefit or use of an
13 automobile manufacturer;
- 14 (4) The term "corporation" means the West Virginia
15 automobile industry assistance corporation, unless the
16 context in which such term is used clearly indicates that
17 reference is made to some other corporation;
- 18 (5) The term "financing plan" means a plan designed to
19 meet the financing needs of an automobile manufacturer as
20 reelected in the operating plan;
- 21 (6) The term "fiscal year" means the fiscal year of an
22 automobile manufacturer; and
- 23 (7) The term "operating plan" means a document
24 detailing production, distribution and sales plans of an
25 automobile manufacturer, together with the expenditures
26 necessary to carry out those plans (including budget and
27 cash flow projections), on an annual basis, and an
28 employment-generating plan setting forth steps to be taken
29 by the automobile manufacturer to create jobs and reduce
30 unemployment in this state.

§5C-1-4. Severability.

- 1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such invalidation shall not
4 affect the validity of the remaining portions of this article,
5 and, to this end, the provisions of this article are hereby
6 declared to be severable.

§5C-1-5. Creation of the West Virginia automobile industry assistance corporation.

- 1 (a) For the purpose of aiding the establishment and
2 expansion of the automobile industry in this state,

3 encouraging and increasing the use of energy derived from
4 hydrocarbon sources located in the state of West Virginia,
5 for developing and maintaining properties now owned or to
6 be owned by the state of West Virginia throughout this
7 state, and in the interest of improving employment
8 opportunities in this state, there is created a body
9 corporate, denominated the "West Virginia Automobile
10 Industry Assistance Corporation," (hereinafter referred to
11 as the "corporation"). The board of directors first
12 appointed shall be deemed the incorporators, and the
13 incorporation shall be held to have been effected from the
14 date of the first meeting of the board.

15 (b) The corporation is created and established to serve a
16 public corporate purpose and to act for the public benefit
17 and as a governmental instrumentality of the state of West
18 Virginia, to act on behalf of the state and its people in
19 improving their health, welfare and prosperity.

20 (c) The corporation:

21 (1) Shall have succession in its corporate name;

22 (2) May sue and be sued in its corporate name;

23 (3) May adopt and use a corporate seal, which shall be
24 judicially noticed;

25 (4) May make contracts as herein authorized; and

26 (5) May adopt, amend and repeal bylaws.

**§5C-1-6. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.**

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.

10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty-five, shall expire as designated by the governor at
13 the time of nomination, one at the end of the second year,
14 one at the end of the fourth year and one at the end of the

15 sixth year, after the first day of July, one thousand nine
16 hundred eighty-five. A successor to a member of the board
17 shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.

21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any
23 member appointed to fill a vacancy in the board occurring
24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

27 (d) The governor may remove a director in the case of
28 incompetence, neglect of duty, gross immorality or
29 malfeasance in office, and may declare such director's
30 office vacant and appoint a person for such vacancy as
31 provided in other cases of vacancy.

32 (e) Vacancies in the board, so long as there shall be two
33 members in office, shall not impair the powers of the board
34 to execute the functions of the corporation, and two of the
35 members in office shall constitute a quorum for the
36 transaction of the business of the board.

37 (f) Each of the members of the board shall be a citizen of
38 the state of West Virginia. The compensation of each
39 member of the board shall be paid by the corporation as
40 current expenses. Members of the board shall be
41 reimbursed by the corporation for actual expenses
42 (including traveling and subsistence expenses) incurred by
43 them in the performance of the duties vested in the board by
44 this article. No member of said board shall, during his
45 continuance in office, be engaged in any other business, but
46 each member shall devote himself to the work of the
47 corporation.

48 (g) No director shall have a financial interest in any
49 automobile manufacturer or in any public-utility
50 corporation engaged in the business of distributing and
51 selling electric power or natural gas to the public nor shall
52 any member have any interest in any business that may be
53 adversely affected by the success of the corporation as a
54 distributor of water, electric power, or oil or natural gas.

§5C-1-7. Management and control of corporation; officers; liability.

1 (a) The board shall direct the exercise of all the powers
2 of the corporation.

3 (b) The chairman shall be the chief executive officer of
4 the corporation, and, in his absence, the vice chairman shall
5 act as chief executive officer.

6 (c) The board shall annually elect a secretary, who need
7 not be a member of the board, to keep a record of the
8 proceedings of the board and perform such other duties as
9 may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in such
12 amount as the other members of the board of directors may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be liable personally, either jointly or severally, for any
16 debt or obligation created by the corporation.

§5C-1-8. Officers and employees; wages of laborers and mechanics.

1 The board shall, without regard to the provisions of civil
2 service laws applicable to officers and employees of the
3 state of West Virginia, appoint such managers, assistant
4 managers, officers, employees, attorneys and agents as are
5 necessary for the transaction of its business, fix their
6 compensation, define their duties, and provide a system of
7 organization to fix responsibility and promote efficiency.
8 Any appointee of the board may be removed in the
9 discretion of the board. No regular officer or employee of
10 the corporation shall receive a salary in excess of that
11 received by the members of the board.

12 All contracts to which the corporation is a party and
13 which require the employment of laborers and mechanics in
14 the construction, alteration, maintenance or repair of
15 buildings, gas transmission pipelines, electric power lines,
16 waterworks systems and waterlines, sewer systems and
17 sewage treatment and disposal systems, roads or other
18 projects shall contain a provision that not less than the
19 prevailing rate of wages for work of a similar nature

20 prevailing in the vicinity shall be paid to such laborers or
21 mechanics.

22 In the event any dispute arises as to what are the
23 prevailing rates of wages, the question shall be referred to
24 the commissioner of the department of labor for
25 determination, and his decision shall be final. In the
26 determination of such prevailing rate or rates, due regard
27 shall be given to those rates which have been secured
28 through collective agreement by representatives of
29 employers and employees.

30 Where such work as is described in the two preceding
31 paragraphs is done directly by the corporation the
32 prevailing rate of wages shall be paid in the same manner as
33 though such work had been let by contract.

§5C-1-9. Corporate powers.

1 In order to foster and expand the automobile industry in
2 this state and to encourage the widest possible use of energy
3 that can be generated from hydrocarbon sources in this
4 state and to market and provide reasonable outlets
5 therefore, the corporation is empowered and directed:

6 (a) To provide, construct, operate, maintain and
7 improve such gas and oil pipelines, electric transmission
8 lines, substations and facilities and structures appurtenant
9 thereto, as it finds necessary, desirable and appropriate for
10 the purpose of transmitting gas, oil and electric energy,
11 available for sale, from sources within this state to existing
12 and potential markets, and, for the purpose of interchange
13 of energy, to interconnect sources within this state with
14 either private projects, other state or federal projects, and
15 publicly owned power systems now or hereafter
16 constructed;

17 (b) To provide for the construction and maintenance of
18 streets, avenues, roads, alleys, ways, sidewalks, crosswalks
19 and other access ways to facilitate the ingress and egress to
20 industrial sites belonging to an automobile manufacturer;

21 (c) To construct, acquire, operate, maintain and
22 improve such waterworks systems and waterlines, sewer
23 systems and sewage treatment and disposal systems, or any
24 combination thereof, as it finds necessary, desirable and
25 appropriate for the purpose of assisting an automobile
26 manufacturer in carrying out its operating plan, and to

27 acquire watersheds, water and riparian rights, plant sites,
28 rights-of-way and any and all other property and
29 appurtenances necessary, appropriate, useful, convenient
30 or incidental to such system or systems;

31 (d) To acquire, by purchase, lease, condemnation or
32 donation, such real or personal property, or any interest
33 therein, including lands, easements, rights-of-way,
34 franchises, oil or gas pipelines, electric transmission lines,
35 substations and facilities and structures appurtenant
36 thereto, waterworks systems and waterlines, and sewer
37 systems and sewage treatment and disposal systems, as the
38 board finds necessary and appropriate to carry out the
39 purposes of this article. Title to all property and property
40 rights acquired by the corporation shall be taken in the
41 name of the corporation.

42 (e) To acquire any property or property rights,
43 including patent rights, which in the opinion of the board
44 are necessary to carry out the purposes of this article, by
45 purchase, lease, donation, or by the exercise of the right of
46 eminent domain and to institute condemnation proceedings
47 therefor in the same manner as is provided by law for the
48 condemnation of real estate.

49 (f) To sell, lease or otherwise dispose of such personal
50 property as in the opinion of the board is not required for
51 the purposes of this article and such real property and
52 interests in land acquired in connection with construction
53 or operation of gas and oil pipelines, electric transmission
54 lines, substations, roads and facilities and other structures,
55 waterworks systems and waterlines, and sewer systems and
56 sewage treatment and disposal systems as in the opinion of
57 the board are not required for the purposes of this article.

58 (g) To negotiate and enter into such contracts,
59 agreements and arrangements as it shall find necessary and
60 appropriate to carry out the purposes of this article.

61 (h) To accept appropriations, gifts, grants, bequests and
62 devises, and to dispose of the same to carry out its corporate
63 purposes;

64 (i) To invest any funds not required for immediate
65 disbursement in any of the following securities:

66 (1) Direct obligations of or obligations guaranteed by
67 the United States of America;

68 (2) Bonds, debentures, notes or other evidences of

69 indebtedness issued by any of the following agencies: Banks
70 for cooperatives; federal intermediate credit banks; federal
71 home loan bank system; export-import bank of the United
72 States; federal land banks; the federal national mortgage
73 association or the government national mortgage
74 association;

75 (3) Bonds issued by public agencies or municipalities
76 and fully secured as to the payment of both principal and
77 interest by a pledge of annual contributions under an
78 annual contributions contract or contracts with the United
79 States of America; or temporary notes issued by public
80 agencies or municipalities or preliminary loan notes issued
81 by public agencies or municipalities in each case, fully
82 secured as to the payment of both principal and interest by
83 a requisition or payment agreement with the United States
84 of America;

85 (4) Certificates of deposit secured by obligations of the
86 United States of America;

87 (5) Direct obligations of or obligations guaranteed by
88 the state of West Virginia;

89 (6) Direct and general obligations of any other state
90 within the territorial United States, to the payment of the
91 principal of and interest on which the full faith and credit of
92 such state is pledged: *Provided*, That at the time of their
93 purchases, such obligations are rated in either of the two
94 highest rating categories by a nationally recognized bond-
95 rating agency; and

96 (7) Any fixed interest bond, note or debenture of any
97 corporation organized and operating within the United
98 States: *Provided*, That such corporation shall have a
99 minimum net worth of fifteen million dollars and its
100 securities or its parent corporation's securities are listed on
101 one or more of the national stock exchanges: *Provided*,
102 *however*, That (1) such corporation has earned a profit in
103 eight of the preceding ten fiscal years as reflected in its
104 statements, and (2) such corporation has not defaulted in
105 the payment of principal or interest on any of the
106 outstanding funded indebtedness during its preceding ten
107 fiscal years, and (3) the bonds, notes or debentures of such
108 corporation to be purchased are rated "AA" or the
109 equivalent thereof or better than "AA" or the equivalent
110 thereof by at least two or more nationally recognized rating

111 services such as Standard and Poor's, Dun & Bradstreet or
112 Moody's;

113 (j) To procure insurance against any loss in connection
114 with its property in such amounts, and from such insurers,
115 as may be necessary or desirable;

116 (k) To make and publish such rules and regulations as
117 are necessary to effectuate its corporate purpose;

118 (l) To borrow money to carry out and effectuate its
119 corporate purpose and to issue notes as evidence of any such
120 borrowing in such principal amounts and upon such terms
121 as shall be necessary to provide sufficient funds for
122 achieving its corporate purpose, except that no notes shall
123 be issued to mature more than ten years from date of
124 issuance;

125 (m) To issue renewal notes, except that no such renewal
126 notes shall be issued to mature more than ten years from
127 date of issuance of the notes renewed;

128 (n) To apply the proceeds from the sale of renewal notes
129 to the purchase, redemption or payment of the notes to be
130 refunded; and

131 (o) To make proper application to the West Virginia
132 economic development authority for the issuance of bonds,
133 in accordance with the provisions of article fifteen, chapter
134 thirty-one of this code.

135 The corporation shall have such additional powers as
136 may be necessary or appropriate for the exercise of the
137 powers herein conferred.

§5C-1-10. Transfer of state property to corporation.

1 The governor is authorized to provide for the transfer to
2 the corporation of the use, possession and control of such
3 real or personal property of the state of West Virginia as he
4 may from time to time deem necessary and proper for the
5 purposes of the corporation as herein stated.

**§5C-1-11. Principal office of the corporation; account books;
directors' oath of office.**

1 (a) The corporation shall maintain its principal office in
2 the immediate vicinity of Charleston, West Virginia or upon
3 the site of any facility.

4 (b) The corporation shall at all times maintain complete
5 and accurate books of accounts.

6 (c) Each member of the board, before entering upon the
7 duties of his office, shall subscribe to an oath or affirmation
8 to support the constitution of the state of West Virginia and
9 to faithfully and impartially perform the duties imposed
10 upon him by this article.

**§5C-1-12. West Virginia board of investments to act as board of
investments for purposes of this article; powers.**

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions of
3 article six, chapter twelve of this code, shall be ex officio a
4 board of investments for public employees retirement
5 system funds as they are made available for investment in
6 accordance with the provisions of this article, and as such,
7 the board of investments may exercise all of the powers and
8 functions granted to it pursuant to the provisions of said
9 article six in carrying out the duties assigned to it under the
10 provisions of this article.

§5C-1-13. Authority of the board of investments.

1 Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities, and other assets
4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

8 (1) That there exists an employment-generating plan
9 which:

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility, in this state, to
20 produce, distribute and sell automobiles, and that by
21 meeting such need employment will be increased in the
22 state;

23 (3) That the borrower has submitted to the board of
24 investments a satisfactory operating plan for the 1985-1986
25 fiscal year and the next succeeding two fiscal years
26 demonstrating the ability of the borrower to employ not less
27 than an additional one thousand full-time employees in this
28 state in the furnishing of goods and services, and after the
29 thirty-first day of December, one thousand nine hundred
30 eighty-eight, to continue to maintain such increased level of
31 employment without additional loans under the provisions
32 of this article;

33 (4) That the board of investments has received such
34 assurances as it shall require that the operating plan is
35 realistic and feasible;

36 (5) That the borrower has submitted to the board of
37 investments a satisfactory financing plan which meets the
38 financial needs of the borrower as reflected in the operating
39 plan for the period covered by such plan;

40 (6) That the board of investments has received adequate
41 assurances regarding the availability of all financing, both
42 public and private, contemplated by the financing plan and
43 that such financing is adequate to meet the borrower's
44 projected financial needs during the period covered by the
45 financing plan;

46 (7) That none of the proceeds of a loan made under the
47 provisions of this article will be used to repay credit
48 extended or committed prior to the date the loan is made
49 under the provisions of this article; and

50 (8) That the financing plan submitted under subdivision
51 (5) of this section provides that expenditures under the
52 financing plan will reduce unemployment in this state.

§5C-1-14. Requirements of loan.

1 (a) A loan may be made under the provisions of this
2 article when such loan is based upon the criteria set forth in
3 section sixteen of this article. In addition, the terms of any
4 such loan shall provide that the loan is made upon the
5 following findings of the board of investments:

6 (1) That the prospective earning power of the borrower,
7 together with the character and value of any security
8 pledged, furnish reasonable assurance of repayment of the
9 loan in accordance with its terms;

10 (2) That the loan will bear interest at a rate determined

11 by the board of investments to be reasonable, taking into
12 account the current average yield on outstanding
13 investments of the board of investments of the pension
14 funds in the consolidated pension fund established under
15 the provisions of section eight, article six, chapter twelve of
16 this code;

17 (3) That the corporation has agreed for as long as unpaid
18 balances of principal and interest are outstanding on a loan
19 issued under this article:

20 (A) To have prepared and submitted on or before the
21 thirtieth day preceding each fiscal year beginning after
22 the thirty-first day of December, one thousand nine
23 hundred eighty-six, a revised operating plan and financial
24 plan which cover the two-year period commencing with
25 such fiscal year and which show compliance with the
26 requirements of section sixteen of this article, and

27 (B) To prepare and deliver to the board of investments
28 within one hundred twenty days following the close of each
29 fiscal year, an analysis reconciling the borrower's actual
30 performance in generating employment in this state with
31 the projected employment for such year as set forth in the
32 operating plan and the financial plan in effect at the start of
33 such fiscal year.

34 (b) The borrower has agreed to pay such loan fees as
35 may be prescribed by the board of investments from time to
36 time. The board of investments shall prescribe and collect
37 no less frequently than annually a loan fee in connection
38 with each loan made under the provisions of this article.
39 Such fee shall be sufficient to compensate the board of
40 investments for all of the administrative expenses of the
41 board of investments related to the loan, but in no case shall
42 such fee be less than one half of one percent per annum of
43 the outstanding principal amount of the loan computed
44 daily. All amounts collected by the board of investments
45 pursuant to this subsection (b) shall be deposited in the
46 state treasury as general revenue.

§5C-1-15. Limitations on loan authority.

1 (a) The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed two hundred fifty million dollars in the
4 aggregate principal amount outstanding.

§5C-1-16. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article shall
2 be payable in full not later than twenty years from the date
3 the loan is made.

4 (b) The board of investments shall require security for
5 the loans to be made under this article at the time the
6 commitment is made. Any commitment to make a loan
7 under the provisions of this article shall contain all of the
8 affirmative and negative covenants and other protective
9 provisions that the board of investments determines are
10 appropriate.

§5C-1-17. Audits; audit reports.

1 (a) The accounts of a borrower under this article shall be
2 audited annually in accordance with generally accepted
3 auditing standards by independent certified public
4 accountants or independent licensed public accountants,
5 certified or licensed by a regulatory authority of this state
6 or a sister state.

7 (b) At any time a request for an application for a loan
8 under this article is pending or a loan under this article is
9 outstanding, the board of investments is authorized to
10 request a report of such independent audit. The report shall
11 set forth the scope of the audit and include such statements
12 as are necessary to present fairly the borrower's assets and
13 liabilities, surplus or deficit with an analysis of changes
14 therein during the year, supplemented in reasonable detail
15 by a statement of the corporation's income and expenses
16 during the year, together with the independent auditor's
17 opinion of those statements.

18 (c) No loan may be made under this article unless and
19 until the borrower agrees, in writing, to provide the board
20 of investments with such reports of independent audits as
21 may be requested under the provisions of subsection (b) of
22 this section.

§5C-1-18. Enforcement of rights accruing to the state.

1 The board of investments shall take such action as may be
2 appropriate to enforce any right accruing to the state or any
3 officer or agency thereof as a result of the making of a loan
4 under the provisions of this article.

§5C-1-19. Tax credit for borrowers.

- 1 The borrower, as defined in this article, may be eligible
- 2 for any tax credits provided for in articles thirteen-c,
- 3 thirteen-d and thirteen-e, chapter eleven of this code.

§5C-1-20. Reports to the Legislature.

- 1 The board of investments shall submit to the Legislature
- 2 annually a full report of its activities under this article
- 3 during fiscal years 1985-1986 and 1986-1987, and annually
- 4 thereafter so long as any loan guaranteed under this article
- 5 is outstanding. The report for 1987 shall include an
- 6 evaluation of the long-term employment implications of the
- 7 loan program created under the provisions of this article,
- 8 with findings, conclusions and recommendations for
- 9 legislative and administrative actions considered
- 10 appropriate to future loans under this article or under
- 11 similar loan programs which might be foreseen.

§5C-1-21. Termination.

- 1 The authority of the board of investments to make loans
- 2 under this article expires on the thirty-first day of
- 3 December, one thousand nine hundred eighty-seven.

**ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS
DEVELOPMENT CORPORATION.**

- §5C-2-1. Definitions.
- §5C-2-2. Creation of the West Virginia industrial and trade jobs development corporation.
- §5C-2-3. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.
- §5C-2-4. Management and control of corporation; officers liability.
- §5C-2-5. Officers and employees; wages of laborers and mechanics.
- §5C-2-6. Corporate powers.
- §5C-2-7. Investment fund.
- §5C-2-8. Investment in qualified securities.
- §5C-2-9. Financing of development projects.
- §5C-2-10. Transfer of state property to corporation.
- §5C-2-11. Principal office of the corporation; account books; directors' oath of office.
- §5C-2-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.
- §5C-2-13. Authority of the board of investments.
- §5C-2-14. Requirements of loan.
- §5C-2-15. Limitations on loan authority.

- §5C-2-16. Terms and conditions of loans.
- §5C-2-17. Enforcement of rights accruing to the state.
- §5C-2-18. Tax credit for borrowers.
- §5C-2-19. Reports to the Legislature.
- §5C-2-20. Termination.
- §5C-2-21. Inspection, audit and investigation.

§5C-2-1. Definitions.

1 For the purposes of this chapter:

2 (1) The term "enterprise" means a business entity which
3 is or proposes to be engaged in this state in any commercial
4 activity for profit. The entity may be owned, operated,
5 controlled or under the management of a person,
6 partnership, corporation, community-based development
7 organization or council, local commerce group, employee
8 stock ownership plan, pension or profit-sharing plan or
9 trust, a group of participating employees who desire to own
10 an entity which does not presently exist, or any similar
11 entity or organization;

12 (2) The term "board of investments" means the board of
13 investments established by article six, chapter twelve of
14 this code;

15 (3) The term "borrower" means an enterprise, any of its
16 subsidiaries or affiliates, or any other entity the board of
17 investments may designate from time to time which
18 borrows funds for the benefit or use of an enterprise;

19 (4) The term "corporation" means the West Virginia
20 industrial and trade jobs development corporation, unless
21 the context in which such term is used clearly indicates that
22 reference is made to some other corporation;

23 (5) The term "financing plan" means a plan designed to
24 meet the financing needs of an enterprise as reflected in the
25 operating plan;

26 (6) The term "fiscal year" means the fiscal year of an
27 enterprise;

28 (7) The term "operating plan" means a document
29 detailing production, distribution and sales plans of an
30 enterprise, together with the expenditures necessary to
31 carry out those plans (including budget and cash flow
32 projections) on an annual basis, and an employment-
33 generating plan setting forth steps to be taken by the
34 enterprise to create jobs and reduce unemployment in this
35 state;

36 (8) The term "investment" means an investment by the
37 corporation in qualified securities of an enterprise to
38 provide initial capital to the enterprise;

39 (9) The term "primary employment" means work which
40 pays at least the prevailing wage in the industry, offers
41 adequate fringe benefits, including health insurance, and is
42 not seasonal or part-time;

43 (10) The term "qualified security" means any note,
44 bond, debenture, convertible debenture, evidence of
45 indebtedness, certificate of deposit for a security,
46 certificate of interest or participation in a patent,
47 trademark, or other intangible property or application
48 therefor, or in general, any interest or instrument
49 commonly known as a security or warrant or right to
50 subscribe to or purchase any of the foregoing, but shall not
51 include any security the ownership of which is prohibited
52 by section six, article ten of the Constitution of the state of
53 West Virginia;

54 (11) The term "initial capital" shall mean financing that
55 is provided for the development, refinement and
56 commercialization of a product, process or service, and
57 other initial working capital needs, including formation,
58 organization, promotion, employment, employment
59 training, and similar expenditures incident to the start-up
60 of an enterprise; and

61 (12) The term "development project" means a
62 commercial or industrial project and all of the assets
63 reasonably and necessarily required for its operation.

**§5C-2-2. Creation of the West Virginia industrial and trade
jobs development corporation.**

1 (a) For the purpose of aiding the establishment and
2 expansion of industry and trade in this state, encouraging
3 and increasing the use of energy derived from hydrocarbon
4 sources located in the state of West Virginia, for developing
5 and maintaining properties now owned or to be owned by
6 the state of West Virginia throughout this state, and in the
7 interest of improving employment opportunities in this
8 state, there is created a body corporate, denominated the
9 "West Virginia Industrial and Trade Jobs Development
10 Corporation" (hereinafter referred to as the "corporation").
11 The board of directors first appointed shall be deemed the
12 incorporators, and the incorporation shall be held to have

13 been effected from the date of the first meeting of the board.
14 (b) The corporation is created and established to serve a
15 public corporate purpose and to act for the public benefit
16 and as a governmental instrumentality of the state of West
17 Virginia, to act on behalf of the state and its people in
18 improving their health, welfare and prosperity.

**§5C-2-3. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.**

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.

10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty-five, shall expire as designated by the governor at
13 the time of nomination, one at the end of the second year,
14 one at the end of the fourth year, and one at the end of the
15 sixth year, after the first day of July, one thousand nine
16 hundred eighty-five. A successor to a member of the board
17 shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.

21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any
23 member appointed to fill a vacancy in the board occurring
24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

27 (d) The governor may remove a director in the case of
28 incompetence, neglect of duty, gross immorality or
29 malfeasance in office, and may declare such director's
30 office vacant and appoint a person for such vacancy as
31 provided in other cases of vacancy.

32 (e) Vacancies in the board, so long as there shall be two
33 members in office, shall not impair the powers of the board

34 to execute the functions of the corporation, and two of the
35 members in office shall constitute a quorum for the
36 transaction of the business of the board.

37 (f) Each of the members of the board shall be a citizen of
38 the state of West Virginia. The compensation of each
39 member of the board shall be paid by the corporation as
40 current expenses. Members of the board shall be
41 reimbursed by the corporation for actual expenses
42 (including traveling and subsistence expenses) incurred by
43 them in the performance of the duties vested in the board by
44 this article. No member of said board shall, during his
45 continuance in office, be engaged in any other business, but
46 each member shall devote himself to the work of the
47 corporation.

48 (g) No officer, member or employee of the corporation
49 shall be financially interested, directly or indirectly, in any
50 contract of any person with the corporation, or in the sale of
51 any property, real or personal, to or from the corporation.
52 This section does not apply to contracts or purchases of
53 property, real or personal, between the corporation and any
54 governmental agency. Any officer, member or employee of
55 the corporation who has such financial interest in a
56 contract or sale of property prohibited hereby, shall be
57 guilty of a misdemeanor, and, upon conviction thereof, shall
58 be fined not more than one thousand dollars, or imprisoned
59 in the county jail not more than one year, or both fined and
60 imprisoned.

**§5C-2-4. Management and control of corporation; officers;
liability.**

1 (a) The board shall direct the exercise of all the powers
2 of the corporation.

3 (b) The chairman shall be the chief executive officer of
4 the corporation, and, in his absence, the vice chairman shall
5 act as chief executive officer.

6 (c) The board shall annually elect a secretary, who need
7 not be a member of the board, to keep a record of the
8 proceedings of the board and perform such other duties as
9 may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in such
12 amount as the other members of the board of directors may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be liable personally, either jointly or severally, for any
16 debt or obligation created by the corporation.

§5C-2-5. Officers and employees; wages of laborers and mechanics.

1 The board shall, without regard to the provisions of civil
2 service laws applicable to officers and employees of the
3 state of West Virginia, appoint such managers, assistant
4 managers, officers, employees, attorneys and agents as are
5 necessary for the transaction of its business, fix their
6 compensation, define their duties and provide a system of
7 organization to fix responsibility and promote efficiency.
8 Any appointee of the board may be removed in the
9 discretion of the board. No regular officer or employee of
10 the corporation shall receive a salary in excess of that
11 received by the members of the board.

12 All contracts to which the corporation is a party and
13 which require the employment of laborers and mechanics in
14 the construction, alteration, maintenance or repair of
15 buildings, gas transmission pipelines, electric power lines,
16 waterworks systems and waterlines, sewer systems and
17 sewage treatment and disposal systems, roads or other
18 projects shall contain a provision that not less than the
19 prevailing rate of wages for work of a similar nature
20 prevailing in the vicinity shall be paid to such laborers or
21 mechanics.

22 In the event any dispute arises as to what are the
23 prevailing rates of wages, the question shall be referred to
24 the commissioner of the department of labor for
25 determination, and his decision shall be final. In the
26 determination of such prevailing rate or rates, due regard
27 shall be given to those rates which have been secured
28 through collective agreement by representatives of
29 employers and employees.

30 Where such work as is described in the two preceding
31 paragraphs is done directly by the corporation, the
32 prevailing rate of wages shall be paid in the same manner as
33 though such work had been let by contract.

§5C-2-6. Corporate powers.

1 In order to foster and expand industry and trade in this
2 state, the corporation is empowered and directed to:

- 3 (a) Make, amend and repeal bylaws; and promulgate
4 rules and regulations in accordance with the provisions of
5 chapter twenty-nine-a of this code;
- 6 (b) Sue and be sued in its corporate name;
- 7 (c) Adopt and use a corporate seal;
- 8 (d) Make contracts, and execute all instruments
9 necessary or convenient for the carrying on of its business;
- 10 (e) Acquire, own, hold, dispose of and encumber
11 personal property of any nature, or any interest therein;
- 12 (f) Enter into agreements or other transactions with any
13 federal, state or municipal agency;
- 14 (g) Acquire real property, or an interest therein, by
15 purchase or foreclosure, where such acquisition is
16 necessary or appropriate to protect or secure any
17 investment or loan in which the corporation has an interest;
18 to sell, transfer and convey any such property to a buyer and
19 in the event such sale, transfer or conveyance cannot be
20 effected with reasonable promptness or at a reasonable
21 price, to lease such property to a tenant;
- 22 (h) Invest any funds held in reserves or sinking funds, or
23 any funds not required for immediate disbursement, in such
24 investments as may be lawful for fiduciaries in the state;
- 25 (i) Borrow money and give guarantees, provided that
26 the indebtedness and other obligations of the corporation
27 shall be payable solely out of its own resources;
- 28 (j) Appoint officers, employees, consultants, agents and
29 advisors and prescribe their duties and fix compensation
30 within the limitations provided by law;
- 31 (k) Appear in its own behalf before boards,
32 commissions, departments or other agencies of municipal,
33 state or federal government;
- 34 (l) Procure insurance against any losses in connection
35 with its property in such amounts, and from such insurers,
36 as may be necessary or desirable;
- 37 (m) Consent, subject to the provisions of any contract
38 with noteholders, whenever it deems it necessary or
39 desirable in the fulfillment of the purposes of this article, to
40 the modification, with respect to rate of interest, time of
41 payment of any installment of principal or interest, or any
42 other terms of any contract or agreement of any kind to
43 which the corporation is a party;
- 44 (n) To accept any and all donations, grants, bequests

45 and devises, conditional or otherwise, of money, property,
46 service or other things of value which may be received from
47 the United States or any agency thereof, any governmental
48 agency or any institution, person, firm or corporation,
49 public or private, to be held, used or applied for any or all of
50 the purposes specified in this article, in accordance with the
51 terms and conditions of any such grant. Receipt of each such
52 donation or grant shall be detailed in the annual report of
53 the corporation. Such report shall include the identity of
54 the donor or lender, the nature of the transaction and any
55 conditions attaching thereto;

56 (o) Buy, hold and sell qualified securities;

57 (p) Finance, conduct or cooperate in financing or
58 conducting technological, business, financial or other
59 investigations which are related to or likely to lead to
60 business and economic development by making and
61 entering into contracts and other appropriate
62 arrangements, including the provision of grants, loans and
63 other forms of assistance;

64 (q) Solicit, study and assist in the preparation of
65 business plans and proposals of new or established
66 businesses suitable for support by the corporation;

67 (r) Prepare, publish and distribute, with or without
68 charge as the corporation may determine, such technical
69 studies, reports, bulletins and other materials as it deems
70 appropriate, subject only to the maintenance and respect
71 for confidentiality of client proprietary information;

72 (s) Organize, conduct, sponsor or cooperate in and assist
73 the conduct of special institutes, conferences,
74 demonstrations and studies relating to the stimulation and
75 formation of industry and trade endeavors;

76 (t) Provide and pay for such advisory services and
77 technical assistance as may be necessary or desirable to
78 carry out the purposes of this article;

79 (u) Exercise any other powers of a corporation
80 organized under article one, chapter thirty-one of this code;

81 (v) Cooperate with state and federal agencies in efforts
82 to promote the expansion of commercial and industrial
83 development in this state;

84 (w) Request the issuance of revenue bonds by the
85 economic development authority, payable solely from
86 revenues, to pay the cost or finance in whole or in part

87 enterprises or development projects;

88 (x) Make, upon proper application of any local
89 development agency, loans to such agency for development
90 projects and to provide for the repayment and redeposit of
91 such loans in the manner provided in this article;

92 (y) Take title by foreclosure to any enterprise or
93 development project where acquisition is necessary to
94 protect any investment or financing previously made by the
95 corporation, and to sell, transfer and convey such enterprise
96 or project, or any part thereof, to any responsible buyer. In
97 the event such sale, transfer and conveyance cannot be
98 effected with reasonable promptness, the authority may, in
99 order to minimize financial losses and sustain employment,
100 lease the project to a responsible tenant. The corporation
101 may lease, sublease or engage in similar financial
102 transactions with any enterprise or project, under the
103 conditions and for the purposes cited in this section;

104 (z) Participate in any reorganization proceeding
105 pending pursuant to the United States Code (being the act
106 of Congress, establishing a uniform system of bankruptcy
107 throughout the United States, as amended) or in any
108 receivership proceeding in a state or federal court for the
109 reorganization or liquidation of any enterprise or
110 development project. The corporation may file its claim
111 against any enterprise or development project in any of the
112 foregoing proceedings, vote upon any question pending
113 therein which requires the approval of the creditors
114 participating in any reorganization proceeding or
115 receivership, exchange any evidence of such indebtedness
116 for any property, security or evidence of indebtedness
117 offered as a part of the reorganization of such responsible
118 tenant or of any other entity formed to acquire the assets
119 thereof and may compromise or reduce the amount of any
120 indebtedness owing to it as a part of any such
121 reorganization;

122 (aa) Sell security interests in the loan portfolio of the
123 corporation. Such security interests shall be evidenced by
124 instruments issued by the corporation. Proceeds from the
125 sale of security interests may be issued in the same manner
126 and for the same purposes as note revenues;

127 (bb) Procure insurance against any losses in connection
128 with its property, operations or assets in such amounts and

129 from such insurers as the corporation deems desirable; and
130 (cc) Take and hold security interests for investments
131 and financings on a nonrecourse basis.

§5C-2-7. Investment fund.

1 There is hereby established an investment fund to which
2 shall be credited any state appropriations or other moneys
3 made available to the fund.

4 The corporation shall hold the investment fund in an
5 account or accounts separate from other funds. The
6 corporation shall invest and reinvest the fund and the
7 income thereof, temporarily pending use for the purposes of
8 this article, in the purchase of such securities as may be
9 lawful investments for fiduciaries in the state.

10 All funds may be used to pay for the proper general
11 expenses of the corporation.

12 Unless otherwise specified, all moneys of the corporation
13 from whatever source derived shall be paid to the treasurer
14 of the corporation.

15 Funds in said accounts shall be paid out on the warrant or
16 other order of the treasurer of the corporation and other
17 person or persons as the board may authorize to execute
18 such warrants or order.

19 The fund shall operate as a revolving fund whereby all
20 appropriations and payments thereto may be applied and
21 reapplied by the corporation for the purposes of this article.
22 The corporation shall requisition from the fund such
23 amounts as are necessary to accomplish the purposes of this
24 article.

25 Whenever the corporation determines that the balance in
26 the fund is in excess of its immediate requirements, it may
27 request that such excess be invested until needed. In such
28 case such excess shall be invested in a manner consistent
29 with the investment of temporary state funds. Interest
30 earned on any money invested pursuant to this section shall
31 be credited to the fund.

32 If the corporation determines that funds held in the fund
33 are in excess of the amount needed to accomplish the
34 purposes of this article, it shall take such action as is
35 necessary to release such excess and transfer it to the
36 general fund of the state treasury.

37 The fund shall consist of the following:

- 38 (a) Moneys collected and deposited in the state treasury
39 which are specifically designated by acts of the Legislature
40 for inclusion into the fund;
- 41 (b) Contributions, grants and gifts from any source,
42 both public and private, which may be used by the
43 corporation for any project or projects;
- 44 (c) All interest earned on investments made by the state
45 from moneys deposited in the fund;
- 46 (d) The proceeds from the issuance of any revenue bonds
47 issued by the economic development authority in
48 accordance with the provisions of article fifteen, chapter
49 thirty-one of this code; and
- 50 (e) The proceeds, repayments, lease or rental receipts,
51 sale proceeds, liquidation proceeds, and any other receipts
52 from investments and financings made pursuant to the
53 authority granted by this article.

§5C-2-8. Investment in qualified securities.

- 1 (1) The corporation may invest in qualified securities
2 issued by an enterprise only after:
- 3 (a) Receipt of an application from the enterprise which
4 contains a business plan including a description of the
5 enterprise and its management, product or service and
6 market, a statement of the amount, timing and projected
7 use of the capital required, a statement of the potential
8 economic impact of the enterprise, including the number,
9 location and types of jobs expected to be created, and such
10 other information as the board shall request; and
- 11 (b) Approval of the investment by the board after the
12 board shall find, based upon the application submitted by
13 the enterprise and such additional investigation as the
14 corporation shall make, and incorporate in its minutes that:
- 15 (1) The proceeds of the investment will be used to cover
16 the initial capital needs of the enterprise as hereinafter
17 authorized;
- 18 (2) The enterprise has a reasonable chance of success;
- 19 (3) The corporation's participation is necessary to the
20 success of the enterprise because funding for the enterprise
21 is unavailable in the traditional capital markets, or because
22 funding has been offered on terms that would substantially
23 hinder the success of the enterprise;

24 (4) The enterprise has reasonable potential to create a
25 substantial amount of primary employment within the state
26 and this employment, so far as feasible, offers employment
27 opportunities to unskilled and semiskilled individuals;

28 (5) The founders or owners of the enterprise have
29 already made or are prepared to make a financial or time
30 commitment, or both, to the enterprise;

31 (6) The securities to be purchased are qualified
32 securities;

33 (7) There is a reasonable possibility that the corporation
34 will recoup at least its initial investment;

35 (8) Binding commitments have been made to the
36 corporation by the enterprise for adequate reporting of
37 financial data to the corporation which shall include a
38 requirement for an annual or other periodic audit of the
39 books of the enterprise, by an independent certified public
40 accountant, and for such control on the part of the
41 corporation as the board shall consider prudent over the
42 management of the enterprise, so as to protect the
43 investment of the corporation including, in the discretion of
44 the board and without limitation, right of access to
45 financial and other records of the enterprise; and

46 (9) A reasonable effort has been made to find an investor
47 to make an investment in the enterprise as a coventure, and
48 that such effort was unsuccessful.

49 Such findings when made by the board shall be conclusive.

50 (2) The corporation shall not make investments in
51 qualified securities issued by enterprises in excess of the
52 following limits:

53 (a) Not more than one million dollars shall be invested
54 in the securities of any one enterprise; except that not more
55 than a total of two million dollars may be invested in the
56 securities of any one enterprise if the board shall find, after
57 the initial investment by the corporation, that additional
58 investments in such enterprise are required to protect the
59 initial investment of the corporation and the other findings
60 set forth above are made as to the additional investment:
61 *Provided*, That the board may, by rule adopted in
62 accordance with the provisions of chapter twenty-nine-a of
63 this code, determine that a higher amount is necessary and
64 prudent, and may, after hearing, determine that a higher
65 amount is necessary and prudent in a particular situation.

66 (b) The corporation shall not invest in securities
67 representing more than ninety-nine percent of the market
68 value of the enterprise at the time of investment by the
69 corporation, after giving effect to the conversion of all
70 outstanding convertible securities of the enterprise.

71 (3) Any investment, or proposed investment, by the
72 corporation, and by all others involved in the enterprise,
73 shall be exempt transactions under the provisions of section
74 four hundred two, article four, chapter thirty-two of this
75 code.

§5C-2-9. Financing of development projects.

1 The corporation may finance development projects, only
2 after:

3 (a) Receipt of an application, except that if an
4 application has been received under section eight of this
5 article, no new application need be received at the discretion
6 of the board, from the enterprise which contains a business
7 plan including a description of the enterprise and its
8 management, product or service and market, a description
9 of the development project, a statement of the amount,
10 timing and projected use of the funds, a statement of the
11 potential economic impact of the development project,
12 including the number, location and types of jobs expected
13 to be created, and other information as the board shall
14 request;

15 (b) Approval of the financing by the board after the
16 board shall find based upon the application submitted by
17 the enterprise and such additional investigation as the
18 corporation shall make, and incorporate in its minutes that:

19 (1) The proceeds of the financing will be used for
20 development of the project;

21 (2) The development project has a reasonable chance of
22 success;

23 (3) The corporation's participation is necessary to the
24 success of the enterprise because financing for the
25 development project is unavailable in the traditional
26 capital markets, or because financing has been offered on
27 terms that would substantially hinder the success of the
28 development project;

29 (4) The development project has reasonable potential to

30 create a substantial amount of primary employment within
31 the state and this employment, so far as feasible, offers
32 employment opportunities to unskilled and semiskilled
33 individuals;

34 (5) The founders of the development project have
35 already made or are prepared to make a financial or time
36 commitment, or both, to the project;

37 (6) Binding commitments have been made to the
38 corporation by the project for adequate reporting of
39 financial data to the corporation, which shall include a
40 requirement for an annual or other periodic audit of the
41 books of the project by an independent certified public
42 accountant, and for such control on the part of the
43 corporation as the board shall consider prudent over the
44 management of the project, so as to protect the investment
45 of the corporation including, in the discretion of the board
46 and without limitation, right of access to financial and
47 other records of the project; and

48 (7) A reasonable effort has been made to find other
49 financing for the development project and that such effort
50 was unsuccessful.

51 Such findings when made by the board shall be
52 conclusive.

53 The corporation may not finance development projects in
54 excess of the following limits:

55 (a) One hundred percent of development project costs;

56 (b) Ten million dollars for any one development project;
57 except that after two years of continual operations, the
58 corporation may finance a total of twenty million dollars of
59 development costs for any one project where the board finds
60 that the development project warrants expansion beyond
61 the original project limits: *Provided*, That the board may,
62 by rule adopted in accordance with the provisions of
63 chapter twenty-nine-a of this code, determine that a higher
64 amount is necessary and prudent.

65 The corporation shall utilize appropriate financing
66 documents and notes in making financing arrangements
67 and shall acquire appropriate security interests, deeds of
68 trust, collateral security agreements, senior and junior
69 security arrangements, and other necessary lienholder
70 interests, not necessitating recourse financing.

71 Any such financing, or proposed financing, by the

72 corporation, and by all others involved in the development
73 project, shall be exempt transactions under the provisions
74 of section four hundred two, article four, chapter thirty-two
75 of this code.

§5C-2-10. Transfer of state property to corporation.

1 The governor is authorized to provide for the transfer to
2 the corporation of the use, possession and control of such
3 real or personal property of the state of West Virginia as he
4 may from time to time deem necessary and proper for the
5 purposes of the corporation as herein stated.

**§5C-2-11. Principal office of the corporation; account books;
directors' oath of office.**

1 (a) The corporation shall maintain its principal office in
2 the immediate vicinity of Charleston, West Virginia or upon
3 the site of any facility.

4 (b) The corporation shall at all times maintain complete
5 and accurate books of accounts.

6 (c) Each member of the board, before entering upon the
7 duties of his office, shall subscribe to an oath or affirmation
8 to support the constitution of the state of West Virginia and
9 to faithfully and impartially perform the duties imposed
10 upon him by this article.

**§5C-2-12. West Virginia board of investments to act as board of
investments for purposes of this article; powers.**

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions of
3 article six, chapter twelve of this code, shall be ex officio a
4 board of investments for public employees retirement
5 system funds as they are made available for investment in
6 accordance with the provisions of this article, and as such,
7 the board of investments may exercise all of the powers and
8 functions granted to it pursuant to the provisions of said
9 article six in carrying out the duties assigned to it under the
10 provisions of this article.

§5C-2-13. Authority of the board of investments.

1 Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities and other assets

4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

8 (1) That there exists an employment-generating plan
9 which:

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility in this state, and
20 that, by meeting such need, employment will be increased
21 in the state;

22 (3) That the borrower has submitted to the board of
23 investments a satisfactory operating plan for the 1985-1986
24 fiscal year and the next succeeding two fiscal years
25 demonstrating the ability of the borrower to generate
26 additional employment in this state in the furnishing of
27 goods and services, and after the thirty-first day of
28 December, one thousand nine hundred eighty-eight, to
29 continue to maintain such increased level of employment
30 without additional loans under the provisions of this
31 article;

32 (4) That the board of investments has received such
33 assurances as it shall require that the operating plan is
34 realistic and feasible;

35 (5) That the borrower has submitted to the board of
36 investments a satisfactory financing plan which meets the
37 financial needs of the borrower as reflected in the operating
38 plan for the period covered by such plan;

39 (6) That the board of investments has received adequate
40 assurances regarding the availability of all financing, both
41 public and private, contemplated by the financing plan and
42 that such financing is adequate to meet the borrower's
43 projected financial needs during the period covered by the
44 financing plan;

45 (7) That none of the proceeds of a loan made under the

46 provisions of this article will be used to repay credit
47 extended or committed prior to the date the loan is made
48 under the provisions of this article; and

49 (8) That the financing plan submitted under subdivision
50 (5) of this section provides that expenditures under the
51 financing plan will reduce unemployment in this state.

§5C-2-14. Requirements of loan.

1 (a) A loan may be made under the provisions of this
2 article when such loan is based upon the criteria set forth in
3 section sixteen of this article. In addition, the terms of any
4 such loan shall provide that the loan is made upon the
5 following findings of the board of investments:

6 (1) That the prospective earning power of the borrower,
7 together with the character and value of any security
8 pledged, furnish reasonable assurance of repayment of the
9 loan in accordance with its terms;

10 (2) That the loan will bear interest at a rate determined
11 by the board of investments to be reasonable, taking into
12 account the current average yield on outstanding
13 investments of the board of investments of the pension
14 funds in the consolidated pension fund established under
15 the provisions of section eight, article six, chapter twelve of
16 this code;

17 (3) That the corporation has agreed for as long as unpaid
18 balances of principal and interest are outstanding on a loan
19 issued under this article:

20 (A) To have prepared and submitted on or before the
21 thirtieth day preceding each fiscal year beginning after the
22 thirty-first day of December, one thousand nine hundred
23 eighty-six, a revised operating plan and financial plan
24 which cover the two-year period commencing with such
25 fiscal year and which show compliance with the
26 requirements of section sixteen of this article; and

27 (B) To prepare and deliver to the board of investments
28 within one hundred twenty days following the close of each
29 fiscal year, an analysis reconciling the borrower's actual
30 performance in generating employment in this state with
31 the projected employment for such year as set forth in the
32 operating plan and the financial plan in effect at the start of
33 such fiscal year;

34 (b) The borrower has agreed to pay such loan fees as

35 may be prescribed by the board of investments from time to
36 time. The board of investments shall prescribe and collect
37 no less frequently than annually a loan fee in connection
38 with each loan made under the provisions of this article.
39 Such fee shall be sufficient to compensate the board of
40 investments for all of the administrative expenses of the
41 board of investments related to the loan, but in no case shall
42 such fee be less than one half of one percent per annum of
43 the outstanding principal amount of the loan computed
44 daily. All amounts collected by the board of investments
45 pursuant to this subsection shall be deposited in the
46 state treasury as general revenue.

§5C-2-15. Limitations on loan authority.

1 (a) The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed fifty million dollars in the aggregate principal
4 amount outstanding.

§5C-2-16. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article shall
2 be payable in full not later than twenty years from the date
3 the loans are made.
4 (b) The board of investments shall require security for
5 the loans to be made under this article at the time the
6 commitment is made. Any commitment to make a loan
7 under the provisions of this article shall contain all of the
8 affirmative and negative covenants and other protective
9 provisions that the board of investments determines are
10 appropriate.

§5C-2-17. Enforcement of rights accruing to the state.

1 The board of investments shall take such action as may be
2 appropriate to enforce any right accruing to the state or any
3 officer or agency thereof as a result of the making of a loan
4 under the provisions of this article.

§5C-2-18. Tax credit for borrowers.

1 (a) There shall be allowed to every borrower under the
2 provisions of this article, as a credit against the business
3 and occupation tax imposed by article thirteen, chapter
4 eleven of this code, and as a credit against the corporation

5 net income tax imposed by article twenty-four of said
6 chapter eleven, the amount determined under subsection
7 (b) of this section. The liability of such borrower for
8 business and occupation tax and corporation net income
9 tax for the taxable year shall be the tax imposed by said
10 chapter eleven for such taxes, reduced by the sum of the
11 credit allowable under subsection (b) of this section.

12 (b) The amount of credit allowed by subsection (a) for
13 the taxable year shall be equal to the amount of principal
14 and interest paid by the borrower during the taxable year
15 on a loan made under this article, subject to the limitations
16 set forth in subsection (c) of this section.

17 (c) Notwithstanding subsection (b) of this section, the
18 amount of the credit allowed by this section shall not exceed
19 the liability of the borrower for business and occupation tax
20 and corporation net income tax for the taxable year. The tax
21 credit granted under the provisions of this section shall not
22 extend beyond a period of five taxable years. The tax credit
23 granted under the provisions of this section shall be in
24 addition to the credits provided for in articles thirteen-c,
25 thirteen-d and thirteen-e, chapter eleven of this code. There
26 shall be no carryback of unused tax credit to taxable years
27 preceding the tax year, nor shall there be a carryover to
28 taxable years following the tax year.

§5C-2-19. Reports to the Legislature.

1 The board of investments shall submit to the Legislature
2 annually a full report of its activities under this article
3 during fiscal years 1985-1986 and 1986-1987, and annually
4 thereafter so long as any loan guaranteed under this article
5 is outstanding. The report for 1987 shall include an
6 evaluation of the long-term employment implications of the
7 loan program created under the provisions of this article,
8 with findings, conclusions and recommendations for
9 legislative and administrative actions considered
10 appropriate to future loans under this article or under
11 similar loan programs which might be foreseen.

§5C-2-20. Termination.

1 The authority of the board of investments to make loans
2 under this article shall expire in accordance with the
3 provisions of article ten, chapter four of this code.

§5C-2-21. Inspection, audit and investigation.

1 (a) At any time a request for an application for a loan
 2 under this article is pending or a loan under this article is
 3 outstanding, the board of investments is authorized to
 4 inspect and copy all accounts, books, records, memoranda,
 5 correspondence, and other documents and transactions of
 6 the borrower.

7 (b) The legislative auditor shall make such audits as
 8 may be deemed appropriate by the President of the Senate
 9 and the Speaker of the House of Delegates of all accounts,
 10 books, records, memoranda, correspondence, and other
 11 documents and transactions of the borrower. No loan may
 12 be made under this article unless and until the borrower
 13 agrees, in writing, to allow the legislative auditor to make
 14 such audits. The legislative auditor shall report the results
 15 of all such audits to the Legislature.

16 (c) The board of investments is empowered to
 17 investigate and shall investigate all allegations of fraud,
 18 dishonesty, incompetence, misconduct or irregularity in
 19 the management of the affairs of the borrower which are
 20 material to the borrower's ability to repay a loan made
 21 under the provisions of this article.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.**ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.**

- §5D-1-1. Short title.
- §5D-1-2. Purpose and intent.
- §5D-1-3. Definitions.
- §5D-1-4. West Virginia public energy authority created; West Virginia public energy board created; organization of authority and board; appointment of board members; term, compensation and expenses; director authority.
- §5D-1-5. Powers, duties and responsibilities of authority generally.
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§5D-1-1. Short title.

- 1 This chapter shall be known and cited as the “West
- 2 Virginia Public Energy Authority Act.”

§5D-1-2. Purpose and intent.

- 1 The Legislature finds and declares:
- 2 (a) That the long-term health and economy of the
- 3 United States will depend upon the availability of reliable
- 4 sources of energy;
- 5 (b) That the state of West Virginia has abundant
- 6 reserves of coal, natural gas and other natural resources;
- 7 (c) That the economy of the state of West Virginia needs
- 8 a reliable and dependable market for the state’s coal,
- 9 natural gas and other natural resources;
- 10 (d) That, with all due regard to the protection and
- 11 environment and husbandry of the natural resources of this
- 12 state, the health, happiness, safety, right of gainful
- 13 employment and general welfare of the citizens of this state
- 14 will be promoted by the establishment and operation of coal
- 15 fired electric generating plants and the establishment and
- 16 operation of natural gas transmission projects and/or other
- 17 energy projects; and
- 18 (e) That the means and measures herein authorized for
- 19 the building and operation of the facilities described in
- 20 subsection (d) are, as a matter of public policy, for the
- 21 public purpose of the state.

22 Accordingly, the public energy authority created herein
23 shall be authorized to initiate such directives and take such
24 measures as may be necessary to effectuate the public
25 purpose of this chapter.

§5D-1-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia public energy
4 authority created in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.

7 (2) "Board" means the West Virginia public energy
8 authority board created in section four of this article, which
9 shall manage and control the West Virginia public energy
10 authority.

11 (3) "Bond" means a revenue bond or note issued by the
12 West Virginia economic development authority to effect the
13 intents and purposes of this article.

14 (4) "Construction" includes construction, reconstruction,
15 enlargement improvement and providing furnishings or
16 equipment.

17 (5) "Cost" means, as applied to natural gas transmission
18 projects, electric power generating projects or other energy
19 projects authorized by the authority shall include, but not be
20 limited to: The cost of their acquisition and construction,
21 including all costs pertaining to pipelines; the cost of
22 acquisition of all land, rights-of-way, property rights,
23 easements, franchise rights, contract rights, lease rights
24 and other rights or interests required by the authority for
25 such acquisition and construction; the cost of demolishing
26 or removing any pipeline, buildings or structures on land so
27 acquired, including the cost of acquiring any lands to which
28 such pipelines, buildings or structures may be moved; the
29 cost of acquiring or constructing and equipping a principal
30 office and suboffices of the authority; the cost of diverting
31 highways, interchange of highways and access roads to
32 private property, including the cost of land or easements
33 therefor; the cost of all machinery, furnishings and
34 equipment, all financing charges, and interest prior to and
35 during construction and after completion of construction;
36 the cost of all engineering services and all expenses of

37 research and development with respect to natural gas
38 transmission projects, electric power generating projects,
39 and related facilities; the cost of all legal services and
40 expenses; cost of all plans, specifications, surveys and
41 estimates of cost and revenues; all working capital and
42 other expenses necessary or incident to determining the
43 feasibility or practicability of acquiring or constructing any
44 such projects; all administrative expenses and such other
45 expenses as may be necessary or incident to the acquisition
46 or construction of any such projects; the financing of such
47 acquisition or construction, and the cost of financing of the
48 placing of any such project in operation. Any obligation or
49 expenses incurred after the effective date of this article by
50 any governmental agency, with the approval of the
51 authority, for surveys, borings, preparation of plans and
52 specifications and other engineering services in connection
53 with the acquisition or construction of a project shall be
54 regarded as a part of the cost of such project and shall be
55 reimbursed out of the proceeds of loans or revenue bonds as
56 authorized by the provisions of this article.

57 (6) "End-user" means any person who consumes or uses
58 natural gas in connection with any industrial, commercial,
59 residential or other use, except that such term shall not
60 include any person purchasing such natural gas for resale to
61 another person. For purposes of this article, the term end-
62 user shall include local distribution companies and
63 intrastate pipelines as defined in article three, chapter
64 twenty-four of this code.

65 (7) "Governmental agency" means the state
66 government or any agency, department, division or unit
67 thereof; counties; municipalities; public service districts;
68 regional governmental authorities and any other
69 governmental agency, entity, political subdivision, public
70 corporation or agency; the United States government or any
71 agency, department, division or unit thereof; and any
72 agency, commission or authority established pursuant to an
73 interstate compact or agreement.

74 (8) "Local distribution company" means any person,
75 other than any interstate pipeline or any intrastate pipeline,
76 engaged in transportation or local distribution of natural
77 gas and the sale of natural gas for ultimate consumption.

78 (9) "Owner" includes all persons having any title or

79 interest in any property rights, easements and interests
80 authorized to be acquired by this article.

81 (10) "Person" means any public or private corporation,
82 institution, association, firm or company organized or
83 existing under the laws of this or any other state or country;
84 the United States or the state of West Virginia; any federal
85 or state governmental agency; political subdivision; county
86 commission; municipality; industry; public service district;
87 partnership; trust; estate; person or individual; and group
88 of persons or individuals acting individually or as a group
89 or any other legal entity whatever.

90 (11) "Pipeline" or "pipelines" means any actual lines of
91 pipe for the transmission and distribution of natural gas
92 together with all appurtenances, facilities, structures,
93 equipment, machinery and other items related to the
94 transmission and distribution of gas through lines of pipe.

95 (12) "Natural gas transmission project" means any
96 natural gas pipeline and all facilities necessary or incident
97 to the transportation of natural gas to or for the benefit of
98 industrial or other end-users in West Virginia, the
99 acquisition or construction of which is financed in whole or
100 in part by the West Virginia public energy authority or the
101 acquisition or construction of which is financed in whole or
102 in part from funds made available by grant, loan or any
103 other source by, or through, the authority as provided in
104 this article, including facilities, the acquisition or
105 construction of which is authorized in whole or in part by
106 the West Virginia public energy authority or the acquisition
107 or construction of which is financed in whole or in part from
108 funds made available by grant, loan or any other source by,
109 or through, the authority as provided in this article,
110 including all pipelines, buildings and facilities which the
111 authority deems necessary for the operation of the project,
112 together with all property, rights, easements and interests
113 which may be required for the operation of the project.

114 (13) "Electric power generating project" means the
115 complex of structures, machinery and associated
116 equipment for the generation and transmission of
117 electricity produced from coal, and all facilities related or
118 incidental thereto.

119 (14) "Revenue" means any money or thing of value
120 collected by, or paid to, the West Virginia public energy

121 authority as rates, user fees, service charges or other
122 charge for the electric power produced by, or for the use of,
123 or in connection with, any electric power generating
124 project; or as rent, use, transportation or service fee or
125 charge for use of, or in connection with, any natural gas
126 transmission project; or other money or property from any
127 source which is received and may be expended for or
128 pledged as revenues pursuant to this article.

**§5D-1-4. West Virginia public energy authority created; West
Virginia public energy board created;
organization of authority and board; appointment
of board members; term, compensation and
expenses; director authority.**

1 There is hereby created the West Virginia public energy
2 authority. The authority is a governmental instrumentality
3 of the state and a body corporate. The exercise by the
4 authority of the powers conferred by this article and the
5 carrying out of its purposes and duties shall be deemed and
6 held to be, and are hereby determined to be essential
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and operated
9 by a nine member board known as the West Virginia public
10 energy authority board which is hereby created. The nine
11 members of the board shall be appointed by the governor,
12 by and with the advice and consent of the Senate. Two
13 members shall be appointed to serve a term of two years;
14 two members shall be appointed to serve a term of three
15 years; two members shall be appointed to serve a term of
16 four years; two members shall be appointed to serve a term
17 of five years; and one member shall be appointed to serve a
18 term of six years. The successor of each such appointed
19 member shall be appointed for a term of five years, except
20 that any person appointed to fill a vacancy occurring prior to
21 the expiration of the term for which his predecessor was
22 appointed shall be appointed only for the remainder of
23 such term. Each board member shall serve until the appoint-
24 ment of his successor. No more than five of the board mem-
25 bers shall at any one time belong to the same political party.
26 No more than four members of the board shall be employed
27 by or associated with any industry this authority is

28 empowered to effect. Board members may be reappointed
29 to serve additional terms.

30 All members of the board shall be citizens of the state.
31 Before entering upon his duties, each member of the board
32 shall comply with the requirements of article one, chapter
33 six of this code and give bond in the sum of twenty-five
34 thousand dollars in the manner provided in article two,
35 chapter six of this code. The governor may remove any
36 board member for cause as provided in article six, chapter
37 six of this code.

38 Annually the board shall elect one of its members as
39 chairman and another as vice chairman, and shall appoint a
40 secretary-treasurer, who need not be a member of the
41 board. Five members of the board shall constitute a quorum
42 and the affirmative vote of the majority of members present
43 at any meeting shall be necessary for any action taken by
44 vote of the board. No vacancy in the membership of the
45 board shall impair the rights of a quorum by such vote to
46 exercise all the rights and perform all the duties of the
47 board and the authority. The person appointed as
48 secretary-treasurer, including a board member if he is so
49 appointed, shall give bond in the sum of fifty thousand
50 dollars in the manner provided in article two, chapter six of
51 this code.

52 Each member of the board shall receive an annual salary
53 of six thousand dollars, payable in monthly installments.
54 Each member of the board shall be reimbursed for all
55 reasonable and necessary expenses actually incurred in the
56 performance of his duty as a member of such board. All such
57 expenses incurred by the board shall be payable solely from
58 funds of the authority or from funds appropriated for such
59 purpose by the Legislature and no liability or obligation
60 shall be incurred by the authority beyond the extent to
61 which moneys are available from funds of the authority or
62 from such appropriations.

63 There shall also be a director of the authority appointed
64 by the board, who shall be responsible for managing and
65 administering the daily functions of the authority and for
66 performing any and all other functions necessary or helpful
67 to the effective functioning of the authority, together with
68 all other functions and powers as may be delegated to him
69 by the board.

§5D-1-5. Powers, duties and responsibilities of authority generally.

1 The West Virginia public energy authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and capacity
5 to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its affairs
8 and the conduct of its business and rules and regulations to
9 implement and make effective its powers and duties, such
10 rules and regulations to be promulgated in accordance with
11 the provisions of chapter twenty-nine-a of this code.

12 (2) Adopt and use an official seal and alter the same at
13 pleasure.

14 (3) Maintain a principal office and, if necessary,
15 regional suboffices at locations properly designated or
16 provided.

17 (4) Sue and be sued in its own name and plead and be
18 impleaded in its own name, and particularly to enforce the
19 obligations and covenants made under this article. Any
20 actions against the authority shall be brought in the circuit
21 court of Kanawha County.

22 (5) Apply to the economic development authority for the
23 issuance of bonds payable solely from revenues as provided
24 in article fifteen, chapter thirty-one of this code: *Provided,*
25 That the economic development authority shall not issue any
26 such bonds except by an act of general law: *Provided,*
27 *however,* That the powers of eminent domain or condem-
28 nation provided for in this section shall not be exercised
29 until such time as the bonds provided for in this subdivision
30 have been approved by an act of general law and issued by
31 the economic development authority.

32 (6) Acquire by gift or purchase, hold and dispose of real
33 and personal property in the exercise of its powers and the
34 performance of its duties as set forth in this article.

35 (7) Acquire in the name of the state, by purchase or
36 otherwise, on such terms and in such manner as it deems
37 proper, or by the exercise of the right of eminent domain in
38 the manner provided in chapter fifty-four of this code, such
39 real property or parts thereof or rights therein, rights-of-

40 way, property, rights, easements and interests it deems
41 necessary for carrying out the provisions of this article, and
42 compensation shall be paid for public or private lands so
43 taken.

44 The term "real property" as used in this article is defined
45 to include lands, structures, franchises and interests in
46 land, including lands under water and riparian rights, and
47 any and all other things and rights usually included within
48 the said term, and includes also any and all interests in such
49 property less than full title, such as easements, rights-of-
50 way, uses, leases, licenses and all other incorporeal
51 hereditaments and every estate, interest or right, legal or
52 equitable, including terms for years and liens thereon by
53 way of judgments, mortgages or otherwise, and also all
54 claims for damages for such real estate.

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

58 (9) Employ managers, superintendents and other
59 employees, and retain or contract with consulting
60 engineers, financial consultants, accounting experts,
61 architects, attorneys, and such other consultants and
62 independent contractors as are necessary in its judgment to
63 carry out the provisions of this article, and fix the
64 compensation or fees thereof. All expenses thereof shall be
65 payable solely from the proceeds of revenue bonds or notes
66 issued by the economic development authority, from
67 revenues and from funds appropriated for such purpose by
68 the Legislature.

69 (10) Receive and accept from any federal agency, or any
70 other source, grants for or in aid of the construction of any
71 project or for research and development with respect to
72 electric power generating projects, natural gas
73 transmission projects or other energy projects, and receive
74 and accept aid or contribution from any source of money,
75 property, labor or other things of value to be held, used and
76 applied only for the purpose for which such grants and
77 contributions are made.

78 (11) Purchase property coverage and liability insurance
79 for any electric power generating project or natural gas
80 transmission project or other energy project and for the
81 principal office and suboffices of the authority, insurance

82 protecting the authority and its officers and employees
83 against liability, if any, for damage to property or injury to
84 or death of persons arising from its operations and any
85 other insurance which may be provided for under a
86 resolution authorizing the issuance of bonds or in any trust
87 agreement securing the same.

88 (12) Charge, alter and collect transportation fees and
89 other charges for the use or services of any natural gas
90 transmission project as provided in this article.

91 (13) Charge and collect fees or other charges from any
92 energy project undertaken as a result of this article.

93 (14) Charge reasonable fees in connection with the
94 making and providing of electric power and the sale thereof
95 to corporations, states, municipalities or other entities in
96 the furtherance of the purposes of this article.

97 (15) Purchase and sell electricity in and out of the state
98 of West Virginia.

99 (16) Enter into wheeling contracts for the transmission
100 of electric power over another party's lines.

101 (17) Make and enter into the construction of a facility and
102 joint ownership with another utility, and the provisions of
103 this article shall not constrain the authority from
104 participating as a joint partner therein.

105 (18) Make and enter into joint ownership agreements.

106 (19) Establish or increase reserves from moneys
107 received or to be received by the authority to secure or to
108 pay the principal of and interest on the bonds and notes
109 issued by the economic development authority pursuant to
110 the provisions of article fifteen, chapter thirty-one of this
111 code.

112 (20) Broker the purchase of natural gas for resale to
113 end-users: *Provided*, That whenever there are local
114 distribution company pipelines already in place the
115 authority shall arrange to transport the gas through such
116 pipelines at the rates approved by the public service
117 commission of West Virginia.

118 (21) Engage in market research, feasibility studies,
119 commercial research, and other studies and research
120 pertaining to electric power generating projects and
121 natural gas transmission projects or any other functions of
122 the authority pursuant to this article.

123 (22) Enter upon any lands, waters and premises in the

124 state for the purpose of making surveys and examinations
125 as it may deem necessary or convenient for the purpose of
126 this article, and such entry shall not be deemed a trespass,
127 nor shall an entry for such purposes be deemed an entry
128 under any condemnation proceedings which may be then
129 pending, and the authority shall make reimbursement for
130 any actual damages resulting to such lands, waters and
131 premises as a result of such activities.

132 (23) Participate in any reorganization proceeding
133 pending pursuant to the United States Code (being the act
134 of Congress establishing a uniform system of bankruptcy
135 throughout the United States, as amended) or any
136 receivership proceeding in a state or federal court for the
137 reorganization or liquidation of a responsible buyer or
138 responsible tenant. The authority may file its claim against
139 any such responsible buyer or responsible tenant in any of
140 the foregoing proceedings, vote upon any question pending
141 therein, which requires the approval of the creditors
142 participating in any reorganization proceeding or
143 receivership, exchange any evidence of such indebtedness
144 for any property, security or evidence of indebtedness
145 offered as a part of the reorganization of such responsible
146 buyer or responsible tenant or of any entity formed to
147 acquire the assets thereof and may compromise or reduce
148 the amount of any indebtedness owing to it as a part of any
149 such reorganization.

150 (24) Make or enter into management contracts with a
151 second party or parties to operate any electric power
152 generating project or any gas transmission project and
153 associated facilities, or other related energy project, either
154 during construction or permanent operation.

155 (25) Do all acts necessary and proper to carry out the
156 powers expressly granted to the authority in this article.

157 (26) Nothing herein shall be construed to permit the
158 transportation of gas produced outside of this state through
159 a natural gas transmission project.

**§5D-1-6. Authority may construct, finance, maintain, etc.,
electric power generating projects and
transmission facilities.**

1 To accomplish the public policies and purposes and to

2 meet the responsibility of the state as set forth in this
3 article, the West Virginia public energy authority may
4 initiate, acquire, construct, maintain, repair and operate
5 electric power generating projects and transmission
6 facilities, and may request the issuance of revenue bonds by
7 the economic development authority, payable solely from
8 revenues, to pay the cost or finance in whole or in part such
9 projects: *Provided*, That the economic development
10 authority shall not be authorized to issue any such bonds
11 except by an act of general law, as provided in article
12 fifteen, chapter thirty-one of this code. An electric power
13 generating project shall not be undertaken unless it has
14 been determined by the authority that the project will be
15 consistent with the purposes set out in this article. Any
16 resolution providing for acquiring or constructing such
17 projects shall include a finding by the authority that such
18 determinations have been made.

19 The authority is authorized and directed:

20 (1) To cooperate with the appropriate agencies and
21 officials of the United States government to the end that
22 any electric power generating project shall be so planned
23 and constructed as to be adaptable to the plans of the
24 United States.

25 (2) To apply to the appropriate agencies and officials of
26 the United States government including the federal power
27 commission for such licenses, permits or approval of its
28 plans or projects as it may deem necessary or advisable, and
29 in its discretion and upon such terms and conditions as it
30 may deem appropriate, to accept such licenses, permits or
31 approvals as may be tendered to it by such agencies or
32 officials and such federal or other public or governmental
33 assistance as is now or may hereafter become available to it;
34 and to enter into contracts with such agencies or officials
35 relating to the construction or operation of any project
36 authorized by this article.

37 (3) To proceed with the physical construction or
38 completion of any project authorized by this article,
39 including the erection of the necessary power houses and
40 other facilities, instrumentalities and things necessary or
41 convenient to that end, and including also the erection of
42 such transmission lines as may be necessary to conduct the
43 electricity; and including also the acquisition or

44. construction of transmission lines or the use of such
45 transmission lines, available or which may be made
46 available, to conduct electricity to such point or points at
47 which the electricity is sold by the authority to any person,
48 corporation or association, public or private.

49 (4) To cooperate with and, when the board deems it
50 feasible and advisable, to enter into contractual
51 arrangements with utility companies.

52 (5) To purchase, when available, coal produced in this
53 state as the fuel source for all electric power generating
54 projects.

**§5D-1-7. Authority may construct, finance, maintain, etc.,
natural gas transmission projects and facilities.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia public energy authority may
4 initiate, acquire, construct, reconstruct, enlarge, maintain,
5 repair, improve, furnish, equip, lease or rent, and operate
6 natural gas transmission projects at such locations or areas
7 within the state as may be determined by the authority:
8 *Provided*, That at least thirty days prior to exercising any
9 such power, the authority shall provide written notice to
10 any local natural gas distribution company or to any
11 company that transports natural gas in intrastate or
12 interstate commerce, which would experience a direct loss
13 of sales to an end-user presently served by such company as
14 a result of such natural gas transmission project. For
15 purposes of this article, notice shall be given either by
16 personal delivery thereof to the affected company to be so
17 notified, or by depositing such notice in the United States
18 mail, postage prepaid, in an envelope addressed to such
19 affected company.

§5D-1-8. Annual report to governor and Legislature; audit.

1 The authority shall make an annual report, as soon as
2 possible after the close of each fiscal year, of its activities
3 for the preceding fiscal year to the governor and the
4 Legislature. Each such report shall set forth a complete
5 operating and financial statement covering the authority's
6 operations during the preceding fiscal year. The authority
7 shall cause an audit of its books and accounts to be made at

8 least once each fiscal year by certified public accountants
9 and the cost thereof may be treated as a part of the cost of
10 construction or of operations of its projects.

§5D-1-9. Expenses of authority.

1 All expenses incurred in carrying out the provisions of
2 this article shall be payable solely from funds provided
3 under authority of this article. Such article does not
4 authorize the authority to incur indebtedness or liability on
5 behalf of or payable by the state.

§5D-1-10. Use of funds by authority; restrictions.

1 All moneys, properties and assets acquired by the
2 authority, bonds or as revenues or otherwise, shall be held
3 by it in trust for the purposes of carrying out its powers and
4 duties, and shall be used and reused in accordance with the
5 purposes and provisions of this article. Such moneys shall
6 at no time be commingled with other public funds.

§5D-1-11. Investment of funds by authority.

1 The authority is hereby authorized and empowered to
2 invest any funds not needed for immediate disbursement in
3 any of the following securities:

4 (1) (i) Direct obligations of or obligations guaranteed by
5 the United States of America; (ii) evidences of ownership of
6 a proportionate interest in specified direct obligations of, or
7 specific obligations the timely payment of the principal of
8 and the interest on which are unconditionally and fully
9 guaranteed by, the United States of America, which
10 obligations are held by a bank or trust company organized
11 and existing under the law of the United States of America
12 or any state thereof in the capacity of custodian and (iii)
13 obligations, the sole source of the payment of the principal
14 of and interest on which are obligations of the nature of
15 those described in clause (i), which are irrevocably pledged
16 for such purpose;

17 (2) Bonds, debentures, notes or other evidences of
18 indebtedness issued by any of the following agencies: Banks
19 for cooperatives; federal intermediate credit banks; federal
20 home loan bank system; Export-Import Bank of the United
21 States; federal land banks; the Federal National Mortgage

22 Association or the Government National Mortgage
23 Association;

24 (3) Public housing bonds issued by public agencies or
25 municipalities and fully secured as to the payment of both
26 principal and interest by a pledge of annual contributions
27 under an annual contributions contract or contracts with
28 the United States of America; or temporary notes issued by
29 public agencies or municipalities or preliminary loan notes
30 issued by public agencies or municipalities, in each case,
31 fully secured as to the payment of both principal and
32 interest by a requisition or payment agreement with the
33 United States of America;

34 (4) Certificates of deposit secured by obligations of the
35 United States of America;

36 (5) Direct obligations of or obligations guaranteed by
37 the state of West Virginia;

38 (6) Direct and general obligations of any other state
39 within the territorial United States, to the payment of the
40 principal of and interest on which the full faith and credit of
41 such state is pledged: *Provided*, That at the time of their
42 purchase, such obligations are rated in either of the two
43 highest rating categories by a nationally recognized bond-
44 rating agency;

45 (7) Any fixed interest bond, note or debenture of any
46 corporations organized and operating within the United
47 States: *Provided*, That such corporation shall have a
48 minimum net worth of fifteen million dollars and its
49 securities or its parent corporation's securities are listed on
50 one or more of the national stock exchanges: *Provided*,
51 *however*, That (i) such corporation has earned a profit in
52 eight of the preceding ten fiscal years as reflected in its
53 statements, and (ii) such corporation has not defaulted in
54 the payment of principal or interest on any of its
55 outstanding funded indebtedness during its preceding ten
56 fiscal years, and (iii) the bonds, notes or debentures of such
57 corporation to be purchased are rated "AA" or the
58 equivalent thereof or better than "AA" or the equivalent
59 thereof by at least two or more nationally recognized rating
60 services such as Standard and Poor's, Dun & Bradstreet or
61 Moody's; and

62 (8) Such other investments which at the time of the
63 acquisition thereof shall be listed as permissible

64 investments of trusted funds in an official statement,
65 offering circular or prospectus with respect to indebtedness
66 which is rated by Moody's or Standard & Poor's not less
67 than the highest rating assigned by such agencies to any
68 series of bonds.

§5D-1-12. Maintenance, operation and repair of projects.

1 Each electric power generating project, each natural gas
2 transmission project or other energy project, when
3 constructed and placed in operation, shall be maintained
4 and kept in good condition and repair by the authority.
5 Each such project owned by the authority shall be operated
6 by such operating employees as the authority employs or
7 pursuant to a contract or lease with a governmental agency
8 or person. All public or private property damaged or
9 destroyed in carrying out the provisions of this article and
10 in the exercise of the powers granted hereunder with regard
11 to any project shall be restored or repaired and placed in its
12 original condition, as nearly as practicable, or adequate
13 compensation made therefor out of funds provided in
14 accordance with the provisions of this article.

§5D-1-13. Bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 all revenue bonds issued for the purposes of this article shall
4 be lawful investments for the West Virginia state board of
5 investments and shall also be lawful investments for
6 banking institutions, societies for savings, building and
7 loan associations, savings and loan associations, deposit
8 guarantee associations, trust companies, insurance
9 companies, including domestic for life and domestic not for
10 life insurance companies.

§5D-1-14. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public

7 purpose. As the operation and maintenance of natural gas
8 transmission projects and electric power generating
9 projects and other energy projects will constitute the
10 performance of essential governmental functions, the
11 authority shall not be required to pay any taxes or
12 assessments upon any such project or upon any property
13 acquired or used by the authority or upon the income
14 therefrom. Such bonds and notes and all interest and income
15 thereon shall be exempt from all taxation by this state, or
16 any county, municipality, political subdivision or agency
17 thereof, except inheritance taxes.

**§5D-1-15. Acquisition of property by authority — acquisition
by purchase; governmental agencies authorized
to convey, etc., property.**

1 The authority may acquire by purchase, whenever it
2 deems such purchase expedient, any land, property, rights,
3 rights-of-way, franchises, easements, leases and other
4 interests in lands it deems necessary or convenient for the
5 construction and operation of any natural gas transmission
6 project, any electric power generating project, or other
7 energy project, upon such terms and at such prices it
8 considers reasonable and can be agreed upon between the
9 authority and the owner thereof, and take title thereto in
10 the name of the state.

11 All governmental agencies, notwithstanding any
12 contrary provision of law, may lease, lend, grant or convey
13 to the authority, at its request, upon such terms as the
14 proper authorities of such governmental agencies deem
15 reasonable and fair and without the necessity for an
16 advertisement, auction, order of court or other action or
17 formality, other than the regular and formal action of the
18 governmental agency concerned, any real property or
19 interest therein, including improvements thereto or
20 personal property which is necessary or convenient to the
21 effectuation of the authorized purposes of the authority,
22 including public roads and other real property or interests
23 therein, including improvements thereto or personal
24 property already devoted to public use.

§5D-1-16. Authority not public utility and not subject to full jurisdiction of public service commission; authority subject to provisions concerning gas pipeline safety.

1 Notwithstanding anything contained in this article to the
2 contrary, and specifically notwithstanding any activities of
3 the authority which shall constitute a public service, the
4 authority shall not be considered or deemed a public utility
5 in any respect for purposes of chapter twenty-four of this
6 code, and neither the authority, nor any of its activities or
7 the activities of its agents or employees, nor any project
8 constructed, maintained or operated by the authority, nor
9 any other matters pertaining to the authority, shall be
10 subject to the jurisdiction of the public service commission
11 of West Virginia, either with respect to the powers of said
12 public service commission generally, or with respect to its
13 power over rates, or otherwise: *Provided*, That the
14 authority and all natural gas transmission projects which it
15 constructs, maintains or operates shall nevertheless be
16 subject to the provisions of chapter twenty-four-b of this
17 code concerning gas pipeline safety.

§5D-1-17. Transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers.

1 In conjunction with any natural gas transportation
2 project, and for any other purpose in order to effectuate the
3 policies and intent of this article, the authority may petition
4 the public service commission, pursuant to section three-a,
5 article three, chapter twenty-four of this code, to authorize
6 and require the transportation of natural gas for the
7 authority or for any end-user or other person doing business
8 with the authority, by intrastate pipelines with unused or
9 excess capacity not needed to meet its contractual
10 obligations, by interstate pipelines with unused or excess
11 capacity not needed to meet interstate commerce demands,
12 or by local distribution companies.

§5D-1-18. Transportation fees and other revenues from natural gas transmission projects owned by the authority.

1 This section shall apply to any natural gas transmission
2 project or projects which are owned by the authority. The

3 authority may charge, alter and collect transportation fees
4 or other charges for the use or services of any natural gas
5 transmission project, and fix the terms, conditions,
6 transportation fees or other charges for such use or services.
7 Such transportation fees or other charges shall not be
8 subject to supervision or regulation by any other authority,
9 department, commission, board, bureau or agency of the
10 state, including specifically the public service commission.

§5D-1-19. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be
2 financially interested, directly or indirectly, in any contract
3 of any person with the authority, or in the sale of any
4 property, real or personal, to or from the authority. This
5 section does not apply to contracts or purchases of property,
6 real or personal, between the authority and any
7 governmental agency. If any officer, member or employee of
8 the authority has such financial interest in a contract or sale
9 of property prohibited hereby, he shall be guilty of a
10 misdemeanor, and, upon conviction thereof, shall be fined
11 not more than one thousand dollars, or imprisoned in the
12 county jail not more than one year, or both fined and
13 imprisoned.

§5D-1-20. Personal liability of members or persons acting on behalf of the authority.

1 (a) No director or any person acting on behalf of the
2 authority executing any contracts, comments or
3 agreements issued pursuant to this article shall be liable
4 personally upon such contracts, comments or agreements or
5 be subject to any personal liability or accountability by
6 reason thereof; and
7 (b) No director or any person acting on behalf of the
8 authority shall be personally liable for damage or injury
9 resulting from the performance of his duties hereunder.

§5D-1-21. Meetings and records of authority to be kept public.

1 All meetings of the authority shall be open to the public
2 and the records of the authority shall be open to public
3 inspection at all reasonable times, except as otherwise
4 provided in this section. All final actions of the authority
5 shall be journalized and such journal shall also be open to

6 the inspection of the public at all reasonable times. Any
7 records or information relating to secret processes or secret
8 methods of manufacture or production which may be
9 obtained by the authority or other persons acting under
10 authority of this article are confidential and shall not be
11 disclosed.

§5D-1-22. Liberal construction of article.

1 The provisions of this article are hereby declared to be
2 remedial and shall be liberally construed to effectuate its
3 purposes and intents.

§5D-1-23. Severability.

1 If any section, part, provision, subsection, subpart,
2 subdivision, paragraph or subparagraph of this article or
3 the application thereof to any person or circumstance is
4 held unconstitutional or invalid, such unconstitutionality
5 or invalidity shall not affect any other section, part,
6 provision, subsection, subpart, subdivision, paragraph or
7 subparagraph of this article or its application or validity,
8 and to this end the provisions of this article are declared to
9 be severable.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; reports.

§12-1A-7. Liability of state and treasurer.

§12-1A-1. Definitions.

1 (a) "Eligible small business" means any business which
2 employs two hundred or less employees or has gross annual
3 receipts of four million dollars or less.

4 (b) "Eligible lending institution" means a financial
5 institution that is eligible to make commercial loans, is a
6 public depository of state funds and agrees to participate in
7 the linked deposit program.

8 (c) "Linked deposit" means a certificate of deposit

9 placed by the state treasurer with an eligible lending
10 institution at up to three percent below current market
11 rates, as determined and calculated by the state treasurer,
12 provided the institution agrees to lend the value of such
13 deposit, according to the deposit agreement provided for by
14 this article, to eligible small businesses at three percent
15 below the present borrowing rate applicable to each
16 specific business at the time of the deposit of state funds in
17 the institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagnation
3 or decline, that high interest rates have caused small
4 businesses in this state to suffer disproportionately in
5 profitability and competition and that such high interest
6 rates have fostered a serious increase in unemployment. The
7 linked deposit program provided for by this article is
8 intended to provide a statewide availability of lower cost
9 funds for lending purposes that will materially contribute
10 to the economic revitalization of this state. Accordingly, it
11 is declared to be the public policy of the state through the
12 linked deposit program to create an availability of lower-
13 cost funds to inject needed capital into the business
14 community, sustain or improve business profitability and
15 protect the jobs of citizens of this state.

§12-1A-3. Limitations on investment in linked deposits.

1 The state treasurer may invest in linked deposits,
2 provided that at the time of placement of the linked deposit
3 not more than ten percent of the state's total investment
4 portfolio is so invested. The total amount so deposited at
5 any one time shall not exceed, in the aggregate, one hundred
6 million dollars.

§12-1A-4. Applications for loan priority; loan package.

- 1 (a) An eligible lending institution that desires to receive
2 a linked deposit shall accept and review applications for
3 loans from eligible small businesses. The lending institution
4 shall apply all usual lending standards to determine the
5 creditworthiness of each eligible small business.
- 6 (b) An eligible small business shall certify on its loan

7 application that the reduced rate loan will be used
8 exclusively to create new jobs or preserve existing jobs and
9 employment opportunities. Whoever knowingly makes a
10 false statement concerning such application shall be
11 prohibited from entering into the linked deposit loan
12 program.

13 (c) In considering which eligible small businesses
14 should receive reduced rate loans, the eligible lending
15 institution shall give priority to the economic needs of the
16 area in which the business is located and the number of jobs
17 to be created or preserved by the receipt of such loan.

18 (d) The eligible financial institution shall forward to the
19 state treasurer a linked deposit loan package, in the form
20 and manner as prescribed by the state treasurer. The
21 package shall include such information as required by the
22 state treasurer, including the amount of the loan requested
23 and the number of jobs to be created or sustained by each
24 eligible small business. The institution shall certify that
25 each applicant is an eligible small business, and shall, for
26 each business, certify the present borrowing rate applicable
27 to each specific eligible business.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The state treasurer may accept or reject a linked
2 deposit loan package or any portion thereof, based on the
3 ratio of state funds to be deposited to jobs sustained or
4 created.

5 (b) Upon acceptance of the linked deposit loan package
6 or any portion thereof, the state treasurer may place
7 certificates of deposit with the eligible lending institution
8 at three percent below current market rates, as determined
9 and calculated by the state treasurer. When necessary, the
10 treasurer may place certificates of deposit prior to
11 acceptance of a linked deposit loan package.

12 (c) The eligible lending institution shall enter into a
13 deposit agreement with the state treasurer, which shall
14 include requirements necessary to carry out the purposes of
15 this article. Such requirements shall reflect the market
16 conditions prevailing in the eligible lending institution's
17 lending area. The agreement may include a specification of

18 the period of time in which the lending institution is to lend
19 funds upon the placement of a linked deposit and shall
20 include provisions for the certificates of deposit to be
21 placed for up to two-year maturities that may be renewed
22 for up to an additional two years. Interest shall be paid at
23 the times determined by the state treasurer.

§12-1A-6. Rate of loan; certification and monitoring of compliance; reports.

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, such institution is required to
3 lend such funds to each approved eligible small business
4 listed in the linked deposit loan package required in
5 subsection (d), section four of this article, and in accordance
6 with the deposit agreement required by subsection (c),
7 section five of this article. The loan shall be at three percent
8 below the present borrowing rate applicable to each
9 business. A certification of compliance with this section in
10 the form and manner as prescribed by the state treasurer
11 shall be required of the eligible lending institution.

12 (b) The state treasurer shall take any and all steps
13 necessary to implement the linked deposit program and
14 monitor compliance of eligible lending institutions and
15 eligible small businesses. The state treasurer and the
16 industrial development authority shall notify each other at
17 least quarterly of the names of the businesses receiving
18 financial assistance from their respective programs.

19 By the first day of January, April, July and October of
20 each year, the treasurer shall report on the linked deposit
21 program for the preceding calendar quarter to the governor
22 and to the joint committee on government and finance. The
23 reports shall set forth the linked deposits made by the state
24 treasurer under the program during the quarter and shall
25 include information regarding the nature, terms and
26 amounts of the loans upon which the linked deposits were
27 based and the eligible small business to which the loans
28 were made.

§12-1A-7. Liability of state and treasurer.

1 The state and the state treasurer are not liable to any
2 eligible lending institution in any manner for payment of
3 the principal or interest on the loan to an eligible small

- 4 business. Any delay in payment or default on the part of an
- 5 eligible small business does not in any manner affect the
- 6 deposit agreement between the eligible lending institution
- 7 and the state treasurer.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

- §19-1A-1. Legislative findings.
- §19-1A-2. Legislative purposes.
- §19-1A-3. Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.
- §19-1A-4. Additional duties of the director of the division of forestry generally.
- §19-1A-5. Forestry commission; qualifications and appointment of director, powers and duties generally; appointment of director by governor.

§19-1A-1. Legislative findings.

- 1 The Legislature finds that West Virginia has extensive
- 2 forest resources and their continued development and
- 3 expansion is vital to the economic well-being of the state
- 4 and its people.
- 5 The Legislature also finds that the production potential
- 6 of the state's forest resources remains far greater than the
- 7 present demand.
- 8 The Legislature further finds that the promotion of
- 9 existing forest products industries and the promotion of
- 10 new forest products industries would benefit the state in
- 11 terms of employment and additional revenue to the state.
- 12 The Legislature further finds and declares that, to
- 13 increase employment and boost the state's economy, the
- 14 limits to the development of the potential of West Virginia
- 15 forest resources must be reduced through an intensive
- 16 campaign aimed at making new contacts, developing new
- 17 and existing markets and increasing public awareness of
- 18 the advantages of the forest resources in West Virginia.
- 19 The Legislature further finds that the state forests are an
- 20 important resource for silvicultural and scientific research;
- 21 developed and undeveloped outdoor recreation;
- 22 propagation of forest trees, fish and wildlife; wildlife and
- 23 fisheries management; aesthetic preservation; hunting and
- 24 fishing; timber production; and demonstration of state-of-
- 25 the-art forestry management and therefor should be
- 26 managed on a multiple-use basis.

§19-1A-2. Legislative purposes.

1 The purposes of this article are to provide for promoting
2 West Virginia products; promoting new forest products
3 industries; developing existing forest products industries;
4 promoting coordination of all state forests resources;
5 advising the governor and Legislature on all aspects of
6 forestry, the management of state forests for conservation
7 and preservation of wildlife, fish, forest species, natural
8 areas, aesthetic and scenic values and to provide developed
9 and undeveloped outdoor recreational opportunities, and
10 hunting and fishing for the citizens of this state and its
11 visitors.

§19-1A-3. Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.

1 The division of forestry which existed within the
2 department of natural resources pursuant to article three,
3 chapter twenty of this code is hereby abolished. And, except
4 as otherwise provided in this article, all powers and duties
5 previously exercised by the director of natural resources
6 under subsection thirteen, section seven, article one and
7 article three, chapter twenty of this code, except those
8 powers and duties relating solely to wildlife areas as
9 described in section three, article three, chapter twenty of
10 this code are hereby transferred to the division of forestry
11 herein created in the department of agriculture. All books,
12 papers, maps, charts, plans, literature and other records,
13 equipment, personnel, buildings, structures, other tangible
14 properties and assets and appropriations used by or
15 assigned to the division shall be transferred with the
16 program. However, nothing in this article shall be
17 construed as to transfer the legal title to any real property
18 possessed by the department of natural resources prior to
19 the thirtieth day of June, one thousand nine hundred
20 eighty-five. The division of forestry of the department of
21 agriculture shall have within its jurisdiction and
22 supervision the state forests, other forests and woodland
23 areas, the protection of forest areas from injury and damage
24 by fire, disease, insects and other pestilences and forces the

25 management of forest areas for natural resources,
26 conservation and undeveloped recreational activities,
27 administration of the southeastern interstate forest fire
28 protection compact and other compacts and agreements
29 relating to forest management and husbandry, and the
30 administration and enforcement of laws relating to the
31 conservation, development, protection, use and enjoyment
32 of all forest land areas of the state consistent with the
33 provisions of this chapter. All moneys collected from the
34 sale of timber realized through management of the state-
35 owned forests and the sale of seedlings from the tree
36 nurseries shall be paid into the state treasury and into a
37 special account therein to be subsequently appropriated to
38 the department of agriculture for the administration of this
39 article.

40 The chief of the division shall be designated state forester
41 and shall be responsible for the execution and
42 administration of the provisions of this article as an integral
43 part of the natural resources program of the state. In
44 addition to meeting merit system or civil service
45 qualifications and requirements, the state forester shall be
46 a graduate of an accredited school of forestry with practical
47 experience and training in forestry field organization and
48 programs. All other personnel shall be transferred with the
49 current merit or civil service ratings they now hold under
50 the civil service system.

51 The state forester shall study means and methods of
52 implementing the provisions of section fifty-three, article
53 six of the Constitution of West Virginia, relating to forest
54 lands, and shall prepare and recommend to the
55 commissioner legislation thereon.

56 The commissioner of the department of agriculture shall
57 meet with the state forester and the director of the
58 department of natural resources prior to the first day of
59 June, one thousand nine hundred eighty-five, to facilitate
60 the orderly transfer of the forestry division, books, papers,
61 maps, charts, plans, literature, records, equipment,
62 buildings, structures and other tangible properties and
63 assets. The director of the department of natural resources
64 shall cooperate fully to ensure that present forestry
65 operations and programs are not discontinued prior to the
66 transfer which shall be the first day of July, one thousand

67 nine hundred eighty-five. The director of the department of
68 natural resources and the commissioner shall work out a
69 pro rata agreement for continuation of the present
70 occupancy of any buildings transferred that are occupied by
71 department of natural resources personnel, other than
72 personnel of the forestry division and for any buildings that
73 are not transferred, but which are partially occupied by
74 personnel of the forestry division.

75 The state forester shall immediately after the transfer of
76 the division of forestry establish a system to divide the
77 forests being transferred to the department of agriculture
78 for management from the cabins, lodges and improved
79 recreational facilities which shall remain with the parks
80 division of the department of commerce.

81 In establishing the division lines, the commissioner and
82 the state forester shall cooperate fully to ensure that
83 management of improved property essential to the parks
84 division is not transferred.

85 In the event of disagreement over the placement of a
86 division line or dual occupancy of a building, the
87 disposition shall be decided by the Legislature's joint
88 committee on government and finance at a regularly
89 scheduled meeting. The transfer of management shall
90 include a transfer of all appurtenances, equipment, products,
91 inventories and forest facilities.

92 All personnel employed in the division of forestry within
93 the department of natural resources and whose
94 employment is being transferred to the department of
95 agriculture shall retain their coverage under the civil
96 service commission and civil service system, and all matters
97 relating to job classification, job tenure, salary and
98 conditions of employment shall remain in force and effect
99 from and after the effective date of this article.

100 The chief of the division of forestry in the department of
101 natural resources on the effective date of transfer to the
102 department of agriculture shall continue as, and thereafter
103 be designated as, the state forester and retain civil service
104 system coverage with such duties and responsibilities as
105 may be assigned by the director.

§19-1A-4. Additional duties of the director of the division of forestry generally.

1 The division director shall encourage and assist in the
2 location of new and expansion of existing wood products
3 business and industry; stimulate and assist in the expansion
4 of the forest industry; cooperate and act in conjunction with
5 other organizations, public or private, the objects of which
6 are the promotion and advancement of the wood products
7 industry in this state. The division shall arrange for or
8 conduct research in forest utilization and the marketing of
9 forest products, affecting the industrial and commercial
10 development of the state; shall correlate and interchange
11 information and disseminate the results of such research;
12 and shall, to the extent considered necessary, provide for or
13 conduct additional research projects or pilot plant
14 demonstrations of research results by cooperating with all
15 appropriate existing educational, public and industrial
16 institutions or agencies of the state.

17 The division director may exercise all powers necessary
18 or appropriate to carry out and effectuate the purposes of
19 this section, including the following powers, in addition to
20 others herein granted:

21 (a) To cooperate with industrial development agencies
22 in their efforts to promote the expansion of forest resources;
23 and

24 (b) To pursue research and education related to forest
25 resources and their multiple use, including conservation,
26 management and utilization, evaluation of forest land use
27 and the maintenance of the rural environment; the
28 manufacture and marketing of forest products, the
29 protection of recreation and aesthetic values, and the
30 organization of technical advisory committees to assist in
31 all or any other of these or any aspect of forestry.

32 The director shall study ways and shall advise the
33 governor and the Legislature on all aspects of what is
34 needed to:

35 (1) Improve the business climate for forest industries
36 and the general awareness of forestry potential;

37 (2) Develop a strong state forestry agency;

38 (3) Improve forest resources data;

39 (4) Improve the transportation system for wood
40 products; and

41 (5) Improve forestry knowledge and practices of private
42 landowners.

43 (c) To accept and use gifts, donations or contributions
44 from individuals, associations, corporations and to acquire
45 by gift, lease or purchase real estate for purposes within the
46 powers and duties of the division.

47 (d) To promulgate rules and regulations, subject to the
48 provisions of chapter twenty-nine-a of this code, for the
49 management of state forests and to implement the programs
50 and policies of this article.

§19-1A-5. Forestry commission; qualifications and appointment of director; powers and duties generally; appointment of director by governor.

1 There is hereby created in the division of forestry in the
2 department of agriculture a forestry commission composed
3 of three members who are the commissioner of agriculture,
4 the commissioner of commerce and the director of the
5 department of natural resources. The commissioner of
6 agriculture shall be the chairman of the commission. No
7 business shall be transacted by the commission in the
8 absence of a quorum which consists of two members
9 including the chairman. The forestry commission shall hold
10 meetings quarterly or at the call of the chairman. The
11 commission shall appoint the director of the division of
12 forestry. In the event that the commission cannot agree
13 upon the appointment of a director within sixty days of any
14 vacancy therein, the appointment shall be made by the
15 governor within sixty days thereafter, but with the advice
16 and consent of the Senate, in either event. The salary of the
17 director shall be forty-five thousand dollars a year. The
18 director shall be a graduate of a school of forestry accredited
19 by the Society of American Foresters or have a minimum
20 of ten years experience in forest management and shall serve
21 at the will and pleasure of the forestry commission. The
22 commission serves as an advisory board for the director and
23 shall approve the division budget before it is submitted to
24 the department of finance and administration by the
25 department.

CHAPTER 20. NATURAL RESOURCES.**Article.**

1. **Organization and Administration.**
7. **Law Enforcement, Procedures and Penalties; Motorboating.**

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

- §20-1-9. Fiscal management.
§20-1-14. Divisions within department.

§20-1-9. Fiscal management.

1 Subject to any controlling rules and regulations of the
2 department of finance and administration relating to state
3 fiscal management policies and practices, the director shall
4 establish in the department an adequate budget, finance
5 and accounting system which will currently and accurately
6 reflect the fiscal operations and conditions of the
7 department at all times. The department's accounting and
8 auditing services shall be on a fiscal-year basis.

9 The director shall select and designate a competent and
10 qualified person as department fiscal officer who, under the
11 supervision of the director, shall be responsible for all
12 budget, finance and accounting services of the department.
13 All moneys received by the department shall be recorded
14 and shall be paid as special revenue to the department of
15 natural resources, as provided in subdivision (i), section
16 two, article two, chapter twelve of this code, except in cases
17 wherein certain receipts of the department are by specific
18 provisions of this chapter required to be paid into some
19 special fund or funds.

§20-1-14. Divisions within department.

1 Divisions of game and fish, of forestry, of water resources,
2 of law enforcement and of reclamation are hereby created
3 and established within the department. Subject to
4 provisions of law, the director shall allocate the functions
5 and services of the department to the divisions, offices and
6 activities thereof and may from time to time establish and
7 abolish other divisions, offices and activities within the
8 department in order to carry out fully and in an orderly
9 manner the powers, duties and responsibilities of his office
10 as director. The director shall select and designate a

11 competent and qualified person to be chief of each division.
12 The chief shall be the principal administrative officer of his
13 division and shall be accountable and responsible for the
14 orderly and efficient performance of the duties, functions
15 and services thereof.

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

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

**§20-7-1. Chief conservation officer; conservation officers;
special and emergency conservation officers;
subsistence allowance; expenses.**

1 The department's law-enforcement policies, practices
2 and programs shall be under the immediate supervision and
3 direction of the department law-enforcement officer
4 selected by the director and designated as chief
5 conservation officer as provided in article one hereof.

6 Under the supervision of the director, the chief
7 conservation officer shall organize, develop and maintain
8 law-enforcement practices, means and methods geared,
9 timed and adjustable to seasonal, emergency and other
10 needs and requirements of the department's comprehensive
11 natural resources program. All department personnel
12 detailed and assigned to law-enforcement duties and
13 services hereunder shall be known and designated as
14 conservation officers and shall be under the immediate
15 supervision and direction of the chief conservation officer.
16 All such conservation officers shall be trained, equipped
17 and conditioned for duty and services wherever and
18 whenever required by department law-enforcement needs.

19 The chief conservation officer, acting under supervision
20 of the director, is authorized to select and appoint
21 emergency conservation officers for a limited period of time
22 for effective enforcement of the provisions of this chapter
23 when considered necessary because of emergency or other
24 unusual circumstances. The emergency conservation
25 officers shall be selected from qualified civil service
26 personnel of the department, except in emergency
27 situations and circumstances when the director may
28 designate such officers, without regard to such
29 requirements and qualifications, to meet law-enforcement

30 needs. Emergency conservation officers shall exercise all
31 powers and duties prescribed in section four of this article
32 for full-time salaried conservation officers except the
33 provisions of subdivision (8).

34 The chief conservation officer, acting under supervision
35 of the director, is also authorized to select and appoint as
36 special conservation officers any full-time civil service
37 employee who is assigned to, and has direct responsibility
38 for management of, an area owned, leased or under the
39 control of the department and who has satisfactorily
40 completed a course of training established and
41 administered by the chief conservation officer, when such
42 action is deemed necessary because of law-enforcement
43 needs. The powers and duties of a special conservation
44 officer, appointed under this provision, shall be the same
45 within his assigned area as prescribed for full-time salaried
46 conservation officers. The jurisdiction of such person
47 appointed as a special conservation officer, under this
48 provision, shall be limited to the department area or areas
49 to which he is assigned and directly manages.

50 The chief conservation officer, acting under supervision
51 of the director, is also authorized to appoint as special
52 conservation officers any full-time civil service forest fire
53 control personnel who have satisfactorily completed a
54 course of training established and administered by the chief
55 conservation officer. The jurisdiction of forest fire control
56 personnel appointed as special conservation officers shall
57 be limited to the enforcement of the provisions of article
58 three of this chapter.

59 The chief conservation officer, with the approval of the
60 director, shall have the power and authority to revoke any
61 such appointment of an emergency conservation officer or
62 of a special conservation officer at any time.

63 Conservation officers shall be subject to seasonal or other
64 assignment and detail to duty whenever and wherever
65 required by the functions, services and needs of the
66 department.

67 The chief conservation officer shall designate the area of
68 primary residence of each conservation officer, including
69 himself. Since the area of business activity of the
70 department is actually anywhere within the territorial

- 71 confines of the state of West Virginia, actual expenses
72 incurred shall be paid whenever the duties are performed
73 outside the area of primary assignment and still within the
74 state.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

- §31-15-6. General powers of authority.
- §31-15-7b. Loans for construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects; and export development, farm development, job development, forest development and projects.
- §31-15-7c. Bonds and notes issued pursuant to section seven-b.
- §31-15-7d. Trustee for bondholders; contents of trust agreement; relating to bonds issued pursuant to section seven-c of this article.
- §31-15-7e. Use of funds by authority; restrictions thereon; relating to projects under section seven-b of this article.
- §31-15-7f. Security for bonds and notes issued pursuant to section seven-c of this article.
- §31-15-7g. Enforcement of payment and validity of bonds and notes issued pursuant to section seven-c of this article.
- §31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section seven-c of this article.
- §31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this article.
- §31-15-7j. Purchase and cancellation of notes or bonds issued pursuant to section seven-c of this article.
- §31-15-7k. Vested rights; impairment; bonds issued pursuant to section seven-c of this article.
- §31-15-7m. Bonds and notes issued pursuant to section seven-c of this article not debt of state, county, municipality or any political subdivision; exceptions; expenses incurred pursuant to article.
- §31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-c of this article.
- §31-15-7o. Bonds and notes issued pursuant to section seven-c of this article; legal investments.
- §31-15-7p. Exemption from taxation; bonds issued pursuant to the provisions of section seven-c of this article.
- §31-15-7q. Personal liability; persons executing bonds or notes issued pursuant to section seven-c of this article.
- §31-15-7r. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to section seven-c of this article.
- §31-15-9. Equipment loans.
- §31-15-21. Authorized limit on borrowing.

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT
AUTHORITY.**

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate
4 to carry out the purposes of this article, including the
5 power:

6 (a) To cooperate with industrial development agencies
7 in efforts to promote the expansion of industrial,
8 commercial, manufacturing and tourist activity in this
9 state.

10 (b) To determine, upon the proper application of an
11 industrial development agency, whether the declared
12 public purposes of this article have been or will be
13 accomplished by the establishment by such agency of an
14 industrial development project in this state.

15 (c) To conduct examinations and investigations and to
16 hear testimony and take proof, under oath or affirmation, at
17 public or private hearings, on any matter relevant to this
18 article and necessary for information on the establishment
19 of any industrial development project.

20 (d) To issue subpoenas requiring the attendance of
21 witnesses and the production of books and papers relevant
22 to any hearing before such authority or one or more
23 members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such
25 offense to have punished for contempt any witness who
26 refuses to obey a subpoena, to be sworn or affirmed or to
27 testify or who commits any contempt after being summoned
28 to appear.

29 (f) To authorize any member of the authority to conduct
30 hearings, administer oaths, take affidavits and issue
31 subpoenas.

32 (g) To make, upon proper application of any industrial
33 development agency, loans to such agency for industrial
34 development projects, industrial subdivision projects and
35 industrial subdivision project improvements and to provide
36 for the repayment and redeposit of such loans in the manner
37 provided in this article.

- 38 (h) To sue and be sued, implead and be impleaded, and
39 complain and defend in any court.
- 40 (i) To adopt, use and alter at will a corporate seal.
- 41 (j) To make bylaws for the management and regulation
42 of its affairs.
- 43 (k) To appoint officers, agents, employees and servants.
- 44 (l) To make contracts of every kind and nature to
45 execute all instruments necessary or convenient for
46 carrying on its business.
- 47 (m) Without in any way limiting any other subdivision
48 of this section, to accept grants from and enter into
49 contracts and other transactions with any federal agency.
- 50 (n) To take title by foreclosure to any industrial
51 development project or any industrial subdivision project
52 where acquisition is necessary to protect any loan
53 previously made by the authority and to sell, transfer and
54 convey such project to any responsible buyer. In the event
55 such sale, transfer and conveyance cannot be effected with
56 reasonable promptness, the authority may, in order to
57 minimize financial losses and sustain employment, lease
58 the project to a responsible tenant. The authority shall not
59 lease an industrial development project or industrial
60 subdivision project, except under the conditions and for the
61 purposes cited in this section.
- 62 (o) To participate in any reorganization proceeding
63 pending pursuant to the United States Code (being the act
64 of Congress establishing a uniform system of bankruptcy
65 throughout the United States, as amended) or in any
66 receivership proceeding in a state or federal court for the
67 reorganization or liquidation of a responsible buyer or
68 responsible tenant. The authority may file its claim against
69 any such responsible buyer or responsible tenant in any of
70 the foregoing proceedings, vote upon any question pending
71 therein which requires the approval of the creditors
72 participating in any reorganization proceeding or
73 receivership, exchange any evidence of such indebtedness
74 for any property, security or evidence of indebtedness
75 offered as a part of the reorganization of such responsible
76 buyer or responsible tenant or of any other entity formed to
77 acquire the assets thereof and may compromise or reduce
78 the amount of any indebtedness owing to it as a part of any
79 such reorganization.

80 (p) To borrow money and to issue its negotiable bonds,
81 security interests or notes and to provide for and secure the
82 payment thereof, and to provide for the rights of the holders
83 thereof, and to purchase, hold and dispose of any of its
84 bonds, security interests or notes.

85 (q) To sell, at public or private sale, any bond or other
86 negotiable instrument, security interests or obligation of
87 the authority in such manner and upon such terms as the
88 authority deems would best serve the purposes of this
89 article.

90 (r) To issue its bonds, security interests and notes
91 payable solely from the revenues or funds available to the
92 authority therefor; and the authority may issue its bonds,
93 security interests or notes in such principal amounts as it
94 shall deem necessary to provide funds for any purposes
95 under this article, including:

96 (i) The making of loans to approved industrial develop-
97 ment agencies.

98 (ii) The payment, funding or refunding of the principal
99 of, interest on, or redemption premiums on, any bonds,
100 security interests or notes issued by it whether the bonds,
101 security interests, notes or interest to be funded or refunded
102 have or have not become due.

103 (iii) The establishment or increase of reserves to secure
104 or to pay bonds, security interests, notes or the interest
105 thereon and all other costs or expenses of the authority
106 incident to and necessary or convenient to carry out its
107 corporate purposes and powers. Any bonds, security
108 interests or notes may be additionally secured by a pledge of
109 any revenues, funds, assets or moneys of the authority from
110 any source whatsoever.

111 (s) To issue renewal notes, or security interests, to issue
112 bonds to pay notes or security interests and, whenever it
113 deems refunding expedient, to refund any bonds by the
114 issuance of new bonds, whether the bonds to be refunded
115 have or have not matured except that no such renewal notes
116 shall be issued to mature more than ten years from date of
117 issuance of the notes renewed and no such refunding bonds
118 shall be issued to mature more than twenty-five years from
119 the date of issuance.

120 (t) To apply the proceeds from the sale of renewal notes,
121 security interests or refunding bonds to the purchase,

122 redemption or payment of the notes, security interests or
123 bonds to be refunded.

124 (u) To accept gifts or grants of property, funds, security
125 interests, money, materials, labor, supplies or services from
126 the United States of America or from any governmental
127 unit or any person, firm or corporation, and to carry out the
128 terms or provisions of, or make agreements with respect to,
129 or pledge, any gifts or grants, and to do any and all things
130 necessary, useful, desirable or convenient in connection
131 with the procuring, acceptance or disposition of gifts or
132 grants.

133 (v) To the extent permitted under its contracts with the
134 holders of bonds, security interests or notes of the authority,
135 to consent to any modification of the rate of interest, time of
136 payment of any installment of principal or interest, security
137 or any other term of any bond, security interest, note or
138 contract or agreement of any kind to which the authority is
139 a party.

140 (w) To sell security interests in the loan portfolio of the
141 authority. Such security interests shall be evidenced by
142 instruments issued by the authority. Proceeds from the sale
143 of security interests may be issued in the same manner and
144 for the same purposes as bond and note revenues.

145 (x) To procure insurance against any losses in
146 connection with its property, operations or assets in such
147 amounts and from such insurers as the authority deems
148 desirable.

149 (y) To take and hold security interests for equipment
150 loans as prescribed in this article.

151 (z) To make, upon proper application, loans for the
152 purposes and under the conditions provided in this article,
153 for electrical power generating facilities, natural gas
154 transmission lines, coal processing plants, other energy
155 projects, export development, farm development, job
156 development, forest development, and for automobile
157 assistance corporation projects, and the industrial and
158 trade jobs development corporation projects, and to
159 provide for the repayment and redeposit of such loans in the
160 manner provided in this article: *Provided*, That no bonds
161 shall be issued for the constructing of electrical power
162 generating facilities, natural gas transmission lines or other
163 energy projects unless the same shall be specifically

164 provided for by an act of general law, after public notice
165 and public hearing.

166 (aa) To take title by foreclosure to any project, plant,
167 property or equipment where acquisition is necessary to
168 protect any loan previously made by the authority and to
169 sell, transfer and convey such project, plant, property or
170 equipment to any responsible buyer. In the event such sale,
171 transfer and conveyance cannot be effected with reasonable
172 promptness, the authority may, in order to minimize
173 financial losses and sustain employment, lease a project to a
174 responsible tenant.

175 (bb) To borrow money for its purpose and issue bonds or
176 notes for the money and provide for the rights of the holders
177 of the bonds or notes, and to secure the bonds or notes by a
178 deed of trust on, or an assignment or pledge of, any or all of
179 its property and property of the project, including any part
180 of the security for the project loans, and the authority may
181 issue its bonds and notes in such principal amounts as it
182 shall deem necessary to provide funds for any purposes
183 under this article, including the making of loans for the
184 purposes set forth in subsection (z) of this section.

**§31-15-7b. Loans for construction of electrical power gener-
ating facilities, natural gas transmission lines,
coal processing plants, other energy projects;
and export development, farm development, job
development, forest development projects.**

1 (a) At the request of the governor or the appropriate
2 state agency or authority, the authority may lend money to
3 such office, agency or authority for the acquisition,
4 construction, improvement or alteration of projects for
5 electrical power generating facilities, natural gas
6 transmission lines, coal processing plants and other energy
7 projects.

8 (b) At the request of the department of commerce or the
9 office of community and industrial development, the
10 authority may lend money to any person or entity for the
11 acquisition, construction, improvement or alteration of any
12 project relative to export development, farm development,
13 job development and forest development.

14 (c) At the request of the West Virginia automobile
15 assistance corporation, the authority may lend money to

16 any person or entity for the acquisition, construction,
17 improvement or alteration of any project relative thereto.

18 (d) At the request of the West Virginia industrial and
19 trade jobs development corporation, the authority may lend
20 money to any person or entity for the acquisition,
21 construction, improvement or alteration of any project
22 relative thereto.

23 (e) A loan shall not be made unless the authority is
24 reasonably satisfied that the project will produce revenues
25 sufficient, together with any other revenues pledged, to
26 meet the principal and interest on the loan, other costs,
27 expenses and charges in connection with the loan and other
28 charges or obligations of the project which may be prior or
29 equal to the loan, promptly as they become due; that the
30 project is otherwise soundly financed; that the loan
31 application requirements of section eight of this article
32 have been satisfied; that the project will be owned and
33 operated by the state of West Virginia. A loan made
34 pursuant to this subsection shall not exceed the project
35 costs as determined by the authority. A loan shall be
36 secured in the manner required by the authority, shall be
37 repaid in a period and bear interest at a rate as determined
38 by the authority, which interest rate may be decreased or
39 increased so that it shall in no event be less than the rate
40 paid by the authority on notes, renewal notes or bonds
41 issued to fund the loan, and shall have such terms and
42 conditions as are required by the authority, all which shall
43 be set forth in a loan agreement and related documents as
44 required by the authority.

§31-15-7c. Bonds and notes issued pursuant to section seven-b.

1 The following provisions apply to loans made pursuant to
2 section seven-b of this article:

3 (a) The authority periodically may issue its negotiable
4 bonds and notes in a principal amount which, in the opinion
5 of the authority, shall be necessary to provide sufficient
6 funds for the making of loans provided for in section seven-
7 b of this article, including temporary loans during the
8 construction of such projects, for the payment of interest on
9 bonds and notes of the authority during construction of
10 such projects and for a reasonable time thereafter and for

11 the establishment of reserves to secure those bonds and
12 notes.

13 (b) No bonds shall be issued for any projects for an
14 electrical power generating facility, a natural gas
15 transmission line or other energy project unless the same
16 shall be specifically provided for by an act of general law.

17 (c) The authority periodically may issue renewal notes,
18 may issue bonds to pay notes and, if it considers refunding
19 expedient, to refund or to refund in advance, bonds or notes
20 issued by the authority by the issuance of new bonds.

21 (d) Except as may otherwise be expressly provided by
22 the authority, every issue of its notes or bonds shall be
23 special obligations of the authority, payable solely from the
24 property, revenues or other sources of or available to the
25 authority pledged therefor.

26 (e) The bonds and the notes shall be authorized by
27 resolution of the authority, shall bear such date and shall
28 mature at such time or times, as such resolution may
29 provide. The bonds and notes shall bear interest at such rate
30 or rates, be in such denominations, be in such form, either
31 coupon or registered, carry such registration privileges, be
32 payable in such medium of payment and at such place or
33 places and be subject to such terms of redemption as the
34 authority may authorize. The bonds and notes of the
35 authority may be sold by the authority, at public or private
36 sale, at or not less than the price the authority determines.
37 The bonds and notes shall be executed by the chairman and
38 vice chairman of the board, both of whom may use facsimile
39 signatures. The official seal of the authority or a facsimile
40 thereof shall be affixed to or printed on each bond and note
41 and attested, manually or by facsimile signature, by the
42 secretary-treasurer of the board, and any coupons attached
43 to any bond or note shall bear the signature or facsimile
44 signature of the chairman of the board. In case any officer
45 whose signature, or a facsimile of whose signature, appears
46 on any bonds, notes or coupons ceases to be such officer
47 before delivery of such bonds or notes, such signature or
48 facsimile is nevertheless sufficient for all purposes the same
49 as if he had remained in office until such delivery; and, in
50 case the seal of the authority has been changed after a
51 facsimile has been imprinted on such bonds or notes, such
52 facsimile seal will continue to be sufficient for all purposes.

53 A resolution authorizing bonds or notes or an issue of
54 bonds or notes under this article may contain provisions,
55 which shall be a part of the contract with the holders of the
56 bonds or notes, as to any or all of the following:

57 (1) Pledging and creating a lien on all or any part of the
58 fees and charges made or received or to be received by the
59 authority, all or any part of the moneys received in payment
60 of project loans and interest on project loans and all or any
61 part of other moneys received or to be received, to secure the
62 payment of the bonds or notes or of any issue of bonds or
63 notes, subject to those agreements with bondholders or
64 noteholders which then exist;

65 (2) Pledging and creating a lien on all or any part of the
66 assets of the authority, including notes, deeds of trust and
67 obligations securing the assets, to secure the payment of the
68 bonds or notes or of any issue of bonds or notes, subject to
69 those agreements with bondholders or noteholders which
70 then exist;

71 (3) Pledging and creating a lien on any loan, grant or
72 contribution to be received from the federal, state or local
73 government or other source;

74 (4) The use and disposition of the income from project
75 loans owned by the authority and payment of the principal
76 of and interest on project loans owned by the authority;

77 (5) The setting aside of reserves or sinking funds and the
78 regulation and disposition thereof;

79 (6) Limitations on the purpose to which the proceeds of
80 sale of bonds or notes may be applied and pledging the
81 proceeds to secure the payment of the bonds or notes or of
82 any issue of the bonds or notes;

83 (7) Limitations on the issuance of additional bonds or
84 notes and the terms upon which additional bonds or notes
85 may be issued and secured;

86 (8) The procedure by which the terms of a contract with
87 the bondholders or noteholders may be amended or
88 abrogated, the amount of bonds or notes the holders of
89 which must consent thereto and the manner in which the
90 consent may be given; and

91 (9) Vesting in a trustee or trustees the property, rights,
92 powers, remedies and duties which the authority considers
93 necessary or convenient.

§31-15-7d. Trustee for bondholders; contents of trust agreement; relating to bonds issued pursuant to section seven-c of this article.

1 For bonds issued pursuant to the provisions of section
2 seven-c of this article, in the discretion of the authority, any
3 bonds, including refunding bonds or notes issued by the
4 authority, may be secured by a trust agreement between the
5 authority and a corporate trustee, which trustee may be any
6 trust company within or without the state. Any such trust
7 agreement may contain provisions as set forth in section
8 seven-c of this article with respect to resolution. All
9 expenses incurred in carrying out the provisions of any
10 trust agreement may be treated as a part of the costs of the
11 operation of the project loan program provided for
12 hereunder. Any such trust agreement, indenture or
13 resolution authorizing the issuance of bonds or notes may
14 provide the method whereby the general administrative
15 overhead expenses of the authority shall be allocated
16 among the several projects for which project loans have
17 been made.

§31-15-7e. Use of funds by authority; restrictions thereon; relating to projects under section seven-b of this article.

1 For projects described in and loans made pursuant to
2 section seven-b of this article, and bonds and notes issued
3 pursuant to section seven-c thereof:

4 All moneys, properties and assets acquired by the
5 authority, whether as proceeds from the sale of bonds or
6 notes or as revenues or otherwise, shall be held by it in trust
7 for the purposes of carrying out its powers and duties and
8 shall be used and reused in accordance with the purposes
9 and provisions of this article. Such moneys shall at no time
10 be commingled with other public funds. Such moneys,
11 except as otherwise provided in any resolution authorizing
12 the issuance of bonds or notes or in any trust agreement
13 securing the same, or except when invested pursuant to this
14 article, shall be kept in appropriate depositories and
15 secured as provided and required by law. The resolution
16 authorizing the issuance of such bonds or notes of any issue
17 or the trust agreement securing such bonds or notes shall

18 provide that any officer to whom, or any banking
19 institution or trust company to which, such moneys are
20 paid, shall act as trustee of such moneys and hold and apply
21 them for the purposes hereof, subject to the conditions this
22 article and such resolution or trust agreement provide.

§31-15-7f. Security for bonds and notes issued pursuant to section seven-c of this article.

1 A resolution authorizing the issuance of bonds or notes
2 under section seven-c of this article may provide that the
3 principal of and interest on the bonds or notes issued shall
4 be secured by a lien on any or all of the fees and charges
5 made or received, or to be received, by the authority from
6 the project in connection with the project loan, on any or all
7 of the money received in payment of the project loan and
8 interest thereon, on any or all of investment earnings or
9 profits on any of these sources or on any or all of the security
10 held for that payment, and on other funds or assets of the
11 authority or of any other agency, person or entity pledged
12 for such purpose.

§31-15-7g. Enforcement of payment and validity of bonds and notes issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to section seven-c of
2 this article:
3 (a) The provisions of this article and any resolution,
4 indenture, deed of trust or security agreement shall
5 continue in effect until the principal of and interest on the
6 bonds or notes of the authority have been fully paid, and the
7 duties of the authority under this article and any resolution,
8 indenture, deed of trust or security agreement shall be
9 enforceable by any bondholder or noteholder by
10 mandamus, trustee's sale under the deed of trust or other
11 appropriate action in any court of competent jurisdiction.
12 (b) The resolution authorizing the bonds or notes shall
13 provide that such bonds or notes shall contain a recital that
14 they are issued pursuant to this article, which recital shall
15 be conclusive evidence of their validity and of the regularity
16 of their issuance.

§31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to section seven-c of
2 this article, any pledge made by the authority shall be valid
3 and binding from the time the pledge is made. The money or
4 property so pledged and thereafter received by the
5 authority shall immediately be subject to the lien of the
6 pledge without any physical delivery thereof or further act.
7 The lien of any such pledge shall be valid and binding as
8 against all parties having claims of any kind in tort,
9 contract or otherwise against the authority, irrespective of
10 whether such parties have notice thereof.

§31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this article.

1 Any bonds issued pursuant to the provisions of section
2 seven-c of this article and at any time outstanding may at
3 any time and from time to time be refunded by the authority
4 by the issuance of its refunding bonds in such amount as it
5 may deem necessary to refund the principal of the bonds so
6 to be refunded, together with any unpaid interest thereon;
7 to provide additional funds for the purposes of the
8 authority; and to pay any premiums and commissions
9 necessary to be paid in connection therewith. Any such
10 refunding may be effected whether the bonds to be
11 refunded shall have then matured or shall thereafter
12 mature, either by sale of the refunding bonds and the
13 application of the proceeds thereof for the redemption of
14 the bonds to be refunded thereby or by exchange of the
15 refunding bonds for the bonds to be refunded thereby:
16 *Provided*, That the holders of any bonds so to be refunded
17 shall not be compelled without their consent to surrender
18 their bonds for payment or exchange prior to the date on
19 which they are payable or, if they are called for redemption,
20 prior to the date on which they are by their terms subject to
21 redemption. Any refunding bonds issued under the
22 authority of this article shall be payable from the revenues
23 out of which the bonds to be refunded thereby were
24 payable, from other moneys or from the principal of and
25 interest on or other investment yield from investments or
26 proceeds of bonds or other applicable funds and moneys,

27 including investments of proceeds of any refunding bonds,
28 shall be subject to the provisions contained in section
29 seven-c of this article and shall be secured in accordance
30 with the provisions of sections seven-c and seven-d of this
31 article.

§31-15-7j. Purchase and cancellation of notes or bonds issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to the provisions of
2 section seven-c of this article:

3 The authority, subject to such agreements with
4 noteholders or bondholders as may then exist, shall have
5 power, out of any funds available therefor, to purchase
6 bonds, including refunding bonds, or notes of the authority.

7 If the bonds or notes are then redeemable, the price of
8 such purchase shall not exceed the redemption price then
9 applicable plus accrued interest to the next interest
10 payment date thereon. If the bonds or notes are not then
11 redeemable, the price of such purchase shall not exceed the
12 redemption price applicable on the first date after such
13 purchase upon which the bonds or notes become subject to
14 redemptions plus accrued interest to such date. Upon such
15 purchase, such bonds or notes shall be cancelled.

§31-15-7k. Vested rights; impairment; bonds issued pursuant to section seven-c of this article.

1 The state pledges and agrees with the holders of any
2 bonds or notes issued under the provisions of section seven-
3 c of this article that the state will not limit or alter the rights
4 vested in the authority to fulfill the terms of any agreements
5 made with the holders thereof, or in any way impair the
6 rights and remedies of the holders until the bonds or notes,
7 together with the interest thereon, and all costs and
8 expenses in connection with any action or proceeding by or
9 on behalf of such holders, are fully met and discharged. The
10 authority is authorized to include this pledge and
11 agreement of the state in any agreement with the holders of
12 such bonds or notes.

§31-15-7m. Bonds and notes issued pursuant to section seven-c of this article not debt of state, county, municipality or any political subdivision; exceptions; expenses incurred pursuant to article.

1 Bonds, including refunding bonds, and notes issued
2 under the authority of section seven-c of this article and any
3 coupons in connection therewith shall not constitute a debt
4 or a pledge of the faith and credit or taxing power of this
5 state or of any county, municipality or any other political
6 subdivision of this state, and the holders and owners thereof
7 shall have no right to have taxes levied by the Legislature or
8 the taxing authority of any county, municipality or any
9 other political subdivision of this state for the payment of
10 the principal thereof or interest thereon, but such bonds
11 and notes shall be payable solely from the revenues and
12 funds pledged for their payment as authorized by this
13 article unless the notes are issued in anticipation of the
14 issuance of bonds or the bonds are refunded by refunding
15 bonds issued under the authority of this article, which
16 bonds or refunding bonds shall be payable solely from
17 revenues and funds pledged for their payment as authorized
18 by this article. All such bonds and notes shall contain on the
19 face thereof a statement to the effect that the bonds or notes
20 as to both principal and interest, are not debts of the state or
21 any county, municipality or political subdivision thereof,
22 but are payable solely from revenues and funds pledged for
23 their payment.

24 Such bonds and notes shall be the debts of any state
25 agency, office or authority specifically agreeing thereto.

26 All expenses incurred in carrying out the provisions of
27 this article shall be payable solely from funds provided
28 under the authority of this article. Such article does not
29 authorize the authority to incur indebtedness or liability on
30 behalf of or payable by the state or any county, municipality
31 or any other political subdivision thereof.

§31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-c of this article.

1 Whether or not the bonds or notes issued pursuant to the
2 provisions of section seven-c of this article are of such form
3 or character as to be negotiable instruments under the

4 Uniform Commercial Code, such bonds or notes are
5 negotiable instruments within the meaning of and for all
6 the purposes of the Uniform Commercial Code, subject only
7 to the provisions of the bonds or notes for registration.

**§31-15-7o. Bonds and notes issued pursuant to section seven-c
of this article; legal investments.**

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 the bonds and notes issued pursuant to the provisions of
4 section seven-c of this article are securities in which all
5 public officers and bodies of this state, including the West
6 Virginia state board of investments, all municipalities and
7 other political subdivisions of this state, all insurance
8 companies and associations and other persons carrying on
9 an insurance business, including domestic for life and
10 domestic not for life insurance companies, all banks, trust
11 companies, societies for savings, building and loan
12 associations, savings and loan associations, deposit
13 guarantee associations and investment companies, all
14 administrators, guardians, executors, trustees and other
15 fiduciaries and all other persons whatsoever who are
16 authorized to invest in bonds or other obligations of the
17 state may properly and legally invest funds, including
18 capital, in their control or belonging to them.

**§31-15-7p. Exemption from taxation; bonds issued pursuant to
the provisions of section seven-c of this article.**

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state for the improvement of their health, safety,
4 convenience and welfare and is a public purpose. As the
5 operation and maintenance of projects described in section
6 seven-b of this article will constitute the performance of
7 essential governmental functions, the authority shall not be
8 required to pay any taxes or assessments upon any property
9 acquired or used by the authority or upon the income
10 therefrom. All bonds and notes of the authority, and all
11 interest and income thereon, shall be exempt from all
12 taxation by this state and any county, municipality,
13 political subdivision or agency thereof, except inheritance
14 taxes.

15 All bonds and notes of the authority issued pursuant to
16 the provisions of section seven-c of this article, and all
17 interest and income thereon, shall be exempt from all
18 taxation by this state and any county, municipality,
19 political subdivision or agency thereof, except inheritance
20 taxes.

**§31-15-7q. Personal liability; persons executing bonds or notes
issued pursuant to section seven-c of this article.**

1 Neither the members or officers of the authority or of any
2 authority agency or office, nor any person executing the
3 bonds or notes issued pursuant to the provisions of section
4 seven-c of this article, shall be liable personally on such
5 bonds or notes or be subject to any personal liability or
6 accountability by reason of the insurance thereof.

**§31-15-7r. Cumulative authority as to powers conferred;
applicability of other statutes and charters;
bonds issued pursuant to section seven-c of this
article.**

1 The provisions of this article relating to the issuance of
2 loans made pursuant to the provisions of section seven-b of
3 this article, and bonds issued pursuant to the provisions of
4 section seven-c of this article shall be construed as granting
5 cumulative authority for the exercise of the various powers
6 herein conferred, and neither the powers nor any bonds or
7 notes issued hereunder shall be affected or limited by any
8 other statutory or charter provision now or hereafter in
9 force, other than as may be provided in this article, it being
10 the purpose and intention of this article to create full,
11 separate and complete additional powers. The various
12 powers conferred herein may be exercised independently
13 and notwithstanding that no bonds or notes are issued
14 hereunder.

***§31-15-9. Equipment loans.**

1 The authority may make loans for equipment as part of
2 industrial development projects, industrial subdivision
3 projects, and projects for electrical power generating
4 facilities, natural gas transmission lines, coal processing

Clerks Note: This section was also amended by S. B. 571, which passed prior to this act.

5 plants, other energy projects, export development, farm
6 development, job development, forest development,
7 automobile assistance corporation projects and industrial
8 and trade jobs development corporation projects, and
9 improvements thereto, subject to the same application,
10 loan and bond procedures and provisions as usually apply
11 to loans issued under the provisions of this article, or by an
12 unconditional letter of credit approved by the authority.
13 The real property in which a security interest is taken may
14 be the real property upon which the equipment is situate or
15 real property at a different location from the location of the
16 equipment. Such additional security shall be upon such
17 terms and in such amount satisfactory to the authority.

§31-15-21. Authorized limit on borrowing.

1 The aggregate principal amount of notes, security
2 interests and bonds issued by the authority shall not exceed
3 three hundred million dollars outstanding at any one time:
4 *Provided*, That in computing the total amount of notes,
5 security interests and bonds which may at any one time be
6 outstanding, the principal amount of any outstanding
7 notes, security interests and bonds refunded or to be
8 refunded either by application of the proceeds of the sale of
9 any refunding bonds, security interests or notes of the
10 authority or by exchange for any such refunding bonds,
11 security interests or notes shall be excluded. The provisions
12 of section nineteen of this article notwithstanding, the state
13 board of investments shall have invested no more than a
14 total aggregate principal amount of forty-five million
15 dollars at any one time in such notes, security interests or
16 bonds.

CHAPTER 42

(S. B. 571—By Senator Chernenko, Mr. Tonkovich, Mr. President,
Senators Loehr and Karras)

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

AN ACT to amend and reenact section nine, article fifteen,
chapter thirty-one of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority; additional security on equipment loans; location of real property that may be additional security.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

***§31-15-9. Equipment loans.**

1 The authority may make loans for equipment as part of
2 industrial development projects or industrial subdivision
3 projects or improvement thereto subject to the same
4 application and loan procedures and limitations as usually
5 apply to loans for industrial development projects or
6 industrial subdivision projects or improvements thereto:
7 *Provided*, That such loans shall be secured by a first lien
8 on the equipment financed by the loan and shall be
9 additionally secured by a deed of trust in real property
10 and any improvement thereto. The real property in
11 which a security interest is taken may be the real
12 property upon which the equipment is situate or real
13 property at a different location from the location of the
14 equipment. Such additional security shall be upon such
15 terms and in such amount satisfactory to the authority.

CHAPTER 43

(S. B. 213—By Senator Tucker)

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

AN ACT to amend and reenact section ten, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen,

* Clerk's Note: This section was also amended by S. B. 196, which passed subsequent to this act.

chapter thirty-three of said code by adding thereto a new section, designated section twelve; to amend article sixteen of said chapter by adding thereto a new section, designated section eight; to amend article sixteen-a of said chapter by adding thereto a new section, designated section ten-a; to amend article twenty-three of said chapter by adding thereto a new section, designated section thirty-five; and to amend article twenty-four of said chapter by adding thereto a new section, designated section thirteen, all relating to providing coverage for continuum of care services by insurance companies and health care corporations.

Be it enacted by the Legislature of West Virginia:

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

Chapter

16. Public Health.

33. Insurance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5D. COORDINATION OF CONTINUUM OF CARE SERVICES FOR ELDERLY, IMPAIRED AND TERMINALLY ILL.

§16-5D-10. Insurance.

1 Not later than the first day of July, one thousand nine
2 hundred eighty-six, every insurance carrier who shall offer
3 for sale in this state any policy of health or accident and
4 sickness insurance, shall make available for purchase at a
5 reasonable rate supplemental insurance coverage for
6 continuum of care services: *Provided*, That any insurance
7 carrier required to provide supplemental insurance
8 coverage for continuum of care services hereunder shall not
9 be required to expend funds for underwriting such

10 supplemental coverage until the continuum of care board,
11 in cooperation with the West Virginia state insurance
12 commissioner, shall have completed a written master plan
13 related to insurance coverage as set forth in section five, arti-
14 cle five-d, chapter sixteen of the code of West Virginia, one
15 thousand nine hundred thirty-one, as amended, including,
16 but not limited to, the specific standards and coverages to
17 be provided in such supplemental coverage: *Provided,*
18 *however,* That a public hearing shall be held pursuant to the
19 provisions of chapter twenty-nine-a of this code applicable
20 to such proceedings prior to the consideration of the
21 aforesaid plan by said board. The rates for continuum of
22 care coverage shall accurately reflect the cost of such
23 coverage and shall not be subsidized by the rate structure
24 for any other coverage.

CHAPTER 33. INSURANCE.

Article

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
- 16A. Group Health Insurance Conversion.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-12. Continuum of care services.

1 Any insurer which, on or after the first day of July, one
2 thousand nine hundred eighty-six, delivers or issues for
3 delivery in this state any policy of accident and sickness
4 insurance under the provisions of this article, shall make
5 available for purchase, at a reasonable rate, supplemental
6 insurance coverage for continuum of care services pursuant
7 to article five-d, chapter sixteen of this code: *Provided,*
8 That any insurance carrier required to provide
9 supplemental insurance coverage for continuum of care
10 services hereunder shall not be required to expend funds for
11 underwriting such supplemental coverage until the
12 continuum of care board, in cooperation with the West
13 Virginia state insurance commissioner, shall have
14 completed a written master plan related to insurance
15 coverage as set forth in section five, article five-d, chapter

16 sixteen of the code of West Virginia, one thousand nine
17 hundred thirty-one, as amended, including, but not limited
18 to, the specific standards and coverages to be provided in
19 such supplemental coverage: *Provided, however,* That a
20 public hearing shall be held pursuant to the provisions of
21 chapter twenty-nine-a of this code applicable to such
22 proceedings prior to the consideration of the aforesaid
23 plan by said board. The rates for continuum of care
24 coverage shall accurately reflect the cost of such coverage
25 and shall not be subsidized by the rate structure for any
26 other coverage.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-8. Continuum of care services.

1 Any insurer which, on or after the first day of July, one
2 thousand nine hundred eighty-six, delivers or issues for
3 delivery in this state any policy of group accident and
4 sickness insurance under the provisions of this article, shall
5 make available for purchase, at a reasonable rate,
6 supplemental insurance coverage for continuum of care
7 services pursuant to article five-d, chapter sixteen of this
8 code: *Provided,* That any insurance carrier required to
9 provide supplemental insurance coverage for continuum of
10 care services hereunder shall not be required to expend
11 funds for underwriting such supplemental coverage until
12 the continuum of care board, in cooperation with the West
13 Virginia state insurance commissioner, shall have
14 completed a written master plan related to insurance
15 coverage as set forth in section five, article five-d, chapter
16 sixteen of the code of West Virginia, one thousand nine
17 hundred thirty-one, as amended, including, but not limited
18 to, the specific standards and coverages to be provided in
19 such supplemental coverage: *Provided, however,* That a
20 public hearing shall be held pursuant to the provisions of
21 chapter twenty-nine-a of this code applicable to such
22 proceedings prior to the consideration of the aforesaid
23 plan by said board. The rates for continuum of care
24 coverage shall accurately reflect the cost of such coverage
25 and shall not be subsidized by the rate structure for any
26 other coverage.

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.**§33-16A-10a. Continuum of care services.**

1 If the group insurance policy from which conversion is
2 made insures the employee or member for continuum of
3 care services pursuant to article five-d, chapter sixteen of
4 this code, the employee or member shall be entitled to
5 obtain a converted policy providing benefits for continuum
6 of care services to the same extent such benefits are
7 provided in the group insurance policy: *Provided*, That any
8 insurance carrier required to provide supplemental
9 insurance coverage for continuum of care services
10 hereunder shall not be required to expend funds for
11 underwriting such supplemental coverage until the
12 continuum of care board, in cooperation with the West
13 Virginia state insurance commissioner, shall have
14 completed a written master plan related to insurance
15 coverage as set forth in section five, article five-d, chapter
16 sixteen of the code of West Virginia, one thousand nine
17 hundred thirty-one, as amended, including, but not limited
18 to, the specific standards and coverages to be provided in
19 such supplemental coverage: *Provided, however*, That a
20 public hearing shall be held pursuant to the provisions of
21 chapter twenty-nine-a of this code applicable to such
22 proceedings prior to the consideration of the aforesaid
23 plan by said board. The rates for continuum of care
24 coverage shall accurately reflect the cost of such coverage
25 and shall not be subsidized by the rate structure for any
26 other coverage.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**§33-23-35. Continuum of care services.**

1 Any society which, on or after the first day of July, one
2 thousand nine hundred eighty-six, delivers or issues for
3 delivery in this state any policy under the provisions of
4 subdivision (e), subsection (1), section seventeen of this article,
5 shall make available for purchase, at a reasonable rate,
6 supplemental insurance coverage for continuum of care
7 services pursuant to article five-d, chapter sixteen of this
8 code: *Provided*, That any insurance carrier required to
9 provide supplemental insurance coverage for continuum of

10 care services hereunder shall not be required to expend
11 funds for underwriting such supplemental coverage until
12 the continuum of care board, in cooperation with the West
13 Virginia state insurance commissioner, shall have
14 completed a written master plan related to insurance
15 coverage as set forth in section five, article five-d, chapter
16 sixteen of the code of West Virginia, one thousand nine
17 hundred thirty-one, as amended, including, but not limited
18 to, the specific standards and coverages to be provided in
19 such supplemental coverage: *Provided, however,* That a
20 public hearing shall be held pursuant to the provisions of
21 chapter twenty-nine-a of this code applicable to such
22 proceedings prior to the consideration of the aforesaid
23 plan by said board. The rates for continuum of care
24 coverage shall accurately reflect the cost of such coverage
25 and shall not be subsidized by the rate structure for any
26 other coverage.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE COR-
PORATIONS AND HEALTH SERVICE CORPORA-
TIONS.**

§33-24-13. Continuum of care services.

1 Any hospital service corporation, medical service
2 corporation or health service corporation which, on or after
3 the first day of July, one thousand nine hundred eighty-six,
4 delivers or issues for delivery in this state any subscriber
5 contract under the provisions of this article, shall make
6 available for purchase, at a reasonable rate, supplemental
7 insurance coverage for continuum of care services pursuant
8 to article five-d, chapter sixteen of this code: *Provided,*
9 That any insurance carrier required to provide
10 supplemental insurance coverage for continuum of care
11 services hereunder shall not be required to expend funds for
12 underwriting such supplemental coverage until the
13 continuum of care board, in cooperation with the West
14 Virginia state insurance commissioner, shall have
15 completed a written master plan related to insurance
16 coverage as set forth in section five, article five-d, chapter
17 sixteen of the code of West Virginia, one thousand nine
18 hundred thirty-one, as amended, including, but not limited
19 to, the specific standards and coverages to be provided in

20 such supplemental coverage: *Provided, however,* That a
21 public hearing shall be held pursuant to the provisions of
22 chapter twenty-nine-a of this code applicable to such
23 proceedings prior to the consideration of the aforesaid
24 plan by said board. The rates for continuum of care
25 coverage shall accurately reflect the cost of such coverage
26 and shall not be subsidized by the rate structure for any
27 other coverage.

CHAPTER 44

(Com. Sub. for H. B. 2042—By Mr. Speaker, Mr. Albright)

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

AN ACT to amend and reenact sections two hundred one, two hundred four, two hundred six and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred eight, article three of said chapter, all relating to controlled substances; authority of board of pharmacy; emergency changes of schedules of controlled substances between legislative sessions; changing certain substances between schedules; adding buprenorphine to schedule five; and prescriptions for controlled substances.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Standards and Schedules.

3. Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority of state board of pharmacy, recommendations to Legislature.

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

§60A-2-212. Schedule V.

§60A-2-201. Authority of state board of pharmacy; recommendations to Legislature.

1 (a) The state board of pharmacy shall administer the
2 provisions of this chapter. It shall also, on the first day of each
3 regular legislative session, recommend to the Legislature which
4 substances should be added to or deleted from the schedules
5 of controlled substances contained in this article or reschedule
6 therein. The state board of pharmacy shall also have the
7 authority between regular legislative sessions, on an emergency
8 basis, to add to or delete from the schedules of controlled
9 substances contained in this article or reschedule such
10 substances based upon the recommendations and approval of
11 the federal food, drug and cosmetic agency, and shall report
12 such actions on the first day of the regular legislative session
13 immediately following said actions.

14 In making any such recommendation regarding a substance,
15 the state board of pharmacy shall consider the following
16 factors:

17 (1) The actual or relative potential for abuse;

18 (2) The scientific evidence of its pharmacological effect, if
19 known;

20 (3) The state of current scientific knowledge regarding the
21 substance;

22 (4) The history and current pattern of abuse;

23 (5) The scope, duration and significance of abuse;

24 (6) The potential of the substance to produce psychic or
25 physiological dependence liability; and

26 (7) Whether the substance is an immediate precursor of a
27 substance already controlled under this article.

28 (b) After considering the factors enumerated in subsection
29 (a), the state board of pharmacy shall make findings with
30 respect to the substance under consideration. If it finds that
31 any substance not already controlled under any schedule has
32 a potential for abuse, it shall recommend to the Legislature

33 that the substance be added to the appropriate schedule. If it
34 finds that any substance already controlled under any schedule
35 should be rescheduled or deleted, it shall so recommend to the
36 Legislature.

37 (c) If the state board of pharmacy designates a substance
38 as an immediate precursor, substances which are precursors
39 of the controlled precursor shall not be subject to the control
40 solely because they are precursors of the controlled precursor.

41 (d) If any substance is designated, rescheduled or deleted as
42 a controlled substance under federal laws and notice thereof
43 is given to the state board of pharmacy, the board shall
44 recommend similar control of such substance to the Legisla-
45 ture, specifically stating that such recommendation is based on
46 federal action and the reasons why the federal government
47 deemed such action necessary and proper.

48 (e) The authority vested in the board by subsection (a) of
49 this section shall not extend to distilled spirits, wine, malt
50 beverages or tobacco as those terms are defined or used in
51 other chapters of this code nor to any nonnarcotic substance
52 if such substance may under the "Federal Food, Drug and
53 Cosmetic Act" and the law of this state lawfully be sold over
54 the counter without a prescription.

***§60A-2-204. Schedule I.**

1 (a) The controlled substances listed in this section are
2 included in Schedule I.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any of the following opiates, including its isomers,
5 esters, ethers, salts and salts of isomers, esters and ethers
6 whenever the existence of such isomers, esters, ethers and salts
7 is possible within the specific chemical designation:

- 8 (1) Acetylmethadol;
- 9 (2) Allylprodine;
- 10 (3) Alphacetylmethadol;
- 11 (4) Alphameprodine;
- 12 (5) Alphamethadol;
- 13 (6) Alpha-methylfentanyl;

* Clerks Note: This section was also amended by H. B. 1082, which passed prior to this act.

- 14 (7) Benzethidine;
- 15 (8) Betacetylmethadol;
- 16 (9) Betameprodine;
- 17 (10) Betamethadol;
- 18 (11) Betaprodine;
- 19 (12) Clonitazene;
- 20 (13) Dextromoramide;
- 21 (14) Diampromide;
- 22 (15) Diethylthiambutene;
- 23 (16) Difenoxin;
- 24 (17) Dimenoxadol;
- 25 (18) Dimepheptanol;
- 26 (19) Dimethylthiambutene;
- 27 (20) Dioxaphetylbutyrate;
- 28 (21) Dipipanone;
- 29 (22) Ethylmethylthiambutene;
- 30 (23) Etonitazene;
- 31 (24) Etoxidine;
- 32 (25) Fenethylamine;
- 33 (26) Furethidine;
- 34 (27) Hydroxypethidine;
- 35 (28) Ketobemidone;
- 36 (29) Levomoramide;
- 37 (30) Levophenacetylmorphan;
- 38 (31) Morpheridine;
- 39 (32) Noracetylmethadol;
- 40 (33) Norlevorphanol;
- 41 (34) Normethadone;

- 42 (35) Norpipanone;
- 43 (36) Phenadoxone;
- 44 (37) Phenampromide;
- 45 (38) Phenomorphan;
- 46 (39) Phenoperidine;
- 47 (40) Piritramide;
- 48 (41) Proheptazine;
- 49 (42) Properidine;
- 50 (43) Propiram;
- 51 (44) Racemoramide;
- 52 (45) Tilidine;
- 53 (46) Trimeperidine.

54 (c) Unless specifically excepted or unless listed in another
55 schedule, any of the following opium derivatives, its salts,
56 isomers and salts of isomers whenever the existence of such
57 salts, isomers and salts of isomers is possible within the specific
58 chemical designation:

- 59 (1) Acetorphine;
- 60 (2) Acetyldihydrocodeine;
- 61 (3) Benzylmorphine;
- 62 (4) Codeine methylbromide;
- 63 (5) Codeine-N-Oxide;
- 64 (6) Cyprenorphine;
- 65 (7) Desomorphine;
- 66 (8) Dihydromorphine;
- 67 (9) Drotebanol;
- 68 (10) Etorphine (except HCl Salt);
- 69 (11) Heroin;
- 70 (12) Hydromorphinol;

- 71 (13) Methyldesorphine;
- 72 (14) Methyldihydromorphine;
- 73 (15) Morphine methylbromide;
- 74 (16) Morphine methylsulfonate;
- 75 (17) Morphine-N-Oxide;
- 76 (18) Myrophine;
- 77 (19) Nicocodeine;
- 78 (20) Nicomorphine;
- 79 (21) Normorphine;
- 80 (22) Phoclodine;
- 81 (23) Thebacon.

82 (d) Unless specifically excepted or unless listed in another
83 schedule, any material, compound, mixture or preparation,
84 which contains any quantity of the following hallucinogenic
85 substances, or which contains any of the salts, isomers and
86 salts of isomers of any thereof whenever the existence of such
87 salts, isomers and salts of isomers is possible within the specific
88 chemical designation and for the purposes of this subsection
89 only, "isomer" includes the optical position and geometric
90 isomers:

- 91 (1) 2,5-dimethoxyamphetamine; also known by these trade
92 or other names: 2,5-dimethoxy- α -methylphenethyl-amine; 2,5-
93 DMA;
- 94 (2) 3,4-methylenedioxy amphetamine;
- 95 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-
96 dimethoxy- α -methylphenethylamine, or 4-bromo-2,5-DMA;
- 97 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 98 (5) 4-methoxyamphetamine; also known by these trade or
99 other names: 4-methoxy- α -methylphenethylamine; paramen-
100 hoxamphetamine; PMA;
- 101 (6) 3,4,5-trimethoxy amphetamine;
- 102 (7) Bufotenine; known also by these trade and other
103 names: 3-(β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-

- 104 dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-
105 hydroxy-N-dimethyltryptamine; mappine;
- 106 (8) Diethyltryptamine; known also by these trade and
107 other names: N-N-Diethyltryptamine; "DET";
- 108 (9) Dimethyltryptamine; known also by the name "DMT";
- 109 (10) 4-methyl-2,5-dimethoxy amphetamine; known also by
110 these trade and other names: 4-methyl-2,5-dimethoxy-a-
111 methylphenethylamine; "DOM"; "STP";
- 112 (11) Ibogaine; known also by these trade and other names:
113 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-
114 methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole;
115 tabernanthe iboga;
- 116 (12) Lysergic acid diethylamide;
- 117 (13) Marihuana;
- 118 (14) Mescaline;
- 119 (15) Peyote; meaning all parts of the plant presently
120 classified botanically as *Lophophora Williamsii* Lematre,
121 whether growing or not; the seeds thereof; any extract from
122 any part of such plant; and every compound, manufacture,
123 salt, derivative, mixture or preparation of such plant, its seeds
124 or extracts;
- 125 (16) N-ethyl-3-piperidyl benzilate;
- 126 (17) N-methyl-3-piperidyl benzilate;
- 127 (18) Psilocybin;
- 128 (19) Psilocyn;
- 129 (20) Tetrahydrocannabinols; including synthetic equival-
130 ents of the substances contained in the plant or in the resinous
131 extractives of *Cannabis* or synthetic substances, derivatives
132 and their isomers with similar chemical structure and
133 pharmacological activity such as the following:
- 134 Delta 1
- 135 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 136 Delta 6

- 137 Cis or trans tetrahydrocannabinol, and their optical isomers;
 138 Delta 3, 4
- 139 Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and
 140 their optical isomers;
- 141 (21) Thiophene analog of phencyclidine; also known by
 142 these trade or other names: (A) (1-(2-thienyl) cyclohexyl)
 143 piperidine; (B) Thienyl analog of phencyclidine; TPCP;
- 144 (22) Ethylamine analog of phencyclidine. . . Some trade or
 145 other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclo-
 146 lohexyl)ethylamine, N-(1phenylcyclohexyl) ethylamine, cyclo-
 147 hexamine, PCE;
- 148 (23) Pyrrolidine analog of phencyclidine. . . Some trade or
 149 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 150 (24) N-ethylamphetamine;
- 151 (25) Parahexyl.
- 152 (e) Unless specifically excepted or unless listed in another
 153 schedule, any of the following depressants, its salts, isomers
 154 and salts of isomers whenever the existence of such salts,
 155 isomers and salts of isomers is possible within the specific
 156 chemical designation:
- 157 (1) Mecloqualone.
- 158 (2) Methaqualone.

***§60A-2-206. Schedule II.**

- 1 (a) The controlled substances listed in this section are
 2 included in Schedule II.
- 3 (b) Unless specifically excepted or unless listed in another
 4 schedule, any of the following substances whether produced
 5 directly or indirectly by extraction from substances of
 6 vegetable origin, or independently by means of chemical
 7 synthesis, or by a combination of extraction and chemical
 8 synthesis:
- 9 (1) Opium and opiate, and any salt, compound, derivative
 10 or preparation of opium or opiate excluding nalorphine,

*Clerks Note: This section was also amended by H. B. 1082, which passed prior to this act.

11 naloxone and naltrexone and their respective salts, but
12 including the following:

- 13 (A) Raw opium;
- 14 (B) Opium extracts;
- 15 (C) Opium fluid extracts;
- 16 (D) Powdered opium;
- 17 (E) Granulated opium;
- 18 (F) Tincture of opium;
- 19 (G) Codeine;
- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydrocodone;
- 23 (K) Hydromorphone;
- 24 (L) Metopon;
- 25 (M) Morphine;
- 26 (N) Oxycodone;
- 27 (O) Oxymorphone;
- 28 (P) Thebaine;

29 (2) Any salt, compound, isomer derivative or preparation
30 thereof which is chemically equivalent or identical with any
31 of the substances referred to in subdivision (1) of this
32 subsection, except that these substances shall not include the
33 isoquinoline alkaloids of opium;

34 (3) Opium poppy and poppy straw;

35 (4) Coca leaves and any salt, compound, derivative or
36 preparation of coca leaves, and any salt, compound, derivative
37 or preparation thereof which is chemically equivalent or
38 identical with any of these substances, except that the
39 substances shall not include decocainized coca leaves or
40 extractions of coca leaves, which extractions do not contain
41 cocaine or ecgonine;

42 (5) Concentrate of poppy straw (the crude extract of poppy
43 straw in either liquid, solid or powder form which contains
44 the phenanthrine alkaloids of the opium poppy).

45 (c) Unless specifically excepted or unless in another
46 schedule, any of the following opiates, including its isomers,
47 esters, ethers, salts and salts of isomers, esters and ethers
48 whenever the existence of such isomers, esters, ethers and salts
49 is possible within the specific chemical designation:

- 50 (1) Alphaprodine;
- 51 (2) Anileridine;
- 52 (3) Bezitramide;
- 53 (4) Dextrophan — excepted;
- 54 (5) Dihydrocodeine;
- 55 (6) Diphenoxylate;
- 56 (7) Fentanyl;
- 57 (8) Isomethadone;
- 58 (9) Levopropoxyphene — excepted;
- 59 (10) Levomethorphan;
- 60 (11) Levorphanol;
- 61 (12) Metazocine;
- 62 (13) Methadone;
- 63 (14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
64 4-diphenyl butane;
- 65 (15) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-
66 diphenyl-propane-carboxylic acid;
- 67 (16) Pethidine; (meperidine);
- 68 (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
69 phenylpiperidine;
- 70 (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-
71 ethyl-4-phenylpiperidin-4-carboxylate;
- 72 (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperi-
73 dine-4-carboxylic acid;
- 74 (20) Phenazocine;
- 75 (21) Piminodine;
- 76 (22) Racemethorphan;
- 77 (23) Racemorphan;
- 78 (24) Bulk Dextropropoxyphene (nondosage forms);
- 79 (25) Sufentanil.

- 80 (d) Unless specifically excepted or unless listed in another
81 schedule, any material, compound, mixture or preparation
82 which contains any quantity of the following substances having
83 a stimulant effect on the central nervous system:
- 84 (1) Methamphetamine, including its salts, isomers and salts
85 of isomers:
- 86 (2) Amphetamine, its salts, optical isomers and salts of its
87 optical isomers;
- 88 (3) Phenmetrazine and its salts;
- 89 (4) Methylphenidate and its salts.
- 90 (e) Unless specifically excepted or unless listed in another
91 schedule, any material, compound, mixture or preparation
92 which contains any quantity of the following substances having
93 a depressant effect on the central nervous system, including
94 its salts, isomers and salts of isomers whenever the existence
95 of such salts, isomers and salts of isomers is possible within
96 the specific chemical designation:
- 97 (1) Amobarbital;
- 98 (2) Secobarbital;
- 99 (3) Pentobarbital;
- 100 (4) Phencyclidine.
- 101 (f) Immediate precursors. Unless specifically excepted or
102 unless listed in another schedule, any material, compound,
103 mixture or preparation which contains any quantity of the
104 following substances:
- 105 (1) Immediate precursor to amphetamine and meth-
106 amphetamine:
- 107 (i) Phenylacetone
- 108 Some trade or other names: phenyl-2-propanone; P2P;
109 benzylylmethyl ketone; methyl benzyl ketone.
- 110 (2) Immediate precursors to phencyclidine (PCP):
- 111 (i) 1-phenylcyclohexylamine
- 112 (ii) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-212. Schedule V.

1 (a) The controlled substances listed in this section are
2 included in Schedule V.

3 (b) Narcotic drugs. Unless specifically excepted or unless
4 listed in another schedule, any material, compound, mixture
5 or preparation containing any of the following narcotic drugs
6 and their salts, as set forth below:

7 (1) Buprenorphine.

8 (c) Narcotic drugs containing nonnarcotic active medicinal
9 ingredients. Any compound, mixture or preparation contain-
10 ing any of the following limited quantities of narcotic drugs
11 or salts thereof, which shall include one or more nonnarcotic
12 active medicinal ingredients in sufficient proportion to confer
13 upon the compound, mixture or preparation valuable
14 medicinal qualities other than those possessed by the narcotic
15 drug alone:

16 (1) Not more than 200 milligrams of codeine per 100
17 milliliters or per 100 grams and not more than 10 milligrams
18 per dosage unit;

19 (2) Not more than 100 milligrams of dihydrocodeine per 100
20 milliliters or per 100 grams and not more than 5 milligrams
21 per dosage unit;

22 (3) Not more than 100 milligrams of ethylmorphine per 100
23 milliliters or per 100 grams and not more than 5 milligrams
24 per dosage unit;

25 (4) Not more than 2.5 milligrams of diphenoxylate and not
26 less than 25 micrograms of atropine sulfate per dosage unit;

27 (5) Not more than 100 milligrams of opium per 100
28 milliliters or per 100 grams;

29 (6) Not more than 0.5 milligram of difenoxin and not less
30 than 25 micrograms of atropine sulfate per dosage unit.

31 (d) Amyl nitrite, isobutyl nitrite and the other organic
32 nitrites are controlled substances and no product containing
33 these compounds as a significant component shall be
34 possessed, bought or sold other than pursuant to a bona fide
35 prescription, or for industrial or manufacturing purposes.

**ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION
AND DISPENSING OF CONTROLLED SUBSTANCES.****§60A-3-308. Prescriptions.**

1 (a) Except when dispensed directly by a practitioner, other
2 than a pharmacy, to an ultimate user, no controlled substance
3 in Schedule II may be dispensed without the written
4 prescription of a practitioner.

5 (b) In emergency situations, as defined by rule of the said
6 appropriate department, board or agency, Schedule II drugs
7 may be dispensed upon oral prescription of a practitioner,
8 reduced promptly to writing and filed by the pharmacy.
9 Prescription shall be retained in conformity with the
10 requirements of section 306. No prescription for a Schedule
11 II substance may be refilled.

12 (c) Except when dispensed directly by a practitioner, other
13 than a pharmacy, to an ultimate user, a controlled substance
14 included in Schedule III or IV, which is a prescription drug
15 as determined under appropriate state or federal statute, shall
16 not be dispensed without a written or oral prescription of a
17 practitioner. The prescription shall not be filled or refilled
18 more than six months after the date thereof or be refilled more
19 than five times, unless renewed by the practitioner.

20 (d) A controlled substance included in Schedule V shall not
21 be distributed or dispensed other than for a medicinal purpose:
22 *Provided*, That buprenorphine shall be dispensed only by
23 prescription pursuant to subsections (a), (b) and (c) of this
24 section.

CHAPTER 45

(H. B. 1082—By Speaker, Mr. Albright)

[Passed March 4, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four and two hundred six, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to controlled substances; changing certain substances between schedules.

Be it enacted by the Legislature of West Virginia:

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

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

***§60A-2-204. Schedule I.**

1 (a) The controlled substances listed in this section are
2 included in Schedule I.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any of the following opiates, including its isomers,
5 esters, ethers, salts and salts of isomers, esters and ethers
6 whenever the existence of such isomers, esters, ethers and salts
7 is possible within the specific chemical designation:

- 8 (1) Acetylmethadol;
- 9 (2) Allylprodine;
- 10 (3) Alphacetylmethadol;
- 11 (4) Alphameprodine;
- 12 (5) Alphamethadol;
- 13 (6) Alpha-methylfentanyl;
- 14 (7) Benzethidine;
- 15 (8) Betacetylmethadol;
- 16 (9) Betameprodine;
- 17 (10) Betamethadol;
- 18 (11) Betaprodine;
- 19 (12) Clonitazene;
- 20 (13) Dextromoramide;
- 21 (14) Diampromide;
- 22 (15) Diethylthiambutene;
- 23 (16) Difenoxy;
- 24 (17) Dimenoxadol;
- 25 (18) Dimepheptanol;
- 26 (19) Dimethylthiambutene;
- 27 (20) Dioxaphetylbutyrate;
- 28 (21) Dipipanone;
- 29 (22) Ethylmethylthiambutene;
- 30 (23) Etonitazene;
- 31 (24) Etoxadine;

* Clerk's Note: This section was also amended by H. B. 2042, which passed subsequent to this act.

- 32 (25) Fenethylline;
- 33 (26) Furethidine;
- 34 (27) Hydroxypethidine;
- 35 (28) Ketobemidone;
- 36 (29) Levomoramide;
- 37 (30) Levophenacylmorphan;
- 38 (31) Morpheridine;
- 39 (32) Noracymethadol;
- 40 (33) Norlevorphanol;
- 41 (34) Normethadone;
- 42 (35) Norpipanone;
- 43 (36) Phenadoxone;
- 44 (37) Phenampromide;
- 45 (38) Phenomorphan;
- 46 (39) Phenoperidine;
- 47 (40) Piritramide;
- 48 (41) Proheptazine;
- 49 (42) Properidine;
- 50 (43) Propiram;
- 51 (44) Racemoramide;
- 52 (45) Tilidine;
- 53 (46) Trimeperidine.

54 (c) Unless specifically excepted or unless listed in another
55 schedule, any of the following opium derivatives, its salts,
56 isomers and salts of isomers whenever the existence of such
57 salts, isomers and salts of isomers is possible within the specific
58 chemical designation:

- 59 (1) Acetorphine;
- 60 (2) Acetyldihydrocodeine;
- 61 (3) Benzylmorphine;
- 62 (4) Codeine methylbromide;
- 63 (5) Codeine-N-Oxide;
- 64 (6) Cyprenorphine;
- 65 (7) Desomorphine;
- 66 (8) Dihydromorphine;
- 67 (9) Drotebanol;
- 68 (10) Etorphine (except HCl Salt);
- 69 (11) Heroin;
- 70 (12) Hydromorphanol;
- 71 (13) Methyldesorphine;
- 72 (14) Methyldihydromorphine;

- 73 (15) Morphine methylbromide;
- 74 (16) Morphine methylsulfonate;
- 75 (17) Morphine-N-Oxide;
- 76 (18) Myrophine;
- 77 (19) Nicocodeine;
- 78 (20) Nicomorphine;
- 79 (21) Normorphine;
- 80 (22) Phoclodine;
- 81 (23) Thebacon.

82 (d) Unless specifically excepted or unless listed in another
83 schedule, any material, compound, mixture or preparation,
84 which contains any quantity of the following hallucinogenic
85 substances, or which contains any of the salts, isomers and
86 salts of isomers of any thereof whenever the existence of such
87 salts, isomers and salts of isomers is possible within the specific
88 chemical designation and for the purposes of this subsection
89 only, "isomer" includes the optical position and geometric
90 isomers:

- 91 (1) 2,5-dimethoxyamphetamine; also known by these trade
92 or other names: 2,5-dimethoxy- α -methylphenethyl-amine; 2,5-
93 DMA;
- 94 (2) 3,4-methylenedioxy amphetamine;
- 95 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-
96 dimethoxy- α -methylphenethylamine, or 4-bromo-2,5-DMA;
- 97 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 98 (5) 4-methoxyamphetamine; also known by these trade or
99 other names: 4-methoxy- α -methylphenethylamine; paramen-
100 hoxyamphetamine; PMA;
- 101 (6) 3,4,5-trimethoxy amphetamine;
- 102 (7) Bufotenine; known also by these trade and other
103 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
104 dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-
105 hydroxy-N-dimethyltryptamine; mappine;
- 106 (8) Diethyltryptamine; known also by these trade and
107 other names: N-N-Diethyltryptamine; "DET";
- 108 (9) Dimethyltryptamine; known also by the name "DMT";

- 109 (10) 4-methyl-2,5-dimethoxy amphetamine; known also by
110 these trade and other names: 4-methyl-2,5-dimethoxy-a-
111 methylphenethylamine; "DOM"; "STP";
- 112 (11) Ibogaine; known also by these trade and other names:
113 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-
114 methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole;
115 tabernanthe iboga;
- 116 (12) Lysergic acid diethylamide;
- 117 (13) Marihuana;
- 118 (14) Mescaline;
- 119 (15) Peyote; meaning all parts of the plant presently
120 classified botanically as *Lophophora Williamsii* Lematre,
121 whether growing or not; the seeds thereof; any extract from
122 any part of such plant; and every compound, manufacture,
123 salt, derivative, mixture or preparation of such plant, its seeds
124 or extracts;
- 125 (16) N-ethyl-3-piperidyl benzilate;
- 126 (17) N-methyl-3-piperidyl benzilate;
- 127 (18) Psilocybin;
- 128 (19) Psilocyn;
- 129 (20) Tetrahydrocannabinols; including synthetic equival-
130 ents of the substances contained in the plant or in the resinous
131 extractives of *Cannabis* or synthetic substances, derivatives
132 and their isomers with similar chemical structure and
133 pharmacological activity such as the following:
- 134 Delta 1
- 135 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 136 Delta 6
- 137 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 138 Delta 3, 4
- 139 Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and
140 their optical isomers;
- 141 (21) Thiophene analog of phencyclidine; also known by

142 these trade or other names: (A) (1-(2-thienyl) cyclohexyl)
143 piperidine; (B) Thienyl analog of phencyclidine; TPCP;

144 (22) Ethylamine analog of phencyclidine. . . Some trade or
145 other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
146 ethylamine, N-(1-phenylcyclohexyl) ethylamine,
147 cyclohexamine, PCE;

148 (23) Pyrrolidine analog of phencyclidine. . . Some trade or
149 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

150 (24) N-ethylamphetamine;

151 (25) Parahexyl.

152 (e) Unless specifically excepted or unless listed in another
153 schedule, any of the following depressants, its salts, isomers
154 and salts of isomers whenever the existence of such salts,
155 isomers and salts of isomers is possible within the specific
156 chemical designation:

157 (1) Mecloqualone.

158 (2) Methaqualone.

***§60A-2-206. Schedule II.**

1 (a) The controlled substances listed in this section are
2 included in Schedule II.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any of the following substances whether produced
5 directly or indirectly by extraction from substances of
6 vegetable origin, or independently by means of chemical
7 synthesis, or by a combination of extraction and chemical
8 synthesis:

9 (1) Opium and opiate, and any salt, compound, derivative
10 or preparation of opium or opiate excluding nalorphine,
11 naloxone and naltrexone and their respective salts, but
12 including the following:

- 13 (A) Raw opium;
- 14 (B) Opium extracts;
- 15 (C) Opium fluid extracts;
- 16 (D) Powdered opium;
- 17 (E) Granulated opium;
- 18 (F) Tincture of opium;

* Clerk's Note: This section was also amended by H. B. 2042, which passed subsequent to this act.

- 19 (G) Codeine;
- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydrocodone;
- 23 (K) Hydromorphone;
- 24 (L) Metopon;
- 25 (M) Morphine;
- 26 (N) Oxycodone;
- 27 (O) Oxymorphone;
- 28 (P) Thebaine;

29 (2) Any salt, compound, isomer derivative or preparation
30 thereof which is chemically equivalent or identical with any
31 of the substances referred to in subdivision (1) of this
32 subsection, except that these substances shall not include the
33 isoquinoline alkaloids of opium;

34 (3) Opium poppy and poppy straw;

35 (4) Coca leaves and any salt, compound, derivative or
36 preparation of coca leaves, and any salt, compound, derivative
37 or preparation thereof which is chemically equivalent or
38 identical with any of these substances, except that the
39 substances shall not include decocainized coca leaves or
40 extractions of coca leaves, which extractions do not contain
41 cocaine or ecgonine;

42 (5) Concentrate of poppy straw (the crude extract of poppy
43 straw in either liquid, solid or powder form which contains
44 the phenanthrine alkaloids of the opium poppy).

45 (c) Unless specifically excepted or unless in another
46 schedule, any of the following opiates, including its isomers,
47 esters, ethers, salts and salts of isomers, esters and ethers
48 whenever the existence of such isomers, esters, ethers and salts
49 is possible within the specific chemical designation:

- 50 (1) Alphaprodine;
- 51 (2) Anileridine;
- 52 (3) Bezitramide;
- 53 (4) Dextrophan — excepted;
- 54 (5) Dihydrocodeine;

- 55 (6) Diphenoxylate;
56 (7) Fentanyl;
57 (8) Isomethadone;
58 (9) Levopropoxyphene — excepted;
59 (10) Levomethorphan;
60 (11) Levorphanol;
61 (12) Metazocine;
62 (13) Methadone;
63 (14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
64 4-diphenyl butane;
65 (15) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-
66 diphenyl-propane-carboxylic acid;
67 (16) Pethidine; (meperidine);
68 (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
69 phenylpiperidine;
70 (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-
71 ethyl-4-phenylpiper-idin-4-carboxylate;
72 (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperi-
73 dine-4-carboxylic acid;
74 (20) Phenazocine;
75 (21) Piminodine;
76 (22) Racemethorphan;
77 (23) Racemorphan;
78 (24) Bulk Dextropropoxyphene (nondosage forms);
79 (25) Sufentanil.
80 (d) Unless specifically excepted or unless listed in another
81 schedule, any material, compound, mixture or preparation
82 which contains any quantity of the following substances having
83 a stimulant effect on the central nervous system:
84 (1) Methamphetamine, including its salts, isomers and salts
85 of isomers:

- 86 (2) Amphetamine, its salts, optical isomers and salts of its
87 optical isomers;
- 88 (3) Phenmetrazine and its salts;
- 89 (4) Methylphenidate and its salts.
- 90 (e) Unless specifically excepted or unless listed in another
91 schedule, any material, compound, mixture or preparation
92 which contains any quantity of the following substances having
93 a depressant effect on the central nervous system, including
94 its salts, isomers and salts of isomers whenever the existence
95 of such salts, isomers and salts of isomers is possible within
96 the specific chemical designation:
- 97 (1) Amobarbital;
- 98 (2) Secobarbital;
- 99 (3) Pentobarbital;
- 100 (4) Phencyclidine.
- 101 (f) Immediate precursors. Unless specifically excepted or
102 unless listed in another schedule, any material, compound,
103 mixture or preparation which contains any quantity of the
104 following substances:
- 105 (1) Immediate precursor to amphetamine and meth-
106 amphetamine:
- 107 (i) Phenylacetone.
108 Some trade or other names: phenyl-2-propanone; P2P;
109 benzylmethyl ketone; methyl benzyl ketone.
- 110 (2) Immediate precursors to phencyclidine (PCP):
- 111 (i) 1-phenylcyclohexylamine;
- 112 (ii) 1-piperidinocyclohexanecarbonitrile (PCC).

CHAPTER 46

(Com. Sub. for H. B. 1344—By Delegate Faircloth and Delegate Shanholtz)

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

AN ACT to amend and reenact section two, article eight, chapter seven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating generally to the sheriff as keeper of the jail; appointment of jailer; care of jail; authorizing the jailer to inquire as regards and obtain assignments of the right to reimbursement for medical benefits; authorizing county commissions and municipalities to seek reimbursement from prisoners, said prisoners insurers, agencies providing such prisoners medical benefits, and persons liable by law for the costs of medical care received in county jails; authorizing county commissions and municipalities to seek reimbursement for certain clothing from such prisoners; limiting reimbursement for certain injuries or illnesses; limiting reimbursement in cases of undue hardship; authorizing suit after one year; requiring funds to be deposited in the general fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. JAIL AND JAILER.

§7-8-2. Sheriff to be keeper of jail; appointment of jailer; care of jail; authorizing county commissions and municipalities to seek reimbursement of medical care and certain clothing provided by county jails.

1 (a) The sheriff of every county shall be the keeper of the
2 jail thereof, but he may, with the assent of the county
3 commission, appoint a jailer of the said county, and may take
4 from him a bond with security conditioned for the faithful
5 performance of his duties. The jailer may be a deputy sheriff
6 and shall take an oath of office like other officers. He shall
7 keep the jail in a clean, sanitary and healthful condition. When
8 any prisoner is sick the jailer shall see that he has adequate
9 medical and dental attention and nursing, and so far as
10 possible keep him separate from other prisoners. Any such
11 medical and nursing care as the jailer may be required to
12 furnish shall be paid for by the county commission. A failure
13 on the part of the jailer to perform any of the duties herein
14 required with respect to any prisoner in his jail shall be a
15 contempt of any court of record under whose commitment
16 such prisoner is confined, and shall be punished as other

17 contempts of such court. The jailer or his agents are authorized
18 to inquire of every prisoner at any time whether he has medical
19 insurance or is covered by a public medical benefit, to further
20 inquire of the prisoner sufficient information to enable the
21 county commission to seek reimbursement of health care costs
22 as provided by this section and to take an assignment of the
23 right to reimbursement from said third parties.

24 (b) The county commission is hereby authorized to seek
25 reimbursement from every person who receives medical,
26 dental, hospital or eye care or any type of nursing care while
27 incarcerated in the jail at the rate at which the care is generally
28 available in the community for those persons not incarcerated,
29 from their private health care insurers, if any, to the extent
30 of the coverage in effect, from any public agency then
31 providing medical benefits to the person incarcerated to the
32 extent that said public agency would have reimbursed the cost
33 of the care rendered if the person receiving the care was not
34 then incarcerated so long as said reimbursement is not
35 inconsistent with the lawful provisions of the agency's benefit
36 program, or from persons who are liable pursuant to section
37 twenty-two, article three, chapter forty-eight of this code:
38 *Provided*, That no reimbursement for care shall be required
39 when any medical, dental, hospital or eye care or any type of
40 nursing care has been rendered for injuries or illnesses
41 sustained as a result of an act by another prisoner, injuries
42 or illnesses sustained where an act or omission by the jailer
43 or any deputy sheriff has been a contributing factor, or injuries
44 or illnesses resulting from fire or other catastrophic hazard,
45 all without fault on the part of the prisoner: *Provided*,
46 *however*, That no reimbursement for the care received from
47 the person receiving the care or from the person made liable
48 for the care by section twenty-two, article three, chapter forty-
49 eight of this code shall be sought unless that person is able
50 to pay without undue hardship considering the financial
51 resources of the person, the ability to pay of the person and
52 the nature of the burden that reimbursement will impose:
53 *Provided further*, That the determination of undue hardship
54 by the commission does not preclude the commission from
55 subsequently ordering reimbursement should the person's
56 financial circumstances change: *And provided further*, That
57 whenever the county commission seeks reimbursement from a

58 municipality for medical, dental, hospital, eye or nursing care
 59 authorized by this subsection then the municipality shall also
 60 be hereby authorized to seek reimbursement as provided for
 61 in this subsection for counties under the same conditions.

62 (c) The county commission is hereby authorized to seek
 63 reimbursement from every prisoner for the costs of any shoes
 64 and clothing furnished by the jailer and retained by the
 65 prisoner after his release from incarceration: *Provided*, That
 66 no reimbursement for the goods authorized by this subsection
 67 shall be sought unless the former prisoner is able to pay
 68 without undue hardship, considering the financial resources of
 69 the person, said persons ability to pay and the nature of the
 70 burden that reimbursement will impose: *Provided, however*,
 71 That the determination of undue hardship by the county
 72 commission does not preclude the county commission from
 73 subsequently ordering repayment should the financial
 74 circumstances of such person change: *Provided further*, That
 75 whenever the county commission seeks reimbursement from a
 76 municipality for the goods then the municipality shall also be
 77 hereby authorized to seek reimbursement for the goods
 78 authorized by this subsection as provided for in this subsection
 79 for counties under the same conditions.

80 (d) Subject to any statutes of limitation, if reimbursement
 81 pursuant to this section was sought at or within a reasonable
 82 time after the release from incarceration of the person
 83 receiving the goods or care and if the reimbursement
 84 authorized by this section has not been received within one
 85 year the county commission or municipality, as the case may
 86 be, may prosecute a civil action against any liable person and
 87 against any insurer or agency the assignment of whose
 88 obligation to pay for care was obtained by the jailer. Any
 89 funds paid to or collected by the county commission or
 90 municipality pursuant to the provisions of this section shall
 91 be deposited to its general fund.

CHAPTER 47

(Com. Sub. for H. B. 1523—By Delegate Ashley)

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

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

thirty-one, as amended, relating to the feeding and care of prisoners in the county jails and the powers and duties of the county commissions relating thereto; allowing county commissions to provide for the feeding of prisoners by contracting with county, state or municipal governmental agencies; allowing county commissions to contract for such purpose with private vendors upon competitive bidding; procedure for solicitation of such bidding; purchase of certain supplies for jails; requiring maintenance of certain records and inspection thereof; requiring that all entities providing food services to prisoners be subject to health department inspection; and source of funds for feeding and care of prisoners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. JAIL AND JAILER.

§7-8-2a. Feeding and care of prisoners; purchase of food and supplies; contract for feeding of prisoners; records; inspection by health officer; payment of costs.

- 1 (a) On and after the first day of January, one thousand nine
2 hundred forty-nine, the county commission of each county
3 shall provide wholesome and sufficient food and clean and
4 sufficient bedding for all prisoners confined in the county jail,
5 and shall furnish the soaps, disinfectants and other supplies
6 needed by the jailer in the performance of his duties.
- 7 (b) The county commission may require the jailer to act as
8 its agent for the purpose of purchasing, preparing and serving
9 food for prisoners. If, however, the jailer is not named as such
10 agent, he may be required to make available to the county
11 commission for use in the preparation and serving of food for
12 prisoners, the services of prisoners, to the number requested
13 by the county commission. The county commission may
14 employ a cook and such other employees as may be necessary
15 in the performance of duties required of it by this article.
- 16 (c) The county commission may provide for the feeding of
17 prisoners on a contract basis with any other county, state or
18 municipal governmental agency which at the time of entering

19 into said contract is required or authorized to provide food
20 services for other purposes.

21 (d) The county commission may provide for the feeding of
22 prisoners on a contract basis with any private provider upon
23 competitive bidding procedures. Solicitation of competitive
24 bids shall be accomplished by publication of a Class II legal
25 advertisement in compliance with article three, chapter fifty-
26 nine of this code. The publication area for such legal
27 advertisement shall be the county in which the affected jail is
28 situate.

29 (e) All purchases of food, bedding and other supplies shall
30 whenever practicable be made at wholesale. Invoices or
31 itemized statements of account from each vendor of food,
32 bedding and other supplies shall be obtained, and payment of
33 such statements or invoices may not be authorized by the
34 county commission unless and until the county commission
35 has ascertained that the merchandise has been received and
36 that the terms of the purchase have been complied with on
37 the part of the vendor.

38 (f) The county commission shall keep or cause to be kept
39 a daily record showing the total number of prisoners confined
40 in the jail of the county, the number of prisoners admitted,
41 the number released and the time of each such admittance and
42 of each such release. Such record shall show such information
43 separately as to the prisoners of the county, of each
44 municipality and of the United States. The county commission
45 shall also keep or cause to be kept such other accounts and
46 records as will enable it to show the per capita daily cost of
47 the feeding and care of prisoners in each calendar month.

48 (g) The county commission shall require to be kept a daily
49 record of food served prisoners and, in all counties having a
50 county health officer, said health officer shall, at least once
51 a month, inspect such lists and make such recommendations
52 and suggestions as he may deem proper regarding daily diets
53 and foods regardless of how the feeding services are provided.

54 (h) The sheriff, the jailer or any entity contracting with the
55 county commission to provide food services for prisoners shall
56 be subject to inspection and regulation by the department of
57 health in the same manner as any commercial food service.

58 (i) All actual costs incurred by the county commission for
59 salaries, for the purchase of food, bedding and other supplies
60 or for services shall be paid out of the same funds as payments
61 to sheriffs of fees for the feeding and care of prisoners were
62 made immediately prior to the effective date of this section.
63 In counties having thirty thousand population or less, the
64 sheriff, or the jailer duly appointed as provided in section two,
65 article eight, chapter seven of this code, shall, if so directed
66 by the county commission, furnish each prisoner with
67 wholesome and sufficient food.

CHAPTER 48

(H. B. 1237—By Delegate Wooton and Delegate Hamilton)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seventeen-c, all relating to civil service for deputy sheriffs; rules and regulations issued by each county civil service commission and notice thereof; increasing the probationary period of deputy sheriffs from six months to twelve months; expiration of such probationary period; and providing an incremental salary increase for deputy sheriffs with one year or more of service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

- §7-14-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.
- §7-14-17c. Salary increment.

§7-14-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.

1 The civil service commission in each such county shall make
2 rules and regulations providing for both competitive and
3 medical examinations for the position of deputy sheriff in each
4 such county subject to the provisions of this article, for
5 appointments to the position of deputy sheriff and for
6 promotions and for such other matters as are necessary to
7 carry out the purposes of this article. Any such commission
8 has the power and authority to require by rules and regulations
9 a physical fitness examination as part of its competitive
10 examination or as a part of its medical examination. Due
11 notice of the contents of all rules and regulations and of any
12 modifications thereof shall be given, by mail, in due season
13 to the appointing officer; and said rules and regulations and
14 any modifications thereof shall also be printed for public
15 distribution. All original appointments on and after the
16 effective date of this article to any position of deputy sheriff
17 in any county subject to the provisions of this article shall be
18 for a probationary period of twelve months: *Provided*, That
19 at any time during the probationary period the probationer
20 may be discharged for just cause, in the manner provided in
21 section seventeen of this article. If, at the close of this
22 probationary period, the conduct or capacity of the proba-
23 tioner has not been satisfactory to the appointing sheriff, the
24 probationer shall be notified, in writing, that he will not
25 receive absolute appointment, whereupon his employment
26 shall cease; otherwise, his retention in the position of deputy
27 sheriff beyond the probationary term shall be equivalent to his
28 absolute appointment.

§7-14-17c. Salary increment.

1 Beginning on and after the effective date of this section,
2 every deputy sheriff with one year or more of service shall
3 receive an annual salary increase in the sum of five dollars per
4 month for each year of service up to a maximum of sixteen
5 years of service. Any incremental salary increase in effect prior
6 to the effective date of this section that is more favorable to
7 the deputy sheriffs entitled to such increase shall remain in full
8 force and effect to the exclusion of the provisions of this
9 section.

CHAPTER 49

(H. B. 1469—By Delegate Woolsey and Delegate Wooton)

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

AN ACT to amend and reenact section eight, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to civil service for correctional officers; receipt of application; removing certain age requirements and exceptions thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-8. Form of application; age requirements; exceptions.

1 The civil service commission in each such county shall
2 require persons applying for admission to any competitive
3 examination provided for under this article or under the rules
4 and regulations of the commission to file in its office, within
5 a reasonable time prior to the proposed competitive exami-
6 nation a formal application in which the applicant shall state
7 under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place and date
10 of his birth;

11 (3) His health and his physical capacity for the position of
12 correctional officer;

13 (4) His business, employments and residences for at least
14 three previous years; and

15 (5) Such other information as may reasonably be required,
16 relative to the applicant's qualifications and fitness for the
17 position of correctional officer.

18 Blank forms for such applications shall be furnished by the
19 commission, without charge, to all persons requesting the

20 same. The commission may require, in connection with the
21 application, such certificates of citizens, physicians or others,
22 having pertinent knowledge concerning the applicant, as the
23 good of the service may require.

24 No application for original appointment shall be received on
25 and after the effective date of this article, if the person
26 applying is less than eighteen years of age at the date of his
27 application: *Provided*, That in the event any applicant
28 formerly served as a correctional officer for a period of more
29 than one year in the county to which he makes application,
30 and resigned as a correctional officer at a time when there were
31 no charges of misconduct or other misfeasance pending against
32 him, within a period of two years preceding the date of his
33 application, and at the time of his application resides within
34 the county in which he seeks appointment by reinstatement,
35 then such applicant shall be eligible for appointment by
36 reinstatement in the discretion of the civil service commission
37 provided he is not sixty-five years of age or over, and such
38 applicant, providing his former term of service as a correc-
39 tional officer so justifies, may be reappointed by reinstatement
40 without a competitive examination, but such applicant shall
41 undergo a medical examination; and if such applicant shall be
42 so appointed by reinstatement as aforesaid, he shall be the
43 lowest in rank in the jail next above the probationers of the
44 office.

CHAPTER 50

(Com. Sub. for H. B. 1773—By Delegate Ryan)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and increasing certain fees to be charged by the sheriff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

1	A sheriff shall charge and collect the following fees:	
2	For serving on any person a declaration in	
3	ejectment, or an order, notice, summons or other	
4	process where the body is not taken, except a	
5	subpoena served on a witness, and making	
6	return thereof.....	\$5.00
7	For summoning a witness	5.00
8	For serving on any person an attachment or other	
9	process under which the body is taken.....	5.00
10	For levying an attachment on real estate and	
11	making the return	5.00
12	For making any other levy.....	5.00
13	For conveying a prisoner to or from jail,	
14	for each mile of necessary travel either	
15	in going or returning.....	.15
16	For taking any bond.....	1.00
17	When a jury is sworn in court, for summoning	
18	and impaneling such jury	1.00
19	For serving a writ of possession	5.00
20	For issuing receipt to purchaser at	
21	delinquent tax sale	1.00

22 The county commission, giving due regard to the cost
 23 thereof, may from time to time prescribe the amount which
 24 the sheriff may charge for keeping any property or in removing
 25 any property. When, after distraining or levying, he neither
 26 sells nor receives payment, and either takes no bond or takes
 27 one which is not forfeited, he shall, if guilty of no default, have
 28 (in addition to the one dollar for a bond, if one was taken)
 29 a fee of three dollars, unless this be more than half of what
 30 his commission would have amounted to if he had received
 31 payment; in which case he shall (whether a bond was taken
 32 or not) have a fee of one dollar at the least, and so much more
 33 as is necessary to make the said half of his commission. The

34 commission to be included in a forthcoming bond (when one
35 is taken) shall be five percent on the first three hundred dollars
36 of the money for which the distress or levy is made, and two
37 percent on the residue of such money; but such commission
38 shall not be received, in whole or in part, except as
39 hereinbefore provided, unless the bond be forfeited, or the
40 amount (including the commission) be paid to the plaintiff. An
41 officer receiving payment in money, or selling property, shall
42 have the like commission of five percent on the first three
43 hundred dollars of the money paid or proceeds from such sale,
44 and two percent on the residue, except that when such
45 payment or sale is on an execution on a forthcoming bond,
46 his commission shall be only half what it would be if the
47 execution were not on such bond.

CHAPTER 51

(H. B. 1197—By Delegate Shaffer and Delegate Conley)

[Passed March 4, 1985; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1z. Twenty-sixth circuit.

1 For the county of Lewis, on the first Monday in March,
2 the second Monday in July and the first Monday in
3 November. For the County of Upshur, on the second Monday
4 in January, May and September.

CHAPTER 52

(H. B. 2125—By Delegate Casey and Delegate Carmichael)

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

AN ACT to amend and reenact article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims compensation; changing the title of the act, the name of the fund and references to certain personnel; making new findings and providing for continuation of the program; modifying the definitions of claimant, collateral source, dependent, allowable expense, noneconomic detriment and victim, and defining contributory misconduct; providing that commissioners serve under the supervision of judges of the court; clarifying that expenses necessary in obtaining reports may be paid from the fund; modifying the application requirements; removing the limit to state officers and employees as those persons subject to penalty for knowingly and willfully participating or assisting in preparation of false or fraudulent applications; requiring the investigator to apply to court for leave to discontinue investigation when he believes it will interfere with or jeopardize prosecution of a case and requiring court to grant such leave when satisfied that an investigation will interfere with or jeopardize the investigation or prosecution of a case; providing for compensation for emotional distress and pain and suffering in certain cases and limiting the amount of such compensation; increasing the maximum award payable in cases of death to the victim and providing for compensation to certain persons for sorrow, mental anguish and solace; providing for the attorney general to represent the interests of the state in hearings on claims; clarifying authority of investigator to petition court for order to take depositions; providing for payment from the fund of expenses of attorneys; eliminating the requirement for reporting the average amount of claims made; and providing for retroactive effect of amendments.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter fourteen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

- §14-2A-1. Short title.
- §14-2A-2. Legislative findings; purpose and intent.
- §14-2A-3. Definitions.
- §14-2A-4. Creation of crime victims compensation fund.
- §14-2A-5. Jurisdiction.
- §14-2A-6. Appointment and compensation of commissioners and judges serving under this article.
- §14-2A-7. Qualifications of commissioners.
- §14-2A-8. Commissioners' oath of office.
- §14-2A-9. Claim investigators; compensation and expenses.
- §14-2A-10. Filing of application for compensation award; contents.
- §14-2A-11. Procedure for filing of application.
- §14-2A-12. Investigation and recommendations by claim investigators.
- §14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by judge or commissioner.
- §14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress, mental anguish, etc.
- §14-2A-15. Hearings.
- §14-2A-16. Evidence.
- §14-2A-17. Contempt sanction not available.
- §14-2A-18. Effect of prosecution or conviction of offender.
- §14-2A-19. Attorney and witness fees.
- §14-2A-20. Procedure for certification and payment of claims.
- §14-2A-21. Annual report of court of claims.
- §14-2A-22. State's subrogation to claimant's rights.
- §14-2A-23. Subrogation rights of collateral source.
- §14-2A-24. Award not subject to execution or attachment; exceptions.
- §14-2A-25. Publicity.
- §14-2A-26. Rules and regulations.
- §14-2A-27. Application of article.
- §14-2A-28. Retroactive effect of amendments.

§14-2A-1. Short title.

1 The act heretofore created by this article and known and
2 cited as the "West Virginia Crime Reparation Act of 1981"
3 shall henceforth be known and cited as the "West Virginia
4 Crime Victims Compensation Act." Any and all funds existing
5 under the West Virginia crime reparation act of 1981 shall
6 continue for the purposes set forth in this article, notwith-
7 standing the amendments to the name of the act or a
8 redesignation of the special revenue fund in the state treasury
9 as herein provided.

§14-2A-2. Legislative findings; purpose and intent.

1 The Legislature finds and declares that a primary purpose
2 of government is to provide for the safety of citizens and the
3 inviolability of their property. To the extent that innocent
4 citizens are victims of crime, particularly violent crime, and
5 are without adequate redress for injury to their person or
6 property, this primary purpose of government is defeated. The
7 people of West Virginia are demonstrably peaceful, and, in
8 comparison to the citizens of other states, suffer a lower crime
9 rate. In establishing the West Virginia crime reparation act of
10 1981, the Legislature stated its findings that the provision of
11 governmental services to prevent crime is not wholly effective
12 and expressed its intent to establish a system of compensation
13 for the victims of crime which would provide a partial remedy
14 for the failure of the state to fully achieve this primary purpose
15 of government.

16 The Legislature now finds that the system of compensation
17 established by the act as an experimental effort by the
18 Legislature of this state on behalf of its people, after having
19 been reviewed and perfected in its initial stages, should be
20 continued and retained in the legislative branch of government
21 as an expression of a moral obligation of the state to provide
22 partial compensation to the innocent victims of crime for
23 injury suffered to their person or property.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons, whether
3 residents or nonresidents of this state, who claim an award of
4 compensation under this article:

5 (1) A victim;

6 (2) A dependent, spouse or minor child of a deceased
7 victim; or in the event that the deceased victim is a minor,
8 the parents, legal guardians and siblings of the victim;

9 (3) A third person other than a collateral source who legally
10 assumes or voluntarily pays the obligations of a victim, or of
11 a dependent of a victim, which obligations are incurred as a
12 result of the criminally injurious conduct that is the subject
13 of the claim;

14 (4) A person who is authorized to act on behalf of a victim,

15 dependent or a third person who is not a collateral source.

16 (b) "Collateral source" means a source of benefits or
17 advantages for economic loss otherwise compensable that the
18 victim or claimant has received, or that is readily available to
19 him, from any of the following sources:

20 (1) The offender, except any restitution received from the
21 offender pursuant to an order by a court of law sentencing
22 the offender or placing him on probation following a
23 conviction in a criminal case arising from the criminally
24 injurious act for which a claim for compensation is made;

25 (2) The government of the United States or any of its
26 agencies, a state or any of its political subdivisions, or an
27 instrumentality of two or more states;

28 (3) Social security, medicare and medicaid;

29 (4) State-required, temporary, nonoccupational disability
30 insurance;

31 (5) Workers' compensation;

32 (6) Wage continuation programs of any employer;

33 (7) Proceeds of a contract of insurance payable to the victim
34 or claimant for loss that was sustained because of the
35 criminally injurious conduct;

36 (8) A contract providing prepaid hospital and other health
37 care services or benefits for disability;

38 (9) That portion of the proceeds of all contracts of
39 insurance payable to the claimant on account of the death of
40 the victim which exceeds twenty-five thousand dollars.

41 (c) "Criminally injurious conduct" means conduct that
42 occurs or is attempted in this state which by its nature poses
43 a substantial threat of personal injury or death, and is
44 punishable by fine or imprisonment or death, or would be so
45 punishable but for the fact that the person engaging in the
46 conduct lacked capacity to commit the crime under the laws
47 of this state. Criminally injurious conduct does not include
48 conduct arising out of the ownership, maintenance or use of
49 a motor vehicle, except when the person engaging in the
50 conduct intended to cause personal injury or death, or except
51 when the person engaging in the conduct committed negligent

52 homicide, driving under the influence of alcohol, controlled
53 substances or drugs, or reckless driving.

54 (d) "Dependent" means an individual who received over half
55 of his support from the victim. For the purpose of determining
56 whether an individual received over half of his support from
57 the victim, there shall be taken into account the amount of
58 support received from the victim as compared to the entire
59 amount of support which the individual received from all
60 sources, including support which the individual himself
61 supplied. The term "support" includes, but is not limited to,
62 food, shelter, clothing, medical and dental care and education.
63 The term "dependent" includes a child of the victim born after
64 his death.

65 (e) "Economic loss" means economic detriment consisting
66 only of allowable expense, work loss and replacement services
67 loss. If criminally injurious conduct causes death, economic
68 loss includes a dependent's economic loss and a dependent's
69 replacement services loss. Noneconomic detriment is not
70 economic loss; however, economic loss may be caused by pain
71 and suffering or physical impairment.

72 (f) "Allowable expense" means reasonable charges incurred
73 or to be incurred for reasonably needed products, services and
74 accommodations, including those for medical care, prosthetic
75 devices, eye glasses, dentures, rehabilitation and other remedial
76 treatment and care.

77 Allowable expense includes a total charge not in excess of
78 one thousand two hundred fifty dollars for expenses in any
79 way related to funeral, cremation and burial. It does not
80 include that portion of a charge for a room in a hospital,
81 clinic, convalescent home, nursing home or any other
82 institution engaged in providing nursing care and related
83 services in excess of a reasonable and customary charge for
84 semiprivate accommodations, unless accommodations other
85 than semiprivate accommodations are medically required.

86 (g) "Work loss" means loss of income from work that the
87 injured person would have performed if he had not been
88 injured and expenses reasonably incurred or to be incurred by
89 him to obtain services in lieu of those he would have
90 performed for income, reduced by any income from substitute
91 work actually performed or to be performed by him, or by

92 income he would have earned in available appropriate
93 substitute work that he was capable of performing but
94 unreasonably failed to undertake.

95 (h) "Replacement services loss" means expenses reasonably
96 incurred or to be incurred in obtaining ordinary and necessary
97 services in lieu of those the injured person would have
98 performed, not for income but for the benefit of himself or
99 his family, if he had not been injured.

100 (i) "Dependent's economic loss" means loss after a victim's
101 death of contributions of things of economic value to his
102 dependents, not including services they would have received
103 from the victim if he had not suffered the fatal injury, less
104 expenses of the dependents avoided by reason of the victim's
105 death.

106 (j) "Dependent's replacement service loss" means loss
107 reasonably incurred or to be incurred by dependents after a
108 victim's death in obtaining ordinary and necessary services in
109 lieu of those the victim would have performed for their benefit
110 if he had not suffered the fatal injury, less expenses of the
111 dependents avoided by reason of the victim's death and not
112 subtracted in calculating dependent's economic loss.

113 (k) "Noneconomic detriment" means sorrow, mental
114 anguish and solace which may include society, companionship,
115 comfort, guidance, kindly offices and advice.

116 (l) "Victim" means a person who suffers personal injury or
117 death as a result of any one of the following: (1) Criminally
118 injurious conduct; (2) the good faith effort of the person to
119 prevent criminally injurious conduct; or (3) the good faith
120 effort of the person to apprehend a person that the injured
121 person has observed engaging in criminally injurious conduct,
122 or who such injured person has reasonable cause to believe
123 has engaged in such criminally injurious conduct immediately
124 prior to the attempted apprehension.

125 (m) "Contributory misconduct" means any conduct of the
126 claimant, or of the victim through whom the claimant claims
127 an award, that is unlawful or intentionally tortious and that,
128 without regard to the conduct's proximity in time or space to
129 the criminally injurious conduct, has a causal relationship to
130 the criminally injurious conduct that is the basis of the claim.

§14-2A-4. Creation of crime victims compensation fund.

1 Every person within the state who is convicted of or pleads
2 guilty to a misdemeanor or felony offense, other than a traffic
3 offense that is not a moving violation, shall pay the sum of
4 three dollars as costs in the case, in addition to any other court
5 costs that the court is required by law to impose upon such
6 convicted person. The clerk of the circuit court, magistrate
7 court or municipal court wherein such additional costs are
8 imposed shall, on or before the last day of each month,
9 transmit all such costs received under this article to the state
10 treasurer for deposit in the state treasury to the credit of a
11 special revenue fund to be known as the "Crime Victims
12 Compensation Fund," which is hereby created. All moneys
13 heretofore collected and received under the prior enactment or
14 reenactments of this article and deposited or to be deposited
15 in the "Crime Victims Reparation Fund" are hereby trans-
16 ferred to the crime victims compensation fund, and the
17 treasurer shall so deposit such moneys in the state treasury.
18 All moneys collected and received under this article and paid
19 into the state treasury and credited to the crime victims
20 compensation fund in the manner prescribed in section two,
21 article two, chapter twelve of this code, shall be kept and
22 maintained for the specific purposes of this article, and shall
23 not be treated by the auditor and treasurer as part of the
24 general revenue of the state.

25 Moneys in the crime victims compensation fund shall be
26 available for the payment of the costs of administration of this
27 article in accordance with the budget of the court approved
28 therefor.

§14-2A-5. Jurisdiction.

1 Any judge of the court of claims individually, or the court
2 of claims en banc, or any court of claims commissioner
3 appointed pursuant to section six of this article, shall have
4 jurisdiction to approve awards of compensation arising from
5 criminally injurious conduct, in accordance with the provisions
6 of this article, if satisfied by a preponderance of the evidence
7 that the requirements for an award of compensation have been
8 met.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

1 (a) The court of claims, with the approval of the president
2 of the Senate and the speaker of the House of Delegates, may
3 appoint court of claims commissioners to hear claims for
4 awards of compensation and to approve awards of compen-
5 sation pursuant to the provisions of this article. Each
6 commissioner shall serve at the pleasure of the court of claims
7 and under the supervision of the judges of the court of claims.

8 (b) The court of claims shall fix the compensation of the
9 court of claims commissioners in an amount not exceeding the
10 compensation for judges of the court of claims. Compensation
11 of judges and commissioners for services performed under this
12 article, and actual expenses incurred in the performance of
13 duties as judges and commissioners under this article shall be
14 paid out of the crime victims compensation fund.

15 (c) The limitation period of one hundred days in section
16 eight, article two of this chapter pertaining to time served by
17 the judges of the court of claims shall not apply to the
18 provisions of this article.

§14-2A-7. Qualifications of commissioners.

1 Each commissioner appointed by the court of claims shall
2 be an attorney-at-law, licensed to practice in this state, and
3 shall have been so licensed to practice law for a period of not
4 less than three years prior to his appointment as commissioner.
5 A commissioner shall not be an officer or an employee of any
6 branch of state government, except in his capacity as
7 commissioner of the court. A commissioner shall not hear or
8 participate in the consideration of any claim in which he is
9 interested personally, either directly or indirectly. When
10 practicable, the commissioners should be selected from
11 different congressional districts and be geographically located,
12 with reference to their counties of residence, to facilitate the
13 appearance of claimants and witnesses at hearings held
14 pursuant to this article.

§14-2A-8. Commissioners' oath of office.

1 Each commissioner shall, before entering upon the duties of
2 his office, take and subscribe to the oath prescribed by section
3 five, article four of the constitution of the state. The oath shall
4 be filed with the clerk.

§14-2A-9. Claim investigators; compensation and expenses.

1 The court of claims is hereby authorized to hire not more
2 than two claim investigators to be employed within the office
3 of the clerk of the court of claims, who shall carry out the
4 functions and duties set forth in section twelve of this article.
5 Claim investigators shall serve at the pleasure of the court of
6 claims and under the administrative supervision of the clerk
7 of the court of claims. The compensation of claim investigators
8 shall be fixed by the court, and such compensation, together
9 with travel, clerical and other expenses of the clerk of the court
10 of claims relating to a claim investigator carrying out his duties
11 under this article, including the cost of obtaining reports
12 required by the investigator in investigating a claim, shall be
13 payable from the crime victims compensation fund as
14 appropriated for such purpose by the Legislature.

§14-2A-10. Filing of application for compensation award; contents.

1 (a) A claim for an award of compensation shall be
2 commenced by filing an application for an award of
3 compensation with the clerk of the court of claims. The
4 application shall be in a form prescribed by the clerk of the
5 court of claims and shall contain the information specified in
6 subdivisions (1) through (6) of this subsection and, to the
7 extent possible, the information in subdivisions (7) through
8 (10) of this subsection:

9 (1) The name and address of the victim of the criminally
10 injurious conduct, the name and address of the claimant and
11 the relationship of the claimant to the victim;

12 (2) The nature of the criminally injurious conduct that is
13 the basis for the claim and the date on which the conduct
14 occurred;

15 (3) The law-enforcement agency or officer to whom the
16 criminally injurious conduct was reported and the date on
17 which it was reported;

18 (4) Whether the claimant is the spouse, parent, child,
19 brother or sister of the offender, or is similarly related to an
20 accomplice of the offender who committed the criminally
21 injurious conduct;

22 (5) A release authorizing the court of claims, the court of
23 claims commissioners and the claim investigator to obtain any
24 report, document or information that relates to the determi-
25 nation of the claim for an award of compensation;

26 (6) If the victim is deceased, the name and address of each
27 dependent of the victim and the extent to which each is
28 dependent upon the victim for care and support;

29 (7) The nature and extent of the injuries that the victim
30 sustained from the criminally injurious conduct for which
31 compensation is sought, the name and address of any person
32 who gave medical treatment to the victim for the injuries, the
33 name and address of any hospital or similar institution where
34 the victim received medical treatment for the injuries, and
35 whether the victim died as a result of the injuries;

36 (8) The total amount of the economic loss that the victim,
37 a dependent or the claimant sustained or will sustain as a result
38 of the criminally injurious conduct, without regard to the
39 financial limitation set forth in subsection (g), section fourteen
40 of this article;

41 (9) The amount of benefits or advantages that the victim,
42 a dependent or other claimant has received or is entitled to
43 receive from any collateral source for economic loss that
44 resulted from the criminally injurious conduct, and the name
45 of each collateral source;

46 (10) Any additional relevant information that the court of
47 claims may require. The court of claims may require the
48 claimant to submit, with the application, materials to
49 substantiate the facts that are stated in the application.

50 (b) All applications for an award of compensation shall be
51 filed within two years after the occurrence of the criminally
52 injurious conduct that is the basis of the application. Any
53 application so filed which contains the information specified
54 in subdivisions (1) through (6), subsection (a) of this section
55 may not be excluded from consideration on the basis of
56 incomplete information specified in subdivisions (7) through
57 (10) of said subsection if such information is completed after
58 reasonable assistance in the completion thereof is provided
59 under procedures established by the court of claims.

60 (c) A person who knowingly and willfully presents or
61 attempts to present a false or fraudulent application, or who
62 knowingly and willfully participates, or assists in the
63 preparation or presentation of a false or fraudulent applica-

64 tion, shall be guilty of a misdemeanor. A person convicted,
65 in a court of competent jurisdiction, of a violation of this
66 section shall be fined not more than one thousand dollars or
67 imprisoned for not more than one year, or both, in the
68 discretion of such court. If the convicted person is a state
69 officer or employee, he shall, in addition, forfeit his office or
70 position of employment, as the case may be.

§14-2A-11. Procedure for filing of application.

1 The clerk of the court of claims shall establish a procedure
2 for the filing, recording and processing of applications for an
3 award of compensation.

§14-2A-12. Investigation and recommendations by claim investigator.

1 (a) The clerk of the court of claims shall transmit a copy
2 of the application to the claim investigator within seven days
3 after the filing of the application.

4 (b) The claim investigator, upon receipt of an application
5 for an award of compensation from the clerk of the court of
6 claims, shall investigate the claim. After completing the
7 investigation, the claim investigator shall make a written
8 finding of fact and recommendation concerning an award of
9 compensation. He shall file with the clerk the finding of fact
10 and recommendation and all information or documents that
11 he used in his investigation: *Provided*, That the claim
12 investigator shall not file information or documents which
13 have been the subject of a protective order entered under the
14 provisions of subsection (c) of this section.

15 (c) The claim investigator, while investigating the claim,
16 may require the claimant to supplement the application for an
17 award of compensation with any further information or
18 documentary materials, including any medical report readily
19 available, which may lead to any relevant facts aiding in the
20 determination of whether, and the extent to which, a claimant
21 qualifies for an award of compensation.

22 The claim investigator, while investigating the claim, may
23 also require law-enforcement officers and prosecuting
24 attorneys employed by the state or any political subdivision
25 thereof, to provide him with reports, information, witness
26 statements or other data gathered in the investigation of the

27 criminally injurious conduct that is the basis of any claim to
28 enable him to determine whether, and the extent to which, a
29 claimant qualifies for an award of compensation. The
30 prosecuting attorney and any officer or employee of the
31 prosecuting attorney or of the law-enforcement agency shall
32 be immune from any civil liability that might otherwise be
33 incurred as the result of providing such reports, information,
34 witness statements or other data relating to the criminally
35 injurious conduct to the claim investigator.

36 Upon motion of any party, court or agency from whom such
37 reports, information, witness statements or other data is
38 sought, and for good cause shown, the court may make any
39 order which justice requires to protect a witness or other
40 person, including, but not limited to, the following: (1) That
41 the reports, information, witness statements or other data not
42 be made available; (2) that the reports, information, witness
43 statements or other data may be made available only on
44 specified terms and conditions, including a designation of time
45 and place; (3) that the reports, information, witness statements
46 or other data be made available only by a different method
47 than that selected by the claim investigator; (4) that certain
48 matters not be inquired into, or that the scope of the claim
49 investigator's request be limited to certain matters; (5) that the
50 reports, information, witness statements or other data be
51 examined only by certain persons designated by the court; (6)
52 that the reports, information, witness statements or other data,
53 after being sealed, be opened only by order of the court; (7)
54 that confidential information or the identity of confidential
55 witnesses or informers not be disclosed, or disclosed only in
56 a designated manner.

57 However, in any case wherein the claim investigator has
58 reason to believe that his investigation may interfere with or
59 jeopardize the investigation of a crime by law-enforcement
60 officers, or the prosecution of a case by prosecuting attorneys,
61 he shall apply to the court of claims, or a judge thereof, for
62 an order granting leave to discontinue his investigation for a
63 reasonable time in order to avoid such interference or
64 jeopardization. When it appears to the satisfaction of the
65 court, or judge, upon application by the claim investigator or
66 in its own discretion, that the investigation of a case by the
67 claim investigator will interfere with or jeopardize the

68 investigation or prosecution of a crime, the court, or judge,
69 shall issue an order granting the claim investigator leave to
70 discontinue his investigation for such time as the court, or
71 judge, deems reasonable to avoid such interference or
72 jeopardization.

73 (d) The finding of fact that is issued by the claim
74 investigator pursuant to subsection (b) of this section shall
75 contain the following:

76 (1) Whether the criminally injurious conduct that is the
77 basis for the application did occur, the date on which the
78 conduct occurred and the exact nature of the conduct;

79 (2) If the criminally injurious conduct was reported to a
80 law-enforcement officer or agency, the date on which the
81 conduct was reported and the name of the person who
82 reported the conduct; or, the reasons why the conduct was not
83 reported to a law-enforcement officer or agency; or, the
84 reasons why the conduct was not reported to a law-
85 enforcement officer or agency within seventy-two hours after
86 the conduct occurred;

87 (3) The exact nature of the injuries that the victim sustained
88 as a result of the criminally injurious conduct;

89 (4) If the claim investigator is recommending that an award
90 be made, a specific itemization of the economic loss that was
91 sustained by the victim, the claimant or a dependent as a result
92 of the criminally injurious conduct;

93 (5) If the claim investigator is recommending that an award
94 be made, a specific itemization of any benefits or advantages
95 that the victim, the claimant or a dependent has received or
96 is entitled to receive from any collateral source for economic
97 loss that resulted from the conduct;

98 (6) Whether the claimant is the spouse, parent, child,
99 brother or sister of the offender, or is similarly related to an
100 accomplice of the offender who committed the criminally
101 injurious conduct;

102 (7) Any information which might be a basis for a reasonable
103 reduction or denial of a claim because of contributory
104 misconduct of the claimant or of a victim through whom he
105 or she claims;

106 (8) Any additional information that the claim investigator
107 deems to be relevant to the evaluation of the claim.

108 (e) The recommendation that is issued by the claim
109 investigator pursuant to subsection (b) of this section shall
110 contain the following:

111 (1) Whether an award of compensation should be made to
112 the claimant and the amount of the award;

113 (2) If the claim investigator recommends that an award not
114 be made to the claimant, the reason for his decision.

115 (f) The claim investigator shall file his finding of fact and
116 recommendation with the clerk within six months after the
117 filing of the application: *Provided*, That where there is active
118 criminal investigation or prosecution of the person or persons
119 alleged to have committed the criminally injurious conduct
120 which is the basis for the claimant's claim, the claim
121 investigator shall file his finding of fact and recommendation
122 within six months after the first of any final convictions or
123 other final determinations as to innocence or guilt, or any
124 other final disposition of criminal proceedings. In any case,
125 an additional time period may be provided by order of any
126 court of claims judge or commissioner upon good cause
127 shown.

§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by judge or commissioner.

1 (a) The clerk of the court of claims, upon receipt of the
2 claim investigator's finding of fact and recommendation, shall
3 forward a copy of the finding of fact and recommendation to
4 the claimant with a notice informing the claimant that any
5 response, in the form of objections or comments directed to
6 the finding of fact and recommendation, must be filed with
7 the clerk within thirty days of the date of the notice. After
8 the expiration of such thirty-day period, the clerk shall assign
9 the claim to a judge or commissioner of the court.

10 (b) The judge or commissioner to whom the claim is
11 assigned shall review the finding of fact and recommendation
12 and any response submitted by the claimant and, if deemed
13 appropriate, may request the claim investigator to comment
14 in writing on the claimant's response. The judge or commis-
15 sioner shall, within forty-five days after assignment by the

16 clerk, evaluate the claim without a hearing and either deny the
17 claim or approve an award of compensation to the claimant.

**§14-2A-14. Grounds for denial of claim or reduction of award;
maximum awards; awards for emotional distress,
mental anguish, etc.**

1 (a) Except as provided in subsection (b), section ten of this
2 article, the judge or commissioner shall not approve an award
3 of compensation to a claimant who did not file his application
4 for an award of compensation within two years after the date
5 of the occurrence of the criminally injurious conduct that
6 caused the injury or death for which he is seeking an award
7 of compensation.

8 (b) An award of compensation shall not be approved if the
9 criminally injurious conduct upon which the claim is based was
10 not reported to a law-enforcement officer or agency within
11 seventy-two hours after the occurrence of the conduct, unless
12 it is determined that good cause existed for the failure to
13 report the conduct within the seventy-two hour period.

14 (c) The judge or commissioner shall not approve an award
15 of compensation to a claimant who is the offender or an
16 accomplice of the offender who committed the criminally
17 injurious conduct, nor to any claimant if the award would
18 unjustly benefit the offender or his accomplice. Unless a
19 determination is made that the interests of justice require that
20 an award be approved in a particular case, an award of
21 compensation shall not be made to the spouse of, or to a
22 person living in the same household with, the offender or
23 accomplice of the offender, or the parent, child, brother or
24 sister of the offender or his accomplice.

25 (d) A judge or commissioner, upon a finding that the
26 claimant or victim has not fully cooperated with appropriate
27 law-enforcement agencies, or the claim investigator, may deny
28 a claim, reduce an award of compensation and may reconsider
29 a claim already approved.

30 (e) An award of compensation shall not be approved if the
31 injury occurred while the victim was confined in any state,
32 county or city jail, prison or correctional facility.

33 (f) After reaching a decision to approve an award of
34 compensation, but prior to announcing such approval, the

35 judge or commissioner shall require the claimant to submit
36 current information as to collateral sources on forms
37 prescribed by the clerk of the court of claims. The judge or
38 commissioner shall reduce an award of compensation or deny
39 a claim for an award of compensation that is otherwise
40 payable to a claimant to the extent that the economic loss
41 upon which the claim is based is or will be recouped from
42 other persons, including collateral sources, or if such reduction
43 or denial is determined to be reasonable because of the
44 contributory misconduct of the claimant or of a victim through
45 whom he claims. If an award is reduced or a claim is denied
46 because of the expected recoupment of all or part of the
47 economic loss of the claimant from a collateral source, the
48 amount of the award or the denial of the claim shall be
49 conditioned upon the claimant's economic loss being recouped
50 by the collateral source: *Provided*, That if it is thereafter
51 determined that the claimant will not receive all or part of the
52 expected recoupment, the claim shall be reopened and an
53 award shall be approved in an amount equal to the amount
54 of expected recoupment that it is determined the claimant will
55 not receive from the collateral source, subject to the limitation
56 set forth in subsection (g) of this section.

57 (g) Except in the case of death, compensation payable to
58 a victim and to all other claimants sustaining economic loss
59 because of injury to that victim shall not exceed twenty
60 thousand dollars in the aggregate. Compensation payable to
61 a victim of criminally injurious conduct which would
62 constitute an offense under the provisions of article eight-b,
63 chapter sixty-one of this code which causes serious permanent
64 injury may include, in addition to economic loss, an amount
65 up to five thousand dollars for emotional distress and pain and
66 suffering. Compensation payable to all claimants because of
67 the death of the victim shall not exceed fifty thousand dollars
68 in the aggregate, but may include, in addition to economic
69 loss, compensation to the claimants specified in paragraph (2),
70 subdivision (a), section three of this article, for sorrow, mental
71 anguish and solace.

§14-2A-15. Hearings.

1 (a) If either the claim investigator or the claimant disagrees
2 with the approval of an award or the denial of a claim in the
3 summary manner set forth in the preceding sections of this

4 article, the claim investigator or the claimant, or both, shall
5 file with the clerk a request for hearing. Such request shall
6 be filed within twenty-one days after notification by the judge
7 or commissioner of his decision.

8 (b) Upon receipt of a request for hearing, the clerk shall
9 place the claim upon the regular docket of the court for
10 hearing, shall advise the attorney general and the claimant of
11 the receipt of the request and docketing of the claim, and shall
12 request the attorney general to commence negotiations with
13 the claimant.

14 (c) During the period of negotiations and pending hearing,
15 the attorney general, shall, if possible, reach an agreement with
16 the claimant regarding the facts upon which the claim is based
17 so as to avoid the necessity for the introduction of evidence
18 at the hearing. If the parties are unable to agree upon the facts,
19 an attempt shall be made to stipulate the questions of fact in
20 issue.

21 (d) The hearing held in accordance with this section shall
22 be before a single judge or commissioner to whom the claim
23 has not been previously assigned. Hearings before a judge or
24 commissioner may, in the discretion of such hearing officer,
25 be held at such locations throughout the state as will facilitate
26 the appearance of the claimant and witnesses.

27 (e) The hearing shall be conducted so as to disclose all
28 material facts and issues. The judge or commissioner may
29 examine or cross-examine witnesses. The judge or commis-
30 sioner may call witnesses or require evidence not produced by
31 the parties; may stipulate the questions to be argued by the
32 parties; and may continue the hearing until some subsequent
33 time to permit a more complete presentation of the claim.

34 (f) After the close of the hearing the judge or commissioner
35 shall consider the claim and shall conclude his determination,
36 if possible, within thirty days.

37 (g) The court shall adopt and may from time to time amend
38 rules of procedure to govern proceedings before the court in
39 accordance with the provisions of this article. The rules shall
40 be designed to assure a simple, expeditious and inexpensive
41 consideration of claims. The rules shall permit a claimant to
42 appear in his own behalf or be represented by counsel and

43 provide for interests of the state to be represented by the
44 attorney general in any hearing under this section at no
45 additional cost to the fund or the state.

46 Under its rules, the court shall not be bound by the usual
47 common law or statutory rules of evidence. The court may
48 accept and weigh, in accordance with its evidential value, any
49 information that will assist the court in determining the factual
50 basis of a claim.

§14-2A-16. Evidence.

1 (a) There is no privilege, except the privilege arising from
2 the attorney-client relationship, as to communications or
3 records that are relevant to the physical, mental or emotional
4 condition of the claimant or victim in a proceeding under this
5 article in which that condition is an element.

6 (b) If the mental, physical or emotional condition of a
7 victim or claimant is material to a claim for an award of
8 compensation, the court, judge or commissioner may order the
9 victim or claimant to submit to a mental or physical
10 examination by a physician or psychologist, and may order
11 an autopsy of a deceased victim. The order may be made for
12 good cause shown and upon notice to the person to be
13 examined and to the claimant and the claim investigator. The
14 order shall specify the time, place, manner, conditions and
15 scope of the examination or autopsy and the person by whom
16 it is to be made, and shall require the person who performs
17 the examination or autopsy to file with the clerk of the court
18 of claims a detailed written report of the examination or
19 autopsy. The report shall set out the findings, including the
20 results of all tests made, diagnosis, prognosis and other
21 conclusions and reports of earlier examinations of the same
22 conditions. On request of the person examined, the clerk of
23 the court of claims shall furnish him a copy of the report. If
24 the victim is deceased, the clerk of the court of claims, on
25 request, shall furnish the claimant a copy of the report.

26 (c) The court, or a judge or commissioner thereof, may
27 order law-enforcement officers employed by the state or any
28 political subdivision thereof to provide it or the claim
29 investigator with copies of any information or data gathered
30 in the investigation of the criminally injurious conduct that is
31 the basis of any claim to enable it to determine whether, and

32 the extent to which, a claimant qualifies for an award of
33 compensation.

34 (d) The court, or a judge or commissioner thereof, may
35 require the claimant to supplement the application for an
36 award of compensation with any reasonably available medical
37 or psychological reports relating to the injury for which the
38 award of compensation is claimed.

39 (e) The court, a judge or commissioner thereof, or the claim
40 investigator, in a claim arising out of a violation of article
41 eight-b, chapter sixty-one of this code, shall not request the
42 victim or the claimant to supply any evidence of specific
43 instances of the victim's activity, or reputation evidence of the
44 victim's sexual activity, unless it involves evidence of the
45 victim's past sexual activity with the offender, and then only
46 to the extent that the court, the judge, the commissioner or
47 the claim investigator finds that the evidence is relevant to a
48 fact at issue in the claim.

49 (f) Notwithstanding any provision of this code to the
50 contrary relating to the confidentiality of juvenile records, the
51 court of claims, a judge or commissioner thereof, or the claim
52 investigator shall have access to the records of juvenile
53 proceedings which bear upon an application for compensation
54 under this article. The court of claims, a judge or commis-
55 sioner thereof, and the claim investigator, shall, to the extent
56 possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

1 If a person refuses to comply with an order under this
2 article, or asserts a privilege, except privileges arising from the
3 attorney-client relationship, so as to withhold or suppress
4 evidence relevant to a claim for an award of compensation,
5 the court, judge or commissioner may make any just order,
6 including denial of the claim, but shall not find the person in
7 contempt. If necessary to carry out any of his powers and
8 duties, the claim investigator may petition the court of claims
9 for an appropriate order, including an order authorizing the
10 investigator to take the depositions of witnesses by oral
11 examination or written interrogatory, but the court of claims
12 shall not find a person in contempt for refusal to submit to
13 a mental or physical examination.

§14-2A-18. Effect of prosecution or conviction of offender.

1 The court, or a judge or commissioner thereof, may approve
2 an award of compensation whether or not any person is
3 prosecuted or convicted for committing the conduct that is the
4 basis of the award. Proof of conviction of a person whose
5 conduct gave rise to a claim is conclusive evidence that the
6 crime was committed, unless an application for rehearing, an
7 appeal of the conviction or certiorari is pending, or a rehearing
8 or new trial has been ordered.

9 The court, or a judge or commissioner thereof, shall
10 suspend, upon a request of the claim investigator, the
11 proceedings in any claim for an award of compensation
12 pending disposition of a criminal prosecution that has been
13 commenced or is imminent.

§14-2A-19. Attorney and witness fees.

1 (a) As part of an order, the court, or a judge or commis-
2 sioner thereof, shall determine and award reasonable attorney's
3 fees, commensurate with services rendered, and reimbursement
4 for reasonable and necessary expenses actually incurred, to be
5 paid from the crime victims compensation fund to the attorney
6 representing a claimant in a proceeding under this article.
7 Attorney's fees and reimbursement may be denied upon a
8 finding that the claim or appeal is frivolous. Awards of
9 attorney's fees and reimbursement shall be in addition to
10 awards of compensation, and attorney's fees and reimburse-
11 ment may be awarded whether or not an award of compen-
12 sation is approved. An attorney shall not contract for or
13 receive any larger sum than the amount allowed under this
14 section.

15 (b) Each witness called by the court to appear in a hearing
16 on a claim for an award of compensation shall receive
17 compensation and expenses in an amount equal to that
18 received by witnesses in civil cases as provided in section
19 sixteen, article one, chapter fifty-nine of this code to be paid
20 from the crime victims compensation fund.

§14-2A-20. Procedure for certification and payment of claims.

1 (a) The clerk shall certify to the department of finance and
2 administration, on or before the twentieth day of November
3 of each year, a list of all claims pursuant to this article for

4 which the court has made a final determination and approved
5 an award since the last such certificate.

6 (b) The governor shall include in his proposed budget bill
7 and revenue estimates:

8 (1) An estimate of the balance and receipts anticipated in
9 the crime victims compensation fund,

10 (2) An itemized report of the approved awards recom-
11 mended by the court to the Legislature,

12 (3) Such recommendations to the Legislature for appropri-
13 ations from the crime victims compensation fund as he may
14 deem appropriate for the payment of fees, costs and expenses
15 incurred, due or payable at any time from such fund, and

16 (4) Such recommendations to the Legislature for appropri-
17 ations for the payment of claims arising under this article,
18 whether accrued and determined by the court and included in
19 the itemization of awards mentioned in this section or arising
20 during the ensuing fiscal year.

21 (c) The Legislature shall, by general law, provide for the
22 authorization to pay the itemized awards arising under this
23 article or so much thereof as may be deemed appropriate or
24 for awards arising during the ensuing fiscal year and provide
25 by appropriation from the crime victims compensation fund
26 for the payment of such awards authorized and for the
27 payment of fees, costs and expenses as from time to time may
28 be appropriate. The clerk shall certify each authorized award
29 and the amount thereof and make requisition upon the crime
30 victims compensation fund relating thereto to the auditor. The
31 auditor shall issue his warrant to the treasurer without further
32 examination or review of the claim except for the question of
33 a sufficient unexpended balance in the appropriation.

§14-2A-21. Annual report of court of claims.

1 The court of claims shall prepare and transmit annually to
2 the governor and the Legislature a report of the activities of
3 the court of claims under this article. The report shall include
4 the number of claims filed, the number of awards made and
5 the amount of each award, and a statistical summary of claims
6 and awards made and denied; the balance in the crime victims
7 compensation fund with a listing by source and amount of the

8 moneys that have been deposited in the fund; the amount that
9 has been withdrawn from the fund, including separate listings
10 of the administrative costs incurred by the court of claims,
11 compensation of judges, commissioners and court personnel,
12 the amount awarded as attorneys' fees.

§14-2A-22. State's subrogation to claimant's rights.

1 If an award of compensation is made under the provisions
2 of this article and is not reduced on account of the availability
3 of payment by a collateral source, the state, upon the payment
4 of the award or a part of the award, shall be subrogated to
5 all of the claimant's rights to receive or recover benefits or
6 advantages for economic loss for which an award of
7 compensation was made from such source if it were a collateral
8 source or would be a collateral source if it were readily
9 available to the victim or claimant. The claimant may sue the
10 offender for any damages or injuries caused by the offender's
11 criminally injurious conduct and not compensated for by an
12 award of compensation. The claimant may join with the
13 attorney general as co-plaintiff in any action against the
14 offender. All moneys that are collected by the state pursuant
15 to its rights of subrogation as provided in this section shall
16 be deposited in the crime victims compensation fund.

§14-2A-23. Subrogation rights of collateral source.

1 Subrogation rights which a collateral source may have shall
2 not extend to a recovery from a claimant of all or any part
3 of an award made under this article. A collateral source may
4 not apply, in the name of a claimant or otherwise, for an
5 award of compensation based upon injury to a claimant to
6 whose rights the collateral source may be subrogated.

**§14-2A-24. Award not subject to execution or attachment;
exceptions.**

1 An award is not subject to execution, attachment, garnish-
2 ment or other process, except that, upon receipt of an award
3 by a claimant, the part of the award that is for allowable
4 expense is not exempt from such action by a creditor to the
5 extent that he provides products, services or accommodations
6 the costs of which are included in the award and the part of
7 the award that is for work loss shall not be exempt from such
8 action to secure payment of alimony, maintenance or child
9 support.

§14-2A-25. Publicity.

1 (a) The clerk of the court of claims shall prepare an
2 information brochure for the benefit of the general public,
3 outlining the rights of claimants and procedures to be followed
4 under this article. Copies of such brochure shall be distributed
5 to law-enforcement agencies in the state, and be made
6 available to other interested persons.

7 (b) Any law-enforcement agency that investigates an offense
8 committed in this state involving personal injury shall make
9 reasonable efforts to provide information to the victim of the
10 offense and his dependents concerning the availability of an
11 award of compensation and advise such persons that an
12 application for an award of compensation may be obtained
13 from the clerk of the court of claims.

§14-2A-26. Rules and regulations.

1 The court of claims may promulgate rules and regulations
2 to implement the provisions of this article.

§14-2A-27. Application of article.

1 The provisions of this article shall not apply to any injury
2 or death resulting from criminally injurious conduct which
3 occurred on or before the thirty-first day of December, one
4 thousand nine hundred eighty-one.

§14-2A-28. Retroactive effect of amendments.

1 Amendments made to the provisions of this article during
2 the regular session of the Legislature in the year one thousand
3 nine hundred eighty-four, shall be of retroactive effect to the
4 extent that such amended provisions shall apply to all cases
5 pending before the court of claims on the effective date of the
6 act of the Legislature which effects such amendment.

CHAPTER 53

(Com. Sub. for S. B. 43—By Senator Holliday)

[Passed March 18, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the
code of West Virginia, one thousand nine hundred thirty-

one, as amended, by adding thereto two new sections, designated sections one-a and three, relating to sentencing alternatives; required findings; custody of sheriff; costs of confinement; continuing jurisdiction; attestation by physician of health status; personnel status; and limitation on liability of public officials and county and community service work agencies.

Be it enacted by the Legislature of West Virginia:

That article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-a and three, to read as follows:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

§62-11A-3. Personnel status; limitation on liability of public officials and county and community service work agencies.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a court of
2 record under any criminal provision of this code of a
3 misdemeanor or felony, which may be punishable by
4 confinement in the county jail, may, in the discretion of
5 the sentencing judge, as an alternative to the sentence
6 imposed by statute for such crime, be sentenced under
7 one of the following programs:

8 (1) The weekend jail program under which persons
9 would be required to spend weekends or other days
10 normally off from work, in jail;

11 (2) The work program under which sentenced persons
12 would be required to spend the first two or more days of
13 their sentence in jail and then, in the discretion of the
14 judge, would be assigned to a county agency to perform
15 labor within the jail, or in and upon the buildings,
16 grounds, institutions, bridges, roads, including orphaned
17 roads used by the general public, and public works within
18 the county. Eight hours of such labor shall be credited as
19 one day of the sentence imposed. Persons sentenced un-
20 der this program may be required to provide their own
21 transportation to and from the work site, lunch and work
22 clothes; or

23 (3) The community service program under which
24 persons sentenced would spend no time in jail but would
25 be sentenced to a number of hours or days of community
26 service work with tax supported agencies. Eight hours
27 of service work shall be credited as one day of the sen-
28 tence imposed. Persons sentenced under this program
29 may be required to provide their own transportation to
30 and from the work site, lunch and work clothes.

31 (b) In no event may the duration of the alternate
32 sentence exceed the maximum period of incarceration
33 otherwise allowed.

34 (c) In imposing a sentence under the provisions of this
35 section, the court shall first make the following findings
36 of fact and incorporate them into the court's sentencing
37 order:

38 (1) The person sentenced was not convicted of an
39 offense for which a mandatory period of confinement is
40 imposed by statute;

41 (2) The person sentenced is not a habitual criminal
42 within the meaning of sections eighteen and nineteen, article
43 eleven, chapter sixty-one of this code;

44 (3) That adequate facilities for the administration and
45 supervision of alternative sentencing programs are avail-
46 able through the court's probation officers or the county
47 sheriff; and

48 (4) That an alternative sentence under provisions of
49 this article will best serve the interests of justice.

50 (d) Persons sentenced under the provisions of this
51 article shall remain under the administrative custody and
52 supervision of the court's probation officers or the county
53 sheriff.

54 (e) Persons sentenced under the provisions of this
55 section may be required to pay the costs of their con-
56 finement, including meal costs, at the discretion of the
57 court.

58 (f) Persons sentenced under the provisions of this
59 section remain under the jurisdiction of the court. The
60 court may withdraw any alternative sentence at any time
61 by order entered with or without notice and require that

62 the remainder of the sentence be served in the county
63 jail: *Provided*, That no alternative sentence directed by
64 the sentencing judge or administered under the supervi-
65 sion of the sheriff, his deputies, a jailer or a guard, shall
66 require the convicted person to perform duties which
67 would be considered detrimental to the convicted
68 person's health as attested by a physician.

**§62-11A-3. Personnel status; limitation on liability of public
officials and county and community service work
agencies.**

1 (a) No person sentenced under any provision of this
2 article shall be regarded as an employee of the sheriff,
3 county commission or the county or community service
4 work agency to which the person sentenced is assigned
5 for any purpose, including, but not limited to, workers'
6 compensation, civil service, unemployment compensation,
7 public employees insurance or public employees retire-
8 ment.

9 (b) Neither the sheriff, the county commission or com-
10 munity service agency to which the person is assigned
11 shall be liable for injury or damage to third parties in-
12 tententionally committed by the person so sentenced or for
13 any action on behalf of the person so sentenced except
14 in the case of gross negligence on the part of the sheriff,
15 county commission or community service agency or the
16 supervisor of the person so sentenced: *Provided*, That
17 nothing herein shall bar a claim by a third party for
18 injury or damage resulting from the negligent act of the
19 person so sentenced committed outside the confines of a
20 county jail and within the scope of the work required by
21 the alternative sentence.

CHAPTER 54

(Com. Sub. for S. B. 59—By Senators Rogers and Tucker)

[Passed April 2, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, atricle one, chap-
ter thirty-eight of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to property sold under a deed of trust; notification of subordinate lienholders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4. Notice of sale.

1 Unless property is to be sold under a deed of trust
2 executed and delivered prior to the first day of July, one
3 thousand nine hundred eighty, which contains a provision
4 waiving the requirement of published notice, or the prop-
5 erty to be sold is in the opinion of the trustee of less
6 value than two thousand dollars, the trustee shall pub-
7 lish a notice of a trustee's sale as a Class III legal adver-
8 tisement in compliance with the provisions of article
9 three, chapter fifty-nine of this code, and the publication
10 area for such publication shall be the county where the
11 property is located. If in the opinion of the trustee the
12 property is of less value than two thousand dollars, such
13 notice of sale shall be posted at least twenty days prior
14 thereto at the front door of the courthouse of
15 the county in which the property is to be sold, and at
16 three other public places in the county, one of which
17 shall be as near as practicable to the premises to be sold
18 if the sale is of real estate. In all cases, whether the
19 notice is published or not, a copy of such notice shall be
20 served on the grantor in such trust deed, or his agent or
21 personal representative, if he or they are within the
22 county, at least twenty days prior to the sale, unless
23 service of such notice be expressly waived by the grantor
24 in any such trust deed; and shall be served by certified
25 mail, at least twenty days prior to the sale, upon any
26 subordinate lienholder who has previously notified the
27 primary lienholder by certified mail of the existence of a
28 subordinate lien: *Provided*, That notice need not be given
29 to a subordinate lienholder for sales for which notice has
30 been posted or published prior to the effective date of

31 this section. Every notice of sale by a trustee under a
32 trust deed shall show the following particulars: (a) The
33 time and place of sale; (b) the names of the parties to
34 the deed under which it will be made; (c) the date of the
35 deed; (d) the office and book in which it is recorded; (e)
36 the quantity and description of the land or other prop-
37 erty or both conveyed thereby; and (f) the terms of
38 sale: *Provided, however,* That except as expressly pro-
39 vided in this section, no trust deed shall waive the re-
40 quirements of publication of notice as required by this
41 section. Notice to a subordinate lienholder shall be com-
42 plete when such notice is mailed in accordance with the
43 provisions of this section, directed to the address of the
44 subordinate lienholder as provided by such subordinate
45 lienholder in the notice of existence of a subordinate
46 lien.

47 An individual who purchases property at a trustee's
48 sale is under no duty to ascertain whether notice was
49 given to subordinate lienholders in accordance with the
50 provisions of this section, and such right, title and in-
51 terest as the purchaser may acquire shall not be affected
52 by defects in such notice or the service thereof, if the
53 purchaser is otherwise a bona fide purchaser for value.

CHAPTER 55

(Com. Sub. for H. B. 1652—By Delegate Underwood)

[Passed April 10, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right to sue for a divorce; residency requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**§48-2-7. Right to sue for divorce.**

1 No action for divorce shall be maintainable:

2 (a) If the cause for divorce is adultery, whether the cause
3 of action arose in or out of this state, unless one of the parties,
4 at the commencement of the action, is a bona fide resident
5 of this state. In such case if the defendant is a nonresident
6 of this state and cannot be personally served with process
7 within this state, such action shall not be maintainable unless
8 the plaintiff has been an actual bona fide resident of this state
9 for at least one year next preceding the commencement of the
10 action; or

11 (b) If the cause for divorce is other than adultery, unless
12 one of the parties was, at the time the cause of action arose,
13 or has since that time become, an actual bona fide resident
14 of this state and has continued so to be for at least one year
15 next preceding the commencement of the action: *Provided,*
16 That if the marriage sought to be dissolved was entered into
17 within this state, the action shall be maintainable if one of the
18 parties is an actual bona fide resident of this state at the time
19 of commencement of the action, without regard to the length
20 of time residency has continued.

CHAPTER 56

(H. B. 1286—By Delegates Shaffer and Shepherd)

[Passed March 4, 1985; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty-nine, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the advertising of an offer to obtain divorces.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**§1. Repeal of section relating to prohibiting the advertising of any offer to obtain divorces.**

1 Section twenty-nine, article two, chapter forty-eight of the
2 code of West Virginia, one thousand nine hundred thirty-one,
3 as amended, is hereby repealed.

CHAPTER 57

(H. B. 2089—By Delegate Pino and Delegate Yanni)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, section four, article five, and sections five, six, eight and ten, article nine-a, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, five, five-c and eight-a, article four, chapter eighteen-a of said code, all relating to public school support generally; increasing compensation of county board and state board of education members; changing from ten to twenty percent the limitation on the increase in the number of service personnel; providing for such limitation in the years succeeding any year in which a county has fewer than thirty-four service personnel per one thousand students; changing that part of the foundation allowance for fixed charges which related to unemployment contribution to a multiplier of three and two-tenths percent; providing for a foundation allowance for administrative cost for distribution to regional educational service agencies in accordance with regulations of the state board; guaranteeing one hundred thousand dollars to each county from the foundation allowance to improve instructional programs prior to allocation in accordance with basic resources per pupil; increasing moneys allocated to professional educators and service personnel by approximately five percent to be paid in accordance with article nine-a, chapter eighteen of this code; providing additional moneys to classroom teachers with more than twenty years of teaching experience; increasing the increment rate for principals and assistant principals; providing for advanced salary classification for certain teachers having specialized training; providing for equity allocations based on county supplements in effect on the first day of January, one thousand nine hundred eighty-four, and providing certain exceptions thereto; requiring that the first ten million dollars of surplus revenue for the current fiscal year be appropriated and expended for salary equity; increasing the years of employment on the service personnel pay scale from

twenty to twenty-five years; and prohibiting changes in the schedules of service personnel in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.

5. County Board of Education.

9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-3. Meetings; compensation and expenses of members.

1 The state board shall hold at least six meetings in every year
2 at such times and places as it may prescribe. It may meet at
3 such other times as may be necessary, such meetings to be held
4 upon its own resolution or at the call of the president of the
5 state board. The members of the state board, other than the
6 ex officio members of the board, shall be paid one hundred
7 dollars per diem each day or any part thereof spent in the
8 performance of their duties under this article, and shall be
9 reimbursed for all reasonable and necessary expenses actually
10 incurred incident to the performance of their duties. The state
11 superintendent of schools and the chancellor of the board of
12 regents shall be reimbursed for such expenses, but shall not
13 receive a per diem allowance. Upon presentation of itemized
14 sworn statements, the per diem and reimbursement payments
15 shall be made from appropriations made by the Legislature
16 to the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.**

1 The board shall meet on the first Monday of January,
2 except that in the year one thousand nine hundred eighty-two,
3 and every year thereafter, the board shall meet on the first
4 Monday of July, and upon the dates provided by law for the
5 laying of levies, and at such other times as the board may fix
6 upon its records. At any meeting as authorized above and in
7 compliance with the provisions of article four of this chapter,
8 the board may employ such qualified teachers, or those who
9 will qualify by the time of entering upon their duties, necessary
10 to fill existing or anticipated vacancies for the current or next
11 ensuing school year. At a meeting of the board, on or before
12 the first Monday of May, the superintendent shall furnish in
13 writing to the board a list of those teachers to be considered
14 for transfer and subsequent assignment for the next ensuing
15 school year; all other teachers not so listed shall be considered
16 as reassigned to the positions held at the time of this meeting.
17 Such list of those recommended for transfer shall be included
18 in the minute record and the teachers so listed shall be notified
19 in writing, which notice shall be delivered in writing, by
20 certified mail, return receipt requested, to such teachers' last-
21 known addresses within ten days following said board meeting,
22 of their having been so recommended for transfer and
23 subsequent assignment.

24 Special meetings may be called by the president or any three
25 members, but no business shall be transacted other than that
26 designated in the call.

27 In addition, a public hearing shall be held concerning the
28 preliminary operating budget for the next fiscal year not less
29 than ten days after such budget has been made available to
30 the public for inspection and within a reasonable time prior
31 to the submission of said budget to the West Virginia board
32 of education for approval and at such hearing reasonable time
33 shall be granted to any person or persons who wish to speak
34 regarding parts or all of such budget. Notice of such hearing
35 shall be published as a Class I legal advertisement in
36 compliance with the provisions of article three, chapter fifty-
37 nine of this code.

38 A majority of the members shall constitute the quorum
39 necessary for the transaction of official business.

40 Board members may receive compensation at a rate not to
41 exceed eighty dollars per meeting attended. But they shall not
42 receive pay for more than fifty-two meetings in any one fiscal
43 year.

44 Members shall also be paid, upon the presentation of an
45 itemized sworn statement, for all necessary traveling expenses,
46 including all authorized meetings, incurred on official business,
47 at the order of the board.

48 When, by a majority vote of its members, a county board
49 of education deems it a matter of public interest, such board
50 may join the West Virginia school board association and the
51 national school board association, and may pay such dues as
52 may be prescribed by said associations and approved by action
53 of the respective county boards. Membership dues and actual
54 traveling expenses of board members for attending meetings
55 of the West Virginia school board association may be paid by
56 their respective county boards of education out of funds
57 available to meet actual expenses of the members, but no
58 allowance shall be made except upon sworn itemized
59 statements.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5. Foundation allowance for service personnel.

§18-9A-6. Foundation allowance for fixed charges.

§18-9A-8. Foundation allowance for administrative cost.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-5. Foundation allowance for service personnel.

1 The basic foundation allowance to the county for service
2 personnel shall be the amount of money required to pay the
3 annual state minimum salaries in accordance with the
4 provisions of article four, chapter eighteen-a of the code, to
5 such service personnel employed: *Provided*, That no county
6 shall receive an allowance for an amount in excess of thirty-
7 four service personnel per one thousand students in adjusted
8 enrollment; for any county which has in excess of thirty-four
9 service personnel per one thousand students in adjusted
10 enrollment, such allowance shall be computed based upon the

11 average state minimum pay scale salary of all service personnel
12 in such county: *Provided, however,* That for any county
13 having fewer than thirty-four service personnel per one
14 thousand students in adjusted enrollment, in any one year, the
15 number of service personnel used in making this computation
16 may be increased the succeeding years by no more than twenty
17 percent per year of its total potential increase under this
18 provision, except that in no case shall such limit be fewer than
19 two service personnel until the county attains the maximum
20 ratio set forth: *Provided further,* That where two or more
21 counties join together in support of a vocational or compre-
22 hensive high school or any other program or service, the
23 service personnel for such school or program may be prorated
24 among the participating counties on the basis of each one's
25 enrollment therein and that such personnel shall be considered
26 within the above-stated limit.

§18-9A-6. Foundation allowance for fixed charges.

1 The total allowance for fixed charges shall be the sum of
2 the following:

3 (1) The sum of the foundation allowance for professional
4 educators and the foundation allowance for other personnel,
5 as determined in sections four and five above, multiplied by
6 the current social security rate of contribution; plus

7 (2) The sum of the foundation allowance for professional
8 educators and the foundation allowance for other personnel,
9 as determined in sections four and five above, multiplied by
10 three and two-tenths percent; plus

11 (3) The sum of the foundation allowance for professional
12 educators and the foundation allowance for other personnel,
13 as determined in sections four and five above, multiplied by
14 the rate which is derived by dividing the total contributions
15 for workers' compensation for professional educators and
16 other personnel by the total of the state minimum salaries. The
17 computation of this rate shall be determined by using data of
18 the most recent year for which available.

§18-9A-8. Foundation allowance for administrative cost.

1 The allowance for administrative cost shall be equal to
2 ninety-five one hundredths of one percent of the allocation for

3 professional educators, as determined in section four of this
4 article.

5 Distribution of the computed allowance shall be made as
6 follows:

7 (1) Seven tenths of the allowance shall be distributed to the
8 counties in equal amounts; and

9 (2) Twenty-five one hundredths of the allowance shall be
10 distributed to the regional education service agencies in
11 accordance with rules and regulations adopted by the state
12 board. The allowance for regional education service agencies
13 shall be excluded from the computation of total basic state
14 aid as provided for in section twelve of this article.

**§18-9A-10. Foundation allowance to improve instructional
programs.**

1 (a) Commencing with the school year beginning on the first
2 day of July, one thousand nine hundred eighty-five, and
3 thereafter, funds which accrue from allocations due to increase
4 in total local share above that computed for the school year
5 beginning on the first day of July, one thousand nine hundred
6 eighty-one, from balances in the general school fund, or from
7 appropriations for such purpose shall be allocated to increase
8 state support of counties as follows:

9 (1) Twenty percent of these funds shall be allocated to the
10 counties proportional to adjusted enrollment, and

11 (2) Each county whose allocation in subsection (1) is less
12 than one hundred thousand dollars in any fiscal year shall then
13 receive an amount which equals the difference between such
14 amount received and one hundred thousand dollars.

15 (b) The remainder of these funds shall be allocated
16 according to the following plan for progress toward basic
17 resources per pupil equity:

18 Beginning with the county which has the lowest basic
19 resources per pupil and progressing through the counties
20 successively to and beyond the county with the highest basic
21 resources per pupil, the funds available shall be allocated in
22 amounts necessary to increase moneys available to the county
23 or counties to the basic resources per pupil level, as nearly as
24 is possible, of the county having the next higher basic
25 resources per pupil: *Provided*, That to be eligible for its

26 allocation under this section, a county board shall lay the
 27 maximum regular tax rates set out in section six-c, article
 28 eight, chapter eleven of this code: *Provided, however,* That
 29 moneys allocated by provision of this section shall be used to
 30 improve instructional programs according to a plan for
 31 instructional improvement which the affected county board
 32 shall file with the state board by the first day of August of
 33 each year, to be approved by the state board by the first day
 34 of September of that year if such plan substantially complies
 35 with standards to be adopted by the state board: *Provided*
 36 *further,* That no part of this allocation may be used to employ
 37 professional educators in counties until and unless all
 38 applicable provisions of sections four and fourteen of this
 39 article have been fully utilized. Such instructional improve-
 40 ment plan shall be made available for distribution to the public
 41 at the office of each affected county board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-5c. Equity appropriation from surplus revenues.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE										
1	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
2	Years	4th	3rd	2nd	A.B.	A.B.	M.A.	M.A.	M.A.	Doc-
3	Exp.	Class	Class	Class		+15		+15	+30	torate
4										
5	0	10,653	11,260	11,503	12,655	13,355	14,055	14,755	15,455	16,155
6	1	10,859	11,466	11,709	13,036	13,736	14,436	15,136	15,836	16,536
7	2	11,065	11,672	11,915	13,417	14,117	14,817	15,517	16,217	16,917
8	3	11,271	11,878	12,121	13,798	14,498	15,198	15,898	16,598	17,298
9	4	11,702	12,309	12,552	14,404	15,104	15,804	16,504	17,204	17,904
10	5	11,908	12,515	12,758	14,785	15,485	16,185	16,885	17,585	18,285
11	6	12,114	12,721	12,964	15,166	15,866	16,566	17,266	17,966	18,666
12	7		12,927	13,170	15,547	16,247	16,947	17,647	18,347	19,047
13	8		13,133	13,376	15,928	16,628	17,328	18,028	18,728	19,428
14	9			13,582	16,309	17,009	17,709	18,409	19,109	19,809

15	10	13,788	16,690	17,390	18,090	18,790	19,490	20,190
16	11		17,071	17,771	18,471	19,171	19,871	20,571
17	12		17,452	18,152	18,852	19,552	20,252	20,952
18	13		17,833	18,533	19,233	19,933	20,633	21,333
19	14				19,614	20,314	21,014	21,714
20	15				19,995	20,695	21,395	22,095
21	16				20,376	21,076	21,776	22,476
22	17						22,157	22,857
23	18						22,538	23,238
24	19						22,919	23,619

25 On and after the first day of July, one thousand nine
 26 hundred eighty-five, each teacher shall receive the amount
 27 prescribed in the "state minimum salary schedule" as set forth
 28 in this section, specific additional amounts prescribed in this
 29 section or article, and any county supplement in effect in a
 30 county pursuant to section five-a of this article during the
 31 contract year.

32 On and after the first day of July, on thousand nine hundred
 33 eighty-five, six hundred dollars shall be paid annually to each
 34 classroom teacher who has at least twenty years of teaching
 35 experience. Such payments shall be in addition to any amounts
 36 prescribed in the "state minimum salary schedule," shall be
 37 paid in equal monthly installments, and shall be deemed a part
 38 of the state minimum salaries for teachers.

**§18A-4-3. State minimum annual salary increments for principals
 and assistant principals.**

1 In addition to any salary increments for principals and
 2 assistant principals, in effect on the first day of January, one
 3 thousand nine hundred eighty-five, and paid from local funds,
 4 and in addition to the county schedule in effect for teachers,
 5 the county board shall pay each principal a principal's salary
 6 increment and each assistant principal an assistant principal's
 7 salary increment as prescribed by this section commencing on
 8 the first day of July, one thousand nine hundred eighty-five,
 9 from state funds appropriated therefor.

10 State funds for this purpose shall be paid within the West
 11 Virginia public school support plan in accordance with article
 12 nine-a, chapter eighteen of this code.

13 The salary increment herein for each principal shall be

14 determined by multiplying the basic salary for teachers in
 15 accordance with the classification of certification and of
 16 training of said principal as prescribed in this article, by the
 17 appropriate percentage rate prescribed herein according to the
 18 number of teachers supervised.

19 STATE MINIMUM SALARY
 20 INCREMENT RATES
 21 FOR
 22 PRINCIPALS

23	No. of Teachers	
24	Supervised	Rates
25	1-7	4.0%
26	8-14	4.5%
27	15-24	5.0%
28	25-38	5.5%
29	39-57	6.0%
30	58 and up	6.5%

31 The salary increment herein for each assistant principal shall
 32 be determined in the same manner as that for principals,
 33 utilizing the number of teachers supervised by the principal
 34 under whose direction the assistant principal works, except
 35 that the percentage rate shall be fifty percent of the rate
 36 prescribed for said principal.

37 Salaries for employment beyond the minimum employment
 38 term shall be at the same daily rate as the salaries for the
 39 minimum employment terms.

40 For the purpose of determining the number of teachers
 41 supervised by a principal, the county board shall use data for
 42 the second school month of the prior school term and the
 43 number of teachers shall be interpreted to mean the total
 44 number of professional educators assigned to each school on
 45 a full-time equivalency basis: *Provided*, That due to a change
 46 in circumstances because of consolidation or catastrophe, the
 47 county board of education shall determine what is a reasonable
 48 number of supervised teachers in order to establish the
 49 appropriate increment percentage rate.

50 No county shall reduce local funds allocated for salary
 51 increments for principals and assistant principals in effect on
 52 the first day of January, one thousand nine hundred eighty-

53 five, and used in supplementing the state minimum salaries as
54 provided for in this article, unless forced to do so by defeat
55 of a special levy, or a loss in assessed values or events over
56 which it has no control and for which the county board has
57 received approval from the state board prior to making such
58 reduction.

59 Nothing herein shall prevent a county board from providing,
60 in a uniform manner, salary increments greater than those
61 required by this section.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

1 The state board of education shall establish the minimum
2 salary schedule for teachers where specialized training may be
3 required for vocational, technical and adult education, and
4 such other permits as may be authorized by said board.

5 On and after the first day of July, one thousand nine
6 hundred eighty-five, vocational industrial, technical, occupa-
7 tional home economics and health occupations teachers who
8 do not hold professional certificates, but who are paid a salary
9 equivalent to the amount prescribed for "A.B. + 15" training
10 classification in the state minimum salary schedule for teachers
11 under section two of this article, shall, upon application
12 therefor, receive advanced salary classification and be entitled
13 to increased compensation on and after such date in respect
14 to and based upon additional semester hours, approved by the
15 state board of education and completed either prior to or
16 subsequent to such date. All such hours earned must be from
17 a regionally accredited institution of higher education.

18 The advanced salary classification shall be as follows:

19 (1) Those who have earned fifteen such additional semester
20 hours shall receive an amount equal to that prescribed for the
21 "M.A." training classification under section two of this article.

22 (2) Those who have earned thirty such additional semester
23 hours shall receive an amount equal to that prescribed for the
24 "M.A. + 15" training classification under section two of this
25 article.

26 (3) Those who have earned forty-five such additional

27 semester hours shall receive an amount equal to that
28 prescribed for the "M.A. + 30" training classification under
29 section two of this article.

30 Any such teacher who has earned or earns a bachelor's
31 degree prior or subsequent to the effective date aforesaid shall
32 be entitled to receive the amount prescribed for the "M.A. +
33 30" training classification on and after the first day of July,
34 one thousand nine hundred eighty-five.

35 No teacher holding a valid professional certificate shall have
36 his salary reduced as a result of being assigned out of his
37 teaching field by the superintendent, with the approval of the
38 county board, under any authorization or regulation of the
39 state board.

**§18A-4-5. Salary equity among the counties; state salary
supplement.**

1 To assist the state in meeting its objective of salary equity
2 among the counties, on and after the first day of July, one
3 thousand nine hundred eighty-four, subject to available state
4 appropriations and the conditions set forth herein, each
5 teacher and school service personnel shall receive a supplement-
6 tal amount in addition to the amount from the state minimum
7 salary schedules provided for in this article.

8 State funds for this purpose shall be paid within the West
9 Virginia public school support plan in accordance with article
10 nine-a, chapter eighteen of this code. The amount allocated
11 for salary equity shall be apportioned between teachers and
12 school service personnel in direct proportion to that amount
13 necessary to support the professional salaries and service
14 personnel salaries statewide under sections four and five,
15 article nine-a, chapter eighteen of this code: *Provided*, That
16 in making such division an adequate amount of state equity
17 funds shall be reserved to finance the appropriate foundation
18 allowances and staffing incentives provided for in said article
19 nine-a.

20 Pursuant to this section, each teacher and school service
21 personnel shall receive the amount that is the difference
22 between their authorized state minimum salary and ninety-five
23 percent of the maximum salary schedules prescribed in sections

24 five-a and five-b of this article, reduced by any amount
25 provided by the county as a salary supplement for teachers
26 and school service personnel on the first day of January of
27 the fiscal year immediately preceding that in which the salary
28 equity appropriation is distributed: *Provided*, That no amount
29 received pursuant to this section shall be decreased as a result
30 of any county supplement increase instituted after the first day
31 of January, one thousand nine hundred eighty-four, unless and
32 until the objective of salary equity is reached: *Provided*,
33 *however*, That, in the event any county reduces funds allocated
34 for salary supplements as provided for in sections five-a and
35 five-b of this article, the amount received for equity pursuant
36 to this section, if any, shall continue to be reduced by any
37 amount provided by the county as a salary supplement in
38 effect on the first day of January, one thousand nine hundred
39 eighty-four, if any, unless and until the objective of salary
40 equity among the counties having no such reduction is reached
41 pursuant to this section: *Provided further*, That any amount
42 received pursuant to this section may be reduced proportion-
43 ately based upon the amount of funds appropriated for this
44 purpose.

45 No county may reduce any salary supplement that was in
46 effect on the first day of January, one thousand nine hundred
47 eighty-four, except as permitted by sections five-a and five-b
48 of this article.

§18A-4-5c. Equity appropriation from surplus revenues.

1 The first ten million dollars of surplus funds from the state
2 fund, general revenue, that have accrued as of the thirtieth day
3 of June, one thousand nine hundred eighty-five, shall be
4 appropriated and shall be expended during fiscal year one
5 thousand nine hundred eighty-five—eighty-six, in accordance
6 with section five of this article, subject to the terms and
7 conditions set forth in this section and in said section five.

8 In the event that the surplus revenues as of the thirtieth day
9 of June, one thousand nine hundred eighty-five, are not
10 sufficient to meet all of the appropriation mandated by this
11 section, then the appropriation shall be available only to the
12 extent of the total actual surplus accrued as of said date.

41	Bus Operator	D
42	Buyer	F
43	Cabinetmaker	G
44	Cafeteria Manager	D
45	Carpenter I	E
46	Carpenter II	F
47	Chief Mechanic	G
48	Clerk I	B
49	Clerk II	C
50	Computer Operator	E
51	Cook I	A
52	Cook II	B
53	Cook III	C
54	Crew Leader	F
55	Custodian I	A
56	Custodian II	B
57	Custodian III	C
58	Custodian IV	D
59	Director or Coordinator of Services	H
60	Draftsman	D
61	Electrician I	F
62	Electrician II	G
63	Electronic Technician I	F
64	Electronic Technician II	G
65	Executive Secretary	G
66	Food Services Supervisor	G
67	Foreman	G
68	General Maintenance	C
69	Glazier	D
70	Graphic Artist	D
71	Groundsman	B
72	Handyman	B
73	Heating and Air Conditioning Mechanic I	E
74	Heating and Air Conditioning Mechanic II	G
75	Heavy Equipment Operator	E
76	Inventory Supervisor	D
77	Key Punch Operator	B
78	Locksmith	G
79	Lubrication Man	C
80	Machinist	F
81	Mail Clerk	D
82	Maintenance Clerk	C

83	Mason.....	G
84	Mechanic	F
85	Mechanic Assistant	E
86	Office Equipment Repairman I	F
87	Office Equipment Repairman II	G
88	Painter	E
89	Plumber I	E
90	Plumber II	G
91	Printing Operator	B
92	Printing Supervisor	D
93	Programmer	H
94	Roofing/Sheet Metal Mechanic	F
95	Sanitation Plant Operator	F
96	School Bus Supervisor	E
97	Secretary I	D
98	Secretary II.....	E
99	Secretary III.....	F
100	Supervisor of Maintenance	H
101	Supervisor of Transportation	H
102	Switchboard Operator-Receptionist.....	D
103	Truck Driver	D
104	Warehouse Clerk.....	C
105	Watchman	B
106	Welder.....	F

107 On and after the first day of July, one thousand nine
 108 hundred eighty-five, the minimum monthly pay for each
 109 service employee whose employment is for a period of more
 110 than three and one-half hours a day shall be at least the
 111 amounts indicated in the "state minimum pay scale" as set
 112 forth in this section, and the minimum monthly pay for each
 113 service employee whose employment is for a period of three
 114 and one-half hours or less a day shall be at least one half the
 115 amount indicated in the "state minimum pay scale" set forth
 116 in this section.

117 Any service employee required to work on any legal school
 118 holiday shall be paid at a rate one and one-half times his usual
 119 hourly rate.

120 No service employee shall have his daily work schedule
 121 changed during the school year without his written consent,
 122 and his required daily work hours shall not be changed to
 123 prevent the payment of time and one-half wages or the
 124 employment of another employee.

CHAPTER 58

(S. B. 661—By Senator Burdette)

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

AN ACT to repeal section twelve, article two, and section five-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-five-a, relating to higher education and sabbatical leave; reducing years of service required upon return; and providing for reinstatement.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, and section five-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-five-a, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-25a. Authority to grant sabbatical leaves.

1 The West Virginia board of regents shall have authority
2 to grant sabbatical leaves to faculty members at the edu-
3 cational institutions under its control for the purpose
4 of permitting them to engage in graduate study, research
5 or other activities calculated to improve their teaching
6 ability. Such leaves shall be granted only in accordance
7 with a uniform plan adopted by the board and shall be
8 subject to such reasonable rules and regulations as the
9 board may prescribe. Any plan adopted by the board
10 shall not provide for the granting of sabbatical leave to
11 any faculty member who has served fewer than six
12 years at the institution where presently employed, nor
13 shall such leave be for more than one half the contract
14 period at full pay or a full contract period at half pay. Any
15 faculty member receiving a sabbatical leave shall be
16 required to return and serve for at least one year at the

17 institution from which he was granted the leave or to
18 repay to the institution the compensation received by
19 him during his leave. Any faculty member returning
20 from leave shall be reinstated at the academic rank held
21 prior to such sabbatical unless promoted to a higher rank
22 and shall be entitled to such salary and any increases
23 thereto appropriate to the rank and years of experience
24 of such faculty member. Compensation to a faculty mem-
25 ber on sabbatical leave shall be paid from the regular
26 personal services appropriations of the institution where
27 employed.

CHAPTER 59

(Com. Sub. for H. B. 1025—By Delegate Prunty)

[Passed April 9, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article twenty of said chapter, all relating to teacher aides employed to assist in teaching exceptional children; requiring such aides to complete a course of training in education of exceptional children prior to assuming such duties; requiring the training to occur during normal working hours; and providing that opportunity for such training be provided by county boards prior to filling of vacancies in accordance with rules and regulations of the state board of education.

Be it enacted by the Legislature of West Virginia:

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

Article

- 5. County Board of Education.
- 20. Education of Exceptional Children.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter and
2 the rules and regulations of the state board, shall have
3 authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school property,
6 whether owned or leased by the county, including the authority
7 to require that records be kept of all receipts and disburse-
8 ments of all funds collected or received by any principal,
9 teacher, student or other person in connection therewith, any
10 programs, activities or other endeavors of any nature operated
11 or carried on by or in the name of the school, or any
12 organization or body directly connected with the school, to
13 audit such records and to conserve such funds, which shall be
14 deemed quasi-public moneys, including securing surety bonds
15 by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish schools
18 and programs, or both, for post high school instruction,
19 subject to approval of the state board of education;

20 (3) To close any school which is unnecessary and to assign
21 the pupils thereof to other schools: *Provided*, That such
22 closing shall be officially acted upon and teachers and service
23 personnel involved notified on or before the first Monday in
24 April, in the same manner as provided in section four of this
25 article, except in an emergency, subject to the approval of the
26 state superintendent, or under subdivision (5) of this section;

27 (4) To consolidate schools;

28 (5) To close any elementary school whose average daily
29 attendance falls below twenty pupils for two months in
30 succession and send the pupils to other schools in the district
31 or to schools in adjoining districts. If the teachers in the school
32 so closed are not transferred or reassigned to other schools,
33 they shall receive one month's salary;

34 (6) (a) To provide at public expense adequate means of
35 transportation, including transportation across county lines,
36 for all children of school age who live more than two miles

37 distance from school by the nearest available road; to provide
38 at public expense and according to such regulations as the
39 board may establish, adequate means of transportation for
40 school children participating in board-approved curricular and
41 extracurricular activities; and to provide in addition thereto,
42 at public expense, by rules and regulations and within the
43 available revenues, transportation for those within two miles
44 distance; to provide in addition thereto, at no cost to the board
45 and according to rules and regulations established by the
46 board, transportation for participants in projects operated,
47 financed, sponsored or approved by the commission on aging:
48 *Provided*, That all costs and expenses incident in any way to
49 transportation for projects connected with the commission on
50 aging shall be borne by such commission, or the local or
51 county chapter thereof: *Provided, however*, That in all cases
52 the buses or other transportation facilities owned by the board
53 of education shall be driven or operated only by drivers
54 regularly employed by the board of education: *Provided*
55 *further*, That buses shall be used for extracurricular activities
56 as herein provided only when the insurance provided for by
57 this section shall have been effected;

58 (b) To enter into agreements with one another to provide,
59 on a cooperative basis, adequate means of transportation
60 across county lines for children of school age subject to the
61 conditions and restrictions of subdivisions (6) and (8) of this
62 section;

63 (7) To lease school buses operated only by drivers regularly
64 employed by the board to public and private nonprofit
65 organizations or private corporations to transport school-age
66 children to and from camps or educational activities in
67 accordance with rules and regulations established by the
68 board. All costs and expenses incurred by or incidental to the
69 transportation of such children shall be borne by the lessee;

70 (8) To provide at public expense for insurance against the
71 negligence of the drivers of school buses, trucks or other
72 vehicles operated by the board; and if the transportation of
73 pupils be contracted, then the contract therefor shall provide
74 that the contractor shall carry insurance against negligence in
75 such an amount as the board shall specify;

76 (9) To provide solely from county funds for all regular full-

77 time employees of the board all or any part of the cost of a
78 group plan or plans of insurance coverage not provided or
79 available under the West Virginia public employees insurance
80 act;

81 (10) To employ teacher aides, to provide in-service training
82 for teacher aides, the training to be in accordance with rules
83 and regulations of the state board and, in the case of service
84 personnel assuming duties as teacher aides in exceptional
85 children's programs, to provide a four-clock-hour program of
86 training prior to such assignment which shall, in accordance
87 with rules and regulations of the state board, consist of
88 training in areas specifically related to the education of
89 exceptional children;

90 (11) To establish and conduct a self-supporting dormitory
91 for the accommodation of the pupils attending a high school
92 or participating in a post high school program and of persons
93 employed to teach therein;

94 (12) To employ legal counsel;

95 (13) To provide appropriate uniforms for school service
96 personnel;

97 (14) To provide at public expense and under regulations as
98 established by any county board of education for the payment
99 of traveling expenses incurred by any person invited to appear
100 to be interviewed concerning possible employment by such
101 county board of education;

102 (15) To allow or disallow their designated employees to use
103 publicly provided carriage to travel from their residences to
104 their workplace and return: *Provided*, That such usage is
105 subject to the supervision of such board and is directly
106 connected with and required by the nature and in the
107 performance of such employee's duties and responsibilities;
108 and

109 (16) To provide, at public expense, adequate public liability
110 insurance, including professional liability insurance for board
111 employees.

112 No policy or contract of public liability insurance providing
113 coverage for public liability shall be purchased as provided
114 herein, unless it shall contain a provision or endorsement

115 whereby the company issuing such policy waives, or agrees not
116 to assert as a defense to any claim covered by the terms of
117 such policy, the defense of governmental immunity. In any
118 action against the board, its officers, agents or employees, in
119 which there is in effect liability insurance coverage in an
120 amount equal to or greater than the amount sued for, the
121 attorney for such board, the attorney for such insurance
122 carrier, or any other attorney who may appear on behalf of
123 the board, its agents, officers or employees shall not set up
124 the defense of governmental immunity in any such action.

125 "Quasi-public funds" as used herein means any money
126 received by any principal, teacher, student or other person for
127 the benefit of the school system as a result of curricular or
128 noncurricular activities.

129 The board of each county shall expend under such
130 regulations as it establishes for each child an amount not to
131 exceed the proportion of all school funds of the district that
132 each child would be entitled to receive if all the funds were
133 distributed equally among all the children of school age in the
134 district upon a per capita basis.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

1 The board of education of each county is empowered and
2 is responsible for providing suitable educational facilities,
3 special equipment and such special services as may be
4 necessary. Special services include provisions and procedures
5 for finding and enumerating exceptional children of each type,
6 diagnosis by appropriate specialists who will certify the child's
7 need and eligibility for special education and make recommen-
8 dations for such treatment and prosthesis as may alleviate his
9 disability, special teaching by qualified and especially trained
10 teachers, transportation, lunches and remedial therapeutic
11 services. Qualifications of teachers and therapists shall be in
12 accordance with standards prescribed or approved by the state
13 board of education.

14 Counties may provide for educating their resident excep-
15 tional children by contracting with other counties or other
16 educational agencies which maintain such special education

17 facilities. Fiscal matters will follow policies approved by the
18 state board of education.

19 Any teacher aide employed to assist teachers in providing
20 services to exceptional children under this article shall, prior
21 to assuming such duties, complete a four-clock-hour course of
22 training in areas specifically related to the education of
23 exceptional children, to be provided by the county in
24 accordance with rules and regulations of the state board of
25 education. Such training shall occur during normal working
26 hours and an opportunity to be trained shall be provided such
27 employee prior to the filling of a vacancy in accordance with
28 the provisions of section eight-b, article four, chapter eighteen-
29 a of this code.

CHAPTER 60

(Com. Sub. for H. B. 1968—By Delegate Leary)

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

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to school closing or consolidation; requiring that written reasons therefor be available for public inspection; requiring and providing for public hearings and notice thereof; requiring that such closing or consolidation be in accordance with current rules and regulations of the state board; providing for requirements as to subsequent rules and regulations; providing for an immediate effective date to affect any school not physically closed or consolidated prior thereto; and providing for compliance with this section by counties affected by such effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-13a. School closing or consolidation.**

1 In addition to the provisions of section thirteen of this
2 article, prior to any final decision of a county board of
3 education on any proposal to close or consolidate any school,
4 the county board of education shall:

5 (1) Prepare and reduce to writing its reasons and supporting
6 data regarding such school closing or consolidation. The
7 written reasons required under this section shall be available
8 for public inspection in the office of the county school
9 superintendent during the four successive weeks before the
10 date of the public hearing required by this section; and

11 (2) Provide for a public hearing, notice of which shall be
12 advertised by publication in a newspaper of general circulation
13 in the locality of the affected school at least once a week for
14 four successive weeks prior to the date of the hearing. The
15 notice shall contain the time and place of the hearing and the
16 proposed action of the school board. A copy of such notice
17 shall be posted at the affected school in conspicuous working
18 places for all professional and service personnel to observe,
19 and such notice shall remain posted for four successive weeks
20 prior to the date of the required public hearing. At least a
21 quorum of the school board members and the county
22 superintendent from the county wherein the affected school is
23 located shall attend and be present at the public hearing.
24 Members of the public shall have the right to be present, to
25 submit statements and testimony, and to question county
26 school officials at the public hearing.

27 Any such proposal to close or consolidate any school by any
28 county board of education shall be further subject to any
29 current rules and regulations of the state board of education
30 relating to school closing or consolidation: *Provided*, That
31 after the effective date of this section the state board shall
32 promulgate rules and regulations which shall prescribe in detail
33 the type of supporting data a county board of education shall
34 include as part of its written statement of reasons required by
35 this section for school closing or consolidation, and which
36 shall include any data required by the state board of education
37 to amend a county's comprehensive educational facilities plan.

38 This section shall take effect on the date of passage and shall
39 affect any school not physically closed or consolidated as of
40 that date: *Provided*, That as to any school closing or
41 consolidation proceeding pursuant to a decision adopted prior
42 to the effective date of this section, county boards of education
43 shall have until the first day of July, one thousand nine
44 hundred eighty-five, to comply with the provisions of this
45 section and the provisions of section thirteen of this article
46 relating to school closing or consolidation: *Provided, however*,
47 That the written reasons shall include all supporting data
48 required by the state board of education to amend a county's
49 comprehensive educational facilities plan.

CHAPTER 61

(Com. Sub. for H. B. 1437—By Delegate Hamilton and Delegate Louisos)

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

AN ACT to amend and reenact section sixteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the transfer of pupils from one school district to another; requiring official board action prior to such transfer; and providing for the mandatory transfer of pupils in certain instances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.

1 Whenever, in the opinion of the board of education of any
2 county, the education and welfare of a pupil will be enhanced,
3 the board of education of such county shall have the authority

4 to transfer any such pupil or pupils on a part-time or full-
5 time basis from one school district to another school district
6 within the state: *Provided*, That the boards of education of
7 both the transferor and the transferee districts agree to the
8 same by official action of both boards as reflected in the
9 minutes of their respective meetings.

10 Any pupil attending a school in a district of this state
11 adjacent to the district of residence during the school year one
12 thousand nine hundred eighty-four—eighty-five, is authorized
13 to continue such attendance in the adjacent district, and, upon
14 written request therefor by the parent or guardian, any person
15 who is entitled to attend the public schools of this state and
16 who resides in the same household and is a member of the
17 immediate family of such pupil is authorized to enroll in such
18 adjacent district. The transferor and transferee school districts
19 shall effectuate any transfer herein authorized in accordance
20 with the provisions of this section.

21 Whenever a pupil is transferred from one school district to
22 another district on a full-time or part-time basis, the board
23 of education of the school district in which the pupil is a bona
24 fide resident shall pay to the board of education of the school
25 district to which the pupil is transferred a tuition that is agreed
26 upon by both such boards. Tuition for each full-time pupil
27 shall not exceed the difference between the state aid per pupil
28 received by the county to which the pupil is transferred and
29 the county cost per pupil in the county to which said pupil
30 is transferred.

31 For purposes of net enrollment as defined in section two,
32 article nine-a of this chapter: (1) Whenever a pupil is
33 transferred on a full-time basis from one school district to
34 another district pursuant to the provisions of this section, the
35 county to which the pupil is transferred shall include such
36 pupil in its net enrollment; and (2) whenever a pupil is
37 transferred on a part-time basis from one school district to
38 another school district pursuant to the provisions of this
39 section, the county in which the student is a bona fide resident
40 shall count the pupil in its net enrollment.

CHAPTER 62

(S. B. 253—By Senator White)

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

AN ACT to amend and reenact section eighteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting classrooms used for instruction in choral, band or orchestra music from the maximum teacher-pupil ratio.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18a. Maximum teacher-pupil ratio.

1 County boards of education shall provide, by the school
2 year one thousand nine hundred eighty-three—eighty-four,
3 and continue thereafter, sufficient personnel, equipment
4 and facilities as will ensure that each first and second grade
5 classroom, or classrooms having two or more grades that
6 include either the first or second grades, shall not have more
7 than twenty-five pupils for each teacher of the grade or
8 grades and shall not have more than twenty pupils for each
9 kindergarten teacher per session, unless the state
10 superintendent has excepted a specific classroom upon
11 application therefor by a county board of education.

12 County boards of education shall provide by the school
13 year one thousand nine hundred eighty-four—eighty-five,
14 and continue thereafter, sufficient personnel, equipment
15 and facilities as will ensure that each third, fourth, fifth and
16 sixth grade classroom, or classrooms having two or more
17 grades that include one or more of the third, fourth, fifth
18 and sixth grades, shall not have more than twenty-five
19 pupils for each teacher of the grade or grades.

20 Beginning with the school year one thousand nine
21 hundred eighty-six—eighty-seven, and thereafter, no
22 county shall maintain a greater number of classrooms

23 having two or more grades that include one or more of the
24 grade levels referred to in this section than were in
25 existence in said county as of the first day of January, one
26 thousand nine hundred eighty-three: *Provided*, That for the
27 prior school years, and only if there is insufficient
28 classroom space available in the school or county, a county
29 may maintain one hundred ten percent of such number of
30 classrooms.

31 During the school year one thousand nine hundred
32 eighty-four—eighty-five, and thereafter, the state
33 superintendent is authorized, consistent with sound
34 educational policy, (a) to permit on a statewide basis in
35 grades four through six, more than twenty-five pupils per
36 teacher in a classroom for the purposes of instruction in
37 physical education, and (b) to permit more than twenty
38 pupils per teacher in a specific kindergarten classroom and
39 twenty-five pupils per teacher in a specific classroom in
40 grades one through six during a school year in the event of
41 extraordinary circumstances as determined by the state
42 superintendent after application by a county board of
43 education.

44 The state board of education shall establish guidelines for
45 the exceptions authorized in this section, but in no event
46 shall the superintendent except classrooms having more
47 than three pupils above the teacher-pupil ratio as set forth
48 in this section.

49 No provision of this section is intended to limit the
50 number of pupils per teacher in a classroom for the purpose
51 of instruction in choral, band or orchestra music.

CHAPTER 63

(Com. Sub. for H. B. 1283—By Delegate Murphy and Delegate Rogers)

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

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-b, relating to requiring county boards of education to provide

for school counselors in public schools; defining school counselor; requiring county boards of education to develop comprehensive school drop-out prevention programs; and requiring or authorizing certain activities of such counselor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18b. School counselors in public schools.

1 A school counselor means a professional educator who
2 holds a valid school counselor's certificate in accordance with
3 article three of chapter eighteen-a of this code.

4 Each county board of education, by the school year one
5 thousand nine hundred eighty-seven—eighty-eight, shall
6 provide counseling services for each pupil enrolled in the
7 public schools of the county.

8 The school counselor shall work with individual pupils and
9 groups of pupils in providing developmental, preventive and
10 remedial guidance and counseling programs to meet academic,
11 social, emotional and physical needs; including programs to
12 identify and address the problem of potential school dropouts.
13 The school counselor may also provide consultant services for
14 parents, teachers and administrators and may use outside
15 referral services when appropriate if no additional cost is
16 incurred by the county board.

17 The state board may adopt rules and regulations regarding
18 the activities of the school counselor, and the school counselor
19 is authorized to perform such services as are not inconsistent
20 therewith. Each county board of education shall develop a
21 comprehensive drop-out prevention program utilizing the
22 expertise of school counselors and any other appropriate
23 resources available.

24 School counselors shall be full-time professional personnel,
25 shall spend at least seventy-five percent of work time in a
26 direct counseling relationship with pupils, and shall devote no

- 27 more than one fourth of the work day to administrative
 28 activities: *Provided*, That such activities are counselor related.
- 29 Nothing herein shall prohibit a county board from exceeding
 30 the provisions of this section.

CHAPTER 64

(S. B. 707—Originating in the Committee on the Judiciary)

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

AN ACT to amend and reenact article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections thirteen and fourteen, all relating to vocational rehabilitation, continuation of social security disability determination section; and providing duties of assistant director of social security disability determination section.

Be it enacted by the Legislature of West Virginia:

That article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections thirteen and fourteen, to read as follows:

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-13. Social security disability determination section.

§18-10A-14. Duties of assistant director of social security disability determination section.

§18-10A-13. Social security disability determination section.

- 1 The disability determination section of the division
- 2 of vocational rehabilitation created pursuant to the pro-
- 3 visions of section three, article ten-a, chapter eighteen of
- 4 this code, is hereby continued and shall be named the
- 5 social security disability determination section.
- 6 The social security disability determination section
- 7 shall be subject to chapter twenty-nine-a of this code.

§18-10A-14. Duties of assistant director of social security disability determination section.

1 In addition to duties imposed by other federal and
2 state laws, the assistant director shall:

3 (1) Ensure that each client of the agency who is denied
4 benefits is

5 (a) Advised of his right to appeal an agency decision to
6 an administrative law judge,

7 (b) Advised of proper procedures for filing and pursuing
8 an appeal, and

9 (c) Encouraged to exercise his right of appeal when he
10 feels a decision was made in error and is unjust;

11 (2) Promulgate rules establishing criteria for granting
12 promotion and salary increases which are to be based on
13 merit;

14 (3) Prepare and submit to the state board, and the
15 social security disability board, an annual report show-
16 ing compliance and noncompliance with the provisions
17 of this section. A copy of the report shall be filed with
18 the secretary of state's office to be made available for
19 public inspection;

20 (4) Ensure that physicians evaluating medical im-
21 pairments are qualified by experience and educational
22 specialty to make proper medical judgments on the
23 medical impairments they are assigned to evaluate; and

24 (5) Ensure that the evaluation of the claimant's per-
25 sonal physician is given due consideration in the dis-
26 ability determination process.

CHAPTER 65

(Com. Sub. for S. B. 297—By Senators Whitacre and Lucht)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section one, article seventeen, chapter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the West Virginia schools for the deaf and blind; and providing a minimum salary schedule for nonprofessional employees in accordance with that provided service personnel in the public schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-1. Continuation; management; minimum salary scale for all employees.

1 The West Virginia schools for deaf pupils and blind
2 pupils heretofore established and located at Romney, in
3 Hampshire County, shall be continued and shall be
4 known as the "West Virginia schools for the deaf and the
5 blind." The schools shall be maintained for the care and
6 education of the deaf youth and blind youth of the state.
7 The educational or business affairs of the schools shall be
8 under the control, supervision and management of the
9 state board of education, and the state board shall employ
10 the superintendent, principals, teachers and other em-
11 ployees and shall fix the yearly or monthly salary to be
12 paid to each person so employed.

13 The minimum salary scale for said principals, teachers
14 and other employees shall be the same as set forth in
15 sections two, three and eight-a, article four, chapter eigh-
16 teen-a of this code.

CHAPTER 66

(Com. Sub. for H. B. 1092—By Delegate Givens and Delegate Shanholtz)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend article twenty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section one-a, relating to requiring special education programs for preschool severely handicapped children between the ages of three and five to the extent legislative appropriation is made therefor; requiring each county to develop a plan in accordance with state standards; providing a schedule for the establishment and maintenance of such programs; defining the term "severely handicapped children"; requiring adoption of rules and regulations by the state board of education to advance this program; and permitting county boards of education to exceed the provisions of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1a. Preschool programs for severely handicapped children; rules and regulations.

1 (a) During the school year beginning on the first day of
2 July, one thousand nine hundred eighty-five, each county
3 board of education shall develop a coordinated service delivery
4 plan in accordance with standards for preschool programs for
5 severely handicapped children to be developed by the state
6 board of education and begin services where plans are already
7 developed.

8 (b) Only in any year in which funds are made available by
9 legislative appropriation, and only to the extent of such
10 funding, each county board of education shall establish and
11 maintain a special educational program, including, but not
12 limited to, special classes and home-teaching and visiting-
13 teacher services for all severely handicapped children between
14 the ages of three and five according to the following schedule:

15 (1) By the school year beginning on the first day of July,
16 one thousand nine hundred eighty-six, and thereafter, for
17 severely handicapped children who are age four before the first
18 day of September, one thousand nine hundred eighty-six;

19 (2) By the school year beginning on the first day of July,
20 one thousand nine hundred eighty-seven, and thereafter, for
21 severely handicapped children who are age three before the
22 first day of September, one thousand nine hundred eighty-
23 seven.

24 As used in this section, the term "severely handicapped
25 children" means those children who fall in any one of the
26 following categories as defined or to be defined in the state
27 board of education standards for the education of exceptional
28 children: Severe behavioral disorders, severely speech and
29 language impaired, deaf-blind, hearing impaired, autistic,
30 physically handicapped, profoundly mentally retarded,
31 trainable mentally retarded or visually impaired.

32 Before the first day of August, one thousand nine hundred
33 eighty-five, the state board of education shall adopt rules and
34 regulations to advance and accomplish this program and to
35 assure that an appropriate educational program is available to
36 all such children in the state, including children in mental
37 health facilities, residential institutions and private schools.

38 This section does not prevent county boards of education
39 from providing special education programs, including, but not
40 limited to, special schools, classes, regular class programs and
41 home-teaching or visiting-teacher services for severely
42 handicapped preschool children prior to such times as are
43 required by this section. In addition, county boards of
44 education may provide these services to preschool exceptional
45 children in disability categories other than those listed above.

CHAPTER 67

(Com. Sub. for H. B. 1664—By Mr. Speaker, Mr. Albright, and Delegate Sattes)

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

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, relating to establishing the eminent scholars endowment trust fund;

providing definitions; establishing a corporation; designating the board of directors; designating powers and duties of the board and of the board of regents; specifying how the fund shall be administered; providing for the selection of scholars; authorizing and providing for the solicitation of private moneys; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

- §18-22A-1. Legislative findings.
- §18-22A-2. Definitions.
- §18-22A-3. Establishment of fund; corporation to administer; board of directors.
- §18-22A-4. Corporate powers.
- §18-22A-5. Duties of board of regents.
- §18-22A-6. Administration of fund.
- §18-22A-7. Selection of scholars.
- §18-22A-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.
- §18-22A-9. Annual report.

§18-22A-1. Legislative findings.

1 The Legislature hereby finds that the essence of excellence
2 in higher education is the attraction and retention of
3 outstanding faculty; that however necessary modern facilities
4 and efficient and effective administration may be, the faculty
5 provides the catalyst by which all the elements of higher
6 education combine to offer a quality education. The Legisla-
7 ture further finds that the attraction and retention of
8 outstanding faculty at all state colleges and universities,
9 particularly those who have attained distinction as scholars
10 and teachers, requires a long-term and permanent commitment
11 from both public and private sources, that private support will
12 help strengthen the commitment of citizens and organizations
13 to the promotion of excellence in higher education and will
14 provide moneys for salaries competitive with those paid to
15 scholars of similar eminence working for this country's leading
16 colleges and universities.

17 The Legislature further finds that the appropriations of
18 public moneys to attract and retain outstanding faculty and
19 to encourage the commitment of private moneys with a view
20 toward the accumulation of such moneys in a trust fund for
21 such purposes is a proper annual expense of the state, and that
22 the establishment of an eminent scholars trust fund is a proper
23 means of providing for the advancement of public higher
24 education in this state.

§18-22A-2. Definitions.

1 Whenever the following terms are used in this article, they
2 shall have the meanings described below:

3 (a) "Board of directors" or "board" means the members of
4 the board of directors of the eminent scholars endowment trust
5 fund.

6 (b) "Endowed chair" or "chair" means the position created
7 pursuant to section six of this article to which an eminent
8 scholar shall be appointed.

9 (c) "Fund" means the eminent scholars endowment trust
10 fund.

11 (d) "Contract salary" means that portion of the scholar's
12 financial compensation paid from state moneys but shall not
13 be construed to include moneys from the eminent scholars
14 endowment trust fund.

**§18-22A-3. Establishment of fund; corporation to administer;
board of directors.**

1 There is hereby established the eminent scholars endowment
2 trust fund, a public corporation, for the purpose of admin-
3 istering the fund described in this article. The board of
4 directors of this corporation shall be those persons appointed
5 and serving as members of the board of regents.

§18-22A-4. Corporate powers.

1 (a) The officers of the corporation shall be the officers of
2 the board of regents. The procedural rules of the board of
3 regents shall be used in conducting meetings.

4 (b) The corporation is hereby expressly authorized to
5 receive appropriations of public moneys and private or public

6 grants, gifts or bequests. It may hold, invest or reinvest such
7 moneys and expend the income therefrom as hereinafter
8 provided. The board may determine which of the properties
9 and moneys received by it, other than public appropriations,
10 grants, bequests and specific gifts, are income and which are
11 additions to principal.

12 (c) The board shall be exempt from liability for any loss
13 or decrease in value of the assets or income of the fund, except
14 as such losses or decreases in value are shown to be the result
15 of bad faith, gross negligence or intentional misconduct.

16 For the purpose of valuing assets, the board may use any
17 commonly accepted techniques of appraisal or commonly
18 accepted principles of accounting. No agency of government
19 nor any person, natural or corporate, may charge or collect
20 any fee or receive any part of the principal or income from
21 any appropriation, grant, gift or bequest as a fee for the
22 acquisition or administration of the appropriation, grant, gift
23 or bequest.

24 (d) The board shall adhere at all times to the terms and
25 limitations of any appropriation, grant, gift or bequest
26 received. However, the board may refuse to receive any grant,
27 gift or bequest which incorporates terms and limitations which
28 they deem to be unacceptable.

29 (e) The board may in its sole discretion borrow money when
30 necessary in order to avoid the untimely sale of assets. At no
31 time, however, may the board incur any debt obligation for
32 such purpose which exceeds twelve months in duration.

§18-22A-5. Duties of board of regents.

1 The board of regents shall provide to the fund all necessary
2 secretarial services, office space, staff and other assistance
3 required without charge or appropriation therefor.

§18-22A-6. Administration of fund.

1 (a) The board shall use any state moneys appropriated to
2 the fund solely for the purpose of establishing endowed chairs
3 at state colleges and universities.

4 The board may allocate state appropriations to an account
5 only when private moneys have also been allocated to that

17 The Legislature further finds that the appropriations of
18 public moneys to attract and retain outstanding faculty and
19 to encourage the commitment of private moneys with a view
20 toward the accumulation of such moneys in a trust fund for
21 such purposes is a proper annual expense of the state, and that
22 the establishment of an eminent scholars trust fund is a proper
23 means of providing for the advancement of public higher
24 education in this state.

§18-22A-2. Definitions.

1 Whenever the following terms are used in this article, they
2 shall have the meanings described below:

3 (a) "Board of directors" or "board" means the members of
4 the board of directors of the eminent scholars endowment trust
5 fund.

6 (b) "Endowed chair" or "chair" means the position created
7 pursuant to section six of this article to which an eminent
8 scholar shall be appointed.

9 (c) "Fund" means the eminent scholars endowment trust
10 fund.

11 (d) "Contract salary" means that portion of the scholar's
12 financial compensation paid from state moneys but shall not
13 be construed to include moneys from the eminent scholars
14 endowment trust fund.

**§18-22A-3. Establishment of fund; corporation to administer;
board of directors.**

1 There is hereby established the eminent scholars endowment
2 trust fund, a public corporation, for the purpose of admin-
3 istering the fund described in this article. The board of
4 directors of this corporation shall be those persons appointed
5 and serving as members of the board of regents.

§18-22A-4. Corporate powers.

1 (a) The officers of the corporation shall be the officers of
2 the board of regents. The procedural rules of the board of
3 regents shall be used in conducting meetings.

4 (b) The corporation is hereby expressly authorized to
5 receive appropriations of public moneys and private or public

6 grants, gifts or bequests. It may hold, invest or reinvest such
7 moneys and expend the income therefrom as hereinafter
8 provided. The board may determine which of the properties
9 and moneys received by it, other than public appropriations,
10 grants, bequests and specific gifts, are income and which are
11 additions to principal.

12 (c) The board shall be exempt from liability for any loss
13 or decrease in value of the assets or income of the fund, except
14 as such losses or decreases in value are shown to be the result
15 of bad faith, gross negligence or intentional misconduct.

16 For the purpose of valuing assets, the board may use any
17 commonly accepted techniques of appraisal or commonly
18 accepted principles of accounting. No agency of government
19 nor any person, natural or corporate, may charge or collect
20 any fee or receive any part of the principal or income from
21 any appropriation, grant, gift or bequest as a fee for the
22 acquisition or administration of the appropriation, grant, gift
23 or bequest.

24 (d) The board shall adhere at all times to the terms and
25 limitations of any appropriation, grant, gift or bequest
26 received. However, the board may refuse to receive any grant,
27 gift or bequest which incorporates terms and limitations which
28 they deem to be unacceptable.

29 (e) The board may in its sole discretion borrow money when
30 necessary in order to avoid the untimely sale of assets. At no
31 time, however, may the board incur any debt obligation for
32 such purpose which exceeds twelve months in duration.

§18-22A-5. Duties of board of regents.

1 The board of regents shall provide to the fund all necessary
2 secretarial services, office space, staff and other assistance
3 required without charge or appropriation therefor.

§18-22A-6. Administration of fund.

1 (a) The board shall use any state moneys appropriated to
2 the fund solely for the purpose of establishing endowed chairs
3 at state colleges and universities.

4 The board may allocate state appropriations to an account
5 only when private moneys have also been allocated to that

6 account. The board shall endeavor, whenever possible, to
7 allocate one dollar of state appropriations for every two
8 dollars of private moneys allocated. The board may also
9 allocate only private moneys to an account.

10 Unless otherwise directed by executive order, the payment
11 of state appropriations to the fund shall be made in twelve
12 equal monthly installments, beginning on the last day of the
13 first month of the fiscal year.

14 (b) The board may, for purposes of investment, commingle
15 any moneys constituting principal received from whatever
16 source to the extent allowed under the terms of the granting
17 of such moneys and shall endeavor to obtain the highest
18 possible rate of return consistent with the preservation of the
19 principal. Consistent with the terms of the appropriation,
20 grant, gift or bequest, and the provisions of this section, the
21 board may use any income, principal or combination of
22 income and principal as it may deem prudent to finance the
23 establishment of each endowed chair.

24 (c) The board shall designate endowed chairs at the various
25 colleges and universities as it may deem appropriate. For each
26 chair so established it shall designate a separate account
27 administered by the board to which moneys from the fund
28 shall be deposited. Such moneys may continue to be deemed
29 principal for purposes of investment and commingling
30 pursuant to subsection (b) of this section, and any income, loss
31 or gain, or increase or decrease in value may be allocated by
32 the board on such reasonable basis as is prescribed by the
33 board.

34 (d) For the purpose of encouraging the donation of private
35 moneys to the fund, the board may designate specific chairs
36 or specific areas of academic study as subjects of challenge
37 grants. A specific chair, or a chair in a designated academic
38 area, shall be established whenever the total amount of
39 principal and interest dedicated to it reaches one hundred fifty
40 thousand dollars, with at least one half of the principal being
41 from private sources.

42 When one hundred fifty thousand dollars has accumulated
43 in the account dedicated to any one chair, the board shall
44 notify the president of the appropriate college or university
45 that an appointment to that chair shall be made.

46 (e) The president of the college or university shall use at
47 least two thirds of the income from moneys allocated to an
48 account to supplement the salary of the person appointed to
49 the endowed chair created by such account. The sum paid
50 from the fund to the person so appointed shall be in addition
51 to the contract salary except as otherwise provided in this
52 section. Such president may allocate one third or any part
53 thereof to provide or assist in providing secretarial or other
54 support services for the endowed chair or may return one third
55 or any part thereof to the board with the direction that such
56 amount be added to the principal amount in the account of
57 the endowed chair from which such income was derived to
58 protect its future yield.

59 (f) Whenever the endowed chair's salary supplement
60 received pursuant to this subsection equals fifty percent of the
61 contract salary, the president of the college or university may
62 return all or a portion of the excess amount to the fund, and
63 the board shall designate a new account for the purpose of
64 establishing another chair at the same institution or an existing
65 account at the same institution for receipt of the moneys so
66 returned: *Provided*, That when the principal amount of any
67 chair reaches the sum of one million dollars or more, no state
68 salary may be paid to the holder of the chair, but such person's
69 entire salary shall be paid from the interest income.

70 (g) When the total allocations designated for a chair from
71 both public and private sources do not equal or exceed one
72 hundred fifty thousand dollars within five years from the date
73 of the establishment of the account, the board may designate
74 a new or existing chair as the recipient of the moneys,
75 regardless of the terms of the appropriation, grant, gift or
76 bequest, except where return of the moneys is required by the
77 terms of the grant, gift or bequest.

§18-22A-7. Selection of scholars.

1 Each college or university shall establish criteria for the
2 selection of persons to be appointed to the chairs established
3 pursuant to this article. Endowed positions may be filled from
4 either within or outside the faculty of the college or university.
5 At each college or university at least one half of all chairs
6 funded pursuant to this article shall be dedicated exclusively
7 to teaching, and outstanding teaching ability shall be part of
8 the criteria for appointment to such teaching chair.

9 Appointees shall have a record of distinguished academic or
10 professional work in an appropriate field, such to be judged
11 in national terms and verified by the department or college
12 benefitting from such chair. Appointees shall submit to peer
13 review at such department or college and such other review
14 procedures as may be established by the college or university.

15 The board, or the college or university, may establish criteria
16 which exceeds the provisions of this section.

**§18-22A-8. Authorization to solicit private moneys; terms of grants;
reports to board of directors; handling of moneys.**

1 Each college and university, and each dean and department
2 chair within each college or university, is hereby authorized
3 to solicit moneys for the endowment of chairs pursuant to this
4 article. In order to maximize the effective use of moneys
5 raised, persons or institutions soliciting moneys shall endeavor,
6 insofar as is possible, to secure private grants, gifts or bequests
7 which are unlimited as to their use. All persons and institutions
8 engaged in soliciting moneys shall apprise the board of their
9 actions and provide periodic reports, at least once each fiscal
10 year, regarding the amounts secured and, upon receipt of any
11 moneys, shall forward them forthwith to the board for deposit
12 in accordance with section six of this article.

§18-22A-9. Annual report.

1 The board shall make an annual report to the joint
2 committee on government and finance of the West Virginia
3 Legislature no later than the first day of December of each
4 year setting forth with specificity the sources of all moneys,
5 the allocations of all moneys and such other information as
6 the joint committee may require.

CHAPTER 68

(S. B. 634—Originating in the Committee on Education)

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

AN ACT to amend and reenact section one-b, article twenty-four, chapter eighteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the faculty improvement fee; requiring that such fees on deposit as of the effective date of this section be distributed in accordance with this section; and requiring that the funds generated by such fee be used to fund faculty salaries in accordance with article twenty-two, chapter eighteen of this code.

Be it enacted by the Legislature of West Virginia:

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

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

§18-24-1b. Faculty improvement fee.

1 In addition to the fees specifically provided for in sec-
2 tions one and one-a of this article, all students enrolled
3 for credit at the state's public colleges and universities
4 shall pay a faculty improvement fee. The West Virginia
5 board of regents shall fix the fee rates for the various insti-
6 tutions and classes of students and may from time to time
7 change these rates: *Provided*, That the fee for each class
8 of students shall be uniform throughout the state and
9 shall be no less than fifteen dollars per semester for
10 residents and no less than fifty dollars per semester for
11 out-of-state students. The amount of the fee charged at
12 each institution shall be prorated for part-time students.
13 The fee imposed by this section is in addition to the
14 maximum fees allowed to be collected under the provi-
15 sions of section one of this article and is not limited
16 thereby. Refunds of the fee may be made in the same
17 manner as any other fee collected at state institutions of
18 higher education.

19 All faculty improvement fees collected shall be de-
20 posited in a special fund in the state treasury. The board
21 of regents shall use such fees to the extent available to
22 implement sections two and three, article twenty-two of
23 this chapter. Notwithstanding prior enactments of this
24 section, any such fees on deposit as of the effective date of

25 this section shall be distributed during the fiscal year one
26 thousand nine hundred eighty-five-eighty-six in accordance
27 with the provisions of this section.

28 The board of regents shall, before the first day of July
29 of each year, provide the legislative auditor with a report
30 of the projected fee collections for each of its institutions.

CHAPTER 69

(Com. Sub. for S. B. 442—By Senators R. Williams, Burdette, Spears, Cook,
Nelson, Ash, Parker and Holliday)

[Passed April 8, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-c; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-nine, all relating to establishing a medical education fee; providing for the collection, disposition and use of such fee; establishing a medical student loan program and fund; authorizing the board of regents to promulgate rules and regulations for administration of the loan program; establishing minimum eligibility requirements; and providing for loan forgiveness in certain instances.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-c; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-nine, all to read as follows:

Article

24. Fees and Other Money Collected at State Institutions of Higher Education.
26. West Virginia Board of Regents.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**§18-24-1c. Medical education fee.**

1 In addition to the fees specifically provided for in
2 sections one, one-a and one-b of this article, all medical
3 students enrolled for credit at the West Virginia Uni-
4 versity school of medicine, Marshall University school of
5 medicine and the West Virginia school of osteopathic
6 medicine shall pay a medical education fee. The board
7 of regents shall fix the fee rates for students at each
8 institution and may from time to time change these rates.
9 The fee imposed by this section is in addition to the
10 maximum fees allowed to be collected under the provi-
11 sions of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same
13 manner as any other fee collected at state institutions of
14 higher education. Medical education fees collected shall
15 be deposited in a special revenue account which is hereby
16 created in the state treasury for the school at which the
17 fees are collected and shall be used by the school to offset
18 general operating costs: *Provided*, That the board of
19 regents may deposit a portion of the total fees collected
20 therein into the medical student loan fund account in
21 accordance with the provisions of section twenty-nine,
22 article twenty-six of this chapter. Before the first day
23 of July of each year, the board of regents shall provide
24 the legislative auditor with a report of the projected fee
25 collections for each of the schools of medicine.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**§18-26-29. Medical student loan program; establishment; ad-
ministration; eligibility; loan forgiveness.**

1 There is hereby created a medical student loan program
2 to be administered by the board. The purpose of this
3 program is to provide loans to state residents who demon-
4 strate financial need, meet academic standards and are
5 enrolled or accepted for enrollment at the West Virginia
6 University school of medicine, Marshall University school

7 of medicine or the West Virginia school of osteopathic
8 medicine.

9 (a) There is hereby established a special revolving
10 fund account under the board in the state treasury to be
11 known as the medical student loan fund which shall be
12 used to carry out the purposes of this section. The fund
13 shall consist of: (1) Amounts allocated by the board from
14 the medical education fee as established by section one-c,
15 article twenty-four of this chapter: *Provided*, That the
16 board may transfer to this fund for student loans an
17 amount not to exceed thirty-three percent of the total col-
18 lections from the medical education fee in any one year;
19 (2) appropriations provided by the Legislature; (3) prin-
20 cipal and interest repaid by medical student loan recipi-
21 ents; and (4) other amounts which may be available from
22 external sources. Balances remaining in the fund at the
23 end of the fiscal year shall not expire or revert. No loans
24 may be awarded under the provisions of this section until
25 the first day of July, one thousand nine hundred eighty-
26 six. All costs associated with the administration of this sec-
27 tion shall be paid from the medical student loan fund.

28 (b) The board shall promulgate rules and regulations
29 for the administration of the medical student loan pro-
30 gram. Such rules and regulations shall include, but not
31 be limited to, the areas of academic standards, financial
32 need, loan amounts, residency requirements, loan repay-
33 ment requirements, loan forgiveness provisions, interest
34 rates, collection procedures and financial management.
35 Loans shall be awarded at the institutional level in a
36 manner consistent with rules and regulations promulgated
37 by the board.

38 (c) An individual shall be eligible for loan considera-
39 tion if he is a resident of this state as defined by the
40 board, demonstrates financial need, meets established
41 academic standards and is enrolled or accepted for en-
42 rollment at one of the aforementioned schools of medicine
43 in a program leading to the degree of medical doctor (M.
44 D.) or doctor of osteopathy (D. O.): *Provided*, That the
45 individual has not yet received one of these degrees and
46 is not in default of any previous student loan.

47 (d) The board, in conjunction with the state depart-
48 ment of health, shall determine qualifying medically
49 underserved areas and medical specialties in which there
50 is a shortage of physicians.

51 At the end of each fiscal year, any individual who has
52 received a medical student loan and who has actually
53 rendered services as a medical doctor or doctor of osteo-
54 pathy in this state in a designated medically underserved
55 area or in a designated medical specialty in which there
56 is a shortage of physicians, may submit to the board a
57 statement of service on a form provided for that purpose.
58 Upon receipt of such statement in proper form, the board
59 shall cancel appropriate portions of the outstanding loan
60 or loans in accordance with rules and regulations promul-
61 gated by the board.

CHAPTER 70

(Com. Sub. for H. B. 1854—By Delegate Givens and Delegate E. Martin)

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

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to higher education; authority to establish faculty and classified employee continuing education and development programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-30. Faculty and classified employee continuing education and development program.

1 Each state college or university shall have the authority to

2 establish and operate a faculty and classified employee
3 continuing education and development program under rules
4 and regulations adopted by the board. Funds allocated or
5 made available may be used to compensate and pay expenses
6 for faculty or classified employees who are pursuing additional
7 academic study or training to better equip themselves for their
8 duties at the college or university.

9 Rules and regulations for this activity may include rea-
10 sonable provisions for the continuation or return of any
11 faculty or classified employee receiving the benefits of such
12 education or training, or for reimbursement by the state for
13 expenditures incurred on behalf of such faculty or classified
14 employee.

CHAPTER 71

(Com. Sub. for H. B. 1970—By Delegate Murphy and Delegate Rogers)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections eight and eleven, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen of said code by adding thereto a new article, designated article twenty-nine, all relating to providing a grievance procedure for employees of the board of regents, state institutions of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocation centers; declaring legislative purpose and intent; defining certain terms; providing for grievance procedures, hearings and appeals generally; designating procedural levels and providing for procedures at each such level; creating and providing for an education employees grievance board; delineating certain powers and duties of said board; providing for hearing examiners; providing for certain powers and duties of such hearing examiners; providing for enforcement and reviewability of decisions of the hearing examiners; providing for the allocation of costs in certain instances; authorizing mandamus proceedings upon failure to comply with the provisions of article twenty-nine of chapter eighteen; providing that employee

suspended or dismissed for certain reasons have opportunity to request a hearing pursuant to said article twenty-nine; providing for recovery of attorney's fees and court costs by an employee prevailing in either circuit court or supreme court of appeals; and setting limitations upon such attorney's fees.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

- §18-29-1. Legislative purpose and intent.
- §18-29-2. Definitions.
- §18-29-3. Grievance procedure generally.
- §18-29-4. Procedural levels and procedure at each level.
- §18-29-5. Education employees grievance board; hearing examiners.
- §18-29-6. Hearings generally.
- §18-29-7. Enforcement and reviewability.
- §18-29-8. Allocation of costs.
- §18-29-9. Mandamus proceedings.

§18-29-1. Legislative purpose and intent.

1 The purpose of this article is to provide a procedure for
2 employees of the board of regents, state board of education,
3 county boards of education, regional educational service
4 agencies and multi-county vocational centers and their
5 employer or agents of the employer to reach solutions to
6 problems which arise between them within the scope of their
7 respective employment relationships to the end that good
8 morale may be maintained, effective job performance may be
9 enhanced and the citizens of the community may be better
10 served. This procedure is intended to provide a simple,
11 expeditious and fair process for resolving problems at the
12 lowest possible administrative level and shall be construed to
13 effectuate this purpose. Nothing herein shall prohibit the
14 informal disposition of grievances by stipulation or settlement

15 agreed to in writing by the parties, nor the exercise of any
16 hearing right provided in article two, chapter eighteen-a of this
17 code or any other section of chapter eighteen or eighteen-a of
18 this code: *Provided*, That employees of the board of regents
19 or of state institutions of higher education shall have the
20 option of filing grievances in accordance with the provisions
21 of this article or in accordance with the provisions of policies,
22 rules and regulations of the board of regents regarding such
23 employees. Any board decision pursuant to such sections may
24 be appealed in accordance with the provisions of this article
25 unless otherwise provided in such section.

§18-29-2. Definitions.

1 For the purpose of this article:

2 (a) "Grievance" means any claim by one or more affected
3 employees of the board of regents, state board of education,
4 county boards of education, regional educational service
5 agencies and multi-county vocational centers alleging a
6 violation, a misapplication or a misinterpretation of the
7 statutes, policies, rules, regulations or written agreements
8 under which such employees work, including any violation,
9 misapplication or misinterpretation regarding compensation,
10 hours, terms and conditions of employment, employment
11 status or discrimination; any discriminatory or otherwise
12 aggrieved application of unwritten policies or practices of the
13 board; any specifically identified incident of harassment or
14 favoritism; or any action, policy or practice constituting a
15 substantial detriment to or interference with effective
16 classroom instruction, job performance or the health and
17 safety of students or employees.

18 Any pension matter or other issue relating to the state
19 teachers retirement system in accordance with article seven-a
20 of this chapter or other retirement system administered outside
21 the jurisdiction of the applicable governing board, any matter
22 relating to public employees insurance in accordance with
23 article sixteen, chapter five of this code, or any other matter
24 in which authority to act is not vested with the employer shall
25 not be the subject of any grievance filed in accordance with
26 the provisions of this article.

27 (b) "Days" means days of the employee's employment term
28 or prior to or subsequent to such employment term exclusive

29 of Saturday, Sunday, official holidays or school closings in
30 accordance with section two, article five, chapter eighteen-a of
31 this code.

32 (c) "Employee" means any person hired by an institution
33 either full or part time. A substitute is considered an employee
34 only on matters related to days worked for an institution or
35 when there is a violation, misapplication or misinterpretation
36 of a statute, policy, rule, regulation or written agreement
37 relating to such substitute.

38 (d) "Grievant" means any named employee or group of
39 named employees filing a grievance as defined in subsection
40 (a) of this section.

41 (e) "Institution" means any state institution of higher
42 education, the board of regents, any institution whose
43 employees are hired by the state board of education including
44 the department of education, and any public school, regional
45 educational service agency or multi-county vocational center.

46 (f) "Employer" means that institution contracting the
47 services of the employee.

48 (g) "Immediate supervisor" means that person next in rank
49 above the grievant possessing a degree of administrative
50 authority and designated as such in the employee's contract,
51 if any.

52 (h) "Chief administrator" means the president of a state
53 institution of higher education, the chancellor of the board of
54 regents only as to those employees not assigned to a state
55 institution of higher education, the state superintendent of
56 schools as to employees hired by the state board of education,
57 the county superintendent, the executive director of a regional
58 educational service agency or the director of a multi-county
59 vocational center.

60 (i) "Governing board" means the administrative board of
61 any state or county educational institution, including
62 institutions whose employees are hired by the state board of
63 education, and refers, as is applicable, to the board of regents,
64 state board of education, county boards of education, the
65 school board members of any board of directors of a regional
66 educational service agency or the school board members of any
67 administrative council of a multi-county vocational center.

68 (j) "Grievance evaluator" means that individual or govern-
69 ing board authorized to render a decision on a grievance.

70 (k) "Board" means the education employees grievance
71 board.

72 (l) "Hearing examiner" means the individual or individuals
73 employed by the board in accordance with section five of this
74 article.

75 (m) "Discrimination" means any differences in the treatment
76 of employees unless such differences are related to the actual
77 job responsibilities of the employees or agreed to in writing
78 by the employees.

79 (n) "Harassment" means repeated or continual disturbance,
80 irritation or annoyance of an employee which would be
81 contrary to the demeanor expected by law, policy and
82 profession.

83 (o) "Favoritism" means unfair treatment of an employee as
84 demonstrated by preferential, exceptional or advantageous
85 treatment of another or other employees.

86 (p) "Reprisal" means the retaliation of an employer or agent
87 toward a grievant or any other participant in the grievance
88 procedure either for an alleged injury itself or any lawful
89 attempt to redress it.

90 (q) "Employee organization" means any employee advocacy
91 organization whose membership includes employees as defined
92 in this section which has filed with the board the name,
93 address, chief officer and membership criteria of the
94 organization.

95 (r) "Representative" means any employee organization,
96 fellow employee, legal counsel or other person or persons
97 designated by the grievant as the grievant's representative.

§18-29-3. Grievance procedure generally.

1 (a) A grievance must be filed within the times specified in
2 section four of this article and shall be processed as rapidly
3 as possible. The number of days indicated at each level
4 specified in section four of this article shall be considered as
5 the maximum number of days allowed and, if a decision is
6 not rendered at any level within the prescribed time limits, the

7 grievant may appeal to the next level: *Provided*, That the
8 specified time limits may be extended by mutual written
9 agreement and shall be extended whenever a grievant is not
10 working because of such circumstances as provided for in
11 section ten, article four, chapter eighteen-a of this code.

12 (b) If the employer or agent intends to assert the applica-
13 bility of any statute, policy, rule, regulation or written
14 agreement or submits any written response to the filed
15 grievance at any level, a copy thereof shall be forwarded to
16 the grievant and any representative of the grievant so named
17 in the filed grievance. Anything so submitted and the grievant's
18 response thereto, if any, shall become part of the record.
19 Failure to assert such statute, policy, rule, regulation or written
20 agreement at any level shall not prevent the subsequent
21 submission thereof in accordance with the provisions of this
22 subsection.

23 (c) The grievant may file the grievance at the level vested
24 with authority to grant the requested relief if each lower
25 administrative level agrees in writing thereto. In the event a
26 grievance is filed at a higher level, the employer shall provide
27 copies to each lower administrative level.

28 (d) An employee may withdraw a grievance at any time by
29 notice, in writing, to the level wherein the grievance is then
30 current. Such grievance may not be reinstated by the grievant
31 unless such reinstatement is granted by the grievance evaluator
32 at the level where the grievance was withdrawn. If more than
33 one employee is named as grievant in a particular grievance,
34 the withdrawal of one employee shall not prejudice the rights
35 of any other employee named in the grievance. In the event
36 a grievance is withdrawn or an employee withdraws from a
37 grievance, such employer shall notify in writing each lower
38 administrative level.

39 (e) Grievances may be consolidated at any level by
40 agreement of all parties.

41 (f) An employee may have the assistance of one or more
42 fellow employees, an employee organization representative or
43 representatives, legal counsel or any other person in the
44 preparation and presentation of the grievance. At the request
45 of the grievant, such person or persons may be present at any
46 step of the procedure.

47 (g) If a grievance is filed which cannot be resolved within
48 the time limits set forth in section four of this article prior
49 to the end of the employment term, the time limit set forth
50 in said section shall be reduced as agreed to in writing by both
51 parties so that the grievance procedure may be concluded
52 within ten days following the end of the employment term or
53 an otherwise reasonable time.

54 (h) No reprisals of any kind shall be taken by any employer
55 or agent of the employer against any interested party, or any
56 other participant in the grievance procedure by reason of such
57 participation. A reprisal constitutes a grievance, and any
58 person held to be responsible for reprisal action shall be
59 subject to disciplinary action for insubordination.

60 (i) Except for the informal attempt to resolve the grievance
61 as provided for in subsection (a), section four of this article,
62 decisions rendered at all levels of the grievance procedure shall
63 be dated, shall be in writing setting forth the decision or
64 decisions and the reasons therefor, and shall be transmitted
65 within the time prescribed to the grievant and any represen-
66 tative named in the grievance. If the grievant is denied the
67 relief sought, the decision shall include the name of the
68 individual at the next level to whom appeal may be made.

69 (j) Once a grievance has been filed, supportive or corrobor-
70 ative evidence may be presented at any conference or hearing
71 conducted pursuant to the provisions of this article. Whether
72 evidence substantially alters the original grievance and renders
73 it a different grievance is within the discretion of the grievance
74 evaluator at the level wherein the new evidence is presented.
75 If the grievance evaluator rules that the evidence renders it a
76 different grievance, the party offering the evidence may
77 withdraw same, the parties may consent to such evidence, or
78 the grievance evaluator may decide to hear the evidence or rule
79 that the grievant must file a new grievance. The time
80 limitations for filing the new grievance shall be measured from
81 the date of such ruling.

82 (k) Any change in the relief sought by the grievant shall be
83 consented to by all parties or may be granted at level four
84 within the discretion of the hearing examiner.

85 (l) Forms for filing grievances, giving notice, taking appeals,
86 making reports and recommendations, and all other necessary

87 documents shall be made available by the immediate
88 supervisor to any employee upon request. Such forms shall
89 include information as prescribed by the board. The grievant
90 shall have access to the institution's equipment for purposes
91 of preparing grievance documents subject to the reasonable
92 rules of the employer governing the use of such equipment.

93 (m) Notwithstanding the provisions of section three, article
94 nine-a, chapter six of this code, or any other provision relating
95 to open proceedings, all conferences and hearings pursuant to
96 this article shall be conducted in private except that, upon the
97 grievant's request, conferences and hearings at levels two and
98 three shall be public. Within the discretion of the hearing
99 examiner, conferences and hearings may be public at level
100 four.

101 (n) No person or governing board to which appeal has been
102 made shall confer or correspond with a grievance evaluator
103 at a previous level regarding the merits of the grievance unless
104 all parties to the grievance are present.

105 (o) Grievances may be processed at any reasonable time, but
106 attempts shall be made to process the grievance in a manner
107 which does not interfere with the normal operation of the
108 institution or with employees' normal working hours.
109 Grievances processed on work time shall not result in any
110 reduction in salary, wages, rate of pay or other benefits of the
111 employee and shall be counted as time worked.

112 Should any employer or the employer's agent cause a
113 conference or hearing to be postponed without adequate notice
114 to employees who are scheduled to appear during their normal
115 work day, such employees will not suffer any loss in pay for
116 work time lost.

117 (p) Any grievance evaluator may be excused from partic-
118 ipation in the grievance process for reasonable cause,
119 including, but not limited to, conflict of interest or incapac-
120 itation, and in such case the grievance evaluator at the next
121 higher level shall designate an alternate grievance evaluator if
122 such is deemed reasonable and necessary.

123 (q) No less than one year following resolution of a grievance
124 at any level, the grievant may by request in writing have
125 removed any record of the grievance from any file kept by the
126 employer.

127 (r) All grievance forms and reports shall be kept in a file
128 separate from the personnel file of the employee and shall not
129 become a part of such personnel file, but shall remain
130 confidential except by mutual written agreement of the parties.

131 (s) The number of grievances filed against an employer or
132 agent or by an employee shall not, per se, be an indication
133 of such employer's or agent's or such employee's job
134 performance.

135 (t) Any chief administrator or governing board of an
136 institution in which a grievance was filed may appeal such
137 decision on the grounds that the decision (1) was contrary to
138 law or lawfully adopted rule, regulation or written policy of
139 the chief administrator or governing board, (2) exceeded the
140 hearing examiner's statutory authority, (3) was the result of
141 fraud or deceit, (4) was clearly wrong in view of the reliable,
142 probative and substantial evidence on the whole record, or (5)
143 was arbitrary or capricious or characterized by abuse of
144 discretion. Such appeal shall follow the procedure regarding
145 appeal provided the grievant in section four of this article and
146 provided both parties in section seven of this article.

§18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days
3 following the occurrence of the event upon which the grievance
4 is based, or within fifteen days of the date on which the event
5 became known to the grievant or within fifteen days of the
6 most recent occurrence of a continuing practice giving rise to
7 a grievance, the grievant or the designated representative shall
8 schedule a conference with the immediate supervisor to discuss
9 the nature of the grievance and the action, redress or other
10 remedy sought.

11 The conference with the immediate supervisor concerning
12 the grievance shall be conducted within three days of the
13 request therefor, and any discussion shall be by the grievant
14 in the grievant's own behalf or by both the grievant and the
15 designated representative.

16 (2) The immediate supervisor shall respond to the grievance
17 within two days of the conference.

18 (3) Within ten days of receipt of the response from the
19 immediate supervisor following the informal conference, a
20 written grievance may be filed with said supervisor by the
21 grievant or the designated representative on a form furnished
22 by the employer or agent.

23 (4) The immediate supervisor shall state the decision to such
24 filed grievance within five days after the grievance is filed.

25 (b) Level two.

26 Within five days of receiving the decision of the immediate
27 supervisor, the grievant may appeal the decision to the chief
28 administrator, and such administrator or his or her designee
29 shall conduct a hearing in accordance with section six of this
30 article within five days of receiving the appeal and shall issue
31 a written decision within five days of such hearing. Such
32 decision may affirm, modify or reverse the decision appealed
33 from.

34 (c) Level three.

35 Except as to faculty and classified employees of the board
36 of regents or any state institution of higher education who
37 shall have the option to proceed directly to level four, within
38 five days of receiving the decision of the chief administrator,
39 the grievant may appeal the decision to the governing board
40 of the institution. Within five days of receiving the appeal,
41 such governing board may conduct a hearing in accordance
42 with section six of this article, may review the record submitted
43 by the chief administrator and render a decision based on such
44 record, or may waive the right granted herein and shall notify
45 the grievant of such waiver. Any decision by the governing
46 board, including a decision to waive participation in the
47 grievance, must be in writing, and, if a hearing be held under
48 the provisions of this subsection, the governing board shall
49 issue a decision affirming, modifying or reversing the decision
50 of the chief administrator within five days of such hearing.

51 (d) Level four.

52 (1) If the grievant is not satisfied with the action taken by
53 the governing board, within five days of the written decision
54 the grievant may request, in writing, on a form furnished by

55 the employer, that the grievance be submitted to a hearing
56 examiner as provided for in section five of this article, such
57 hearing to be conducted in accordance with section six of this
58 article within ten days following the request therefor:
59 *Provided*, That such hearing may be held within thirty days
60 following the request, or within such time as is mutually agreed
61 upon by the parties, if the hearing examiner gives reasonable
62 cause, in writing, as to the necessity for such delay.

63 (2) Within thirty days following the hearing, the hearing
64 examiner shall render a decision in writing to all parties setting
65 forth findings and conclusions on the issues submitted. Subject
66 to the provisions of section seven of this article, the decision
67 of the hearing examiner shall be final upon the parties and
68 shall be enforceable in circuit court.

§18-29-5. Education employees grievance board; hearing examiners.

1 (a) There is hereby created and shall be an education
2 employees grievance board which shall consist of three
3 members who shall be citizens of the state appointed by the
4 governor by and with the advice and consent of the Senate
5 for overlapping terms of three years, except that the original
6 appointments shall be for a period of one, two and three years,
7 respectively, commencing on the first day of July, one
8 thousand nine hundred eighty-five. No two members shall be
9 from the same congressional district, and no more than two
10 of the appointed members shall be from the same political
11 party. No person shall be appointed to membership on the
12 board who is a member of any political party executive
13 committee or holds any other public office or public
14 employment under the federal government or under the
15 government of this state. Members shall be eligible for
16 reappointment, and any vacancy on the board shall be filled
17 within thirty days of the vacancy by the governor by
18 appointment for the unexpired term.

19 A member of the board may not be removed from office
20 except for official misconduct, incompetence, neglect of duty,
21 gross immorality or malfeasance, and then only in the manner
22 prescribed in article six, chapter six of this code for the
23 removal by the Governor of state elected officers.

24 The board shall hold at least two meetings yearly at such
25 times and places as it may prescribe and may meet at such

26 other times as may be necessary, such meetings to be agreed
27 to in writing by at least two of the members. Members of the
28 board shall each be paid seventy-five dollars for each calendar
29 day devoted to the work of the board, but not more than seven
30 hundred and fifty dollars during any one fiscal year. Each
31 member shall be reimbursed for all reasonable and necessary
32 expenses actually incurred in the performance of board duties,
33 but shall submit a request therefor upon sworn itemized
34 statement.

35 The board is hereby authorized and required to administer
36 the grievance procedure at level four as provided for in section
37 four of this article and shall employ at least two full-time
38 hearing examiners on an annual basis and such clerical help
39 as is necessary to implement the legislative intent expressed in
40 section one of this article.

41 The board shall hire hearing examiners who reside in
42 different regional educational service agency areas unless and
43 until the number of hearing examiners exceeds the number of
44 such areas, at which time two hearing examiners may be from
45 the same such area. These hearing examiners shall serve at the
46 will and pleasure of the board.

47 The board shall submit a yearly budget and shall report
48 annually to the governor and Legislature regarding receipts
49 and expenditures, number of level four hearings conducted,
50 synopses of hearing outcomes and such other information as
51 the board may deem appropriate. The board shall further
52 evaluate on an annual basis the level four grievance process
53 and the performance of all hearing examiners and include such
54 evaluation in the annual report to the governor and
55 Legislature. In making such evaluation, the board shall notify
56 all institutions, employee organizations and all grievants
57 participating in level four grievances in the year for which
58 evaluation is being made and shall provide for the submission
59 of written comment and/or the hearing of testimony regarding
60 the grievance process. The board shall provide suitable office
61 space for all hearing examiners in space other than that
62 utilized by any institution as defined in section two of this
63 article and shall ensure that reference materials are generally
64 available.

65 The board is authorized to promulgate rules and regulations

66 consistent with the provisions of this article, such rules and
67 regulations to be adopted in accordance with chapter twenty-
68 nine-a of this code.

69 (b) Hearing examiners are hereby authorized and shall have
70 the power to consolidate grievances, allocate costs among the
71 parties in accordance with section eight of this article,
72 subpoena witnesses and documents in accordance with the
73 provisions of section one, article five, chapter twenty-nine-a of
74 this code, provide such relief as is deemed fair and equitable
75 in accordance with the provisions of this article, and such
76 other powers as will provide for the effective resolution of
77 grievances not inconsistent with any rules or regulations of the
78 board or the provisions of this article.

§18-29-6. Hearings generally.

1 The chief administrator or his or her designee, the governing
2 board or the hearing examiner shall conduct all hearings in
3 an impartial manner and shall ensure that all parties are
4 accorded procedural and substantive due process. All parties
5 shall have an opportunity to present evidence and argument
6 with respect to the matters and issues involved, to cross
7 examine and to rebut evidence. Notice of a hearing shall be
8 sent to all parties and their named representative and shall
9 include the date, time and place of the hearing.

10 The institution that is party to the grievance shall produce
11 prior to such hearing any documents, not privileged, and
12 which are relevant to the subject matter involved in the
13 pending grievance, that has been requested by the grievant, in
14 writing.

15 The superintendent, the president of the state or county
16 board of education or the state or county board member
17 designated by such president, the executive director of the
18 regional educational service agency, the director of the multi-
19 county vocational center, the chancellor of the board of
20 regents, the president of any state institution of higher
21 education, the chief administrator or his or her designee, each
22 member of the governing board or the hearing examiner shall
23 have the power to (1) administer oaths and affirmations, (2)
24 regulate the course of the hearing, (3) hold conferences for the
25 settlement or simplification of the issues by consent of the
26 parties, (4) exclude immaterial, irrelevant or repetitious

27 evidence, (5) sequester witnesses, (6) restrict the number of
28 advocates, and take any other action not inconsistent with the
29 rules and regulations of the board or the provisions of this
30 article.

31 All the testimony and evidence at any hearing shall be
32 recorded by mechanical means, and all recorded testimony and
33 evidence at such hearing shall be transcribed and certified at
34 the request of any party to the institution or board. The
35 institution shall be responsible for promptly transcribing the
36 testimony and evidence and for providing a copy of the
37 certified transcription to the party requesting same. The
38 hearing examiner may also request and be provided a
39 transcript upon appeal to level four and allocate the costs
40 therefor as prescribed in section eight of this article.

41 Formal rules of evidence shall not be applied, but parties
42 shall be bound by the rules of privilege recognized by law.

43 All materials submitted in accordance with section three of
44 this article; the mechanical recording of all testimony and
45 evidence or the transcription thereof, if any; the decision; and
46 any other materials considered in reaching the decision shall
47 be made a part and shall constitute the record of a grievance.
48 Such record shall be submitted to any level at which appeal
49 has been made, and such record shall be considered, but the
50 development of such record shall not be limited thereby.

51 Every decision pursuant to a hearing shall be in writing and
52 shall be accompanied by findings of fact and conclusions of
53 law.

54 Prior to such decision any party may propose findings of
55 fact and conclusions of law.

§18-29-7. Enforcement and reviewability.

1 The decision of the hearing examiner shall be final upon the
2 parties and shall be enforceable in circuit court: *Provided*,
3 That either party may appeal to the circuit court of the county
4 in which the grievance occurred on the grounds that the
5 hearing examiner's decision (1) was contrary to law or lawfully
6 adopted rule, regulation or written policy of the chief
7 administrator or governing board, (2) exceeded the hearing
8 examiner's statutory authority, (3) was the result of fraud or
9 deceit, (4) was clearly wrong in view of the reliable, probative

10 and substantial evidence on the whole record, or (5) was
 11 arbitrary or capricious or characterized by abuse of discretion
 12 or clearly unwarranted exercise of discretion. Such appeal shall
 13 be filed in the circuit court of Kanawha County or in the
 14 circuit court of the county in which the grievance occurred
 15 within thirty days of receipt of the hearing examiner's decision.
 16 The decision of the hearing examiner shall not be stayed,
 17 automatically, upon the filing of an appeal, but a stay may
 18 be granted by the circuit court upon separate motion therefor.

19 The court's ruling shall be upon the entire record made
 20 before the hearing examiner, and the court may hear oral
 21 arguments and require written briefs. The court may reverse,
 22 vacate or modify the decision of the hearing examiner or may
 23 remand the grievance to the chief administrator of the
 24 institution for further proceedings.

§18-29-8. Allocation of costs.

1 Any expenses incurred relative to the grievance procedure
 2 at levels one through three shall be borne by the party
 3 incurring such expenses.

§18-29-9. Mandamus proceeding.

1 Any institution failing to comply with the provisions of this
 2 article may be compelled to do so by mandamus proceeding
 3 and shall be liable to any party prevailing against the
 4 institution for court costs and attorney fees, as determined and
 5 established by the court.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

§18A-2-11. Employee's right to attorney's fees and costs.

**§18A-2-8. Suspension and dismissal of school personnel by board;
 appeal.**

1 Notwithstanding any other provisions of law, a board may
 2 suspend or dismiss any person in its employment at any time
 3 for: Immorality, incompetency, cruelty, insubordination,
 4 intemperance or willful neglect of duty, but the charges shall
 5 be stated in writing served upon the employee within two days
 6 of presentation of said charges to the board. The employee
 7 so affected shall be given an opportunity, within five days of

8 receiving such written notice, to request, in writing, a level four
9 hearing and appeals pursuant to provisions of article twenty-
10 nine, chapter eighteen of the code of West Virginia, one
11 thousand nine hundred thirty-one, as amended.

§18A-2-11. Employee's right to attorney's fees and costs.

1 If an employee shall appeal to a circuit court an adverse
2 decision of either a county board of education or of a hearing
3 examiner rendered in a grievance or other proceeding pursuant
4 to provisions of chapters eighteen and eighteen-a of this code
5 and such person shall substantially prevail, the adverse party
6 or parties shall be liable to such employee, upon final
7 judgment or order, for court costs, and for reasonable
8 attorney's fees, to be set by the court, for representing such
9 employee in all administrative hearings and before the circuit
10 court and the supreme court of appeals, and shall be further
11 liable to such employee for any court reporter's costs incurred
12 during any such administrative hearings or court proceedings:
13 *Provided*, That in no event shall such attorney's fees be
14 awarded in excess of a total of one thousand dollars for the
15 administrative hearings and circuit court proceedings nor an
16 additional one thousand dollars for supreme court proceed-
17 ings: *Provided, however*, That the requirements of this section
18 shall not be construed to limit the school employee's right to
19 recover reasonable attorney's fees in a mandamus proceeding
20 brought under section eight, article four, chapter eighteen-a of
21 this code.

CHAPTER 72

(Com. Sub. for S. B. 630—By Senator Palumbo)

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

AN ACT to amend and reenact sections five, twenty-one, twenty-
three, twenty-four, twenty-five, twenty-seven, thirty-four,
thirty-six and forty-three, article one, chapter three of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact sections twenty and
forty-one, article two; sections three, four, five, six and
eleven, article three; sections twelve, twenty-one and twenty-

two, article four; sections nine, eleven, twelve, thirteen, sixteen, twenty-two, twenty-three and thirty, article four-a, all of said chapter; to further amend said article four-a by adding thereto a new section, designated section ten-a; to amend and reenact sections one, five, seven and nine, article five; sections two, six and nine, article six; sections five, five-a, seven and twelve, article eight, all of said chapter; and to further amend said article eight by adding thereto a new section, designated section five-f, all relating to elections; voting precincts, number of voters in precincts and exceptions relating thereto; precinct maps; preparation of paper ballots and time requirements relating thereto; notification of certain candidates of drawing by lot for ballot position; duty of county commissions to arrange and equip polling places; minimum number of voting booths; delivery and receipt of election supplies and time requirements relating thereto; delivery of supplies by special messenger; receipt and return of municipal precinct registration records and time requirements relating thereto; procedures for voters to receive, prepare and deposit ballots at the polling place; disposition of spoiled ballots; voters qualified to receive assistance in voting; procedures for rendering assistance to such voters; persons qualified to render assistance to such voters; challenge of ballots cast with assistance; requiring affidavit of person rendering assistance to a voter and oaths to be contained therein; recordation of certain information relating to assisted voters; receipt and preservation of certain election materials by the clerks of the county commissions; penalties for false swearing; penalties for allowing an unqualified voter to receive unchallenged assistance in voting; report on and disposition of ballots spoiled or unused; preservation of unused ballots; penalties for failure to account for all ballots delivered; disposition of certain election papers; procedure for voter registration; procedure for registration and transfer of registration by mail; form required for registration by mail and distribution thereof; information to be provided and excluded from such form; requiring validation of registration by mail and certain exceptions thereto; application and procedures for voting an absent voter's ballot by personal appearance in the offices of the circuit clerks; voters qualified to vote an absent voter's

ballot by personal appearance; duties of the clerks of the circuit court in conducting voting of absent voter's ballots by personal appearance; voters qualified to receive assistance in voting an absent voter's ballot by personal appearance; persons qualified to render assistance to such voters; challenge of absent voter's ballots cast with assistance; requiring affidavit of person rendering assistance to a voter voting an absent voter's ballot and oaths to be contained therein; recordation of certain information relating to assisted voters voting an absent voter's ballot; penalties for false swearing; penalties for assistance of a voter by unqualified person; penalties for allowing an unqualified voter to vote an absent voter's ballot; definitions of certain terms; application and procedures for voting an absent voter's ballot by mail; voters qualified to vote an absent voter's ballot by mail; assistance to voters in voting an absent voter's ballot by mail; requiring affidavit of person rendering assistance to such a voter and oaths to be contained therein; definitions of certain terms; duties of circuit clerks in preparation of absent voter's ballots; handling of ballots received by mail and recordation of information relating thereto; delivery and receipt of election supplies in counties using voting machines and time requirements relating thereto; assistance in voting by voting machine; persons qualified to render assistance in voting by voting machine; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting machines, certain exceptions thereto and penalties therefor; minimum requirements of electronic voting systems; requiring proportional distribution of voting devices at a primary election; preparation of ballot labels and certain supplies for electronic voting and time requirements relating thereto; ballot label arrangement in vote recording devices; requiring uniform numbering for candidates for certain offices; requiring drawing by lot to determine position of certain candidates on ballot labels; duties of the clerks of the circuit courts and clerks of the county commissions in the preparation of ballot labels; providing for inspection, maintenance, removal and certification of vote recording devices and ballot cards; delivery and receipt of election supplies used in electronic voting and time requirements relating thereto; assistance in

voting by electronic voting device; persons qualified to render assistance in voting by electronic voting device; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting devices, certain exceptions thereto and penalties therefor; voting precincts in counties using electronic voting systems and the maximum number of voters therein; time and place of holding primary elections and hours polls open; announcements of candidacy for county boards of education and time requirements for filing thereof; announcements of candidacy for other offices and time requirements for filing thereof; certification and posting of candidacies by the secretary of state and time requirements relating thereto; preparation and form of general election ballots and information contained thereon; ballot counting procedures; canvass of election returns; declaration and certification procedures for recount of ballots; preservation and destruction of certain election papers; requiring accounts of financial transactions; filing of reports relating thereto with certain exceptions; time requirements for such filing; definitions of certain terms; information required in reports of financial transactions; prohibiting anonymous contributions and providing for distribution thereof; requiring written loan agreements and reporting thereof; penalties relating to filing reports of financial transactions; prohibiting certain activities related to campaigns and elections; and prohibiting any person from soliciting campaign contributions unless such person reveals the compensation to be received if such contribution is successfully collected and penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections five, twenty-one, twenty-three, twenty-four, twenty-five, twenty-seven, thirty-four, thirty-six and forty-three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections twenty and forty-one, article two; sections three, four, five, six and eleven, article three; sections twelve, twenty-one and twenty-two, article four; sections nine, eleven, twelve, thirteen, sixteen, twenty-two, twenty-three and thirty, article four-a, all of said chapter, be amended and reenacted; that said article four-a be further amended by adding

thereto a new section, designated section ten-a; that sections one, five, seven and nine, article five; sections two, six and nine, article six; sections five, five-a, seven and twelve, article eight, all of said chapter, be amended and reenacted; and that said article eight be further amended by adding thereto a new section, designated section five-f, all to read as follows:

Article.

1. **General Provisions and Definitions.**
2. **Registration of Voters.**
3. **Voting By Absentees.**
4. **Voting Machines.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**
7. **Regulation and Control of Elections.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-5. Voting precincts and places established; number of voters in precincts; precinct map.
- §3-1-21. Ballots.
- §3-1-23. County commission to arrange polling places and equipment; requirements.
- §3-1-24. Obtaining and delivering election supplies.
- §3-1-25. Supplies by special messenger.
- §3-1-27. Municipal precinct registration records.
- §3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
- §3-1-36. Report on and disposition of ballots spoiled or not used.
- §3-1-43. Disposition of miscellaneous election papers.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map.

- 1 The precinct shall be the basic territorial election unit.
- 2 The county commission shall divide each magisterial
- 3 district of the county into election precincts, shall number
- 4 the precincts, shall determine and establish the boundaries
- 5 thereof, and shall designate one voting place in each
- 6 precinct, which place shall be established as nearly as
- 7 possible at the point most convenient for the voters of the
- 8 precinct. Each magisterial district shall contain at least one
- 9 voting precinct and each precinct shall have but one voting
- 10 place therein.
- 11 Each precinct within any urban center shall contain not
- 12 less than three hundred nor more than eight hundred
- 13 registered voters. Each precinct in a rural or less thickly

14 settled area shall contain not less than two hundred nor
15 more than seven hundred registered voters, unless, upon a
16 written finding by the county commission that
17 establishment of or retention of a precinct of less than two
18 hundred voters would prevent undue hardship to the voters,
19 the secretary of state determines that such precinct be
20 exempt from the two hundred voter minimum limit. If, at
21 any time the number of registered voters shall exceed the
22 maximum number in either case herein specified, it shall be
23 the duty of the county commission to, and it shall, rearrange
24 the precincts within the political division so that the new
25 precincts formed therefrom, or from any part thereof, shall
26 each contain a number of registered voters within the limits
27 above provided. If such county commission fails to so act
28 as herein directed, any qualified voter of the county may
29 apply for a writ of mandamus to compel the performance
30 of this duty.

31 In order to facilitate the conduct of local and special
32 elections and the use of election registration records
33 therein, precinct boundaries shall be established to
34 coincide with the boundaries of any municipality of the
35 county and with the wards or other political subdivisions of
36 the municipality except in instances where found by the
37 county commission to be wholly impracticable so to do.

38 The provisions of this section shall be subject to the
39 provisions of section twenty-eight, article four of this
40 chapter relating to the number of voters in precincts in
41 which voting machines are used.

42 The county commission shall keep available at all times
43 during business hours in the courthouse at a place
44 convenient for public inspection a map or maps of the
45 county with the current boundaries of all precincts.

§3-1-21. Ballots.

1 It shall be the duty of the board of ballot commissioners
2 for each county to provide printed ballots for every election
3 for public officers in which the voters or any of the voters
4 within the county participate, and cause to be printed, on
5 the appropriate ballot, the name of every candidate, but in
6 no case shall the ballot contain any title, position, rank,
7 degree, or such, including, but not limited to, doctor,
8 reverend, Ph D., or the equivalent, whose name has been

9 certified to or filed with the clerk of the circuit court of the
10 county in any manner provided for in this chapter. In any
11 case wherein the constitution or statutes limit or prescribe
12 the number of candidates or elected officers to be selected
13 by the voters in any district or other governmental
14 subdivision, the ballot commissioners, in the preparation of
15 such ballots, shall cause to be printed thereon, in plainly
16 worded language, the number of candidates to be voted for
17 in each district or other governmental subdivision.

18 The clerk of the circuit court shall appoint a time at which
19 all candidates for the office of delegate to a political party
20 national convention are to appear in his office for the
21 purpose of drawing by lot to determine where their names
22 will appear on the ballots. The clerk shall give due notice of
23 such time to each such candidate by United States mail,
24 directed to the address given by the candidate in his or her
25 announcement of candidacy. At the time appointed, all such
26 candidates for the office of delegate to a political party
27 national convention shall assemble in the office of such
28 clerk and such candidates shall then proceed to draw by lot
29 to determine where their names shall appear on the ballots.
30 The number so drawn by each such candidate shall
31 determine where his or her name shall appear on the ballots.
32 In the event any candidate or candidates fail to appear at
33 the time appointed, the clerk shall draw for such absent
34 candidate or candidates in the presence of those candidates
35 assembled, if any, and the number so drawn by the clerk
36 shall determine where the name of any absent candidate or
37 candidates shall appear on the ballots.

38 The printing of the ballots, and all other printing caused
39 to be done by the board of ballot commissioners, shall be
40 contracted for with the lowest responsible bidder. Ballots
41 other than those caused to be printed by the respective
42 boards of ballot commissioners, according to the provisions
43 of this chapter, shall not be cast, received or counted in any
44 election.

45 For each such election to be held in their county and at
46 least forty-two days before the date of such election, the
47 board of ballot commissioners shall cause to be printed
48 official ballots to not more than one and one-fifth times the
49 number of registered voters in the county. Provisions of
50 article five of this chapter shall govern the printing of

51 ballots for primary elections. The ballots so printed shall be
52 wrapped and tied in packages, one for each precinct in their
53 county, containing ballots to the number of one and one-
54 twentieth times the number of registered voters in such
55 precinct. Each package of ballots shall be sealed with wax,
56 and plainly marked with the number of ballots therein, the
57 name of the magisterial district, and the number of the
58 voting place therein, to which it is intended to be sent. The
59 names of the ballot commissioners shall also be endorsed
60 thereon.

**§3-1-23. County commission to arrange polling places and
equipment; requirements.**

1 The county commission in each county, before each
2 election, shall secure, for each voting precinct in the county,
3 a suitable room or building in which to hold the election,
4 and shall cause the same to be suitably provided with heat,
5 drinking water and light and a sufficient number of booths
6 or compartments, each containing a table, counter or shelf,
7 and furnished with proper supplies for preparing ballots, at
8 or in which voters may conveniently prepare their ballots,
9 so that in the preparation thereof they may be secure from
10 the observation of others. The number of such booths or
11 compartments shall not be less than two. Such room or
12 building shall be located in such precinct: *Provided*,
13 That upon a determination of the county commission that
14 a suitable room or building in which to hold the election is
15 not reasonably available in such precinct then the county
16 commission may secure a suitable room or building in which
17 to hold the election for such precinct in an adjacent precinct
18 in said county, in a location as near as may be to the
19 territory of the precinct for which such room or building
20 is provided. At any polling place for which parking spaces
21 are available nearby, at least one parking space shall be
22 reserved for handicapped voters and clearly designated as
23 such.

***§3-1-24. Obtaining and delivering election supplies.**

1 It shall be the duty of the board of ballot commissioners to
2 appoint one or more of the commissioners of election at each
3 precinct of the county to attend at the offices of the clerks of
4 the circuit court and county commission, as the case may be,

* Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.

5 at least one day before each election to receive the ballots,
6 ballot boxes, pollbooks, registration records and forms and
7 all other supplies and materials for conducting the election
8 at the respective precincts. The clerks shall take a receipt
9 for the respective materials delivered to the above
10 commissioner or commissioners of election, and shall file
11 such receipt in their respective offices. It shall be the duty of
12 such commissioners to receive such supplies and materials
13 from the respective clerks and to deliver the same with the
14 seal of all sealed packages unbroken, at the election
15 precinct in time to open the election.

16 Such commissioner or commissioners, if they perform
17 such services, shall receive the per diem and mileage rate
18 prescribed by law for this service.

19 Ballots shall be delivered in sealed packages with seals
20 unbroken. For general and special elections the ballots so
21 delivered shall not be in excess of one and one-twentieth
22 times the number of registered voters in the precinct. For
23 primary elections the ballots for each party shall be in a
24 separately sealed package containing not more than one
25 and one-twentieth times the number of registered voters of
26 such party in the election precinct.

27 For primary elections one copy of the pollbooks,
28 including the forms for oaths of commissioners of election
29 and poll clerks written or printed thereon, shall be supplied
30 at each voting precinct for each political party appearing on
31 the primary ballot.

32 There shall be two ballot boxes for each election precinct
33 for which a receiving and a counting board of election
34 commissioners have been appointed.

***§3-1-25. Supplies by special messenger.**

1 In case any commissioner of election so appointed shall
2 fail to appear at the offices of the clerks of such county
3 commission and circuit court, by the close of the clerk's
4 office on the day prior to any election, as required by the
5 preceding section, the board of ballot commissioners, or the
6 chairman thereof, shall forthwith dispatch a special mes-
7 senger to the commissioners of election of each respective
8 precinct with the ballots, registration records, ballot boxes,

* Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.

9 pollbooks and other supplies for such precinct. Such
10 messenger, if not a county employee, shall be allowed five
11 dollars for this service and, even if his be a county employee,
12 twenty cents a mile for the distance necessary to be traveled
13 by him, and shall promptly report to the clerks of the circuit
14 court and county commission, respectively, and file with
15 such clerks the receipts of the person to whom he delivered
16 such ballots and other supplies, and his affidavit, stating
17 when and to whom he delivered them.

***§3-1-27. Municipal precinct registration records.**

1 At least one day prior to every municipal election, it shall
2 be the duty of the appropriate officer designated by the
3 municipality to procure from the municipal precinct file in
4 the office of the clerk of the county commission the
5 registration records necessary for the conduct of such
6 election.

7 Such records shall, within ten days after the date of the
8 municipal election, be returned to the office of the clerk of
9 the county commission by the appropriate officer or officers
10 designated by the municipality.

11 In case of a contested municipal election, the registration
12 record of any challenged voter shall be made available by
13 the clerk of the county commission to the officer or tribunal
14 empowered to determine the contest. Such record shall be
15 returned to the office of the clerk of the county commission
16 within a reasonable time after the contest shall have been
17 finally decided.

18 The clerk of the county commission shall acknowledge
19 the release and return of the registration records under this
20 section by the issuance of appropriate receipts.

21 In the event any municipal registration record is lost,
22 destroyed, defaced or worn in any way as to warrant
23 replacement, it shall be the duty of the clerk of the county
24 commission to prepare a duplicate of such record and it
25 shall be the duty of the municipality to pay for such
26 replacement.

**§3-1-34. Voting procedures generally; assistance to voters;
voting records; penalties.**

1 Any person offering to vote in an election shall, upon

*Clerks Note: This section was also amended in H. B. 1381, which passed
prior to this bill.

2 entering the election room, clearly state his name and
3 residence to one of the poll clerks who shall thereupon
4 announce the same in a clear and distinct tone of voice. If
5 such person is found to be duly registered as a voter at that
6 precinct, he shall be required to sign his name in the space
7 marked "signature of voter" on the pollbook prescribed and
8 provided for the precinct. If such person be physically or
9 otherwise unable to sign his name, his mark shall be affixed
10 by one of the poll clerks in the presence of the other and the
11 name of the poll clerk affixing the voter's mark shall be
12 indicated immediately under such affixation. No ballot
13 shall be given to such person until he so signs his name on
14 the pollbook or his signature is so affixed thereon.

15 The county clerk shall be authorized, upon verification
16 that the precinct at which such person is registered is not
17 handicap accessible, to transfer such person's registration
18 to the nearest polling place in the county which is handicap
19 accessible. Requests by such persons for a transfer of
20 registration shall be received by the county clerk no later
21 than thirty days prior to the date of the election.

22 When the voter's signature is properly on the pollbook,
23 the two poll clerks shall sign their names in the places
24 indicated on the back of the official ballot and shall deliver
25 the ballot to the voter to be voted by him then without
26 leaving the election room. If he returns the ballot spoiled to
27 the clerks, they shall immediately mark such ballot
28 "spoiled" and the same shall be preserved and placed in a
29 spoiled ballot envelope together with other spoiled ballots
30 to be delivered to the board of canvassers and deliver to the
31 voter another official ballot, signed by the clerks on the
32 reverse side as before done. The voter shall thereupon retire
33 alone to the booth or compartment prepared within the
34 election room for voting purposes and there prepare his
35 ballot, using a ballpoint pen of not less than five inches in
36 length or other indelible marking device of not less than five
37 inches in length. In voting for candidates in general and
38 special elections, the voter shall comply with the rules and
39 procedures prescribed in section five, article six of this
40 chapter.

41 It shall be the duty of a poll clerk, in the presence of the
42 other poll clerk, to indicate by a check mark inserted in the
43 appropriate place on the registration record of each voter

44 the fact that such voter voted in the election. In primary
45 elections the clerk shall also insert thereon a distinguishing
46 initial or initials of the political party for whose candidates
47 the voter voted. If a person is challenged at the polls, such
48 fact shall be indicated by the poll clerks on the registration
49 record together with the name of the challenger. The
50 subsequent removal of the challenge shall be recorded on
51 the registration record by the clerk of the county
52 commission.

53 No voter shall receive any assistance in voting unless, by
54 reason of blindness, disability, advanced age or inability to
55 read and write, that voter is unable to vote without
56 assistance.

57 Any voter qualified to receive assistance in voting under
58 the provisions of this section may: (1) Declare his or her
59 choice of candidates to an election commissioner of each
60 political party who, in the presence of the voter and in the
61 presence of each other, shall prepare the ballot for voting in
62 the manner hereinbefore provided, and, on request, shall
63 read over to such voter the names of candidates on the ballot
64 as so prepared; or (2) require the election commissioners to
65 indicate to him or her the relative position of the names of
66 the candidates on the ballot, whereupon the voter shall
67 retire to one of the booths or compartments to prepare his
68 ballot in the manner hereinbefore provided; or (3) be
69 assisted by any person of the voter's choice: *Provided*, That
70 such assistance may not be given by the voter's present or
71 former employer or agent of that employer or by the officer
72 or agent of a labor union of which the voter is a past or
73 present member.

74 Any voter who requests assistance in voting but who is
75 believed not to be qualified for such assistance under the
76 provisions of this section shall nevertheless be permitted to
77 vote a challenged ballot with the assistance of any person
78 herein authorized to render assistance.

79 Any one or more of the election commissioners or poll
80 clerks in the precinct may challenge such ballot on the
81 ground that the voter thereof received assistance in voting it
82 when in his or their opinion that the person who received
83 assistance in voting is not so illiterate, blind, disabled or of
84 such advanced age as to have been unable to vote without
85 assistance. The election commissioner or poll clerk or

86 commissioners or poll clerks making such challenge shall
87 enter the challenge and reason therefor on the form and in
88 the manner prescribed or authorized by article three of this
89 chapter.

90 An election commissioner or other person who assists a
91 voter in voting (1) shall not in any manner request, or seek to
92 persuade, or induce the voter to vote any particular ticket or
93 for any particular candidate or for or against any public
94 question, and shall not keep or make any memorandum or
95 entry of anything occurring within the voting booth or
96 compartment, and shall not, directly or indirectly, reveal to
97 any person the name of any candidate voted for by the voter,
98 or which ticket he had voted, or how he had voted on any
99 public question, or anything occurring within the voting
100 booth or compartment or voting machine booth, except
101 when required pursuant to law to give testimony as to such
102 matter in a judicial proceeding; (2) shall sign a written oath
103 or affirmation before assisting such voter on a form
104 prescribed by the secretary of state stating that he or she
105 will not override the actual preference of the voter being
106 assisted, attempt to influence the voter's choice or mislead
107 the voter into voting for someone other than the candidate
108 of voter's choice. Such person assisting the voter shall also
109 swear or affirm that he or she believes that the voter is
110 voting free of intimidation or manipulation.

111 In accordance with instructions issued by the secretary of
112 state, the clerk of the county commission shall provide a
113 form entitled "List of Assisted Voters," the form of which
114 list shall likewise be prescribed by the secretary of state.
115 The commissioners shall enter the name of each voter
116 receiving assistance in voting the ballot, together with the
117 poll slip number of that voter and the signature of the
118 person or the commissioner from each party who assisted
119 the voter. If no voter shall have been assisted in voting the
120 ballot as herein provided, the commissioners shall likewise
121 make and subscribe to an oath of that fact on such list.

122 After preparing the ballot the voter shall fold the same so
123 that the face shall not be exposed and so that the names of
124 the poll clerks thereon shall be seen. The voter shall then
125 announce his name and present his ballot to one of the
126 commissioners who shall hand the same to another
127 commissioner, of a different political party, who shall

128 deposit it in the ballot box, if such ballot is the official one
129 and properly signed. The commissioner of election may
130 inspect every ballot before it is deposited in the ballot box,
131 to ascertain whether it is single, but without unfolding or
132 unrolling it, so as to disclose its content. When the voter has
133 voted, he shall retire immediately from the election room,
134 and beyond the sixty-foot limit thereof, and shall not
135 return, except by permission of the commissioners.

136 Following the election, the affidavits required by this
137 section from those assisting voters together with the "List
138 of Assisted Voters," shall be returned by the election
139 commissioners to the clerk of the county commission along
140 with the election supplies, records and returns, who shall
141 make such oaths and list available for public inspection and
142 who shall preserve the same for a period of twenty-two
143 months or until disposition is authorized or directed by the
144 secretary of state, or court of record.

145 Any person making an affidavit required under the
146 provisions of this section who shall therein knowingly
147 swear falsely, or any person who shall counsel, or advise,
148 aid or abet another in the commission of false swearing
149 under this section, shall be guilty of a misdemeanor, and,
150 upon conviction thereof, shall be fined not more than one
151 thousand dollars, or imprisoned in the county jail for a
152 period of not more than one year, or both.

153 Any election commissioner or poll clerk who authorizes
154 or provides unchallenged assistance to a voter when such
155 voter is known to such election commissioner or poll clerk
156 not to require assistance in voting shall be guilty of a felony,
157 and, upon conviction thereof, shall be fined not more than
158 five thousand dollars, or imprisoned in the penitentiary for
159 a period of not less than one year nor more than five years,
160 or both fined and imprisoned.

§3-1-36. Report on and disposition of ballots spoiled or not used.

1 Any voter who shall spoil, deface or mutilate the ballot
2 delivered to him, on returning the same to the poll clerks,
3 shall receive another in place thereof. Every person who
4 does not vote any ballot delivered to him shall, before
5 leaving the election room, return such ballot to the poll
6 clerks. When a spoiled or defaced ballot is returned, the poll

7 clerks shall make a minute of the fact on the pollbooks, at
8 the time, and the word "spoiled" shall be written across the
9 face of the ballot and such ballot shall be placed in an
10 envelope for spoiled ballots.

11 Immediately on closing the polls, the commissioners of
12 election shall ascertain the number of ballots spoiled during
13 the election and the number of ballots remaining not voted.
14 The commissioners of election shall also ascertain from the
15 pollbooks the number of persons who voted and shall
16 report, over their signatures, to the clerk of the county
17 commission, the number of votes cast, the number of ballots
18 spoiled during the election and the number of ballots not
19 voted. All unused ballots shall at the same time be returned
20 to the clerk of the county commission, who shall separately
21 package the unused ballots from each precinct, mark the
22 name and number of the precinct on the package and retain
23 them securely along with other election materials.

24 Each commissioner who is a member of an election board
25 which fails to account for every ballot delivered to it is
26 guilty of a misdemeanor, and, upon conviction thereof, shall
27 be fined not more than one thousand dollars or confined in
28 the county jail for not more than one year, or both fined and
29 imprisoned.

30 The board of ballot commissioners of each county, or the
31 chairman thereof, shall preserve the ballots that are left
32 over in their hands, after supplying the precincts as
33 provided, until twenty-two months after the election.

§3-1-43. Disposition of miscellaneous election papers.

1 At the expiration of twenty-two months after any
2 election, the affidavits taken and returned by any registrar
3 or any election officer, applications for absent voters'
4 ballots, rejected absent voters' ballots, certificates of
5 nominations of candidates, and the written designations of
6 election officers and of ballot commissioners shall be
7 destroyed. If the further preservation of any of the
8 documents mentioned in this section shall be required by
9 the order of the court, the same shall be destroyed at the
10 expiration of the time fixed for the further preservation
11 thereof by such order.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-20. Completing registration forms; registration receipts.

§3-2-41. Registration and transfer by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

§3-2-20. Completing registration forms; registration receipts.

1 Each applicant for voter registration shall fill in and
2 complete only one registration form, except in those cases
3 where a separate record for municipal elections is required,
4 in which cases those registrants who are required to be
5 listed in separate municipal record lists shall fill in and
6 complete two forms. The signature of the applicant on all
7 forms shall be written in ink. Upon the completion of the
8 registration of any person and the presentation of valid
9 identification and proof of age, the registration official
10 shall issue to such person a signed and dated receipt of such
11 registration. The form for such receipt shall be prescribed
12 by the secretary of state.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

1 (a) In addition to any procedures which may be used in
2 effecting the biennial checkup as provided under section
3 twenty-one of this article, central registration and transfer
4 as provided under sections twenty-two and twenty-seven of
5 this article, and the provision with respect to registration of
6 absentee voters under section twenty-three of this article,
7 any qualified person may register or transfer his
8 registration by mail.

9 (b) Completed applications, when received by any
10 county clerk not later than forty-two days and by the
11 appropriate county clerk not later than thirty days before
12 the following primary, general or special election, entitle

13 the applicant to vote in such election if he is otherwise
14 qualified. Any county clerk receiving an application from a
15 person who does not reside in his county but who does
16 reside elsewhere in the state shall forthwith forward such
17 application to the proper county clerk. Each county clerk
18 shall make an entry on such application of the date it is
19 received by such clerk, and the application shall remain on
20 file in the office of the clerk for at least two years from the
21 date it was received.

22 (c) Applications for use pursuant to this section shall be
23 made available by the county clerk to every adult person of
24 the county, not registered, and to any registered voter of the
25 county upon request. The application for use pursuant to
26 this section shall be a uniform statewide application in a
27 form to be prescribed by the secretary of state and shall
28 include the information required under the form provisions
29 of section nineteen of this article. The form, which shall be
30 self-addressed, is to be as widely and freely distributed as
31 possible and shall be a bifold self-mailer which shall be
32 compatible with local systems of voter registration data
33 collection and storage.

34 (d) In addition to the information required under the
35 form provisions of section nineteen of this article, the form
36 shall contain such other information as the secretary of
37 state may reasonably require and shall also include the
38 following information:

39 (1) Notice that those currently registered do not need to
40 reregister unless they have moved or failed to vote at least
41 once during a period covering two statewide primary and
42 two general elections as indicated by their registration
43 records;

44 (2) Instructions on how to fill out and submit the form
45 and that the form must be received by the appropriate
46 county clerk at least thirty days prior to the election at
47 which the applicant may vote;

48 (3) Notice that registration or transfer is not complete
49 until the form is received by the appropriate county clerk;

50 (4) Notice of a voter's right to register centrally;

51 (5) A warning to the voter that it is a crime to procure a
52 false registration and notice of the felony offenses provided
53 for in section forty-two of this article;

54 (6) Notice that political party enrollment is optional

55 but, in order to vote in a primary election of a political
56 party, a voter must enroll in that political party;

57 (7) Notice that the applicant must be a citizen of the
58 United States, at least seventeen years old and will be
59 eighteen years old on or before the next general election,
60 and a resident of the county to which application is made;

61 (8) Notice that a voter notification form will be mailed
62 to those applicants whose complete form is received;

63 (9) A space for the applicant to indicate whether or not
64 he has ever been registered before and, if so, his name and
65 address at the time of prior registration;

66 (10) A space for the applicant to indicate his choice of
67 party, if any, in which space the names of all parties are
68 provided so that the applicant can check one with a clear
69 alternative provided for an applicant to decline to affiliate
70 with any party;

71 (11) A space for the applicant to indicate his social
72 security number; and

73 (12) A place for the applicant to execute the application
74 on a line which is clearly labeled "signature of applicant"
75 and contained in the following specific form of oath or
76 affirmation:

77 "I do solemnly swear or affirm that the information
78 provided in the preceding uniform statewide application is
79 true to the best of my knowledge, information and belief,
80 and I understand that if I willingly provide false
81 information concerning a material matter or thing therein, I
82 shall be deemed guilty of the felony offense of perjury and
83 shall be subject to the penalties for perjury.

84

85 Signature of Applicant

86 Subscribed and sworn (or affirmed) to before me,
87 this day of, 19.....

88"

89 which oath or affirmation shall be administered by a person
90 authorized to perform notarial acts under the provisions of
91 article one or one-a, chapter thirty-nine of this code. The
92 person administering the oath or affirmation shall not
93 charge a fee for such act, and the uniform statewide
94 application shall inform the person administering such
95 oath or affirmation that no fee is to be charged.

96 (e) Any person who has registered or reregistered

97 pursuant to this section shall be required to make his first
98 vote in person at the poll or appear in person at the office of
99 the clerk of the circuit court to vote an absentee ballot
100 during a period covering two statewide primary elections
101 and two general elections in order to make such registration
102 valid: *Provided*, That any person who has registered or
103 reregistered pursuant to this section and who has qualified
104 for placement on the special absentee voting list pursuant to
105 section two-b, article three of this chapter, or who has
106 qualified to vote an absent voter's ballot by mail pursuant
107 to paragraph one, two, three or six of the application for
108 voting an absent voter's ballot by mail provided in section
109 five, article three of this chapter, shall not be required to
110 make his first vote in person but shall be required to vote
111 during a period covering two statewide primary elections
112 and two general elections next following his registration in
113 order to make such registration valid.

114 Any such person required by this section to make his first
115 vote in person in order to make his registration valid shall
116 present valid identification and proof of age to the clerks at
117 the poll or the clerk in the office of the circuit clerk of the
118 county in which he is registered before casting his first
119 ballot.

120 (f) The uniform statewide application prescribed by this
121 section may refer to various public officials by title or
122 official position (e.g., clerk of the county commission,
123 secretary of state), but in no case may the actual name of the
124 officeholder be printed or otherwise appear on such form:
125 *Provided*, That nothing contained in this subsection shall
126 prohibit a public official, otherwise qualified, from
127 administering the oath or affirmation in accordance with
128 the provisions of subdivision (12), subsection (d) of this
129 section, and affixing his signature thereto.

130 (g) It shall be the duty of the secretary of state to create
131 and commence distribution of the forms for the uniform
132 statewide application within six months following the
133 effective date of this section.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Voting absent voter's ballot by personal appearance.

§3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance.

§3-3-5. Voting an absent voter's ballot by mail.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

§3-3-11. Preparation, number and handling of absent voters' ballots.

§3-3-3. Voting absent voter's ballot by personal appearance.

1 A person desiring to vote an absent voter's ballot by
 2 personal appearance may appear during regular business
 3 hours at the office of the clerk of the circuit court of the
 4 county in which he is registered to vote not more than
 5 fifteen days before the election and on any day thereafter up
 6 to and including the Saturday next preceding the date of the
 7 primary or general election or, in the case of special
 8 elections, up to and including the third day next preceding
 9 the day of any such special election (in computing such
 10 third day, the day of conducting the special election shall be
 11 excluded), and upon oral request receive an application for
 12 an official absent voter's ballot or ballots to be voted at such
 13 election, which application shall be prescribed by the
 14 secretary of state and shall be in substantially the following
 15 form:

16 APPLICATION FOR VOTING AN ABSENT
 17 VOTER'S BALLOT BY PERSONAL APPEARANCE
 18 KNOWING THAT I CAN BE FINED NOT MORE THAN
 19 ONE THOUSAND DOLLARS OR IMPRISONED IN THE
 20 COUNTY JAIL FOR A PERIOD OF NOT MORE THAN
 21 ONE YEAR OR BOTH SUCH FINE AND
 22 IMPRISONMENT FOR KNOWINGLY MAKING A
 23 FALSE STATEMENT OR REPRESENTATION HEREIN,
 24 I,, hereby declare that I am now,
 25 or will have been a resident of the State of West Virginia for
 26 twelve months, and of the county of
 27 for sixty days, next preceding the date of the ensuing election
 28 to be held on the
 29 day of, 19....; that I now reside at
 30, in the magisterial
 31 (give full address) district of, in
 32 said county; that I am a duly qualified voter entitled to vote
 33 in such election; that I am registered in the precinct of my
 34 residence as provided by law; that I am registered as a
 35; (state political party if
 36 ballot is for primary election) and that (strike out numbered

37 paragraphs not applicable and complete the numbered
38 paragraph which is applicable):

39 (1) I expect to be absent from the aforementioned
40 county in which I am registered to vote during the entire
41 time the polls are open in such election, and I am (check one
42 applicable):

43 A member of the armed forces in the active service.

44 A spouse or dependent of a member of the armed
45 forces in the active service.

46 A member of the merchant marine of the United
47 States.

48 A spouse or dependent of a member of the merchant
49 marine of the United States.

50 A citizen of the United States temporarily residing
51 outside the territorial limits of the United States and the
52 District of Columbia.

53 A spouse or dependent residing with or accompanying
54 a citizen of the United States temporarily residing outside
55 the territorial limits of the United States and the District of
56 Columbia.

57 (2) I am required to be absent from the aforementioned
58 county in which I am registered during the entire time the
59 polls are open in such election for the reason or reasons
60 hereafter stated, and I am not in any of the categories
61 referred to in paragraph (1) above:

62
63 (here state specific reason or reasons for required absence)

64 (3) I anticipate commitment to a hospital, institution or
65 other confinement on or about the

66 day of, 19...., for the
67 following medical reasons

68 as evidenced below by the statement of a duly licensed
69 physician or chiropractor, and by reason thereof will not be
70 able to vote in person at the polls in such election.

71 (4) I have been appointed

72
73 (specify whether an election commissioner or poll clerk) in
74 precinct No. . . . in said election, which precinct is not the
75 precinct in which I am registered to vote.

76 (5) My regular polling place in precinct No. is
77 inaccessible to me because of the following disability or
78 disabilities

79 In consideration of the foregoing qualifications, I hereby
 80 make application for an official absent voter's ballot (or
 81 ballots if more than one are to be used) to be voted by me at
 82 such election.

83 I hereby declare, under the penalties for false swearing as
 84 provided in section three, article nine, chapter three of the
 85 code of West Virginia, one thousand nine hundred thirty-
 86 one, as amended, that the statements and declarations
 87 contained in this application are true and correct to the best
 88 of my knowledge and belief.

89
 90 Signature of Applicant
 91 (or in case the applicant is illiterate he
 92 shall make his mark and have it witnessed
 93 on the following lines):

94
 95 Mark of Applicant

96
 97 Signature of Witness

98 If the person applying for an absent voter's ballot by
 99 personal appearance be unable to sign his application
 100 because of illiteracy, he shall make his mark on the
 101 signature line above provided for an illiterate applicant
 102 which mark shall be witnessed.

103 The following declaration must be completed and signed
 104 if the reason specified in the above application for being
 105 unable to vote in person at such election is anticipated
 106 commitment to a hospital, institution or other confinement
 107 for medical reasons.

108 **DECLARATION OF PHYSICIAN (CHIROPRACTOR)**

109 I,, hereby declare
 110 that I am a physician (chiropractor), duly licensed to
 111 practice in the State of ; that I last
 112 examined, the applicant whose signature
 113 appears on the application above on the
 114 day of, 19....; and that
 115 in my opinion said applicant will, because of

116
 117 (state medical reasons)

118 be committed to ,
 119 (state hospital, institution
 120 or other confinement)

121 on or about the day of, 19....,
 122 and will because of such reasons not be able to go to the
 123 polls on the day of, 19....,
 124 the date of the election.

125
 126 Signature of Physician (Chiropractor)

127 The application shall be completed by the applicant in his
 128 own handwriting, or in the handwriting of the witness to his
 129 mark in the event of illiteracy, in the office of the clerk of the
 130 circuit court; in no event shall the applicant remove an
 131 application for voting an absent voter's ballot by personal
 132 appearance from said office except when such is necessary
 133 to have a physician or chiropractor to complete and sign the
 134 declaration of a physician or chiropractor when such is
 135 required.

136 Immediately upon receipt of a completed application for
 137 voting an absent voter's ballot by personal appearance, the
 138 clerk of the circuit court shall determine (1) whether such
 139 application has been completed as required by law; (2)
 140 whether he has evidence that any of the statements or
 141 declarations contained in the application are not true; (3)
 142 whether the applicant is in fact duly registered in the
 143 precinct of his residence as provided by law and insofar as
 144 registration is concerned would be permitted to vote at the
 145 polls in such election. If the determination of the clerk of the
 146 circuit court as to (1) or (3) is in the negative or as to (2) is in
 147 the affirmative, the clerk shall, if the applicant insists,
 148 permit the applicant to vote an absent voter's ballot by
 149 personal appearance, but the clerk shall challenge the
 150 absent voter's ballot on the basis of such determination.

151 Upon determination by the clerk of the circuit court that
 152 the applicant is entitled to vote an absent voter's ballot by
 153 personal appearance or in case the applicant determines to
 154 vote an absent voter's ballot challenged by the clerk of the
 155 circuit court as provided in the immediately preceding
 156 paragraph, the clerk of the circuit court shall hand to him
 157 the following absentee voting supplies:

158 (a) One official absent voter's ballot (or ballots if more
 159 than one are to be used) which has been prepared in
 160 accordance with law for use in such election; such ballot in
 161 the case of a primary election shall be of the party of
 162 applicant's affiliation as indicated on his registration

163 record or in case the applicant is not found to be registered
164 by the clerk but insists upon voting a challenged ballot, the
165 ballot shall be of the party designated by the applicant in
166 his application.

167 (b) One Absent Voter's Ballot Envelope No. 1, unsealed,
168 which shall have no writing thereon except the designation
169 "Absent Voter's Ballot Envelope No. 1."

170 (c) One Absent Voter's Ballot Envelope No. 2, unsealed.
171 The voter shall thereupon retire alone to the booth or
172 compartment provided in said clerk's office for voting
173 absent voters' ballots and there mark his ballot: *Provided,*
174 That the voter may have assistance in voting his absent
175 voter's ballot in accordance with the provisions of the next
176 succeeding section of this article. After the voter has voted
177 his absent voter's ballot, he shall (1) enclose the same in
178 Absent Voter's Ballot Envelope No. 1, and seal that
179 envelope; (2) enclose sealed Absent Voter's Ballot Envelope
180 No. 1 in Absent Voter's Ballot Envelope No. 2 and seal that
181 envelope; (3) complete and sign the forms, if any, on Absent
182 Voter's Ballot Envelope No. 2 according to the instructions
183 thereon; and (4) transmit possession of sealed Absent
184 Voter's Ballot Envelope No. 2 to the clerk of the circuit
185 court.

186 Upon receipt of such sealed envelope, the clerk shall (1)
187 enter onto the envelope such information as may be
188 required of him according to the instructions thereon; (2)
189 enter his challenge, if any, to the absent voter's ballot; (3)
190 enter the required information into a record of persons
191 making an application for and voting an absent voter's
192 ballot by personal appearance or by mail (the form of which
193 record and the information to be entered thereon shall be
194 prescribed by the secretary of state); and (4) place such
195 sealed envelope in a secure location in his office, there to
196 remain until delivered to the polling place in accordance
197 with the provisions of this article or in case of a challenged
198 ballot to the county court sitting as a board of canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot by
personal appearance.**

- 1 Any duly registered voter, who requires assistance to vote
- 2 by reason of blindness, disability, advanced age, or inability
- 3 to read and write, may be given assistance by a person of the

4 voter's choice: *Provided*, That such assistance may not be
5 given by the voter's present or former employer or agent of
6 that employer or by the officer or agent of a labor union of
7 which the voter is a past or present member.

8 Any voter who requests assistance in voting an absent
9 voter's ballot but who is determined by the clerk of the
10 circuit court not to be qualified for such assistance under
11 the provisions of this section and section thirty-four, article
12 one, shall nevertheless be permitted to vote a challenged
13 absent voter's ballot with the assistance of any person
14 herein authorized to render assistance. The clerk of the
15 circuit court shall in such case challenge the absent voter's
16 ballot on the basis of such determination.

17 Any one or more of the election commissioners or poll
18 clerks in the precinct to which an absent voter's ballot has
19 been sent may challenge such ballot on the ground that the
20 voter thereof received assistance in voting it when in his or
21 their opinion (1) the person who received the assistance in
22 voting the absent voter's ballot did not require such
23 assistance, or (2) the person who provided the assistance in
24 voting did not make an affidavit as required by this section.
25 The election commissioner or poll clerk or commissioners or
26 poll clerks making such challenge shall enter the challenge
27 and reason therefor on the form and in the manner
28 prescribed or authorized by this article.

29 Before entering the voting booth or compartment, the
30 person who intends to provide a voter assistance in voting
31 shall make an affidavit, the form of which shall be
32 prescribed by the secretary of state, that he or she will not in
33 any manner request, or seek to persuade, or induce the voter
34 to vote any particular ticket or for any particular candidate
35 or for or against any public question, and that he or she will
36 not keep or make any memorandum or entry of anything
37 occurring within the voting booth or compartment, and that
38 he or she will not, directly or indirectly, reveal to any person
39 the name of any candidate voted for by the voter, or which
40 ticket he had voted, or how he had voted on any public
41 question, or anything occurring within the voting booth or
42 compartment or voting machine booth, except when
43 required pursuant to law to give testimony as to such matter
44 in a judicial proceeding.

45 In accordance with instructions issued by the secretary of
46 state, the clerk of the circuit court shall provide a form
47 entitled "List of Assisted Voters," the form of which list
48 shall likewise be prescribed by the secretary of state, which
49 list shall be divided into two parts. Part A shall be entitled
50 "Unchallenged Assisted Voters" and Part B shall be
51 entitled "Challenged Assisted Voters." Under Part A the
52 clerk shall enter the name of each voter receiving
53 unchallenged assistance in voting an absent voter's ballot,
54 the address of the voter assisted, the nature of the disability
55 which qualified the voter for assistance in voting an absent
56 voter's ballot, the name of the person providing the voter
57 with assistance in voting an absent voter's ballot, the fact
58 that the person rendering the assistance in voting made and
59 subscribed to the oath required by this section, and the
60 signature of the clerk of the circuit court certifying to the
61 fact that he had determined that the voter who received
62 assistance in voting an absent voter's ballot was qualified to
63 receive such assistance under the provisions of this section.
64 Under Part B the clerk shall enter the name of each voter
65 receiving challenged assistance in voting, the address of the
66 voter receiving such challenged assistance, the reason for
67 the challenge, and the name of the person providing the
68 challenged voter with assistance in voting. At the close of
69 the period provided for voting an absent voter's ballot by
70 personal appearance, the clerk of the circuit court shall
71 make and subscribe to an oath on such list that the list is
72 correct in all particulars; if no voter shall have been assisted
73 in voting an absent voter's ballot as herein provided, the
74 clerk of the circuit court shall likewise make and subscribe
75 to an oath of that fact on such list. The "List of Assisted
76 Voters" shall be available for public inspection in the office
77 of the clerk of the circuit court during regular business
78 hours throughout the period provided for voting an absent
79 voter's ballot by personal appearance, and unless otherwise
80 directed by the secretary of state, the clerk of the circuit
81 court shall transmit such list, together with the affidavits,
82 applications and absent voters' ballots, to the precincts on
83 election day.

84 Following the election, the affidavits required by this
85 section from persons providing assistance in voting,
86 together with the "List of Assisted Voters," shall be

87 returned by the election commissioners to the clerk of the
88 county commission along with the election supplies, records
89 and returns, who shall make such oaths and list available
90 for public inspection and who shall preserve the same for
91 twenty-two months or, if under order of the court, until their
92 destruction or other disposition is authorized or directed by
93 the court.

94 Any person making an affidavit required under the
95 provisions of this section who shall therein knowingly
96 swear falsely, or any person who shall counsel, or advise,
97 aid or abet another in the commission of false swearing
98 under this section, shall be guilty of a misdemeanor, and,
99 upon conviction thereof, shall be fined not more than one
100 thousand dollars or imprisoned in the county jail for a
101 period of not more than one year, or both such fine and
102 imprisonment.

103 Any person who provides a voter assistance in voting an
104 absent voter's ballot in the office of the clerk of the circuit
105 court who is not qualified or permitted by this section to
106 provide such assistance shall be guilty of a misdemeanor,
107 and, upon conviction thereof, shall be fined not more than
108 one thousand dollars or imprisoned in the county jail for a
109 period of not more than one year, or both such fine and
110 imprisonment.

111 Any clerk of the circuit court, election commissioner or
112 poll clerk who authorizes or allows a voter to receive or to
113 have received unchallenged assistance in voting an absent
114 voter's ballot when such voter is known to the clerk of the
115 circuit court or election commissioner or poll clerk not to be
116 or have been authorized by the provisions of this section to
117 receive or to have received assistance in voting shall be
118 guilty of a misdemeanor, and, upon conviction thereof, shall
119 be fined not more than one thousand dollars or imprisoned
120 in the county jail for a period of not more than one year, or
121 both such fine and imprisonment.

122 The term "physical disability" as used in this section shall
123 mean only blindness or such degree of blindness as will
124 prevent the voter from seeing the names on the ballot, or
125 amputation of both hands, or such disability of both hands
126 that neither can be used to make cross marks on the absent
127 voter's ballot.

§3-3-5. Voting an absent voter's ballot by mail.

1 A person desiring to vote an absent voter's ballot by mail
 2 may, not earlier than the first day of January prior to the
 3 date of any primary, general or special election in the case of
 4 any person outside the continental limits of the United
 5 States and not more than eighty-four days prior to the date
 6 of any primary, general or special election in the case of any
 7 other person, make application by mail to the clerk of the
 8 circuit court of the county in which he is registered to vote
 9 for an official absent voter's ballot or ballots to be voted at
 10 such election, except that the clerk of the circuit court shall
 11 not honor any such application for an absent voter's ballot
 12 received by him after the fourth day next preceding the date
 13 of the election. In computing such fourth day, the day of
 14 conducting the election shall be excluded. The application
 15 to be used by persons who wish to vote an absent voter's
 16 ballot by mail shall be prescribed by the secretary of state
 17 and shall be in substantially the following form:

18 APPLICATION FOR VOTING AN ABSENT
 19 VOTER'S BALLOT BY MAIL
 20 KNOWING THAT I CAN BE FINED NOT MORE THAN
 21 ONE THOUSAND DOLLARS OR IMPRISONED IN THE
 22 COUNTY JAIL FOR A PERIOD OF NOT MORE THAN
 23 ONE YEAR OR BOTH SUCH FINE AND
 24 IMPRISONMENT FOR KNOWINGLY MAKING A
 25 FALSE STATEMENT OR REPRESENTATION HEREIN,
 26 I,, hereby declare that I am
 27 now, or will have been a resident of the state of West
 28 Virginia for twelve months, and of the county of,
 29 for sixty days next preceding the date of the ensuing
 30 election to be held on the
 31 day of, 19....; that I now reside at
 32
 33 (give full address)
 34 in the magisterial district of, in
 35 said county; that I am a duly qualified voter entitled to vote
 36 in such election; that I am registered in the precinct of my
 37 residence as provided by law; that I am registered as a
 38; (state political party if
 39 ballot is for primary election) and that (strike out the

40 numbered paragraphs not applicable and complete the
41 numbered paragraph which is applicable):

42 (1) I will be unable to vote in person at the polls on
43 election day because of ,
44 (state particulars of physical disability, illness or injury) as
45 evidenced below by the statement of a duly licensed
46 physician or chiropractor.

47 (2) I anticipate commitment to a hospital, institution or
48 other confinement on or about the day of
49 , 19 , for the following
50 medical reasons , as evidenced
51 below by the statement of a duly licensed physician or
52 chiropractor, and by reason thereof will not be able to vote
53 in person at the polls in such election.

54 (3) I expect to be absent from the aforementioned
55 county in which I am registered to vote during the entire
56 time the polls are open in such election, and I am (check one
57 applicable):

58 A member of the armed forces in the active service.

59 A spouse or dependent of a member of the armed
60 forces in active service.

61 A member of the merchant marine of the United
62 States.

63 A spouse or dependent of a member of the merchant
64 marine of the United States.

65 A citizen of the United States temporarily residing
66 outside the territorial limits of the United States and the
67 District of Columbia.

68 A spouse or dependent residing with or accompanying
69 a citizen of United States temporarily residing outside the
70 territorial limits of the United States and the District of
71 Columbia.

72 (4) I am required to be absent from the aforementioned
73 county in which I am registered during the entire time the
74 polls are open in such election the reason or reasons
75 hereafter stated; I am not in any of the categories referred to
76 in paragraph three above; I am required to be absent from
77 said county during regular business hours of the clerk of the
78 circuit court of said county throughout the period or
79 throughout the remainder of the period of voting absent
80 voter's ballot by personal appearance at said office

81

82

83 (state reason or reasons for required

84 absence from county on election.)

85 (5) I have been appointed

86 (state whether an election

87 commissioner or poll clerk)

88 in precinct No. in said election,

89 which precinct is not the precinct in which I am registered

90 to vote.

91 (6) I will be incarcerated in the county or city jail or

92 other detention facility located in this county on election

93 day but am not under sentence of treason, bribery or a

94 felony, as evidenced below by the statement of the county

95 sheriff, chief of police or authorized deputy.

96 In consideration of the foregoing qualifications, I hereby

97 make application for an official absent voter's ballot (or

98 ballots if more than one are to be used) to be voted by me at

99 such election, and request that such ballot or ballots be

100 mailed to me at the following address:

101

102 (give full address for mailing purposes)

103 (Complete the following paragraph only if assistance will

104 be needed in voting absent voter's ballot):

105 I further declare that I will need assistance in voting an

106 absent voter's ballot for the following reasons

107

108 (specify illiteracy or exact nature of physical

109 disability, illness or injury)

110 I hereby declare under the penalties for false swearing as

111 provided in section three, article nine, chapter three of the

112 code of West Virginia, one thousand nine hundred thirty-

113 one, as amended, that the statements and declarations

114 contained in this application are true and correct to the best

115 of my knowledge and belief.

116

117 Signature of Applicant

118 (or in case the applicant is illiterate he

119 shall make his mark and have it witnessed

120 on the following lines):

121

122 Mark of Applicant

123
124

Signature of Witness

125 If the person applying for an absent voter's ballot by mail
126 be unable to sign his application because of illiteracy, he
127 shall make his mark on the signature line above provided
128 for an illiterate applicant which mark shall be witnessed.

129 The following declaration must be completed and signed
130 if the reason specified in the above application for being
131 unable to vote in person at such election is physical
132 disability, illness or injury, or is anticipated confinement in
133 a hospital, institution or other place for medical reasons.

134 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

135 I,, hereby declare
136 that I am a physician (chiropractor) duly licensed to
137 practice in the state of ;
138 that I last examined,
139 the applicant whose signature appears on the application
140 above on the day of, 19.... ;
141 and that in my opinion (strike out numbered paragraph not
142 applicable and complete the numbered paragraph which is
143 applicable).

144 (1) The applicant will, because of

145,

146 (state particulars of physical disability,

147 illness or injury)

148 be unable to go to the polls on the

149 day of, 19...., the date of the election.

150 (2) The applicant will, because of

151 (state for what

152, be confined in

153 medical reasons) (specify hospital,

154, on or about the

155 institution or other place)

156 day of, 19...., and will because of such

157 reasons not be able to go to the polls on the

158 day of, 19...., the date of the election.

159 (Complete the following paragraph if applicant for

160 absent voter's ballot will need assistance in voting such

161 ballot, based upon physical disability, illness or injury.)

162 I am of the further opinion that applicant.....

163 (will)

164 , because of the aforementioned physical
 165 (will not)
 166 disability, illness or injury need assistance in voting an
 167 absent voter's ballot.

168
 169 Signature of Physician (Chiropractor)

170 The following declaration must be completed and signed
 171 if the reason specified in the above application for being
 172 unable to vote in person at the election is incarceration in a
 173 facility within the county for other than conviction of
 174 treason, bribery or a felony.

175 STATEMENT OF SHERIFF, CHIEF OF POLICE
 176 OR AUTHORIZED DEPUTY

177 I, , hereby declare that the
 178 applicant whose signature appears on the application
 179 above will be confined in the county or city jail or other
 180 detention facility on the
 181 day of , 19.... , the date of the election,
 182 and is not under conviction of treason, bribery or a felony.

183
 184 SIGNATURE

185
 186 TITLE

187
 188 COUNTY

189 In lieu of the application for an absent voter's ballot
 190 provided above, those persons specified in subdivision (2),
 191 section one of this article may use the application for
 192 absentee ballot form recommended by and issued under
 193 authority of The Federal Voting Assistance Act of 1955, as
 194 amended, and any such federal postcard application does
 195 not have to be executed pursuant to oath or attestation in
 196 the case of a voter outside the continental limits of the
 197 United States. Upon receipt of a properly completed copy of
 198 such form, the clerk of the circuit court shall process it the
 199 same as he would any other application for an absent voter's
 200 ballot by mail. Any such properly completed copy may be
 201 returned only to the clerk of the circuit court of the county
 202 in which the applicant is a registered voter.

203 Immediately upon receipt of a completed application for
 204 voting an absent voter's ballot by mail, the clerk of the
 205 circuit court shall determine (1) whether the application for

206 voting such ballot has been completed as required by law;
207 (2) whether he has evidence that any of the statements
208 contained in the application are not true; and (3) whether
209 the applicant is in fact duly registered in the precinct of his
210 residence as provided by law and insofar as registration is
211 concerned would be permitted to vote at the polls in such
212 election. If the determination of the clerk of the circuit court
213 as to (1) or (3) is in the negative or as to (2) is in the
214 affirmative, the clerk shall notify the applicant at the time
215 he mails the absent voter's ballot to him that he will
216 challenge the applicant's privilege to vote an absent voter's
217 ballot by mail for reasons which he shall indicate and, upon
218 receipt of the applicant's absent voter's ballot, the clerk
219 shall challenge such ballot.

220 Upon determination by the clerk of the circuit court that
221 the applicant is entitled to vote an absent voter's ballot by
222 mail or that the applicant will be permitted to vote an
223 absent voter's ballot by mail with such ballot to be
224 challenged by the clerk, the clerk shall between the forty-
225 second day and the fourth day next prior to the election in
226 which the absent voter's ballot is to be used mail to the
227 applicant the following absentee voting supplies: *Provided,*
228 That the clerk mail such voting supplies to an applicant
229 whose address is shown to be outside the continental limits
230 of the United States by priority airmail on the same day the
231 application is received in the clerk's office or on the next
232 day thereafter that he has both an application and a ballot:

233 (a) One official absent voter's ballot (or ballots if more
234 than one are to be used) which has been prepared in
235 accordance with law for use in such election; such ballot in
236 the case of a primary election shall be of the party of the
237 applicant's affiliation as indicated on his registration card
238 or, in the case the applicant is not found to be registered by
239 the clerk but votes a ballot challenged by the clerk, the clerk
240 shall send to the applicant an absent voter's ballot of the
241 party designated by the applicant in his application;

242 (b) One Absent Voter's Ballot Envelope No. 1, unsealed,
243 which shall have no writing thereon except the designation
244 "Absent Voter's Ballot Envelope No. 1";

245 (c) One Absent Voter's Ballot Envelope No. 2, unsealed;

246 (d) Notice that an absent voter's ballot returned from

247 outside the continental limits of the United States must be
248 mailed priority airmail; and

249 (e) Notice that absent voters' ballots must be received in
250 the office of the clerk not later than the time of closing of the
251 polls.

252 Upon receipt of an absent voter's ballot by mail, the voter
253 shall mark the ballot and the voter may have assistance in
254 voting his absent voter's ballot in accordance with the
255 provisions of section six of this article.

256 After the voter has voted his absent voter's ballot, he shall
257 (1) enclose the same in Absent Voter's Ballot Envelope No.
258 1, and seal that envelope, (2) enclose sealed Absent Voter's
259 Ballot Envelope No. 1 in Absent Voter's Ballot Envelope No.
260 2 and seal that envelope, (3) complete and sign the forms, if
261 any, on Absent Voter's Ballot Envelope No. 2 according to
262 the instructions thereon, and (4) mail, postage prepaid and,
263 if from outside the continental limits of the United States,
264 by priority airmail, the sealed Absent Voter's Ballot
265 Envelope No. 2 to the clerk of the circuit court of the county
266 in which he is registered to vote.

267 Upon receipt of such sealed envelope, the clerk shall (1)
268 enter onto the envelope such information as may be
269 required of him according to the instructions thereon; (2)
270 enter his challenge, if any, to the absent voter's ballot; (3)
271 enter the required information into a record of persons
272 making application for and voting an absent voter's ballot
273 by personal appearance or by mail (the form of which
274 record and the information to be entered therein shall be
275 prescribed by the secretary of state); and (4) place such
276 sealed envelope in a secure location in his office, there to
277 remain until delivered to the polling place in accordance
278 with the provisions of this article or, in case of a challenged
279 ballot, to the county commission sitting as a body of
280 canvassers.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

1 No voter shall receive any assistance in voting an absent
2 voter's ballot by mail unless he or she shall make a
3 declaration at the time he or she makes application for an
4 absent voter's ballot that because of blindness, disability,

5 advanced age or inability to read or write he or she requires
6 assistance in voting an absent voter's ballot.

7 Upon receipt of an absent voter's ballot by mail, the voter
8 who requires assistance in voting such ballot and who has
9 indicated he or she requires such assistance and the reasons
10 therefor on the application may select any eligible person to
11 assist him or her in voting.

12 The person providing assistance in voting an absent
13 voter's ballot by mail shall make an affidavit on a form as
14 may be prescribed by the secretary of state, that he will not
15 in any manner request, or seek to persuade, or induce the
16 voter to vote any particular ticket or for any particular
17 candidate or for or against any public question, and that he
18 will not keep or make any memorandum or entry of
19 anything occurring within the voting booth or
20 compartment, and that he will not, directly or indirectly,
21 reveal to any person the name of any candidate voted for by
22 the voter, or which ticket he had voted, or how he had voted
23 on any public question, or anything occurring within the
24 voting booth or compartment or voting machine booth,
25 except when required pursuant to law to give testimony as
26 to such matter in a judicial proceeding.

27 The term "assistance in voting" as used in this section
28 shall mean assistance in physically marking the official
29 absent voter's ballot for a voter, or reading or directing the
30 voter's attention to any part of the official absent voter's
31 ballot.

**§3-3-11. Preparation, number and handling of absent voters'
ballots.**

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than seventy days prior to the date on
3 which any primary, general or special election is to be held,
4 the clerks of the circuit courts of the several counties shall
5 estimate and determine the number of absent voters' ballots
6 of all kinds which will be required in their respective
7 counties for any such election. The ballots for the election of
8 all officers, or the ratification, acceptance or rejection of
9 any measure, proposition or other public question to be
10 voted on by the voters, shall be prepared and printed under
11 the direction of the board of ballot commissioners
12 constituted as provided in article one of this chapter. The

13 several county boards of ballot commissioners shall prepare
14 and have printed, in such number as they shall determine,
15 such absent voters' ballots as are to be printed under their
16 directions as hereinbefore provided, and such ballots shall
17 be delivered to the clerk of the circuit court of the county
18 not less than forty-two days prior to the day of the election
19 at which they are to be used. Before any ballot is mailed or
20 delivered, the clerk of the circuit court shall affix his
21 official seal and he and the other members of the board of
22 ballot commissioners shall place their signatures near the
23 lower left-hand corner on the back thereof. An absent
24 voter's ballot not containing such seal and signatures shall
25 be invalid and shall be subject to challenge by any election
26 commissioner or poll clerk.

27 The clerk of the circuit court shall be primarily
28 responsible for the preparation, mailing, receiving,
29 delivering and otherwise handling of all absent voters'
30 ballots. He shall keep such record, as may be prescribed by
31 the secretary of state, of all ballots so delivered for the
32 purpose of absentee voting, as well as all ballots, if any,
33 marked before him, and shall deliver to the commissioner of
34 election to whom the ballots for the precinct are delivered
35 and at the time of the delivery of such ballots a certificate
36 stating the number of ballots delivered or mailed to absent
37 voters, and those marked before him, if any, and the names
38 of the voters to whom such ballots have been delivered or
39 mailed, or by whom they have been marked, if marked
40 before him.

ARTICLE 4. VOTING MACHINES.

§3-4-12. Inspection of machines; duties of county commissions, ballot commissioners and election commissioners; keys and records relating to machines.

§3-4-21. Assistance to illiterate and disabled voters.

§3-4-22. Persons prohibited about voting machines; penalties.

***§3-4-12 Inspection of machines; duties of county commissions, ballot commissioners and election commissioners; keys and records relating to machines.**

1 When the clerk of the county commission has completed
2 the preparation of the voting machines, as provided in the
3 next preceding section, and not later than seven days before

*Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.

4 the day of the election, he shall notify the members of the
5 county commission and the ballot commissioners that the
6 machines are ready for use. Thereupon the members of the
7 county commission and the ballot commissioners shall
8 convene at the office of the clerk, or at such other place
9 wherein the voting machines are stored, not later than five
10 days before the day of the election, and shall examine the
11 machines to determine whether the requirements of this
12 article have been met. Any candidate, and one representative
13 of each political party having candidates to be voted on at
14 the election, may be present during such examination. If the
15 machines are found to be in proper order, the members of
16 the county commission and the ballot commissioners shall
17 endorse their approval in the book in which the clerk
18 entered the numbers of the machines opposite the numbers
19 of the precincts. The clerk shall then deliver the keys to the
20 voting machines to the ballot commissioners who shall give
21 a receipt for the keys, which receipt shall contain identifi-
22 cation of such keys. Not later than one day before the
23 election the election commissioner of each precinct who shall
24 have been previously designated by the ballot commission-
25 ers, shall attend at the offices of the clerks of the circuit
26 court and county commission of such county to receive the
27 key or keys to the device covering the registering counters
28 and such other keys as may be necessary for the operation
29 of the machine in registering votes, and to receive the other
30 necessary election records, books and supplies required by
31 law. Such election commissioners shall receive the per diem
32 mileage rate prescribed by law for this service. Such election
33 commissioners shall give the ballot commissioners a receipt
34 for such keys, records, books and supplies, and such receipt
35 shall contain identification of such keys. The master key and
36 all other keys shall remain in the possession of the clerk of
37 the county commission.

38 The term "assistance in voting," as used in this section,
39 means assistance in physically marking the official ballot
40 for a voter, or reading or directing the voter's attention to
41 any part of the official ballot, or physically operating the
42 voting machine.

§3-4-21. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter, who requires assistance to

2 vote by reason of blindness, disability, advanced age, or
3 inability to read and write, may be given assistance by one
4 of the following means:

5 (1) By a person of the voter's choice: *Provided*, That
6 such assistance may not be given by the voter's present or
7 former employer or agent of that employer or by the officer
8 or agent of a labor union of which the voter is a past or
9 present member; or

10 (2) If no person of the voter's choice be present at the
11 polling place, the voter may request such assistance from
12 the poll clerks or ballot commissioners present at the
13 polling place, whereupon such assistance may be given by
14 any two of such election officers of opposite political party
15 affiliation to whom such voter shall thereupon declare his
16 choice of candidates and his or her position on public
17 questions appearing on the ballot labels. Such election
18 officers, in the presence of the voter and in the presence of
19 each other, shall thereupon cause such voter's declared
20 choices to be registered by the voting machine as votes.

21 (b) A person other than an election officer who assists a
22 voter in voting under the provisions of this section shall sign
23 a written oath or affirmation before assisting such voter,
24 stating that he or she will not override the actual preference
25 of the voter being assisted or mislead the voter into voting
26 for someone other than the candidate of the voter's choice.
27 Such person assisting the voter shall also swear or affirm
28 that he or she believes that the voter is voting free of
29 intimidation or manipulation.

§3-4-22. Persons prohibited about voting machines; penalties.

1 Excepting the election officials acting under authority of
2 sections eighteen, nineteen, twenty and twenty-one of this
3 article in the conduct of the election, and qualified persons
4 assisting voters pursuant to the provisions of section
5 twenty-one of this article no person other than the voter
6 alone may be in, about or within five feet of the voting
7 machine during the time such voter is in the process of
8 voting at any election, and, during such time, no person may
9 communicate in any manner with the voter and the voter
10 may not communicate with any other person or persons.
11 Any conduct or action of an election official about or
12 around the voting machine while the voter is in the process

13 of voting, in excess of the authority vested in such official by
14 provisions of this article, shall constitute a violation of the
15 provisions hereof. Any person violating any provision or
16 provisions of this section shall be guilty of a misdemeanor
17 and, upon conviction thereof, shall be fined not exceeding
18 one thousand dollars or be sentenced to imprisonment in
19 the county jail for a period not exceeding twelve months, or,
20 in the discretion of the court, shall be subject to both such
21 fine and imprisonment.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

- §3-4A-9. Minimum requirements of electronic voting systems.
- §3-4A-10a. Proportional distribution of vote recording devices.
- §3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.
- §3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.
- §3-4A-13. Inspection of vote recording devices and ballot cards; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.
- §3-4A-16. Delivery of vote recording devices; time, arrangement for voting.
- §3-4A-22. Assistance to illiterate and disabled voters.
- §3-4A-23. Persons prohibited about voting booth; penalties.
- §3-4A-30. Adjustments in voting precincts where electronic voting system used.

§3-4A-9. Minimum requirements of electronic voting systems.

- 1 An electronic voting system of particular make and
2 design shall not be approved by the state election
3 commission or be purchased, leased or used, by any county
4 commission unless it shall fulfill the following
5 requirements:
 - 6 (1) It shall secure or ensure the voter absolute secrecy in
7 the act of voting, or, at the voter's election, shall provide for
8 open voting;
 - 9 (2) It shall be so constructed that no person except in
10 instances of open voting, as herein provided for, can see or
11 know for whom any voter has voted or is voting;
 - 12 (3) It shall permit each voter to vote at any election for
13 all persons and offices for whom and which he is lawfully
14 entitled to vote, whether or not the name of any such person
15 appears on a ballot label as a candidate; and it shall permit
16 each voter to vote for as many persons for an office as he is

17 lawfully entitled to vote for; and to vote for or against any
18 question upon which he is lawfully entitled to vote. The
19 automatic tabulating equipment used in such electronic
20 voting systems shall reject choices recorded on any ballot
21 card or paper ballot if the number of such choices exceeds
22 the number to which a voter is entitled;

23 (4) It shall permit each voter to deposit, write in, or affix
24 upon devices to be provided for that purpose, ballots
25 containing the names of persons for whom he desires to vote
26 whose names do not appear upon the ballot labels;

27 (5) It shall permit each voter to change his vote for any
28 candidate and upon any question appearing upon the ballot
29 labels up to the time when his ballot or ballot card is
30 deposited in the ballot box;

31 (6) It shall contain a program deck consisting of cards
32 that are sequentially numbered and capable of tabulating
33 all votes cast in each election;

34 (7) It shall contain two standard validation test decks
35 approved as to form and testing capabilities by the state
36 election commission;

37 (8) It shall correctly record and count accurately all
38 votes cast for each candidate and for and against each
39 question appearing upon the ballots or ballot labels;

40 (9) It shall permit each voter at any election other than
41 primary elections, by one mark or punch to vote a straight
42 party ticket, and by one mark or punch to vote for all
43 candidates of one party for presidential electors; and to vote
44 a mixed ticket selected from the candidates of any and all
45 parties and from independent candidates; and it shall
46 permit the proper counting, to the fullest extent possible, of
47 all votes cast for all candidates: *Provided*, That, in the event
48 of cross-over voting from a straight party ticket, the system
49 shall not discard any vote on the straight ticket, unless (i) a
50 candidate in a single selection contest opposite the
51 discarded vote on the straight ticket has been clearly chosen
52 by the voter, or (ii) the voter, by mark or punch has clearly
53 indicated which choices on each ticket, not in excess of the
54 total number permitted, the voter has made, or (iii) the
55 choices made by the voter are so contradictory that the
56 voter's choice is indiscernible, in which event, all votes for
57 the candidates for such office shall be discarded;

58 (10) It shall permit each voter in primary elections to

59 vote only for the candidates of the party with which he has
60 declared his affiliation, and preclude him from voting for
61 any candidate seeking nomination by any other political
62 party, permit him to vote for the candidates, if any, for
63 nonpartisan nomination or election, and permit him to vote
64 on public questions;

65 (11) It shall be provided with means for sealing the vote
66 recording device to prevent its use and to prevent tampering
67 with ballot labels, both before the polls are open or before
68 the operation of the vote recording device for an election is
69 begun and immediately after the polls are closed or after the
70 operation of the vote recording device for an election is
71 completed;

72 (12) It shall have the capacity to contain the names of
73 candidates constituting the tickets of at least nine political
74 parties, and to accommodate the wording of at least fifteen
75 questions;

76 (13) It shall be durably constructed of material of good
77 quality and in a workmanlike manner and in a form which
78 shall make it safely transportable;

79 (14) It shall be so constructed with frames for the
80 placing of ballot labels and with suitable means for the
81 protection of such labels, that the labels on which are
82 printed the names of candidates and their respective
83 parties, titles of offices, and wording of questions shall be so
84 reasonably protected from mutilation, disfigurement or
85 disarrangement;

86 (15) It shall bear a number that will identify it or
87 distinguish it from any other machine;

88 (16) It shall be so constructed that a voter may easily
89 learn the method of operating it and may expeditiously cast
90 his vote for all candidates of his choice, and upon any public
91 question; and

92 (17) It shall be accompanied by a mechanically operated
93 instruction model which shall show the arrangement of
94 ballot labels, party columns or rows, and questions.

§3-4A-10a. Proportional distribution of vote recording devices.

1 The county commission of each county shall, upon the
2 close of registration, review the total number of registered
3 voters and the number of registered voters of each party in

4 each precinct. Prior to each election, the commission shall
5 determine the number of voting devices needed to
6 accommodate voters without long delays and shall assign
7 an appropriate number to each precinct. For the purposes of
8 the primary election, the commission shall assign the
9 number of vote recording devices in each precinct to be
10 prepared for each party based as nearly as practicable on
11 the proportion of registered voters of each party to the total:
12 *Provided*, That a minimum of one vote recording device per
13 party be provided, except for "independent" voters, which
14 shall be determined under section twenty of this article.

**§3-4A-11. Ballot labels, instructions and other supplies;
vacancy changes; procedure and requirements.**

1 The ballot commissioners of any county in which an
2 electronic voting system is to be used in any election shall
3 cause to be printed for use in such election the ballots or
4 ballot labels, as appropriate, for the electronic voting
5 system. The ballot labels so printed shall total in number
6 one and one-half times the total number of vote recording
7 devices to be used in the several precincts of the county in
8 such election. All such labels shall be delivered to the clerk
9 of the county commission at least forty-two days prior to
10 the day of the election in which such labels are to be used.
11 The labels shall contain the name of each candidate, but in
12 no case shall the ballot contain any title, position, rank,
13 degree, or such, including, but not limited to, "doctor,"
14 "reverend," "Ph D.," or the equivalent, and each question to
15 be voted upon and shall be clearly printed or typed in black
16 ink on clear white material of such size as will fit the vote
17 recording devices. Arrows may be printed on the ballot
18 labels to indicate the place to punch the ballot card, which
19 may be to the right or left of the name or proposition.

20 The titles of offices may be arranged on the ballot labels
21 in vertical columns or in a series of separate pages, and shall
22 be printed above or at the side of the names of candidates so
23 as to indicate clearly the candidates for each office and the
24 number to be elected. In case there are more candidates for
25 an office than can be printed in one column or on one ballot
26 label page, the ballot label shall be clearly marked that the
27 list of candidates is continued on the following column or
28 page, and so far as possible, the same number of names shall

29 be printed on each column or page. The names of candidates
30 for each office shall be printed in vertical columns or on
31 separate pages, grouped by the offices which they seek.

32 In elections in which voters are authorized to vote for
33 persons whose names do not appear on the ballot card, a
34 separate write-in ballot, which may be in the form of a paper
35 ballot or card, shall be provided if required to permit voters
36 to write in the title of the office and the names of persons
37 whose names are not on the ballot, for whom he wishes to
38 vote. The manner of voting for write-in candidates upon
39 electronic voting devices shall be as prescribed by rules and
40 regulations of the secretary of state.

41 One set of ballot labels shall be inserted in the vote
42 recording device prior to the delivery of such device to the
43 polling place. The remainder of such ballot labels for each
44 device shall be retained by the clerk of the county
45 commission for use in the event the set so inserted in such
46 device becomes lost, mutilated or damaged.

47 • In addition to all other equipment and supplies required
48 by the provisions of this article, the ballot commissioners
49 shall cause to be printed a supply of instruction cards,
50 sample ballots, facsimile diagrams of the vote recording
51 device ballot and official printed ballots or ballot cards
52 adequate for the orderly conduct of the election in each
53 precinct in their county. In addition they shall provide all
54 other materials and equipment necessary to the conduct of
55 the election, including voting booths, appropriate facilities
56 for the reception and safekeeping of ballot cards, the ballots
57 of absent voters and of challenged voters and of such
58 "independent" voters who shall, in primary elections cast
59 their votes on nonpartisan candidates and public questions
60 submitted to the voters.

**§3-4A-12. Ballot label arrangement in vote recording devices;
when uniform numbering required; drawing by
lot to determine position of candidates on ballots
or ballot labels; sealing of devices; record of
identifying numbers.**

1 When the ballot labels are printed and delivered to the
2 clerk of the county commission, he shall place them in the
3 vote recording devices in such manner as will most nearly
4 conform to the arrangement prescribed for paper ballots,

5 and as will clearly indicate the party designation or emblem
 6 of each candidate. Each column, row or page containing the
 7 names of the office and candidates for such office shall be so
 8 arranged as to clearly indicate the office for which the
 9 candidate is running. The names of the candidates for each
 10 office indicated shall be placed on the ballot label. The
 11 ballot label and the arrangement of the ballot shall conform
 12 as nearly as practicable to the plan herein given:

Democratic Ticket	Republican Ticket
For House of Delegates	For House of Delegates
Name	Name
	◀69
70 ▶	
	◀71
72 ▶	
	◀73
74 ▶	
	◀75
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13 The secretary of state shall assign a uniform number
 14 applicable to all counties using electronic voting for all
 15 straight party tickets and for all candidates running for
 16 offices to be voted upon by all of the voters of the state. The
 17 number so designated by the secretary of state shall be used
 18 by all counties using electronic voting systems irrespective
 19 of the fact that in one or more such counties the number or
 20 numbers so designated may result in other than strict
 21 sequential ballot arrangement. After taking into account
 22 the numbers so assigned by the secretary of state to straight
 23 party tickets and all candidates for offices to be voted upon

24 by all the voters of the state, the clerk of the circuit court
25 shall appoint a time at which all candidates whose ballot
26 positions are to be determined by drawing by lot are to
27 appear before the clerk for such drawing. Candidates whose
28 ballot positions are to be determined by drawing by lot are
29 those candidates for an office for which the voters will elect
30 more than one person to represent the electoral districts,
31 including, but not limited to, House of Delegates contests in
32 multi-delegate districts, judges in multi-judge circuits,
33 contests for the office of county board of education,
34 magistrate and delegate to a political party national
35 convention. The clerk shall give due notice of such time to
36 each candidate by United States mail, directed to the
37 address given by the candidate in his announcement of
38 candidacy. It shall be the duty of the secretary of state to
39 provide each circuit clerk with a list of names and
40 addresses of candidates running for office in such clerk's
41 county who have filed their announcement of candidacy
42 with the secretary of state, and who are candidates whose
43 ballot positions are to be determined by drawing by lot. At
44 the time appointed, all such candidates whose ballot
45 positions are to be determined by lot shall assemble in the
46 office of such clerk and such candidates shall then proceed
47 to draw by lot to determine where their names shall appear
48 on the ballots or ballot labels. The number so drawn by each
49 such candidate shall determine where his or her name shall
50 appear on the ballots or ballot labels. In the event any
51 candidate or candidates fail to appear at the time
52 appointed, the clerk shall draw for such absent candidate or
53 candidates in the presence of those candidates assembled, if
54 any, and the number so drawn by the clerk shall determine
55 where the name of any absent candidate or candidates shall
56 appear on the ballots or ballot labels. The circuit clerk shall
57 record the number drawn by each candidate and his name
58 in an appropriate book. The ballot commissioners shall
59 proceed to have the ballot labels printed according to the
60 provisions of this article. After receiving the printed ballot
61 labels, the clerk of the circuit court shall ascertain their
62 accuracy and the clerk of the county commission shall
63 proceed to have the ballot labels placed in the vote
64 recording devices. The clerk of the county commission shall
65 then seal the vote recording devices so as to prevent

66 tampering with ballot labels, and enter in an appropriate
67 book, opposite the number of each precinct, the identifying
68 or distinguishing number of the specific vote recording
69 device or devices to be used in that precinct.

***§3-4A-13. Inspection of vote recording devices and ballot
cards; duties of county commission, ballot
commissioners and election commissioner;
records relating to vote recording devices.**

1 When the clerk of the county commission has completed
2 the preparation of the vote recording devices as provided in
3 section twelve of this article and the ballot cards as
4 provided in section twenty-one, article one of this chapter,
5 and not later than seven days before the day of the election,
6 he shall notify the members of the county commission and
7 the ballot commissioners that the devices are ready for use.
8 Thereupon the members of the county commission and the
9 ballot commissioners shall convene at the office of the clerk
10 or at such other place wherein the vote recording devices
11 and ballot cards are stored, not later than five days before
12 the day of the election, and shall inspect the devices and the
13 ballot cards to determine whether the requirements of this
14 article have been met. Notice of the place and time of such
15 inspection shall be published, no less than three days prior
16 thereto, as a Class I-0 legal advertisement in compliance
17 with the provisions of article three, chapter fifty-nine of
18 this code, and the publication area for such publication
19 shall be the county involved. Any candidate and one
20 representative of each political party on the ballot may be
21 present during such examination. If the devices and ballot
22 cards are found to be in proper order, the members of the
23 county commission and the ballot commissioners shall
24 endorse their approval in the book in which the clerk
25 entered the numbers of the devices opposite the numbers of
26 precincts. The devices and the ballot cards shall then be
27 secured in double lock rooms. The county clerk and the
28 president or president pro tempore of the county
29 commission shall each have a key. The rooms shall be
30 unlocked only in their presence and only for the removal of
31 the devices and the ballot cards for transportation to the

* Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.

32 polls. Upon such removal of the devices, the county clerk
33 and president or president pro tempore of the county
34 commission shall certify in writing signed by them that the
35 devices were found to be sealed when removed for
36 transportation to the polls.

37 Not later than one day before the election the election
38 commissioner of each precinct, who shall have been
39 previously designated by the ballot commissioners, shall
40 attend at the offices of the clerks of the circuit court and
41 county commission of such county to receive the necessary
42 election records, books and supplies required by law. Such
43 election commissioners shall receive the per diem mileage
44 rate prescribed by law for this service. Such election
45 commissioners shall give the ballot commissioners a
46 sequentially numbered written receipt, on a printed form,
47 provided by the clerk of the county commission, for such
48 records, books and supplies. Such receipt shall be prepared
49 in duplicate. One copy of the receipt shall remain with the
50 clerk of the county commission and one copy shall be
51 delivered to the president or president pro tempore of the
52 county commission.

**§3-4A-16. Delivery of vote recording devices; time,
arrangement for voting.**

1 The clerk of the county commission shall deliver or cause
2 to be delivered each vote recording device and the package
3 of ballot cards to the polling place where they are to be
4 employed. Such delivery shall be made not less than one
5 hour prior to the opening of the polls and shall be made in
6 the presence of the precinct election commissioners. At the
7 time of the delivery of the vote recording device and the
8 ballot cards, the device shall be sealed in such a way to
9 prevent its use prior to the opening of the polls and any
10 tampering with the ballot labels and the ballot cards shall
11 be packaged and sealed in such a way to prevent any
12 tampering with the ballots. Immediately prior to the
13 opening of the polls on election day, the sealed packages of
14 ballot cards shall be opened, and the seal of the vote
15 recording device shall be broken in the presence of the
16 precinct election commissioners, who shall certify in
17 writing signed by them to the clerk of the county
18 commission, that the devices and the ballot cards have been

19 delivered in their presence, that the devices and packages of
20 ballot cards were found to be sealed upon such delivery, and
21 that the seals have been broken and the devices opened in
22 their presence. The election commissioners shall then cause
23 the vote recording device to be arranged in the voting booth
24 in such manner that the front of the vote recording device on
25 which the ballot labels appear will not be visible, when the
26 vote recording device is being operated, to any person other
27 than the voter if the voter shall elect to close the curtain,
28 screen or hood to the voting booth.

§3-4A-22. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter, who requires assistance to
2 vote by reason of blindness, disability, advanced age or
3 inability to read and write, may be given assistance by one
4 of the following means:

5 (1) By a person of the voter's choice: *Provided*, That
6 such assistance may not be given by the voter's present or
7 former employer or agent of that employer or by an officer
8 or agent of a labor union of which the voter is a past or
9 present member; or

10 (2) If no person of the voter's choice be present at the
11 polling place, the voter may request such assistance from
12 the poll clerks or ballot commissioners present at the
13 polling place, whereupon such assistance may be given by
14 any two of such election officers of opposite political party
15 affiliation to whom such voter shall thereupon declare his
16 or her choice of candidates and his or her position on public
17 questions appearing on the ballot or ballot labels. Such
18 election officers, in the presence of the voter and in the
19 presence of each other, shall thereupon cause such voter's
20 declared choices to be recorded on the vote recording device
21 as votes.

22 (b) A person other than an election officer who assists a
23 voter in voting under the provisions of this section shall sign
24 a written oath or affirmation before assisting such voter,
25 stating that he or she will not override the actual preference
26 of the voter being assisted or mislead the voter into voting
27 for someone other than the candidate of the voter's choice.
28 Such person assisting the voter shall also swear or affirm
29 that he or she believes that the voter is voting free of
30 intimidation or manipulation.

§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting the election officials acting under authority of
2 sections nineteen, twenty, twenty-one and twenty-two of
3 this article in the conduct of the election, and qualified
4 persons assisting voters pursuant to section twenty-two of
5 this article, no person other than the voter alone may be in,
6 about or within five feet of the voting booth during the time
7 such voter is in the process of voting at any election, and,
8 during such time, no person may communicate in any
9 manner with the voter and the voter may not communicate
10 with any other person or persons. Any conduct or action of
11 an election official about or around the voting booth while
12 the voter is in the process of voting, in excess of the
13 authority vested in such official by provisions of this article,
14 shall constitute a violation of the provisions hereof. Any
15 person violating any provision or provisions of this section
16 shall be guilty of a misdemeanor, and, upon conviction
17 thereof, shall be fined not exceeding one thousand dollars
18 or be sentenced to imprisonment in the county jail for a
19 period not exceeding twelve months, or, in the discretion of
20 the court, shall be subject to both such fine and
21 imprisonment.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

1 The provisions of section five, article one of this chapter,
2 relating to the number of registered voters in each precinct,
3 shall apply to and control in precincts in counties in which
4 electronic voting systems have been adopted, except that
5 the maximum number of registered voters shall be one
6 thousand per precinct. The county commissions of such
7 counties, subject to other provisions of this chapter with
8 respect to the altering or changing of the boundaries of
9 voting precincts, may change the boundaries of precincts or
10 consolidate precincts as practicable, to achieve the
11 maximum advantage from the use of electronic voting
12 systems.

13 The county commission may, in the urban centers of any
14 county adopting an electronic voting system, designate a
15 voting place without the limits of a precinct, provided such
16 voting place is in a public building, and in an adjoining

- 17 precinct. In such event more than one precinct may vote in
- 18 any such public building.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

§3-5-5. Candidates for county board of education.

§3-5-7. Filing announcements of candidates; requirements; when section applicable.

§3-5-9. Certification and posting of candidacies.

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

1 Primary elections shall be held at the voting place in each
2 of the voting precincts in the state, for the purposes set forth
3 in this article, on the second Tuesday in May in the year one
4 thousand nine hundred eighty-six and in each second year
5 thereafter.

6 At such election the polls shall be opened and closed at
7 the hours provided for opening and closing the polls in a
8 general election.

§3-5-5. Candidates for county board of education.

1 Any person who is eligible to hold office as a member of a
2 county board of education may file a certificate with the
3 clerk of the circuit court of the county, declaring himself a
4 candidate for election to such office. Such certificate shall
5 be substantially in the following form:

6 I,, hereby certify
7 that I am a candidate for nonpartisan election to
8 membership on the
9 County Board of Education, and desire my name printed on
10 the ballot to be voted at the primary election to be held on
11 the day of, 19....; that I am a
12 legally qualified voter of the County of,
13 State of West Virginia; that the address of my residence in
14 County is; that I am
15 eligible to hold the office; and that I am a candidate therefor
16 in good faith.

17
18 Candidate

19 Signed and acknowledged before me this
20 day of, 19....

21

22 Signature and official title
23 of certifying officer.

24 Such announcement shall be signed and acknowledged
25 by the candidate before some officer qualified to administer
26 oaths, who shall certify the same.

27 In the year one thousand nine hundred eighty-six and
28 each two years thereafter, such certificate shall be filed
29 with the clerk of the circuit court not earlier than the second
30 Monday in January next preceding the primary election
31 day, and not later than the first Saturday of February next
32 preceding the primary election day and must be received by
33 the clerk before midnight, eastern standard time, of that
34 day, or, if mailed, shall be postmarked before that hour.

**§3-5-7. Filing announcements of candidacies; requirements;
when section applicable.**

1 Any person who is eligible to hold and seeks to hold an
2 office (including that of member of any political party
3 executive committee) shall file with the secretary of state, if
4 it be an office to be filled by the voters of more than one
5 county, or with the clerk of the circuit court, if it be for an
6 office to be filled by the voters of a county or subdivision
7 less than a county, a certificate declaring himself a
8 candidate for the nomination for such office, which
9 certificate shall be in form or effect as follows:

10 I,, hereby certify that I am a
11 candidate for the nomination for the office of
12 to represent the Party, and desire my name
13 printed on the official ballot of said party to be voted at the
14 primary election to be held on the
15 day of, 19....; that I am
16 a legally qualified voter of the County of,
17 State of West Virginia; that my residence is number
18 of Street in the City (or Town) of
19 in County in said State;
20 that I am eligible to hold the said office; that I am a member
21 of and affiliated with said political party; that I am a
22 candidate for said office in good faith.

23

24 Candidate

25 Signed and acknowledged before me this
 26 day of, 19.....

27
 28 Signature and official title of
 29 person before whom signed.

30 Any candidate for delegate to the national convention of
 31 any political party shall provide, on a form prescribed by
 32 the secretary of state, the information required in the
 33 certificate hereinbefore described and shall also provide
 34 the name of the person he prefers as the presidential
 35 nominee of his party upon the first convention ballot, or if
 36 he has no preference, a statement that he is uncommitted:
 37 *Provided*, That any candidate for delegate may change his
 38 statement of presidential preference by notifying the
 39 secretary of state by registered letter, at least seventy-seven
 40 days prior to the day fixed for the primary election.

41 Such announcement shall be signed and acknowledged
 42 by the candidate before some officer qualified to administer
 43 oaths, who shall certify the same. Any person who
 44 knowingly provides false information on said certificate
 45 shall be guilty of an offense and shall be punished as set
 46 forth in section twenty-three, article nine of this chapter.

47 Such certificate shall be filed with the secretary of state
 48 or the clerk of the circuit court, as the case may be, not
 49 earlier than the second Monday in January next preceding
 50 the primary election day, and not later than the first
 51 Saturday of February next preceding the primary election
 52 day, and must be received before midnight, eastern
 53 standard time, of that day or, if mailed, shall be postmarked
 54 before that hour.

55 The provisions of this section shall apply to the primary
 56 election held in the year one thousand nine hundred eighty-
 57 six and every primary election held thereafter.

§3-5-9. Certification and posting of candidacies.

1 By the eighty-fourth day next preceding the day fixed for
 2 the primary election, the secretary of state shall arrange the
 3 names of all candidates, who have filed announcements
 4 with him, as provided in this article, and who are entitled to
 5 have their names printed on any political party ballot, in
 6 accordance with the provisions of this chapter, and shall
 7 forthwith certify the same under his name and the lesser
 8 seal of the state, and file the same in his office.

9 Such certificate of candidates shall show (1) the name and
10 residence of each candidate, (2) the office for which he is a
11 candidate, (3) the name of the political party of which he is a
12 candidate, (4) upon what ballot his name is to be printed,
13 and (5) in the case of a candidate for delegate to the national
14 convention of any political party, the name of the person the
15 candidate prefers as the presidential nominee of his party,
16 or if he has no preference, the word "uncommitted."

17 The secretary of state shall post a duplicate of such
18 certificate in a conspicuous place in his office and keep
19 same posted until after the primary election.

20 Immediately upon completion of such certification, the
21 secretary of state shall ascertain therefrom the candidates
22 whose names are to appear on the primary election ballots
23 in the several counties of the state and shall certify to the
24 clerk of the circuit court in each county the certificate
25 information relating to each of the candidates whose names
26 are to appear on the ballot in such county. He shall transmit
27 such certificate to the several clerks by registered or
28 certified mail, but, in emergency cases, he may resort to
29 other reliable and speedy means of transmission which may
30 be available so that such certificates shall reach the several
31 clerks by the seventieth day next preceding such primary
32 election day.

33 The provisions of this section shall apply to the primary
34 election held in the year one thousand nine hundred eighty-
35 six and every primary election held thereafter.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

§3-6-6. Ballot counting procedures.

§3-6-9. Canvass of returns; declaration of results; recounts; record keeping.

§3-6-2. Preparation and form of general election ballots.

1 All ballots prepared under the provisions of this article
2 shall be printed in black ink on number two white book
3 paper sufficiently thick so that the printing cannot be
4 distinguished from the back, and shall contain the names of
5 every candidate whose nomination for any office to be voted
6 for at the election has been certified and filed according to
7 law, and no others, except that if it shall appear to the
8 satisfaction of the ballot commissioners that a person has


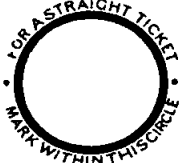

9 been legally nominated as a candidate for an office and is
10 lawfully entitled to have his name upon the ballot and no
11 certificate of the nomination has been received by the clerk
12 of the circuit court, they shall print the name of such
13 candidate upon the ballot in its proper place.

14 The tickets, except the heading, which shall be in display
15 type, shall be printed in eight point type; the name or
16 designation of the office and the residence and county of
17 residence of the candidate in lowercase letters, and the
18 name of the candidate in capital letters. The name and
19 residence of the candidate may be printed in the same line.
20 The name of each candidate shall be printed in a space
21 defined by ruled lines, and with a black square on its left
22 enclosed by heavy dark lines. If, upon any ticket, there be no
23 candidate or candidates for a designated office, a blank
24 space equal to the space that would be occupied by such
25 name or names, if they were printed thereon, with the blank
26 space herein provided for, shall be left. The heading of each
27 party ticket, including the name of the party and the device
28 or emblem above and the large circle between the device or
29 emblem and such name, shall be separated from the rest of
30 the ticket by heavy lines and the circle above the name of
31 the party in which the voter is to place the cross mark, if he
32 desires to vote the straight ticket, shall be defined by
33 heavier lines than the lines defining the blank spaces before
34 the name of candidates, and such circle shall be surrounded
35 by the following words printed in heavy face six point type:
36 "For a straight ticket mark within this circle." Once,
37 immediately below the circles for straight ticket voting, the
38 following instructions shall be printed in eight point type:
39 "STRAIGHT TICKET VOTERS: If you decide to split your
40 straight party vote, remember — (1) For offices where you
41 are asked to choose one candidate, if you vote for a
42 candidate in another party, the candidate for that office in
43 this party will NOT receive a vote. (2) For offices where you
44 are asked to choose more than one, if you vote for any
45 candidate in another party YOU MUST MARK EACH OF
46 YOUR CHOICES for that office, EVEN THOSE IN YOUR
47 STRAIGHT TICKET PARTY." Each party ticket shall be
48 separated from other party tickets and bordered on either
49 side by a heavy border, or a broad solid line, at least one-
50 sixteenth of an inch wide, and the edges of the ballot on

51 either side trimmed off to within one-half inch of the border
52 or solid line described.

53 The names of the candidates shall be arranged on the
54 ballot in tickets or lists, in separate columns under the
55 respective party or political or other designation certified,
56 each column or ticket containing the names of candidates
57 nominated by the same political party and no others. In
58 elections for presidential electors, the names of candidates
59 for electors of any political party or group of petitioners,
60 shall not be placed on the ballot, but shall, after
61 nomination, be filed with the secretary of state. In place of
62 their names, there shall be printed first on the ballots the
63 names of the candidates for president and vice president,
64 respectively, of each such party or group of petitioners, and
65 they shall be arranged under the title of the office. Before
66 the names of such candidates for president and vice
67 president of each party, or group, a single square shall be
68 printed, in front of a brace in which the voter shall place the
69 cross mark for the candidate of his choice for such offices. A
70 vote for any of such candidates shall be a vote for the
71 electors of the party by which such candidates were named,
72 and whose names have been filed with the secretary of state.

73 The names of the candidates on each ticket shall be
74 arranged in groups, with a heading over each group printed
75 in heavy faced eight point type to indicate the political
76 divisions in which such group is to be voted for. The
77 arrangement of the ballot shall conform as nearly as
78 practicable to the plan here given:

Device	Device	Device
		
Republican Ticket	Democratic Ticket	Prohibition Ticket

79 STRAIGHT TICKET VOTERS: If you decide to split your
80 straight party vote, remember — (1) For offices where you

81 are asked to choose one candidate, if you vote for a
 82 candidate in another party, the candidate for that office in
 83 this party will NOT receive a vote. (2) For offices where you
 84 are asked to choose more than one, if you vote for any
 85 candidate in another party YOU MUST MARK EACH OF
 86 YOUR CHOICES for that office, EVEN THOSE IN YOUR
 87 STRAIGHT TICKET PARTY.

For Governor	For Governor	For Governor
Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

88 *Provided*, That the arrangement of the portion of the ballot
 89 for offices for which more than one seat is to be filled shall
 90 conform as nearly as practicable to the following plan:

For House of Delegates (Choose two)	For House of Delegates (Choose two)	For House of Delegates (Choose two)
Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

91 The tickets of the several political parties shall be printed
 92 on the ballot in parallel columns, each ticket in a separate
 93 column headed by the chosen device, and the tickets in such
 94 order on the ballot and the names of the office in such order
 95 on the ticket as the secretary of state shall direct,
 96 preference, however, being given to the political party
 97 which cast the highest number of votes for the head of the
 98 ticket at the last preceding presidential election, and so on.
 99 No ticket or list of candidates shall be printed under the
 100 name of any party containing more candidates for any
 101 office than are to be elected.

102 In those delegate districts set forth in subsection (d),
 103 section two, article two, chapter one of this code which
 104 embrace more than one county and in which there is a
 105 prohibition regarding the number of delegates to be elected

106 or appointed who are residents of any single county within
107 the district, there shall be printed on the ballot, including,
108 but not limited to, voting machines and electronic voting
109 system ballots, in bold type, immediately preceding the
110 names of candidates for the House of Delegates, a clear
111 explanation of such prohibition. In those delegate districts
112 which embrace more than one county, the county of
113 residence of each candidate for the House of Delegates shall
114 be printed beneath the name of each such candidate on the
115 ballot, including, but not limited to, voting machines and
116 electronic voting system ballots.

117 The ballot shall be so printed as to give each voter a clear
118 opportunity to designate by a cross mark in a large, blank,
119 circular space, three quarters of an inch in diameter, below
120 the device and above the name of the party at the head of the
121 ticket or list of candidates, his choice of a party ticket and
122 desire to vote for each and every candidate thereon; and by
123 a cross mark, in a blank, enclosed space on the left side and
124 before the name of each candidate, his choice of particular
125 candidates.

126 For any office or offices for which there is to be more than
127 one candidate elected, that section of the ballot relating to
128 said office shall be printed in such a manner so as to provide
129 for the rotation of names in order to assure that each
130 candidate from each party for said office occupies a given
131 position in the order of the candidates an equal number of
132 times. If any party fails to nominate or to fill a ballot
133 vacancy for as many candidates as there are persons to be
134 elected to said office, then the ballot shall be printed in such
135 a manner so as to provide that the space created by the
136 vacancy shall be rotated in the same manner as the names of
137 each of the candidates for said office.

138 On the back of the ballot shall be printed or stamped in
139 black ink the words "Official Ballot," with the date of the
140 election, and underneath shall be two blank lines, followed
141 by the words "Poll Clerks."

§3-6-6. Ballot counting procedures.

- 1 When the polls are closed in an election precinct where
- 2 two election boards have served, both the receiving and
- 3 counting boards shall conclude the counting of the votes
- 4 cast, the tabulating and summarizing of the number of the

5 votes cast, unite in certifying and attesting to the returns of
6 the election, and join in making out the certificates of the
7 result of the election provided for in this article. They shall
8 not adjourn until the work shall be completed.

9 In all election precincts wherein the election shall be
10 conducted by a single election board, immediately on
11 closing the polls the commissioners and clerks shall proceed
12 to ascertain the result of the election in the following
13 manner: The ballot box shall then be opened, and one of the
14 commissioners taking therefrom one ballot at a time, in the
15 presence of all the other officers, shall read therefrom the
16 designations of the offices to be filled, and the names of the
17 persons voted for, for each office, and hand the ballot to
18 another of such commissioners, differing in politics from
19 himself, who, if satisfied that it was correctly read, shall
20 string it on a thread. The contents of the ballots, as they are
21 read, shall be entered by the poll clerks, under the
22 supervision of the commissioners, on tally sheets for the
23 purpose, by suitable marks, in ink, made opposite to or
24 under the name of each person voted for, so as to show the
25 number of votes received by every person, for any office to
26 be filled. The ballots shall be counted as they are strung
27 upon the thread and whenever the number counted shall be
28 equal to the number of votes entered upon the pollbooks,
29 the excess, if any, remaining in the ballot box shall, without
30 unfolding or unrolling the same, or allowing anyone to
31 examine or know the contents thereof, be counted and
32 strung on a second thread along with a card marked "excess
33 ballots." The number, if any, of excess ballots found in the
34 ballot box and not included in the tally of votes shall be
35 reported on the tally sheets.

36 They shall not adjourn until all of the votes are counted
37 and certificates of the result made and signed by them. In
38 precincts wherein there are double boards, the counting
39 boards, in counting the ballots, shall proceed in the manner
40 prescribed in this section.

**§3-6-9. Canvass of returns; declaration of results; recounts;
record keeping.**

1 The commissioners of the county commission shall be ex
2 officio a board of canvassers, and, as such, shall keep in a
3 well-bound book, marked "election record," a complete

4 record of all their proceedings in ascertaining and declaring
5 the results of every election in their respective counties.
6 They shall convene as the canvassing board at the
7 courthouse on the fifth day (Sundays excepted) after every
8 election held in their county, or in any district thereof, and
9 the officers in whose custody the ballots, pollbooks,
10 registration records, tally sheets and certificates have been
11 placed shall lay them before the board for examination.
12 They may, if considered necessary, require the attendance
13 of any of the commissioners, poll clerks or other persons
14 present at the election, to appear and testify respecting the
15 same, and make such other orders as shall seem proper, to
16 procure correct returns and ascertain the true results of the
17 election in their county; but in this case all the questions to
18 the witnesses and all the answers thereto, and evidence,
19 shall be taken down in writing and filed and preserved. All
20 orders made shall be entered upon the record. They may
21 adjourn from time to time, but no longer than absolutely
22 necessary, and, when a majority of the commissioners are
23 not present, their meeting shall stand adjourned until the
24 next day, and so from day to day, until a quorum is present.
25 All meetings of the commissioners sitting as a board of
26 canvassers shall be open to the public. The board shall
27 proceed to open each sealed package of ballots so laid
28 before them, and, without unfolding them, count the
29 number in each package and enter the number upon their
30 record. The ballots shall then be again sealed up carefully in
31 a new envelope, and each member of the board shall write
32 his name across the place where the envelope is sealed.
33 After canvassing the returns of the election, the board shall
34 publicly declare the results of the election; however, they
35 shall not enter an order certifying the election results for a
36 period of forty-eight hours after the declaration.

37 (a) Within the forty-eight-hour period, a candidate
38 voted for at the election may demand the board to open and
39 examine any of the sealed packages of ballots, and recount
40 them; but in such case they shall seal the ballots again,
41 along with the envelope above named, and the clerk of the
42 county commission and each member of the board shall
43 write his name across the places where it is sealed, and
44 endorse in ink, on the outside: "Ballots of the election held
45 at precinct No., in the district of ,

46 and county of ,
 47 on the day of”
 48 In computing the forty-eight-hour period as used in this
 49 section, Saturdays, Sundays and legal holidays shall be
 50 excluded: *Provided*, That at the end of the forty-eight-hour
 51 period, an order shall be entered certifying all election
 52 results except for those offices in which a recount has been
 53 demanded.

54 (b) If a recount has been demanded, the board shall have
 55 an additional twenty-four hours after the end of the forty-
 56 eight-hour period in which to send notice to all candidates
 57 who filed for the office in which a recount has been
 58 demanded, of the date, time and place where the board will
 59 convene to commence the recount. The notice shall be
 60 served under the provisions of subdivision (c) of this
 61 section. The recount shall be set for no sooner than three
 62 days after the serving of the notice: *Provided*, That after the
 63 notice is served, candidates so served shall have an
 64 additional twenty-four hours in which to notify the board,
 65 in writing, of their intention to preserve their right to
 66 demand a recount of precincts not requested to be
 67 recounted by the candidate originally requesting a recount
 68 of ballots cast: *Provided, however*, That there shall be only
 69 one recount of each precinct, regardless of the number of
 70 requests for a recount of any precinct. A demand for the
 71 recount of ballots cast at any precinct may be made during
 72 the recount proceedings only by the candidate originally
 73 requesting the recount and those candidates who notify the
 74 board, pursuant to this subdivision, of their intention to
 75 preserve their right to demand a recount of additional
 76 precincts.

77 (c) Any sheriff of the county in which the recount is to
 78 occur shall deliver a copy thereof in writing to the candidate
 79 in person; or if the candidate is not found, by delivering the
 80 copy at the usual place of abode of the candidate, and giving
 81 information of its purport, to the spouse of the candidate or
 82 any other person found there who is a member of his family
 83 and above the age of sixteen years; or if neither the spouse of
 84 the candidate nor any other person be found there, and the
 85 candidate is not found, by leaving the copy posted at the
 86 front door of the place of abode. Any sheriff, thereto
 87 required, shall serve a notice within his county and make

88 return of the manner and time of service; for a failure so to
89 do, he shall forfeit twenty dollars. The return shall be
90 evidence of the manner and time of service.

91 (d) Every candidate who demands a recount shall be
92 required to furnish bond in a reasonable amount with good
93 sufficient surety to guarantee payment of the costs and the
94 expenses of such recount in the event the result of the
95 election is not changed by the recount; but the amount of
96 the bond shall in no case exceed three hundred dollars.

97 When they have made their certificates and declared the
98 results as hereinafter provided, they shall deposit the sealed
99 packages of ballots, absent voter ballots, registration
100 records, pollbooks, tally sheets and precinct certificates
101 with the clerks of the county commissions and circuit courts
102 from whom they were received, who shall carefully preserve
103 them for twenty-two months, and if there is no contest
104 pending as to any election, and their further preservation is
105 not required by any order of a court, the ballots, pollbooks,
106 tally sheets and certificates shall be destroyed by fire or
107 otherwise, without opening the sealed packages of ballots;
108 and if there is a contest pending, then they shall be so
109 destroyed as soon as the contest is ended.

110 If the result of the election is not changed by the recount,
111 the costs and expenses thereof shall be paid by the party at
112 whose instance the recount was made.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

§3-8-7. Failure to file statement; penalty.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-5. Detailed accounts and verified financial statements required.

1 Every candidate, financial agent, person and association
2 of persons, organization of any kind, including every
3 corporation, directly or indirectly, supporting a political
4 committee established pursuant to paragraph (C),
5 subdivision (1), subsection (b), section eight of this article or

6 engaging in other activities permitted by said section eight
7 of this article and also including the treasurer or equivalent
8 officer of such association or organization; advocating or
9 opposing the nomination, election or defeat of any
10 candidate, or the passage or defeat of any issue, thing or
11 item to be voted upon, and the treasurer of every political
12 party committee shall keep detailed accounts of every sum
13 of money or other thing of value received by him, including
14 all loans of money or things of value, and of all expenditures
15 and disbursements made, liabilities incurred, by such
16 candidate, financial agent, person, association or
17 organization or committee, for political purposes, or by any
18 of the officers or members of such committee, or any person
19 acting under its authority or on its behalf.

20 Every person or association of persons required to keep
21 detailed accounts under this section shall file with the
22 officers hereinafter prescribed a detailed itemized
23 statement, subscribed and sworn to before an officer
24 authorized to administer oaths, according to the following
25 provisions and times:

26 (a) On the last Saturday in March or within fifteen days
27 thereafter next preceding the primary election day
28 whenever the total of all financial transactions relating to
29 an election exceed five hundred dollars a statement which
30 shall include all financial transactions which have taken
31 place by the date of that statement, subsequent to any
32 previous statement filed within the previous five years
33 under this section, or if no previous statement was filed, all
34 financial transactions made within the preceding five
35 years; and

36 (b) Not less than seven nor more than ten days preceding
37 each primary or other election, a statement which shall
38 include all financial transactions which have taken place by
39 the date of such statement, subsequent to the previous
40 statement, if any; and

41 (c) Not less than twenty-five nor more than thirty days
42 after each primary or other election, a statement which
43 shall include all financial transactions which have taken
44 place by the date of such statement, subsequent to the
45 previous statement; and

46 (d) On the first day of July, one thousand nine hundred
47 eighty-five, and thereafter on the last Saturday in March or

48 within fifteen days thereafter annually, whenever
49 contributions or expenditures relating to an election exceed
50 five hundred dollars or whenever any loans are
51 outstanding, a statement which shall include all financial
52 transactions which have taken place by the date of such
53 report, subsequent to any previous report.

54 Financial transactions shall include all contributions or
55 loans received and all repayments of loans or expenditures
56 made to promote the candidacy of any person by any
57 candidate or any organization advocating or opposing the
58 nomination, election or defeat of any candidate or to
59 promote the passage or defeat of any issue, thing or item to
60 be voted on.

61 Every person who shall announce as a write-in candidate
62 for any elective office and his financial agent or election
63 organization of any kind shall comply with all of the
64 requirements of this section after public announcement of
65 such person's candidacy has been made.

§3-8-5a. Information required in financial statement.

1 Each financial statement as required by this article shall
2 show the following information:

3 (a) The first name, middle initial, if any, and last name,
4 residence and mailing address and telephone number of
5 each candidate, financial agent, treasurer or person, and
6 the full name, address and telephone number of each
7 association, organization or committee filing a financial
8 statement.

9 (b) The balance of cash and any other sum of money on
10 hand at the beginning and the end of the period covered by
11 the financial statement.

12 (c) The first name, middle initial, if any, and the last
13 name in the case of an individual, and the full name of each
14 firm, association or committee, and the amount of such
15 contribution of such individual, firm, association or
16 committee, and, if the aggregate of the sum or sums
17 contributed by any one such individual, firm, association or
18 committee exceeds two hundred fifty dollars there shall
19 also be reported the residence and mailing address and, in
20 the case of an individual, the major business affiliation and
21 occupation. A contribution totaling more than fifty dollars
22 by any one contributor is prohibited unless it is by money

23 order or by check, and a violation of this provision is subject
24 to section five-d of this article. As used herein, the term
25 "check" shall have the meaning ascribed to that term in
26 section one hundred four, article three, chapter forty-six of
27 this code.

28 (d) The total amount of contributions received during
29 the period covered by the financial statement.

30 (e) The first name, middle initial, if any, and the last
31 name, residence and mailing address in the case of an
32 individual or the full name and mailing address of each
33 firm, association or committee making or cosigning a loan
34 and the amount of any loan received, the date and terms of
35 the loan, including interest and repayment schedule, along
36 with a copy of the loan agreement.

37 (f) The first name, middle initial, if any, and the last
38 name, residence and mailing address in the case of an
39 individual or the full name and mailing address of each
40 firm, association or committee having previously made or
41 cosigned a loan for which payment is made or a balance is
42 outstanding at the end of the period, together with the
43 amount of repayment on the loan made during the period
44 and the balance at the end of the period.

45 (g) The total outstanding balance of all loans at the end
46 of the period.

47 (h) The first name, middle initial, if any, and the last
48 name, residence and mailing address in the case of an
49 individual, or the full name and mailing address of each
50 firm, association or committee to whom each expenditure
51 was made or liability incurred, together with the amount
52 and purpose of each expenditure or liability incurred and
53 the date of each transaction.

54 When any lump sum payment is made to any advertising
55 agency or other disbursing person who does not file a report
56 of detailed accounts and verified financial statements as
57 required herein, such lump sum expenditures shall be
58 accounted for in the same manner as provided herein.

59 (i) The total expenditure for the nomination, election or
60 defeat of a candidate or any person or organization
61 advocating or opposing the nomination, election or defeat
62 of any candidate, or the passage or defeat of any issue, thing
63 or item to be voted upon, in whose behalf an expenditure

64 was made or a contribution was given for the primary or
65 other election.

66 (j) The total amount of expenditures made during the
67 period covered by the financial statement.

68 (k) Any unexpended balance at the time of making the
69 financial statements herein provided for shall be properly
70 accounted for in that financial statement and shall appear
71 as a balance in the next following financial statement.

72 (l) Each financial statement required by this section
73 shall contain a separate section setting forth the following
74 information for each fund-raising event held during the
75 period covered by the financial statement:

76 (1) The type of event, date held, and address and name,
77 if any, of the place where the event was held.

78 (2) All of the information required by subdivision (c) of
79 this section.

80 (3) The total of all moneys received at the fund-raising
81 event.

82 (4) The expenditures incident to the fund-raising event.

83 (5) The net receipts of the fund-raising event.

84 For the purpose of this section the term "fund-raising
85 event" means an event such as a dinner, reception,
86 testimonial, cocktail party, auction or similar affair
87 through which contributions are solicited or received by
88 such means as purchase of a ticket, payment of an
89 attendance fee or through purchase of goods or services.

90 (m) Any contribution or expenditure made by or on
91 behalf of a candidate for public office, to any other
92 candidate, or committee for a candidate for any public
93 office in the same election shall comply with the provisions
94 of this article.

95 (n) No person, firm, association or committee shall
96 make any contribution except from his own funds, unless
97 such person, firm, association or committee discloses in
98 writing to the person required to report under this section
99 the first name, middle initial, if any, and the last name in the
100 case of an individual, or the full name in case of a firm,
101 association or committee, residence and mailing address;
102 the major business affiliation and occupation of the person,
103 firm, association or committee which furnished the funds to
104 such contributor. All such disclosures shall be included in
105 the statement required by this section.

106 (o) Any firm, association, committee or fund permitted
107 by section eight of this article to be a political committee
108 shall disclose on the financial statement its corporate or
109 other affiliation.

110 (p) No contribution may be made, directly or indirectly,
111 in a fictitious name, anonymously or by one person through
112 an agent, relative or other person so as to conceal the
113 identity of the source of the contribution or in any other
114 manner so as to effect concealment of the contributor's
115 identity.

116 (q) No person, association or committee may accept any
117 contribution for the purpose of influencing the nomination,
118 election or defeat of a candidate or for the passage or defeat
119 of any issue or thing to be voted upon unless the identity of
120 the donor and the amount of the contribution is known and
121 reported.

122 (r) When any candidate, organization, committee or
123 person receives any anonymous contribution which cannot
124 be returned because the donor cannot be identified, that
125 contribution shall be donated to the general revenue fund of
126 the state. Any anonymous contribution shall be recorded as
127 such on the candidate's financial statement, but may not be
128 expended for election expenses. At the time of filing, the
129 financial statement shall include a statement of
130 distribution of anonymous contributions, which total
131 amount shall equal the total of all anonymous contributions
132 received during the period.

**§3-8-5f. Loans to candidates, organizations or persons for
election purposes.**

1 Every candidate, financial agent, person or association of
2 persons or organization advocating or opposing the
3 nomination or election of any candidate or the passage or
4 defeat of any issue or item to be voted upon who receives
5 money or any other thing of value as a loan toward election
6 expenses shall execute, in writing, an agreement with the
7 individual, lending institution or organization making the
8 loan. Such agreement shall state the date and amount of the
9 loan, the terms, including interest and repayment schedule,
10 and a description of the collateral, if any, and the full names
11 and addresses of all parties to the agreement. A copy of the

12 agreement shall be filed with the financial statement next
13 required after the loan is executed.

§3-8-7. Failure to file statement; penalty.

1 Any candidate, financial agent or treasurer of a political
2 party committee, who fails to file a sworn, itemized
3 statement as in this article provided, within the time
4 required, or who willfully files a grossly incomplete or
5 inaccurate statement, shall be guilty of a misdemeanor,
6 and, upon conviction, shall be fined not less than five
7 hundred dollars, or imprisoned in the county jail for not
8 more than one year, or both, in the discretion of the court.
9 Forty days after any such primary or other election, the
10 secretary of state, or county clerk, as the case may be, shall
11 give notice of any failure to file such statement by any
12 candidate, financial agent or treasurer of such committee,
13 to the prosecuting attorney of the county where such
14 delinquent resides. No candidate nominated at a primary
15 election, who has failed to make a sworn statement as
16 required by this article, shall have his name placed on the
17 official ballot for the ensuing election, unless there has been
18 filed by or on behalf of such candidate, or by his financial
19 agent, if any, the financial statement relating to
20 nominations required by this article. It shall be unlawful to
21 issue a commission or certificate of election, or to
22 administer the oath of office, to any person elected to any
23 public office who has failed to file a sworn statement as
24 required by this article, and no such person shall enter upon
25 the duties of his office until he has filed such statement, nor
26 shall he receive any salary or emolument for any period
27 prior to the filing of such statement.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) No person shall publish, issue or circulate, or cause
2 to be published, issued or circulated, any anonymous letter,
3 circular, placard, or other publication tending to influence
4 voting at any election;

5 (b) No owner, publisher, editor or employee of a
6 newspaper or other periodical shall insert, either in its
7 advertising or reading columns, any matter, paid for or to be
8 paid for, which tends to influence the voting at any election
9 whatever, unless directly designating it as a paid
10 advertisement and stating the name of the person
11 authorizing its publication and the candidate in whose
12 behalf it is published;

13 (c) No person shall, in any room or building occupied for
14 the discharge of official duties by any officer or employee of
15 the state or a political subdivision thereof, solicit orally or
16 by written communication delivered therein, or in any other
17 manner, any contribution of money or other thing of value
18 for any party or political purpose whatever, from any
19 postmaster or any other officer or employee of the federal
20 government, or officer or employee of the state, or political
21 subdivision thereof. No officer, agent, clerk or employee of
22 the federal government, or of this state, or any political
23 subdivision thereof, who may have charge or control of any
24 building, office or room, occupied for any official purpose,
25 shall knowingly permit any person to enter the same for the
26 purpose of therein soliciting or receiving any political
27 assessments from, or delivering or giving written
28 solicitations for, or any notice of, any political assessments
29 to, any officer or employee of the state, or a political
30 subdivision thereof;

31 (d) Except as provided in section eight of this article no
32 person entering into any contract with the state or its
33 subdivisions, or any department or agency thereof, either
34 for rendition of personal services or furnishing any
35 material, supplies or equipment or selling any land or
36 building to the state, or its subdivisions, or any department
37 or agency thereof, if payment for the performance of such
38 contract or payment for such material, supplies, equipment,
39 land or building is to be made in whole or in part from
40 public funds shall, during the period of negotiation for or
41 performance under such contract or furnishing of
42 materials, supplies, equipment, land or buildings, directly
43 or indirectly make any contribution to any political party,
44 committee or candidate for public office or to any person for
45 political purposes or use; nor shall any person or firm solicit

46 any contributions for any such purpose during any such
47 period;

48 (e) No person shall, directly or indirectly, promise any
49 employment, position, work, compensation or other benefit
50 provided for, or made possible, in whole or in part by act of
51 the Legislature, to any person as consideration, favor or
52 reward for any political activity for the support of or
53 opposition to any candidate, or any political party in any
54 election;

55 (f) No person shall, directly or indirectly, make any
56 contribution in excess of the value of one thousand dollars
57 in connection with any campaign for nomination or election
58 to or on behalf of any statewide or national elective office,
59 or in excess of the value of one thousand dollars, in
60 connection with any other campaign for nomination or
61 election to or on behalf of any other elective office in the
62 state or any of its subdivisions, or in connection with or on
63 behalf of any committee or other organization or person
64 engaged in furthering, advancing or advocating the
65 nomination or election of any candidate for any such office;

66 (g) No person shall solicit any contribution from any
67 nonelective salaried employee of the state government or of
68 any of its subdivisions or coerce or intimidate any such
69 employee into making such contribution. No person shall
70 coerce or intimidate any nonsalaried employee of the state
71 government or any of its subdivisions into engaging in any
72 form of political activity. The provisions hereof shall not be
73 construed to prevent any such employee from making such
74 a contribution or from engaging in political activity
75 voluntarily, without coercion, intimidation or solicitation;
76 and

77 (h) No person shall solicit a contribution from any other
78 person without informing such other person at the time of
79 such solicitation of the amount of any commission,
80 remuneration or other compensation that the solicitor or
81 any other person will receive or expect to receive as a direct
82 result of such contribution being successfully collected.
83 Nothing in this subsection shall be construed to apply to
84 solicitations of contributions made by any person serving as
85 an unpaid volunteer.

86 Any person violating any provision of this section shall be
87 guilty of a misdemeanor, and, upon conviction thereof, shall

88 be fined not more than one thousand dollars, or confined in
89 jail for not more than one year, or, in the discretion of the
90 court, be subject to both such fine and imprisonment.

CHAPTER 73

(Com. Sub. for H. B. 1994—By Delegate Shepherd and Delegate Hamilton)

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

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to political party executive committees generally; clarifying the statute which provides for the election of a senatorial or delegate district committee in only those senatorial or delegate districts which are multi-county districts; and providing for the election of two men and two women from each magisterial district to a party's executive committee in counties having three or less magisterial districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

1 At the June primary election in the year one thousand nine
2 hundred eighty-six, and in every fourth year thereafter, the
3 voters of each political party in each senatorial district shall
4 elect two male and two female members of the state executive
5 committee of the party. In senatorial districts containing two
6 or more counties, not more than two such elected committee
7 members shall be residents of the same county. The committee,
8 when convened and organized as herein provided, shall
9 appoint three additional members of the committee from the
10 state at large.

11 At such primary election, the voters of each political party
12 in each county shall elect one male and one female member

13 of the party's executive committee of the congressional district,
14 of the senatorial district and of the delegate district in which
15 such county is situated, if such county be situated in a multi-
16 county senatorial or delegate district. At the same time such
17 voters in each magisterial district or executive committee
18 district, as the case may be, of the county shall elect one male
19 and one female member of the party's county executive
20 committee, except that in counties having three or less
21 magisterial districts or executive committee districts there shall
22 be elected two male and two female members of the party's
23 executive committee from each magisterial district or executive
24 committee district.

25 For the purpose of complying with the provisions of this
26 section the county commission shall create such executive
27 committee districts as they shall determine, which such districts
28 shall not be fewer than the number of magisterial districts in
29 such counties nor shall they exceed in number the following:
30 Forty for counties having a population of one hundred
31 thousand persons or more; thirty for counties having a
32 population of fifty thousand to one hundred thousand; twenty
33 for counties having a population of twenty thousand to fifty
34 thousand; and such districts in counties having a population
35 of less than twenty thousand persons shall be coextensive with
36 the magisterial districts.

37 The executive committee districts shall be as nearly equal
38 in population as practicable, and shall each be composed of
39 compact, contiguous territory. The county commissions shall
40 constitute the executive committee district to be effective for
41 the term of office of executive committee members elected at
42 the one thousand nine hundred eighty-six primary election and
43 thereafter. Executive committees as presently composed shall
44 continue until after their successors are elected and qualified
45 following the primary election of one thousand nine hundred
46 eighty-six. The county commissions shall change the territorial
47 boundaries of such districts as necessary, only if there is an
48 increase or decrease in the population of such districts as
49 determined by a decennial census and such changes must be
50 made within two years following such census.

51 All members of executive committees, selected for each
52 political division as herein provided, shall reside within the

53 county or district from which chosen. The term of office of
54 all members of executive committees elected at the primary
55 election in the year one thousand nine hundred eighty-six, shall
56 begin on the first day of July, following said primary, and shall
57 continue for four years thereafter and until their successors are
58 elected and qualified. Vacancies in the state executive
59 committee shall be filled by the members of the committee for
60 the unexpired term. Vacancies in the party's executive
61 committee of a congressional district, senatorial district,
62 delegate district or county shall be filled by the party's
63 executive committee of the county in which such vacancy
64 exists, and shall be for the unexpired term.

65 As soon as possible after the first day of July, following the
66 election of the new executive committees, as herein provided,
67 they shall convene within their respective political divisions,
68 on the call of the chairman of corresponding outgoing
69 executive committees, or by any member of the new executive
70 committee in the event there is no corresponding outgoing
71 executive committee, and proceed to select a chairman, a
72 treasurer and a secretary, and such other officers as they may
73 desire, each of which officers shall for their respective
74 committees perform the duties that usually appertain to such
75 offices.

CHAPTER 74

(Com. Sub. for H. B. 1381—By Delegate Burke)

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

AN ACT to amend and reenact sections twenty-four, twenty-five and twenty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four of said chapter three; to further amend said article four by adding thereto a new section, designated section twelve-a; to amend and reenact section thirteen, article four-a of said chapter three; and to further amend said article four-a by adding thereto a new section, designated section thirteen-a, relating generally to the delivery and receipt of election supplies; time

limit for delivery of election supplies to election commissioners in counties using paper ballots, voting machines and electronic voting and to the appropriate officers in municipal elections; providing for the delivery of election supplies by special messenger in counties using paper ballots, voting machines and electronic voting; and providing for inspection, maintenance, removal and certification of ballot cards used in electronic voting.

Be it enacted by the Legislature of West Virginia:

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

Article.

- 1. General Provisions and Definitions.**
- 4. Voting Machines.**
- 4A. Electronic Voting Systems.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-24. Obtaining and delivering election supplies.
 §3-1-25. Supplies by special messenger.
 §3-1-27. Municipal precinct registration records.

***§3-1-24. Obtaining and delivering election supplies.**

1 It shall be the duty of the board of ballot commissioners
 2 to appoint one or more of the commissioners of election at
 3 each precinct of the county to attend at the offices of the clerks
 4 of the circuit court and county commission, as the case may
 5 be, at least one day before each election to receive the ballots,
 6 ballot boxes, pollbooks, registration records and forms and all
 7 other supplies and materials for conducting the election at the
 8 respective precincts. The clerks shall take a receipt for the
 9 respective materials delivered to the above commissioner or
 10 commissioners of election, and shall file such receipt in their

*Clerks Note: This section was also amended in S. B. 630, which passed subsequent to this bill.

11 respective offices. It shall be the duty of such commissioners
12 to receive such supplies and materials from the respective
13 clerks and to deliver the same with the seal of all sealed
14 packages unbroken, at the election precinct in time to open
15 the election.

16 Such commissioner or commissioners, if they perform such
17 services, shall receive the per diem and mileage rate prescribed
18 by law for this service.

19 Ballots shall be delivered in sealed packages with seals
20 unbroken. For general and special elections the ballots so
21 delivered shall not be in excess of one and one-twentieth times
22 the number of registered voters in the precinct. For primary
23 elections the ballots for each party shall be in a separately
24 sealed package containing not more than one and one-
25 twentieth times the number of registered voters of such party
26 in the election precinct.

27 For primary elections one copy of the pollbooks, including
28 the forms for oaths of commissioners of election and poll
29 clerks written or printed thereon, shall be supplied at each
30 voting precinct for each political party appearing on the
31 primary ballot.

32 There shall be two ballot boxes for each election precinct
33 for which a receiving and a counting board of election
34 commissioners have been appointed.

***§3-1-25. Supplies by special messenger.**

1 In case any commissioner of election so appointed shall fail
2 to appear at the offices of the clerks of such county
3 commissions and circuit courts, by the close of the clerk's
4 office on the day prior to any election, the board of ballot
5 commissioners, the chairman thereof or the circuit clerk shall
6 forthwith dispatch a special messenger to the commissioners
7 of election of each respective precinct with the ballots,
8 registration records, ballot boxes, pollbooks and other supplies
9 for such precinct. Such messenger, if not a county employee,
10 shall be allowed five dollars for this service and, even if he
11 be a county employee, twenty cents a mile for the distance
12 necessary to be traveled by him, and shall promptly report to

*Clerks Note: This section was also amended in S. B. 630, which passed
subsequent to this bill.

13 the clerks of the circuit court and county commission,
14 respectively, and file with such clerks the receipts of the person
15 to whom he delivered such ballots and other supplies, and his
16 affidavit, stating when and to whom he delivered them.

***§3-1-27. Municipal precinct registration records.**

1 At least one day prior to every municipal election, it shall
2 be the duty of the appropriate officer designated by the
3 municipality to procure from the municipal precinct file in the
4 office of the clerk of the county commission the registration
5 records necessary for the conduct of such election.

6 Such records shall, within ten days after the date of the
7 municipal election, be returned to the office of the clerk of
8 the county commission by the appropriate officer or officers
9 designated by the municipality.

10 In case of a contested municipal election, the registration
11 record of any challenged voter shall be made available by the
12 clerk of the county commission to the officer or tribunal
13 empowered to determine the contest. Such record shall be
14 returned to the office of the clerk of the county commission
15 within a reasonable time after the contest shall have been
16 finally decided.

17 The clerk of the county commission shall acknowledge the
18 release and return of the registration records under this section
19 by the issuance of appropriate receipts.

20 In the event any municipal registration record is lost,
21 destroyed, defaced or worn in any way as to warrant
22 replacement, it shall be the duty of the clerk of the county
23 commission to prepare a duplicate of such record and it shall
24 be the duty of the municipality to pay for such replacement.

ARTICLE 4. VOTING MACHINES.

§3-4-12. Inspection of machines; duties of county commission, ballot
commissioners and election commissioners; keys and records
relating to machines.

§3-4-12a. Supplies by special messenger.

***§3-4-12. Inspection of machines; duties of county commission,
ballot commissioners and election commissioners; keys
and records relating to machines.**

1 When the clerk of the county commission has completed the
2 preparation of the voting machines, as provided in the next

* Clerks Note: These sections were also amended in S. B. 630, which passed
subsequent to this bill.

3 preceding section, and not later than seven days before the day
4 of the election, he shall notify the members of the county
5 commission and the ballot commissioners that the machines
6 are ready for use. Thereupon the members of the county
7 commission and the ballot commissioners shall convene at the
8 office of the clerk, or at such other place wherein the voting
9 machines are stored, not later than five days before the day
10 of the election, and shall examine the machines to determine
11 whether the requirements of this article have been met. Any
12 candidate, and one representative of each political party
13 having candidates to be voted on at the election, may be
14 present during such examination. If the machines are found
15 to be in proper order, the members of the county commission
16 and the ballot commissioners shall endorse their approval in
17 the book in which the clerk entered the numbers of the
18 machines opposite the numbers of the precincts. The clerk
19 shall then deliver the keys to the voting machines to the ballot
20 commissioners who shall give a receipt for the keys, which
21 receipt shall contain identification of such keys. Not later than
22 one day before the election the election commissioner of each
23 precinct who shall have been previously designated by the
24 ballot commissioners, shall attend at the office of the clerks
25 of the circuit court and county commission of such county to
26 receive the key or keys to the device covering the registering
27 counters and such other keys as may be necessary for the
28 operation of the machine in registering votes, and to receive
29 the other necessary election records, books and supplies
30 required by law. Such election commissioners shall receive the
31 per diem mileage rate prescribed by law for this service. Such
32 election commissioners shall give the ballot commissioners a
33 receipt for such keys, records, books and supplies, and such
34 receipt shall contain identification of such keys. The master
35 key and all other keys shall remain in the possession of the
36 clerk of the county commission.

§3-4-12a. Supplies by special messenger.

1 In case any commissioner of election shall fail to appear at
2 the offices of the clerks of the county commission and circuit
3 court by the close of the clerks' offices on the day prior to
4 any election, the board of ballot commissioners, the chairman

5 thereof or the circuit clerk shall cause all necessary election
6 records, books and supplies to be delivered by special
7 messenger in the same manner and under the same terms and
8 conditions as is provided for the dispatch of the special
9 messenger under the provisions of section twenty-five, article
10 one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-13. Inspection of vote recording devices and ballot cards; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices and ballot cards; receipt of election materials by ballot commissioners.

§3-4A-13a. Supplies by special messenger.

***§3-4A-13. Inspection of vote recording devices and ballot cards; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices and ballot cards; receipt of election materials by ballot commissioners.**

1 When the clerk of the county commission has completed the
2 preparation of the vote recording devices as provided in
3 section twelve of this article and the ballot cards as provided
4 in section twenty-one, article one of this chapter, and not later
5 than seven days before the day of the election, he shall notify
6 the members of the county commission and the ballot
7 commissioners that the devices are ready for use. Thereupon
8 the members of the county commission and the ballot
9 commissioners shall convene at the office of the clerk or at
10 such other place wherein the vote recording devices and ballot
11 cards are stored, not later than five days before the day of
12 the election, and shall inspect the devices and the ballot cards
13 to determine whether the requirements of this article have been
14 met. Notice of the place and time of such inspection shall be
15 published, no less than three days prior thereto, as a Class I-
16 O legal advertisement in compliance with the provisions of
17 article three, chapter fifty-nine of this code, and the
18 publication area for such publication shall be the county
19 involved. Any candidate and one representative of each
20 political party on the ballot may be present during such
21 examination. If the devices and ballot cards are found to be
22 in proper order, the members of the county commission and

* Clerks Note: This section was also amended in S. B. 630, which passed subsequent to this bill.

23 the ballot commissioners shall endorse their approval in the
24 book in which the clerk entered the numbers of the devices
25 opposite the numbers of the precincts. The devices and the
26 ballot cards shall then be secured in double lock rooms. The
27 county clerk and the president or president pro tempore of the
28 county commission shall each have a key. The rooms shall be
29 unlocked only in their presence and only for the removal of
30 the devices and the ballot cards for transportation to the polls.
31 Upon such removal of the devices and ballot cards, the county
32 clerk and president or president pro tempore of the county
33 commission shall certify in writing signed by them that the
34 devices and packages of ballot cards were found to be sealed
35 when removed for transportation to the polls.

36 Not later than one day before the election the election
37 commissioner of each precinct who shall have been previously
38 designated by the ballot commissioners, shall attend at the
39 office of the clerks of the circuit court and county commission
40 of such county to receive the necessary election records, books
41 and supplies required by law. Such election commissioners
42 shall receive the per diem mileage rate prescribed by law for
43 this service. Such election commissioners shall give the ballot
44 commissioners a sequentially numbered written receipt, on a
45 printed form, provided by the clerk of the county commission,
46 for such records, books and supplies. Such receipt shall be
47 prepared in duplicate. One copy of the receipt shall remain
48 with the clerk of the county commission and one copy shall
49 be delivered to the president or president pro tempore of the
50 county commission.

§3-4A-13a. Supplies by special messenger.

1 In case any commissioner of election shall fail to appear at
2 the offices of the clerks of the county commission and circuit
3 court by the close of the clerks' offices on the day prior to
4 any election, the board of ballot commissioners, the chairman
5 thereof or the circuit clerk shall cause all necessary election
6 records, books and supplies to be delivered by special
7 messenger in the same manner and under the same terms and
8 conditions as is provided for the dispatch of the special
9 messenger under the provisions of section twenty-five, article
10 one of this chapter.

CHAPTER 75

(Com. Sub. for H. B. 1682—By Delegate Brown and Delegate Shepherd)

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

AN ACT to amend and reenact section forty-six, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to training films for election officials; requiring the clerk of the county commission to conduct instructional programs including training films at least fifteen days prior to every primary and general election and to notify all election officials of such programs; prohibiting any election official from serving in an election without attending such instructional program; providing for removal and replacement of officials who fail to attend with certain exceptions; and requiring instructional programs for persons appointed as replacements for such officials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training film for election officials.

1 The secretary of state in conjunction with West Virginia
2 board of regents shall produce a motion picture film which
3 shall explain and illustrate the procedures for conducting
4 elections, the duties of the various election officials and the
5 methods of voting both on paper ballots and machines.

6 One copy of such film shall be distributed to the clerk of
7 the county commission of each county to be kept and
8 preserved by him. Such film shall be shown to all election
9 officials before each primary or general election as part of their
10 instructional program. The clerk of the county commission
11 shall conduct such instructional program not less than fifteen
12 days before each primary and general election and shall notify
13 all election officials of the exact date, time and place such
14 instructional program will be conducted.

15 No person shall serve as an election commissioner or poll
16 clerk in any election unless he or she has attended such
17 instructional program. A person to replace any election official
18 who fails to attend the instructional program shall be
19 appointed in the same manner as persons are appointed under
20 the provisions of section twenty-eight of this article to replace
21 election officials refusing to serve, and the clerk of the county
22 commission shall conduct an instructional program prior to
23 the election for any such person or persons so appointed:
24 *Provided*, That in cases of emergency which prevent a person
25 from attending the instructional program, the county
26 commission may appoint such person as a commissioner or
27 poll clerk notwithstanding that such person has not received
28 the instruction.

29 While such film is not being used by the clerk for
30 instructional purposes, it shall be available to any duly
31 organized civic, religious, educational or charitable group
32 without charge, except that the clerk shall require a cash
33 deposit on such use in an amount to be determined by the
34 secretary of state.

35 The secretary of state shall cause such film to be amended,
36 edited or reproduced whenever he is of the opinion such
37 revision is necessary in light of changes in the election laws
38 of this state.

39 No officeholder or person seeking election to any office shall
40 appear in such film either in person or by visual image or by
41 name.

CHAPTER 76

(Com. Sub. for H. B. 1536—By Delegate Fullen and Delegate Riffle)

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

AN ACT to amend and reenact section two, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-one, article four-a of said chapter, all relating to absentee voting procedures; qualifications to vote an absent

voter's ballot by mail; qualifications to vote an absent voter's ballot by personal appearance at the office of the circuit clerk; absentee voting procedures in counties using electronic voting systems; circuit clerks in such counties to provide vote recording devices for absentee voting; absent voter ballot packets to be provided to voters qualified to vote an absent voter's ballot card by mail in such counties; procedure for voting and returning such absent voter ballot cards; duties of circuit clerks upon receipt of such absent voter ballot cards; duty of the election commissioners to determine legality of such absent voter ballot cards; and procedures for handling and processing of such absent voter ballot cards by the election officials at the polling place.

Be it enacted by the Legislature of West Virginia:

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

Article.

3. Voting By Absentees.

4A. Electronic Voting Systems.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Absentee voting methods.

1 An absent voter's ballot may be voted by mail or by
2 personal appearance at the office of the clerk of the circuit
3 court as provided in this section.

4 Any person described in subdivisions (1), (2) and (4), section
5 one of this article may vote an absent voter's ballot by mail;
6 and any person described in subdivision (3), section one of this
7 article may vote an absent voter's ballot by mail if (a) his
8 application for an absent voter's ballot directs that the absent
9 voter's ballot be mailed to an out-of-county address, (b) the
10 envelope in which his absent voter's ballot is mailed is
11 postmarked at an address outside the county, or the voter
12 verifies by signature that he or she is mailing the absent voter's
13 ballot from outside the county, and (c) he or she is required
14 to be absent from the county in which he or she is registered
15 to vote during regular business hours of the office of the clerk
16 of the circuit court of said county throughout the period, or

17 throughout the remainder of the period, of voting an absent
18 voter's ballot by personal appearance at said clerk's office.

19 Any person described in subdivisions (2), (3) and (4), section
20 one of this article, and any person described in subdivision (1),
21 section one of this article whose physical disability on the date
22 of the election is anticipated by reason of commitment to a
23 hospital, institution or other confinement for childbirth or
24 other medical reasons, may vote an absent voter's ballot by
25 personal appearance at the office of the clerk of the circuit
26 court.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

1 Absentee voters shall cast their votes on absent voter ballot
2 cards. If absentee voters shall be deemed eligible to vote in
3 person at the office of the clerk of the circuit court, in
4 accordance with the provisions of article three of this chapter,
5 the clerk of the circuit court of each county shall provide a
6 vote recording device for the use of such absentee voters. For
7 all absentee voters deemed eligible to vote an absent voter's
8 ballot card by mail, in accordance with the provisions of article
9 three of this chapter, the clerk of the circuit court of each
10 county shall prepare and issue an absent voter ballot packet
11 consisting of the following:

12 (a) One official absent voter ballot card;

13 (b) One punching tool;

14 (c) One disposable styrofoam block to be placed behind the
15 ballot card for voting purposes and to be discarded after use
16 by the voter;

17 (d) One absent voter instruction ballot;

18 (e) One absent voter's ballot envelope No. 1, unsealed,
19 which shall have no writing thereon and which shall be
20 identical to the secrecy envelope used for placement of ballot
21 cards at the polls; and

22 (f) One absent voter's ballot envelope No. 2, which envelope
23 shall be marked with the proper precinct number and shall
24 provide a place on its seal for the absent voter to affix his
25 signature. Such envelope shall also otherwise contain the forms

26 and instructions as provided in section five, article three of this
27 chapter, relating to the absentee voting of paper ballots.

28 Upon receipt of an absent voter's ballot card by mail, the
29 voter shall mark the ballot card with the punch tool and the
30 voter may receive assistance in voting his absent voter's ballot
31 card in accordance with the provisions of section six, article
32 three of this chapter.

33 After the voter has voted his absent voter's ballot card, he
34 shall (1) enclose the same in absent voter's ballot envelope No.
35 1, and seal that envelope, (2) enclose sealed absent voter's
36 ballot envelope No. 1 in absent voter's ballot envelope No. 2,
37 (3) complete and sign the forms, if any, on absent voter's ballot
38 envelope No. 2 according to the instructions thereon, and (4)
39 mail, postage prepaid, sealed absent voter's ballot envelope
40 No. 2 to the clerk of the circuit court of the county in which
41 he is registered to vote, unless the voter has appeared in
42 person, in which event he shall hand deliver the sealed absent
43 voter's ballot envelope No. 2 to the clerk.

44 Upon receipt of such sealed envelope, the circuit clerk shall
45 (1) enter onto the envelope such information as may be
46 required of him according to the instructions thereon; (2) enter
47 his challenge, if any, to the absent voter's ballot; (3) enter the
48 required information into a record of persons making
49 application for and voting an absent voter's ballot by personal
50 appearance or by mail (the form of which record and
51 information to be entered therein shall be prescribed by the
52 secretary of state); and (4) place such sealed envelope in a
53 secure location in his office, there to remain until delivered
54 to the polling place in accordance with the provisions of this
55 article or, in case of a challenged ballot, to the county
56 commission sitting as a board of canvassers.

57 When absent voters' ballots have been delivered to the
58 election board of any precinct, the election commissioners
59 shall, at the close of the polls, proceed to determine the legality
60 of such ballots as prescribed in article three of this chapter.
61 The commissioners shall then open all of the absent voter's
62 ballot envelopes No. 2 which contain ballots not challenged
63 and remove therefrom the absent voter's ballot envelopes No.
64 1. These ballot envelopes No. 1 shall then be shuffled and
65 intermingled. The election commissioners and poll clerks, in

66 the presence of each other, shall next open all of the absent
67 voter's ballot envelopes No. 1 and remove the ballots
68 therefrom. The poll clerks shall then affix their signatures
69 thereto as provided in section nineteen-a of this article. The
70 commissioners shall then insert each ballot card into a secrecy
71 envelope identical to the secrecy envelopes used for the
72 placement of ballot cards of voters who are voting in person
73 at the polls and shall deposit the ballot in the ballot box.

CHAPTER 77

(Com. Sub. for H. B. 1850—By Mr. Speaker, Mr. Albright and Delegate Swann)

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

AN ACT to repeal articles six, six-b, six-c and six-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapter twenty-two of said code and to enact in lieu thereof a new chapter twenty-two; and to further amend said code by adding thereto two new chapters, designated chapters twenty-two-a and twenty-two-b, all relating to providing for the consolidation of the administration and regulation of exploration for and development, production, utilization and conservation of coal, oil and gas, and other mineral resources of this state; providing for the creation of a new state department of energy charged generally with the administration of power and duties relating to the exploration for and development, production, utilization and conservation of all minerals; to create within the department of energy a division of mines and minerals to administer such laws and matters as relate to coal and other hard minerals; creating a division of oil and gas responsible for administration of such laws and matters as relate to oil and gas; providing that the act may be cited as The West Virginia Energy Act; specifying the legislative findings and policy; defining terms; providing for the commissioner and deputy commissioner of the department of energy, the director

of the division of mines and minerals and the director of the division of oil and gas, their appointment, qualifications, removal, salary, expenses, oath, bond, powers and duties; providing for the creation of sections within the divisions, qualifications of deputy directors thereof, and generally for the ability of the commissioner to delegate authority to such directors and deputy directors and others as he considers appropriate and to create such sections as are necessary for the effective administration of this act; providing for the transfer of funds, supplies, equipment, records and appropriations formerly held with the department of mines or department of natural resources to the department of energy; providing for the commissioner's authority to adopt rules and regulations; providing for the jurisdiction of the department of energy and cooperation with other governments and agencies; all permits, certifications, waivers, bonds, orders or authorizations heretofore issued to continue in effect; providing for hearings before the department of energy; providing for construction of the act; providing for the effective date of the act and operative dates for transfer of powers to the department of energy; providing for continuation of employment, tenure and civil service coverage of employees; relating to the continuation of the interstate mining compact, findings and purposes therefore, definitions, formulation of state programs for the conservation and use of mined land, powers conferred upon the interstate mining commission, the composition, duties and purposes thereof; providing for advisory, technical and regional committees; providing for budget recommendations to be made by the commission to the governor and manner of payment of the commission expenses; providing for the effective date of the act, effect on other laws, and construction and severability of the act; providing for the bylaws of the commission and withdrawal from the compact; providing for the continuation of the abandoned mine reclamation act, the title thereof, the legislative findings, intent and purpose of the act, the jurisdiction and authority of the commissioner to accomplish the purpose of said act to restore and reclaim land and water resources disturbed by coal surface mining operations, and defining terms; providing for the abandoned land reclamation fund and the objectives of the fund; specifying lands eligible for reclamation; providing for the powers and duties of the

commissioner, the program plans and reclamation projects under the act; providing for the acquisition and reclamation of the land adversely affected by past coal surface mining practices; providing for liens against reclaimed land, and a procedure for petition and appeal; providing for the priority of such liens; providing for filling voids and sealing tunnels existing from previous coal surface mining operations; providing for the general and miscellaneous powers and duties of the commissioner, cooperative agreements, injunctive relief, water treatment plants and facilities, the transfer of funds and interagency cooperation; continuing a reclamation board of review, and providing for the appointment, organization, authority, compensation, expenses and removal of the members thereof, appeals to the board, hearings before the board, subpoenas and subpoenas duces tecum, powers, records, findings and orders of the board, appeals from orders of the board, judicial review and temporary relief; continuing a board of appeals to hear appeals and make determinations on questions of miners' entitlements; providing for the composition and powers of said board and the compensation and terms of members; providing for the continuation of the board of coal mine health and safety, and providing for the membership thereof, method of nomination and appointment, meetings, vacancies, quorum, powers, duties, compensation and expenses of members, definitions, findings and purposes; providing for a health and safety administrator, his qualifications, duties, employees and compensation; promulgation of rules and regulations and reports of the board; continuing a shallow gas well review board and providing for policy and findings, definitions, applications of the article and exclusions therefrom; board membership, method of appointment, vacancies, compensation, expenses, staff, general powers and duties, rules and regulations and other requirements; meetings and notice requirements therefor, objections to proposed drilling, conferences, agreed locations and changes on plats, hearings, orders, distance limitations between wells, application for and establishment of a drilling unit and notice thereof and, hearings and orders pursuant thereto, pooling of interests in drilling units and limitations thereon; the effects of orders establishing drilling unit or pooling of interests, and recording procedures, judicial review, appeal to the supreme court of appeals and legal representation for the board,

operation on drilling units, unit agreements, injunctive relief, criminal penalties for violations, and construction of article; promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the oil and gas conservation commission and office of commissioner, and in conjunction therewith providing for public policy and legislative findings, definitions, applications and exclusions, commission membership, qualifications for members, terms, vacancies, meetings, compensation and expenses of members, appointment and qualifications of the commissioner and his general powers and duties, rules and regulations and notice requirements therefor, prohibition against waste, drilling units and pooling for deep oil and gas wells, procedures for secondary recovery of oil and unit operations, validity of unit agreements, hearing procedures, judicial review, appeal to supreme court of appeals, legal representation for commissioner, procedures for obtaining injunctive relief, oil and gas conservation tax, criminal penalties for violation, construction and severability; promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the board of miner training, education and certification and in conjunction therewith providing for legislative findings and policies, definitions; appointment of board and chairman, terms, vacancies and compensation, powers and duties of board, duties of commissioner and the department; providing for the certification of underground and surface coal miners, competency and qualification requirements therefor and certificates, definitions, apprenticeship permits for underground and surface miners, supervision of apprentices, refusal to issue certificates, appeals, limitations and application of article, and criminal penalties for violations thereof; continuing the mine inspectors examining board, its composition and general powers and duties; continuing provisions for emergency medical personnel in coal mines and requirements for first-aid training for coal mine employees; continuing the oil and gas inspector's examining board and providing for its composition, appointment, term, compensation of the members, meetings, and general powers and duties; appointment, tenure, qualifications, salary, expenses and removal of oil and gas inspectors and supervising inspectors; providing for the formation of the division of mines and minerals and a director thereof, his term, appointment,

qualifications, salary, oath and bond, purpose, administration and enforcement powers of the division, definition of terms, rules and regulations, the commissioner's and director's powers and duties; providing for mine inspectors, their districts and divisions, employment, tenure, oath and bond; providing for mine safety instructors, their qualifications, employment, compensation, tenure, oath and bond, the appointment of mine inspectors in the case of vacancies and their tenure; providing for electrical inspectors, their qualifications, salary, expenses, tenure, oath and bond; providing for eligibility and qualifications of mine inspectors, their salary, expenses, removal from office; providing for eligibility and qualifications for surface mine inspectors, their salary, expenses and removal from office; providing for authority and duties of the commissioner, director and authorized representatives to enter mines without notice and inspect mines and issue reports after fatal accidents, and findings, orders and notices with respect to dangerous conditions or violations of law; authorized representative of mines may accompany authorized representatives of commissioner on an inspection; providing for powers and duties of electrical inspectors with regard to inspections, findings and orders; review of orders and notices by the commissioner, posting of notices, orders and decisions and delivery to agent of operator, and requiring that names and addresses be filed by operators; providing for judicial review, injunctions, civil and criminal penalties, discriminations, and records and reports; providing for appointment and salary of mine foreman examiner, mine foreman-fire bosses and assistant mine foreman-fire bosses, duties of the mine foreman examiner; preparation and administration examinations notice of intent to take examination and investigation of applicants, certificates of qualification of examinees, certificate of mine foreman examiner, record of examinations, withdrawal of certification, certification of mine foreman or assistant mine foreman with regards to licensing when similar activities were suspended in another state; purchase of mine rescue stations and their equipment; employment of mine rescue crews and rescue teams; requiring mandatory safety programs; and providing criminal penalties for violating severability of provisions; providing for coal mines generally, mining maps, professional supervision thereof, seals and certifications, contents, extensions, repositories, availability, traversing,

copies, archives, surveys and maps, and criminal penalties for violations; providing for mine ventilation generally, including plans and approval thereof, fans, and ventilation of unused and abandoned mine areas; providing for the movement of mining equipment generally; providing for requiring underground mine foreman-fire bosses, their assistants, certification and duties with respect to ventilation, loose coal, slate or rocks, props, drainage of water, manddoors and instruction of apprentice miners; providing for regulation of slopes, incline planes and haulage roads; providing for signals on haulways, lights at mouth and at bottom of shaft, operation of cages and boreholes; providing for instruction of employees and supervision of apprentices, annual examinations of persons using flame safety lamps, records of such examinations and maintenance of methane detectors, etc.; providing daily inspection of working places and records; providing for safety inspections, removal of gas, sealing off dangerous places, examination of reports of fire bosses, ascertaining, recording and removal of dangers; providing for duty to notify operators when unable to comply with law and duty of operation; providing for the death or resignation of the mine foreman and a successor; providing for the duties of fire bosses to prepare danger signals and maintain open records; providing that fire bosses shall have no superior officers, prohibiting entry of mine prior to fire boss report of safety and general authority of fire bosses; providing for the control of coal dust, rock dusting, roof control programs and plans, refusal to work under unsupported roof, roof support, examination and testing, correction of dangerous conditions, roof bolt recovery, canopies or cabs and electric face equipment; providing for roof equipment to conform to seam; providing generally for the use of authorized explosives, storage and use of unauthorized explosives; providing for separate surface magazines for explosives, transportation of explosives, the underground storage thereof, and preparation for shots and blasting practices, setting forth procedures for misfires of explosives and other blasting devices; providing for hoisting machinery, telephones, safety devices, hoisting engineers and drum runners; providing for transportation generally, including haulage roads and equipment; shelter holes, prohibited practices, signals and inspections; providing for transportation of miners by cars, self propelled equipment and belts;

providing for flame resistant conveyor belts, their installation and maintenance; providing for general electrical provisions and the use of bonding track as power conductor; providing for telephone service and communication facilities; providing for conditions for electrical equipment in mines, for hand drills, rotating tools and trailing cables, and installation of lighting; providing for conditions for welding and cutting, responsibility for care and maintenance of face equipment and requirements for respiratory equipment and control of dust; providing for safeguards for mechanical equipment; providing for procurements of dust tight electrical equipment, fireproof construction, dust control, repairs, welding, handrails and toeboards, protection of personnel on conveyors, back guards on ladders, walkways or safety devices around thickeners; providing for housekeeping and storage of flammable liquids and lamphouses; providing for smoking restrictions; providing for miscellaneous safety provisions and requirements including railroad cars and dumping areas; rules, regulations and duties of operators; protective equipment and clothing, safety helmet and checking systems, prohibiting endangering security of mines, search for intoxicants, matches, etc.; providing for fire protection; first-aid equipment; accessible outlets, safe roadways for emergencies, accessibility of first-aid equipment, use of special capsule for removal of personnel; providing for coal storage bins, recovery tunnels and coal storage piles, thermal coal dryers and plants; prohibiting opening or reopening any mine without prior approval of the commissioner, establishing approval fees, and extensions of certificates of approval; providing that certificates are not transferable, and that section is to be printed on certificates; providing for the sealing and permanent closing of abandoned mines, mining close to abandoned workings, and explosions or accidents, notices, investigations by department, written reports of accidents, and preservation of evidence following accident or disaster; providing for fires in and about mines and notification of the director and mine inspector; providing for shafts and slopes generally; requiring that mine examiner be employed during the sinking of a shaft or a driving of a slope to a coal bed, and the qualifications for such examiner; providing for the rights of miners to refuse to operate on unsafe equipment, the procedures therefor and discrimination policies; providing for methods of long wall and short wall

mining; providing for the construction of shafts, slopes, surface facilities and the safety hazards therewith, duties of the board of coal mine health and safety to promulgate rules and regulations, and time limits therefor; providing for the control of respirable dust; providing for procedures prior to operating near oil and gas wells, setting forth general provisions relating to opening of old or abandoned mines, monthly reports by mine operators, examinations to determine compliance with permits, and providing for severability of provisions of article; providing for the West Virginia surface coal mining and reclamation act, title thereto, legislative findings and purpose, authority, jurisdiction, duties and functions of commissioner, apportionment of responsibility, interdepartmental cooperation, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salary and duties; providing for notice of intention to prospect and requirements therefor, bonding, commissioner's authority to deny or limit such prospecting, postponement of reclamation, prohibited acts and exceptions; prohibiting surface mining without a permit and providing for permit requirements, successors, duration, insurance, termination, fees, application requirements and contents; providing for reclamation plan requirements, performance bonds, amount and method of bonding, bonding requirements, special reclamation tax and fund, prohibited acts, and period of bonding liability; providing for general environmental protection performance standards for surface mining and variances; providing for a pilot program for growing grapes on reclaimed areas; providing for surface effects of underground mining and application of other provisions to surface of underground mining; providing for inspections, monitoring, right of entry, inspection of records, identification signs, and progress maps; providing for cessation of operation by order of inspector, informal conference, imposition of affirmative obligations, and appeals; providing for notices of violations, procedure and actions, enforcement, permit revocation and bond forfeiture, civil criminal penalties, appeals to the board, prosecution and injunctive relief; providing for approval, denial, revision and prohibition of permit; providing for permit revision, renewal, transfer, assignment, sale and reassignment; providing for public notice, written objections, and informal conferences; providing for decision of director on permit application and hearing thereon;

providing for the designation of areas unsuitable for surface mining, petition for removal of such designation, prohibition of surface mining on certain areas, exceptions, taxation of minerals underlying land designated as unsuitable; providing for release of performance bonds or deposits, application therefor, notice, duties of director in this regard, public hearings, and final maps on grade release; providing for water rights and replacement and waiver of replacement; providing for citizens suits, orders of court and damages; providing for those surface mining operations not subject to article; providing for leasing of lands owned by state for surface mining of coal; providing for special permits for removal of coal incidental to land development; prohibited acts, application, bond and reclamation for existing abandoned coal processing waste piles; providing for existing permits and performance bond conversion and exemption from design criteria; providing for experimental practices; providing for certification and training of blasters; providing for certification of surface miners and surface mine foremen; providing for monthly reports by operators; providing for the applicability and enforcement of laws safeguarding life and property, regulations, and authority of department of energy regarding such safety laws; providing for conflicting provisions; prohibiting conflicts of interest, criminal penalties therefor, and employee protection; providing for severability of provisions of article, providing for validity of regulations promulgated under section 502(c) of the surface mining control and reclamation act of 1977, and providing for the consolidation of permitting, enforcement and rule making authority for surface mining operations, National Pollutant Discharge Elimination System, and the effective date thereof; providing for surface mining and reclamation of minerals other than coal, jurisdiction and duties in connection therewith, legislative purpose and apportionment of responsibility, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salaries and duties; providing for surface mining permits, applications, issuance, renewals, fees and use of proceeds; providing for preplans for reclamation and surface mining; providing for the installation of a drainage system and alternate plans for not calling for backfilling where a water impoundment is desired, and its time limits; providing for limitations of areas for surface mining, and mandamus;

providing for blasting restrictions, formulas, filing preplans, civil penalties and notices; providing for the time limits for reclamation work, obligations of the operator, cessation of operation by inspector, completion of planning, inspection and evaluation, performance bonds, exceptions as to highway construction projects, applicability of law safeguarding life and property, rules and regulations therefor, and supervision of operations thereof, monthly reports by the operators, general rules and regulations, noncompliance procedures, adjudications, findings, etc., by written order, contents thereof and notices; providing for appeals, hearings, records, findings and orders; providing for offenses, criminal penalties, prosecutions, treble damages and injunctive relief; providing for the validity and construction of existing surface mining permits, and certification of surface miners and surface mine foreman; providing for underground clay mines; definitions, mine foreman and assistants and the employment and qualifications thereof, and providing for regulations for protection of health and safety of employees of such mines; providing for open pit mines, cement manufacturing plants and underground limestone and sandstone mines, definitions, applicability of mining law to such mines and plants, rules and regulations, monthly reports by operators, inspectors and criminal penalties; providing for a division of oil and gas and a director thereof, oil and gas wells generally, and administration and enforcement of laws in connection therewith, definitions, rules and regulations, appointments, powers and duties of director, and public records; providing for oil and gas inspectors, their eligibility, qualifications, salary, expenses and removal; providing for findings and orders of such inspectors, time for abatement, extensions of such time, special inspections, and notice of findings and orders; providing for review of such findings and orders, special inspections, annulments, revisions, etc., of order and notice; providing for requirements for such findings, orders and notices and the posting thereof; providing for judicial review; providing for permits for well work, fees, applications, and soil erosion control plans; providing water pollution conditions, powers and duties of directors, prohibitions, criminal and civil penalties and appeals to state water resources board; providing for special conditions for permits on flat well royalty leases and legislative findings and declarations in this regard; providing for notice to property

owners; providing for procedures for filing comments and notices; providing for review of application, issuance of permits in the absence of objections and comments, copy of such permits to county assessor; providing for permits to drill or fracture wells, plats, notices, bonds or other securities and forfeiture thereof, all in connection with such permits; providing for permits to fracture certain wells, and notices in connection therewith; providing for permits to introduce liquids or wastes into wells, and in connection therewith the plats, notices and bonds or security and the preparation and contents thereof; providing for objections to proposed drilling of deep wells and to fracturing, notices and hearings, agreed location or conditions, indication of changes on plats, etc., and issuance of permits; providing for objections to proposed drilling or converting for introducing liquids or wastes into wells, notices and hearings, agreed locations or conditions, indication of changes on plats, etc., issuance of permits, and docket of proceedings; providing for objections to proposed drilling of shallow gas wells, notice to chairman of review board, indication of changes on plats, and issuance of permits; providing for the applicability of certain provisions of law, to appeals from orders issuing or refusing permits and procedure therefor; providing for appeals from orders issuing or refusing permits for drilling location for introduction of liquids or waste or from conditions of converting procedure; providing for protective devices when well penetrates workable coal beds, when gas is found beneath or between workable coal beds, continuance of such devices during life of well, and plugging method when well is dry or abandoned; providing for protective devices when well is drilled through horizon of coal bed from which coal has been removed, and installation of fresh water casings; providing for filing of well logs; contents thereof, and authority to promulgate regulations in connection therewith; providing for plugging, abandonment and reclamation of wells, notice of intention therefor, performance bonds or securities, and affidavits showing time and manner thereof; providing for methods of plugging wells; providing for the introduction of liquid pressure into producing strata to recover oil contained therein; providing for performance bonds, corporate surety or other security; providing a cause of action for damages caused by explosions; providing for oil and gas conservation commissioner as acting administrator and

administrative assistants; providing for supervision by department of energy over drilling, mining and reclamation, operations, complaints, hearings and appeals; providing for reclamation fund and fees; providing for reclamation requirements; providing for rules and regulations and hearings before department of energy and appeals; providing for prevention of waste of gas, plans of operation required for wasting gas in process of producing oil, and rejection thereof; providing for rights of adjacent owners or operators to prevent waste of gas and recovery of costs; providing for restraining of waste; providing for offenses and criminal penalties; providing for injunctive relief and appeals; providing for civil actions for contamination or deprivation of fresh water sources or supplies and presumptions in connection therewith; providing for declarations of oil and gas notice by owners and lessees of coal seams; providing for causes of action for damages caused by explosions; providing for reorganizations and required reports; providing that rules, regulations, orders and permits in existence will remain valid but will be subject to review; providing for damages and compensation to surface owners resulting from oil and gas drilling and production, legislative findings and purpose, definitions, items of compensation and damage, preservation of common law rights of action and offsets, notification of claim, agreements, offers of settlement, rejection, legal action, arbitration, fees, costs and application and severability of these provisions; providing for transportation of oils, duty of pipeline companies, inspection grading and measurement, receipt, deduction for waste of oil of 35° Baume at 60° Fahrenheit; providing for the inspection, measurement and loss of oil over 35° Baume at 60° Fahrenheit; providing a lien for charges; providing for accepted orders, certificates for oil, and negotiability; providing for dealing in oil without consent of owner, monthly statements, statements of amount of oil; providing criminal penalties for wrongful issuance, sale or alteration of receipts, orders, etc., and dealing in oil without consent of owner in interest; providing for forfeitures for failure to make reports and statements; providing for underground gas storage reservoirs; definitions; filing of maps and data by persons operating or proposing to operate gas storage reservoirs; filing of maps and data by persons operating coal mines; notice by persons operating coal mines; obligations to be performed by

persons operating storage reservoirs; inspection of facilities and records; reliance on maps; burden of proof; exemptions; alternate methods; powers and duties of director; conferences; hearings; appeals; enforcement and criminal penalties for violations; and providing that orders in effect remain effective but are subject to review.

Be it enacted by the Legislature of West Virginia:

That articles six, six-b, six-c and six-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter twenty-two of said code be repealed and that a new chapter twenty-two of said code be enacted in lieu thereof; and that said code be further amended by adding thereto two new chapters, designated chapters twenty-two-a and twenty-two-b, all to read as follows:

Chapter

22. Energy.

22A. Mines and Minerals.

22B. Oil and Gas.

CHAPTER 22. ENERGY.

Article

- 1. Title; Purposes; Department of Energy.**
- 2. Interstate Mining Compact.**
- 3. Abandoned Mine Lands and Reclamation Act.**
- 4. Reclamation Board of Review.**
- 5. Board of Appeals.**
- 6. Board of Coal Mine Health and Safety.**
- 7. Shallow Gas Well Review Board.**
- 8. Oil and Gas Conservation.**
- 9. Board of Miner Training, Education and Certification.**
- 10. Certification of Underground and Surface Coal Miners.**
- 11. Mine Inspectors' Examining Board.**
- 12. Emergency Medical Personnel.**
- 13. Oil and Gas Inspectors' Examining Board.**

ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.

- §22-1-1. Short title.
- §22-1-2. Declaration of legislative findings and policy.
- §22-1-3. Definitions.
- §22-1-4. Department of energy created.
- §22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.
- §22-1-6. Deputy commissioner—Appointment; eligibility; salary; duties; oath; bond.

- §22-1-7. Divisions within department; sections within divisions.
§22-1-8. Director of the division of mines and minerals—Appointment; eligibility; salary.
§22-1-9. Same—Oath and bond.
§22-1-10. General powers and duties of the director of the division of mines and minerals.
§22-1-11. Director of the division of oil and gas—Appointment; eligibility; salary.
§22-1-12. Same—Oath and bond.
§22-1-13. General powers and duties of director of the division of oil and gas and commissioner.
§22-1-14. Transfer of funds, supplies, equipment, records, appropriations, etc.
§22-1-15. Commissioner's authority to promulgate rules and regulations.
§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.
§22-1-17. Hearings before department of energy.
§22-1-18. Construction.
§22-1-19. Effective date of act.
§22-1-20. Operative dates and transfer of functions.
§22-1-21. Continuation of employment, tenure, civil service coverage.

§22-1-1. Short title.

- 1 This act, which includes the provisions of this chapter and
- 2 chapters twenty-two-a and twenty-two-b, may be cited as "The
- 3 West Virginia Energy Act."

§22-1-2. Declaration of legislative findings and policy.

- 1 The Legislature hereby finds and declares that the mineral
- 2 development industry is vital to the state's economy and the
- 3 employment of many of its citizens, that there exists a need
- 4 for comprehensive regulation of this industry and the
- 5 consolidation of regulatory power and statutes in a single act
- 6 and under a single department of state government with
- 7 related boards and commissions, that such consolidation will
- 8 result in more efficient administration, avoid unnecessary
- 9 delays in permitting and other matters, provide better and
- 10 more expeditious enforcement and application of environmen-
- 11 tal and safety laws as herein provided, result in better
- 12 cooperation between agencies, provide for uniform policies
- 13 and consistent treatment of entities engaged in mineral
- 14 development, and that such efficient and uniform administra-
- 15 tion and regulation will make this state's industry more
- 16 competitive with that in other energy producing states.

- 17 Accordingly, it is hereby declared the public policy of this
- 18 state and the purpose of this act:

19 (a) To foster, encourage and promote the exploration for
20 and the development, production, utilization and conservation
21 of coal, oil and gas and other mineral resources of the state
22 through the fullest practical means, and at the same time
23 promote economic development in the state, protect the
24 environment and enhance safety and health in these vital
25 industries;

26 (b) To provide a comprehensive program for the explora-
27 tion, conservation, development, protection, enjoyment,
28 recovery and use of coal, oil and gas, and other mineral
29 resources in this state;

30 (c) To aid in such a comprehensive program by creating a
31 single department, designated the department of energy, to
32 have the regulatory powers with respect to this industry and
33 to have the general duties and responsibilities heretofore
34 existing in the department of natural resources and department
35 of mines, and that the department will perform such duties
36 and functions in conjunction with the respective boards and
37 commissions which are herein continued in effect;

38 (d) To expedite and facilitate the issuance of permits for
39 mines, surface mining operations, oil and gas wells and other
40 well work; to avoid conflicting permitting requirements and
41 regulations in this state or with federal agencies; and to
42 provide uniform policies with respect to this industry;

43 (e) To provide for a single agency of this state to implement
44 requirements and programs of federal law affecting the
45 exploration, development, production, recovery and utilization
46 of coal, oil and gas, and other mineral resources in this state;

47 (f) To provide for an agency of this state which can be
48 consulted with by other agencies of this state prior to the
49 adoption or implementation of rules, regulations, standards,
50 programs or requirements affecting the exploration, develop-
51 ment, production, recovery and utilization of coal, oil and gas,
52 and other mineral resources in this state.

§22-1-3. - Definitions.

1 (a) Unless the context, in which used, clearly requires a
2 different meaning, the following definitions shall apply in this
3 chapter:

4 (1) "Commissioner" means the commissioner of the
5 department of energy;

6 (2) "Department" means the state department of energy;

7 (3) "Division of mines and minerals" means the division of
8 mines and minerals of the department of energy; and

9 (4) "Division of oil and gas" means the division of oil and
10 gas of the department of energy.

11 (b) Unless the context clearly indicates otherwise, the use
12 of the word "and" and the word "or" shall be interchangeable,
13 as, for example, "oil and gas" shall mean oil or gas or both.

§22-1-4. Department of energy created.

1 There is hereby created in state government a department
2 to be known as the department of energy. It shall be the
3 purpose of the department, by and through the commissioner,
4 the director of the division of mines and minerals and the
5 director of the division of oil and gas to carry out the energy
6 policy of the state as set forth in this chapter and in chapters
7 twenty-two-a and twenty-two-b of this code.

§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.

1 The commissioner shall be the chief executive officer of the
2 department. Subject to provisions of law, he shall organize the
3 department into such offices, divisions, agencies and other
4 units of activity as may be found by the commissioner to be
5 desirable for the orderly, efficient and economical administration
6 of the department and for the accomplishment of its
7 objects and purposes. The commissioner may appoint
8 assistants, hearing officers, clerks, stenographers, and other
9 officers and employees needed for the operation of the
10 department and may prescribe their powers and duties and fix
11 their compensation within amounts appropriated therefor.

12 The commissioner shall have the power to and may
13 designate the deputy commissioner or other officers or
14 employees of the department to substitute for him on any
15 board or commission established under this chapter or to sit
16 in his place in any hearings, appeals, meetings or other
17 activities with such substitute having the same powers, duties,
18 authority and responsibility as the commissioner. Additionally,

19 the commissioner shall have the power to delegate to the
20 deputy commissioner, division directors, section deputies or
21 other personnel, his powers, duties, authority and responsibil-
22 ity relating to issuing permits, hiring and training inspectors
23 and other employees of the department, conducting hearings
24 and appeals and such other duties and functions set forth in
25 this chapter or chapters twenty-two-a and twenty-two-b as he
26 considers appropriate.

27 The commissioner shall be appointed by the governor with
28 the advice and consent of the Senate, and shall serve at the
29 will and pleasure of the governor.

30 At the time of his initial appointment, the commissioner
31 shall be at least thirty years old and shall be selected with
32 special reference and consideration given to his administrative
33 experience and ability, to his demonstrated interest in the
34 energy resources industry and to his experience in the energy
35 resource field. The commissioner shall not be a candidate for
36 or hold any other public office, shall not be a member of any
37 political party committee and shall immediately forfeit and
38 vacate his office as commissioner in the event he becomes a
39 candidate for or accepts appointment to any other public office
40 or political party committee.

41 The commissioner shall receive an annual salary of \$65,000
42 and shall be allowed and paid necessary expenses incident to
43 the performance of his official duties. Prior to the assumption
44 of the duties of his office, the commissioner shall take and
45 subscribe to the oath required of public officers prescribed by
46 section 5, article IV of the constitution of West Virginia and
47 shall execute a bond, with surety approved by the governor,
48 in the penal sum of ten thousand dollars, which executed oath
49 and bond shall be filed in the office of the secretary of state.
50 Premiums on the bond shall be paid from the department
51 funds.

**§22-1-6. Deputy Commissioner—Appointment; eligibility; salary;
duties; oath; bond.**

1 There shall be a deputy commissioner of the department
2 who shall be appointed by and serve at the will and pleasure
3 of the governor. The salary of the deputy commissioner shall
4 be set by the governor and be paid with department funds.
5 The commissioner or governor shall prescribe the duties and

6 responsibilities of the deputy commissioner.

7 Prior to the assumption of the duties of his office, the
8 deputy commissioner shall take and subscribe to the oath
9 required of public officers prescribed by section 5, article IV
10 of the constitution of West Virginia and shall execute a bond,
11 with surety approved by the governor, in the penal sum of two
12 thousand dollars, which executed oath and bond shall be filed
13 in the office of the secretary of state. Premium on the bond
14 shall be paid from department funds.

§22-1-7. Divisions within department; sections within divisions.

1 (a) Divisions of mines and minerals, and oil and gas are
2 hereby created and established within the department. Subject
3 to provisions of law, the commissioner shall allocate the
4 functions and services of the department to the divisions,
5 offices and activities thereof and may from time to time
6 establish and abolish other divisions, offices and activities
7 within the department in order to carry out fully and in an
8 orderly manner the powers, duties and responsibilities of his
9 office as commissioner. The commissioner shall select and
10 designate a competent and qualified person to be director of
11 each division. The director of a division shall be the principal
12 administrative officer of that division and shall be accountable
13 and responsible for the orderly and efficient performance of
14 the duties, functions and services thereof.

15 (b) There shall be within the division of mines and minerals
16 a permit section, an inspection and enforcement section and
17 a safety, health and training section, and such other sections
18 and units of activity as may be found by the commissioner
19 to be necessary and desirable for the orderly, efficient and
20 economical administration of the department for the accom-
21 plishment of its purposes. Each section shall be headed by a
22 deputy director appointed by the commissioner. The deputy
23 director of the safety, health and training section shall be a
24 citizen of this state, shall be a competent person of good repute
25 and temperate habits and shall have had at least fifteen years'
26 experience underground in coal mines, at least ten of which
27 shall have been underground in coal mines in this state. Such
28 deputy director of the safety, health and training section shall
29 possess practical knowlege of the different systems for the
30 working, ventilating and draining of coal mines, and a

31 practical and scientific knowledge of all noxious and
32 dangerous gases found in such mines. A diploma in mining
33 engineering from the West Virginia University school of mines
34 or any similarly accredited engineering school shall be counted
35 as two years' working experience. Such deputy director shall
36 devote all of his time to the duties of the office and shall not
37 be directly or indirectly interested financially in any mine in
38 this state. The deputy director of any other section of the
39 division of mines and minerals shall possess such qualifications
40 as shall be prescribed by the commissioner.

41 (c) There shall be within the division of oil and gas a permit
42 section, an inspection and enforcement section and a safety,
43 health and training section, and such other sections and units
44 of activity as may be found by the commissioner to be
45 necessary and desirable for the orderly, efficient and
46 economical administration of the department for the accomp-
47 lishment of its purposes. Each such section shall be headed
48 by a deputy director appointed by the commissioner. The
49 deputy director of each section of the division of oil and gas
50 shall possess such qualifications as shall be prescribed by the
51 commissioner.

**§22-1-8. Director of the division of mines and minerals—
Appointment; eligibility; salary.**

1 (a) There shall be a director of the division of mines and
2 minerals who shall be appointed by the commissioner to serve
3 at the will and pleasure of the commissioner and whose salary
4 shall be set by the commissioner. The director of the division
5 of mines and minerals shall have full charge of the adminis-
6 tration of the division of mines and minerals and of such other
7 matters as are delegated and assigned to the director of the
8 division of mines and minerals by the commissioner relating
9 to such mines and minerals matters set out in this chapter and
10 in chapter twenty-two-a of this code, subject always to the
11 direct supervision and control of the commissioner.

12 (b) The director of the division of mines and minerals shall
13 be a citizen of West Virginia, shall be a competent person of
14 good repute and temperate habits with demonstrated interest
15 and experience in coal mining. The director of the division of
16 mines and minerals shall devote all of his time to his duties
17 and shall not be directly or indirectly interested financially in

18 any mine in this State.

§22-1-9. Same—Oath and bond.

1 The director of the division of mines and minerals shall,
2 before entering upon the discharge of his duties, take the oath
3 of office prescribed by section five, article four of the
4 Constitution of West Virginia, and shall execute a bond in the
5 penalty of two thousand dollars, with security to be approved
6 by the governor, conditioned upon the faithful discharge of
7 his duties, a certificate of which oath and bond shall be filed
8 in the office of the secretary of state.

**§22-1-10. General powers and duties of the director of the division
of mines and minerals.**

1 The director of the division of mines and minerals is hereby
2 empowered and it shall be his duty to execute and carry out,
3 administer and enforce such provisions of this chapter and
4 chapter twenty-two-a of the code as are expressly conferred
5 upon him by such provisions or delegated to him by the
6 commissioner relating to mines and minerals.

**§22-1-11. Director of the division of oil and gas—Appointment;
eligibility; salary.**

1 (a) There shall be a director of the division of oil and gas
2 who shall be appointed by the commissioner to serve at the
3 will and pleasure of the commissioner and whose salary shall
4 be set by the commissioner. The director of the division of
5 oil and gas shall have full charge of the oil and gas matters
6 set out in this chapter and in chapter twenty-two-b of this
7 code, subject always to the direct supervision and control of
8 the commissioner.

9 (b) The director of the division of oil and gas shall be a
10 citizen of West Virginia, shall be a competent person of good
11 reputation and temperate habits and shall be a registered
12 professional engineer and shall have had at least ten years'
13 practical experience in the oil and gas industry. A degree in
14 mining, petroleum engineering or geology shall be counted as
15 two years' practical experience. The director of the division of
16 oil and gas shall devote all of his time to his duties and shall
17 not be directly or indirectly interested financially in any oil
18 or gas production or drilling or in any coal mine in this state.

§22-1-12. Same—Oath and bond.

1 The director of the division of oil and gas shall, before
2 entering upon the discharge of his duties, take the oath of
3 office prescribed by section five, article four of the constitution
4 of West Virginia, and shall execute a bond in the penalty of
5 two thousand dollars, with security to be approved by the
6 governor, conditioned upon the faithful discharge of his duties,
7 a certificate of which oath and which bond shall be filed in
8 the office of the secretary of state.

§22-1-13. General powers and duties of director of the division of oil and gas and commissioner.

1 (a) Except for the authority of the shallow gas well review
2 board under article seven of this chapter and of the oil and
3 gas conservation commission under article eight of this chapter
4 and of the oil and gas inspectors examining board under article
5 thirteen of this chapter, and subject to the rule review
6 provisions of subsection (b) of this section and the appellate
7 review provisions of section fourteen of this article, the
8 director of the division of oil and gas is hereby empowered
9 and it shall be his duty to execute and carry out, administer
10 and enforce the provisions of this chapter and chapter twenty-
11 two-b of the code in the manner provided herein as they relate
12 to oil and gas. Subject to the provisions of this chapter and
13 chapter twenty-two-b of the code, the director of the division
14 of oil and gas shall have jurisdiction and authority over all
15 persons and property necessary therefor.

16 (b) The director of the division of oil and gas is authorized
17 to propose or promulgate such rules and regulations as are
18 necessary to carry out and implement the provisions of this
19 chapter and chapter twenty-two-b of this code as are
20 specifically authorized in said chapter twenty-two-b of this
21 code. Except where specifically exempted in chapter twenty-
22 two-b of this code, the provisions of chapter twenty-nine-a of
23 this code shall apply to the proposal or promulgation of any
24 such rules and regulations. No rules and regulations shall be
25 finally proposed or promulgated by the director of the division
26 of oil and gas for purposes of chapter twenty-nine-a of this
27 code, unless and until the commissioner has approved such
28 rules and regulations as provided herein. To the extent that
29 the commissioner approves only a portion thereof, only that

30 portion so approved may be finally proposed or promulgated
31 by the director of the division of oil and gas. The commis-
32 sioner shall determine whether he will review the rules and
33 regulations within thirty days from the date the same are filed
34 with the commissioner by the director of the division of oil
35 and gas. If the commissioner decides to make such a review,
36 he shall file a notice of review with the director of the division
37 of oil and gas within the thirty day time period. Failure by
38 the commissioner to file a notice of review shall be considered
39 to be commissioner approval of such rules and regulations, or
40 parts thereof. If the commissioner files a notice of review, he
41 shall act to approve, disapprove or rewrite such rules and
42 regulations or parts thereof within sixty days from the filing
43 of the notice of review. Failure by the commissioner to act
44 within the sixty day time period shall be considered to be
45 commissioner approval of such rules and regulations, or part
46 thereof. Those rules and regulations specifically approved,
47 approved by failure to act, or rewritten shall be proposed or
48 promulgated under the provisions of chapter twenty-nine-a of
49 this code.

**§22-1-14. Transfer of funds, supplies, equipment, records, appro-
priations, etc.**

1 (a) Any appropriation made to, and all funds, credits or
2 other assets, including special funds and accounts which,
3 immediately prior to the effective date of this chapter, were
4 held in connection with the operation of the department of
5 mines or department of natural resources in connection with
6 any other agency for the purpose of carrying out the powers,
7 duties and functions vested in the department of energy, shall
8 be transferred and credited as of the effective date of this act
9 to the department of energy created by this chapter. All
10 reports, records, surveys, files and other materials concerning
11 the purposes of this chapter in the possession of the
12 department of mines or department of natural resources or any
13 other agency with respect to powers, duties and functions
14 vested in the department of energy shall be transferred and
15 delivered to the commissioner as of the effective date of this
16 chapter.

17 (b) Whenever any questions arise as to the transfer to the
18 department of energy of any appropriations, funds, credits,
19 other assets, books, documents, records, surveys, papers, files,

20 equipment or any other tangible property or material used or
21 held in the exercise of the powers and the performances of
22 the duties and functions vested in any agency immediately
23 prior to the effective date of this act, the commissioner of
24 finance and administration shall make a determination thereon
25 and certify the same to the state agencies concerned.

§22-1-15. Commissioner's authority to promulgate rules and regulations.

1 The commissioner shall have the power and authority to
2 propose or promulgate rules and regulations to organize the
3 department and to carry out and implement the provisions of
4 this chapter and chapter twenty-two-a of this code. With
5 respect to chapter twenty-two-b of this code, the commission-
6 er's rulemaking powers and authority shall be as described in
7 section thirteen of this article. All rules and regulations in
8 effect on the effective date of this act which pertain to the
9 provisions of this chapter, chapter twenty-two-a and twenty-
10 two-b of this code shall remain in effect until changed or
11 superseded by the commissioner, or as appropriate, the
12 director of the division of oil and gas. Except when specifically
13 exempted by the provisions of this chapter, or chapters twenty-
14 two-a or twenty-two-b of this code, all rules and regulations
15 or changes thereto shall be proposed or promulgated by the
16 commissioner in accordance with the provisions of chapter
17 twenty-nine-a of this code.

§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.

1 Except as otherwise expressly provided in this chapter or
2 in chapters twenty-two-a or twenty-two-b of this code,
3 jurisdiction over the issuance of regulations, or any and all
4 permits and other governmental authorizations required or to
5 be required in all matters pertaining to the exploration,
6 development, production, storage and recovery of coal, oil and
7 gas, and other mineral resources in this state including all
8 safety, conservation, land, water, waste disposal, reclamation,
9 and environmental regulations, permits and authorizations of
10 such activities called for pursuant to articles five, five-a, five-
11 d and five-f, chapter twenty of this code, and the enforcement
12 and implementation thereof is vested exclusively in the

13 department of energy. The department of energy is hereby
14 designated as the lead regulatory agency for this state for all
15 purposes of federal legislation relating to such activities.

16 The department of energy shall exercise all power and duties
17 vested in the director of the department of natural resources
18 pursuant to subsection (g), section seven, article five-e, chapter
19 twenty of this code, and in the administrator of the office of
20 oil and gas, and shallow gas-well review board pursuant to
21 subsection (h), section seven, article five-e, chapter twenty of
22 this code.

23 All permits, certifications, waivers, bonds, orders or
24 authorizations heretofore issued by the department of mines,
25 department of natural resources, or any of the boards or
26 commissions continued in effect by this chapter shall be
27 continued in effect but become subject to the provisions of this
28 chapter, chapter twenty-two-a and chapter twenty-two-b of
29 this code. All permits, certifications, waivers, bonds, orders or
30 authorizations heretofore issued by the department of mines
31 or department of natural resources shall become subject to the
32 jurisdiction of the department of energy. All permits,
33 certifications, waivers, bonds, orders or authorizations
34 heretofore issued by any of the boards or commissions
35 continued in effect by the provisions of this chapter shall
36 remain subject to the jurisdiction of those boards or
37 commissions.

§22-1-17. Hearings before department of energy.

1 Any hearing or proceeding before the department on any
2 matter other than rulemaking shall be conducted and heard
3 by the commissioner or a representative designated by him and
4 shall be in accordance with the provisions of article five,
5 chapter twenty-nine-a of this code, except where such
6 provisions are inconsistent with this chapter or chapters
7 twenty-two-a or twenty-two-b of this code.

§22-1-18. Construction.

1 This chapter shall be liberally construed so as to effectuate
2 the declaration of public policy set forth in section two, article
3 one of this chapter.

§22-1-19. Effective date of act.

1 This act shall become effective ninety days after passage.

§22-1-20. Operative dates and transfer of functions.

1 (a) The transfer of powers, duties, functions and responsi-
2 bilities to the department of energy shall occur at the earliest
3 practical date consistent with the purposes and intent set forth
4 in section two, article one of this chapter.

5 (b) The Legislature recognizes that certain of the powers,
6 duties, functions and responsibilities transferred under the
7 provisions of this chapter and chapters twenty-two-a and
8 twenty-two-b of this code involve the implementation of
9 federal regulatory programs by the state and that the transfer
10 of such powers, duties, functions and responsibilities to the
11 department of energy may require approval of certain federal
12 agencies or officials in order to avoid disruption of the federal-
13 state relationship under which such regulatory programs are
14 implemented. Therefore, the transfer to the department of the
15 powers, duties, functions and responsibilities referred to in this
16 chapter and chapters twenty-two-a and twenty-two-b of this
17 code shall become effective upon a proclamation by the
18 governor stating either that final approval of the transfer has
19 been given by the appropriate federal agency or official or that
20 final approval of the transfer is not necessary to avoid
21 disruption of the federal-state relationship under which such
22 regulatory programs are implemented.

23 (c) The powers, duties, functions and responsibilities
24 referred to in this chapter and chapters twenty-two-a and
25 twenty-two-b of this code are declared to be severable, and
26 the governor's proclamation, or lack thereof, with respect to
27 the transfer of a portion of such powers, duties, functions and
28 responsibilities shall not affect the transfer of other such
29 powers, duties, functions and responsibilities.

§22-1-21. Continuation of employment, tenure, civil service coverage.

1 All employees of the department of natural resources and
2 department of mines as of the date of the passage of this
3 chapter, whose functions and duties are transferred to the
4 department of energy, shall be employed in a comparable
5 position within the department of energy. Those positions
6 within the departments of mines or natural resources which,

7 prior to the reenactment of this chapter, were afforded tenure
8 or civil service protection and coverage which are transferred
9 to the department of energy pursuant to such reenactment,
10 shall continue to be tenured or subject to civil service
11 protection and coverage, as the case may be, to the same
12 extent as if this chapter had not been reenacted.

13 Personnel of the department of energy who are appointed
14 by the governor or commissioner under the provisions of this
15 chapter shall be excluded from civil service protection and
16 coverage. The commissioner and deputy commissioner are
17 each authorized to hire a personal secretary to serve at their
18 will and pleasure and such secretary also shall be excluded
19 from civil service protection and coverage. The commissioner
20 is authorized to hire a personal assistant, in addition to a
21 personal secretary, who shall serve at the will and pleasure of
22 the commissioner and who also shall be excluded from civil
23 service protection and coverage.

ARTICLE 2. INTERSTATE MINING COMPACT.

§22-2-1. Enactment of compact.

§22-2-2. Bylaws of interstate mining commission.

§22-2-3. Effective date.

§22-2-1. Enactment of compact.

1 The "Interstate Mining Compact" is hereby continued in law
2 and continued in effect with all other jurisdictions legally
3 joining therein in the form substantially as follows:

4 INTERSTATE MINING COMPACT

5 Article I. Findings and Purposes.

6 (a) The party states find that:

7 (1) Mining and the contributions thereof to the economy
8 and well-being of every state are of basic significance.

9 (2) The effects of mining on the availability of land, water
10 and other resources for other uses present special problems
11 which properly can be approached only with due consideration
12 for the rights and interests of those engaged in mining, those
13 using or proposing to use these resources for other purposes
14 and the public.

15 (3) Measures for the reduction of the adverse effects of
16 mining on land, water and other resources may be costly and

17 the devising of means to deal with them are of both public
18 and private concern.

19 (4) Such variables as soil structure and composition,
20 physiography, climatic conditions and the needs of the public
21 make impracticable to all mining areas of a single standard
22 for the conservation, adaption or restoration of mined land,
23 or the development of mineral and other natural resources, but
24 justifiable requirements of law and practice relating to the
25 effects of mining on land, water and other resources may be
26 reduced in equity or effectiveness unless they pertain similarly
27 from state to state for all mining operations similarly situated.

28 The states are in a position and have the responsibility to
29 assure that mining shall be conducted in accordance with
30 sound conservation principles, and with due regard for local
31 conditions.

32 (b) The continuing purposes of this compact are to:

33 (1) Advance the protection and restoration of land, water
34 and other resources affected by mining.

35 (2) Assist in the reduction or elimination or counteracting
36 of pollution or deterioration of land, water and air attributable
37 to mining.

38 (3) Encourage, with due recognition of relevant regional,
39 physical and other differences, programs in each of the party
40 states which will achieve comparable results in protecting,
41 conserving and improving the usefulness of natural resources,
42 to the end that the most desirable conduct of mining and
43 related operations may be universally facilitated.

44 (4) Assist the party states in their efforts to facilitate the use
45 of land and other resources affected by mining, so that such
46 use may be consistent with sound land use, public health and
47 public safety, and to this end to study and recommend,
48 wherever desirable, techniques for the improvement, restora-
49 tion or protection of such land and other resources.

50 (5) Assist in achieving and maintaining an efficient and
51 productive mining industry and in increasing economic and
52 other benefits attributable to mining.

53

Article II. Definitions.

54 As used in this compact, the term:

55 (a) "Mining" means the breaking of the surface soil in order
56 to facilitate or accomplish the extraction or removal of
57 minerals, ores or other solid matter, any activity or process
58 constituting all or part of a process for the extraction or
59 removal of minerals, ores and other solid matter from its
60 original location, and the preparation, washing, cleaning or
61 other treatment of minerals, ores or other solid matter so as
62 to make them suitable for commercial, industrial or construc-
63 tion use; but shall not include those aspects of deep mining
64 not having significant effect on the surface, and shall not
65 include excavation or grading when conducted solely in aid
66 of on-site farming or construction.

67 (b) "State" means a state of the United States, the District
68 of Columbia, the commonwealth of Puerto Rico or a territory
69 or possession of the United States.

70

Article III. State Programs.

71 Each party state agrees that within a reasonable time it will
72 formulate and establish an effective program for the conser-
73 vation and use of mined land, by the establishment of
74 standards, enactment of laws or the continuing of the same
75 in force, to accomplish:

76 (a) The protection of the public and the protection of
77 adjoining and other landowners from damage to their lands
78 and the structures and other property thereon resulting from
79 the conduct of mining operations or the abandonment or
80 neglect of land and property formerly used in the conduct of
81 such operations.

82 (b) The conduct of mining and the handling of refuse and
83 other mining wastes in ways that will reduce adverse effects
84 on the economic, residential, recreational or aesthetic value
85 and utility of land and water.

86 (c) The institution and maintenance of suitable programs
87 for adaption, restoration and rehabilitation of mined lands.

88 (d) The prevention, abatement and control of water, air and
89 soil pollution resulting from mining, present, past and future.

90

Article IV. Powers.

91 In addition to any other powers conferred upon the

92 interstate mining commission, established by Article V of this
93 compact, such commission shall have power to:

94 (a) Study mining operations, processes and techniques for
95 the purpose of gaining knowledge concerning the effects of
96 such operations, processes and techniques on land, soil, water,
97 air, plant and animal life, recreation and patterns of
98 community or regional development or change.

99 (b) Study the conservation, adaptation, improvement and
100 restoration of land and related resources affected by mining.

101 (c) Make recommendations concerning any aspect or
102 aspects of law or practice and governmental administration
103 dealing with matters within the purview of this compact.

104 (d) Gather and disseminate information relating to any of
105 the matters within the purview of this compact.

106 (e) Cooperate with the federal government and any public
107 or private entities having interests in any subject coming within
108 the purview of this compact.

109 (f) Consult, upon the request of a party state and within
110 resources available therefor, with the officials of such state in
111 respect to any problem within the purview of this compact.

112 (g) Study and make recommendations with respect to any
113 practice, process, technique or course of action that may
114 improve the efficiency of mining or the economic yield from
115 mining operations.

116 (h) Study and make recommendations relating to the
117 safeguarding of access to resources which are or may become
118 the subject of mining operations to the end that the needs of
119 the economy for the products of mining may not be adversely
120 affected by unplanned or inappropriate use of land and other
121 resources containing minerals or otherwise connected with
122 actual or potential mining sites.

123 **Article V. The Commission.**

124 (a) There is hereby created an agency of the party states to
125 be known as the "Interstate Mining Commission," hereinafter
126 called "the commission." The commission shall be composed
127 of one commissioner from each party state who shall be the
128 governor thereof. Pursuant to the laws of his party state, each

129 governor shall have the assistance of an advisory body
130 (including membership from mining industries, conservation
131 interests and such other public and private interests as may
132 be appropriate) in considering problems relating to mining and
133 in discharging his responsibilities as the commissioner of his
134 state on the commission. In any instance where a governor is
135 unable to attend a meeting of the commission or perform any
136 other function in connection with the business of the
137 commission, he shall designate an alternate from among the
138 members of the advisory body required by this paragraph, who
139 shall represent him and act in his place and stead. The
140 designation of an alternate shall be communicated by the
141 governor to the commission in such manner as its bylaws may
142 provide.

143 (b) The commissioners shall be entitled to one vote each on
144 the commission. No action of the commission making a
145 recommendation pursuant to Articles IV (c), IV (g) and IV
146 (h) or requesting, accepting or disposing of funds, services or
147 other property pursuant to this paragraph, Article V (g), V
148 (h) or VII shall be valid unless taken at a meeting at which
149 a majority of the total number of votes on the commission
150 is cast in favor thereof. All other action shall be by a majority
151 of those present and voting: *Provided*, That action of the
152 commission shall be only at a meeting at which a majority of
153 the commissioners, or their alternates, is present. The
154 commission may establish and maintain such facilities as may
155 be necessary for the transacting of its business. The
156 commission may acquire, hold and convey real and personal
157 property and any interest therein.

158 (c) The commission shall have a seal.

159 (d) The commission shall elect annually, from among its
160 members, a chairman, a vice chairman, and a treasurer. The
161 commission shall appoint an executive director and fix his
162 duties and compensation. Such executive director shall serve
163 at the pleasure of the commission. The executive director, the
164 treasurer and such other personnel as the commission shall
165 designate shall be bonded. The amount or amounts of such
166 bond or bonds shall be determined by the commission.

167 (e) Irrespective of the civil service, personnel or other merit
168 system laws of any of the party states, the executive director

169 with the approval of the commission, shall appoint, remove
170 or discharge such personnel as may be necessary for the
171 performance of the commission's functions, and shall fix the
172 duties and compensation of such personnel.

173 (f) The commission may establish and maintain, independ-
174 ently or in conjunction with a party state, a suitable retirement
175 system for its employees. Employees of the commission shall
176 be eligible for social security coverage in respect of old age
177 and survivor's insurance: *Provided*, That the commission take
178 such steps as may be necessary pursuant to the laws of the
179 United States to participate in such program of insurance as
180 a governmental agency or unit. The commission may establish
181 and maintain or participate in such additional programs of
182 employee benefits as it may deem appropriate.

183 (g) The commission may borrow, accept or contract for the
184 services of personnel from any state, the United States or any
185 other governmental agency, or from any person, firm,
186 association or corporation.

187 (h) The commission may accept for any of its purposes and
188 functions under this compact any and all donations and grants
189 of money, equipment, supplies, materials and services,
190 conditional or otherwise, from any state, the United States or
191 any other governmental agency, or from any person, firm,
192 association or corporation, and may receive, utilize and
193 dispose of the same. Any donation or grant accepted by the
194 commission pursuant to this paragraph or services borrowed
195 pursuant to paragraph (g) of this article shall be reported in
196 the annual report of the commission. Such report shall include
197 the nature, amount and conditions, if any, of the donation,
198 grant or services borrowed and the identity of the donor or
199 lender.

200 (i) The commission shall adopt bylaws for the conduct of
201 its business and shall have the power to amend and rescind
202 these bylaws. The commission shall publish its bylaws in
203 convenient form and shall file a copy thereof and a copy of
204 any amendment thereto with the appropriate agency or officer
205 in each of the party states.

206 (j) The commission annually shall make to the governor,
207 Legislature and advisory body required by Article V (a) of
208 each party state a report covering the activities of the

209 commission for the preceding year, and embodying such
210 recommendations as may have been made by the commission.
211 The commission may make such additional reports as it may
212 deem desirable.

213 **Article VI. Advisory, Technical and Regional Committees.**

214 The commission shall establish such advisory, technical and
215 regional committees as it may deem necessary, membership on
216 which shall include private persons and public officials, and
217 shall cooperate with and use the services of any such
218 committees and the organizations which the members
219 represent in furthering any of its activities. Such committees
220 may be formed to consider problems of special interest to any
221 party states, problems dealing with particular commodities or
222 types of mining operations, problems relating to reclamation,
223 development or use of mined land or any other matters of
224 concern to the commission.

225 **Article VII. Finance.**

226 (a) The commission shall submit to the governor or
227 designated officer or officers of each party state a budget of
228 its estimated expenditures for such periods as may be required
229 by the laws of that party state for presentation to the
230 Legislature thereof.

231 (b) Each of the commission's budgets of estimated expen-
232 ditures shall contain specific recommendations of the amount
233 or amounts to be appropriated by each of the party states.
234 The total amount of appropriations requested under any such
235 budget shall be apportioned among the party states as follows:
236 One half in equal shares, and the remainder in proportion to
237 the value of minerals, ores and other solid matter mined. In
238 determining such values, the commission shall employ such
239 available public source or sources of information as, in its
240 judgment, present the most equitable and accurate compari-
241 sons among the party states. Each of the commission's budgets
242 of estimated expenditures and requests for appropriations shall
243 indicate the source or sources used in obtaining information
244 concerning value of minerals, ores and other solid matter
245 mined.

246 (c) The commission shall not pledge the credit of any party
247 state. The commission may meet any of its obligations in

248 whole or in part with funds available to it under Article V
249 (h) of this compact: *Provided*, That the commission takes
250 specific action setting aside such funds prior to incurring any
251 obligation to be met in whole or in part in such manner.
252 Except where the commission makes use of funds available to
253 it under Article V (h) hereof, the commission shall not incur
254 any obligation prior to the allotment of funds by the party
255 states adequate to meet the same.

256 (d) The commission shall keep accurate accounts of all
257 receipts and disbursements. The receipts and disbursements of
258 the commission shall be subject to the audit and accounting
259 procedures established under its bylaws. All receipts and
260 disbursements of funds handled by the commission shall be
261 audited yearly by a qualified public accountant and the report
262 of the audit shall be included in and become part of the annual
263 report of the commission.

264 (e) The accounts of the commission shall be open at any
265 reasonable time for inspection by duly constituted officers of
266 the party states and by any persons authorized by the
267 commission.

268 (f) Nothing contained herein shall be construed to prevent
269 commission compliance with laws relating to audit or
270 inspection of accounts by or on behalf of any government
271 contributing to the support of the commission.

272 **Article VIII. Entry Into Force and Withdrawal.**

273 (a) This compact shall enter into force when enacted into
274 law by any four or more states. Thereafter, this compact shall
275 become effective as to any other state upon its enactment
276 thereof.

277 (b) Any party state may withdraw from this compact by
278 enacting a statute repealing the same, but no such withdrawal
279 shall take effect until one year after the governor of the
280 withdrawing state has given notice in writing of the withdrawal
281 to the governors of all other party states. No withdrawal shall
282 affect any liability already incurred by or chargeable to a party
283 state prior to the time of such withdrawal.

284 **Article IX. Effect on Other Laws.**

285 Nothing in this compact shall be construed to limit, repeal

286 or supersede any other law of any party state.

287 **Article X. Construction and Severability.**

288 This compact shall be liberally construed so as to effectuate
 289 the purposes thereof. The provisions of this compact shall be
 290 severable and if any phrase, clause, sentence or provision of
 291 this compact is declared to be contrary to the constitution of
 292 any state or of the United States or the applicability thereof
 293 to any government, agency, person or circumstance is held
 294 invalid, the validity of the remainder of this compact and the
 295 applicability thereof to any government, agency, person or
 296 circumstance shall not be affected thereby. If this compact
 297 shall be held contrary to the constitution of any state
 298 participating herein, the compact shall remain in full force and
 299 effect as to the remaining party states and in full force and
 300 effect as to the state affected as to all severable matters.

§22-2-2. Bylaws of interstate mining commission.

1 In accordance with Article V (i) of the interstate mining
 2 compact, the commission shall file copies of its bylaws and any
 3 amendments thereto in the office of the secretary of state of
 4 West Virginia.

§22-2-3. Effective date.

1 This article is effective as of the first day of July, one
 2 thousand nine hundred seventy-two.

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-1. Short title.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

§22-3-3. Definitions.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

§22-3-5. Powers and duties of commissioner; program plans and reclamation projects.

§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

§22-3-7. Liens against reclaimed lands; petition by landowners; appeal; priority of liens.

§22-3-8. Filling voids and sealing tunnels.

§22-3-9. General and miscellaneous powers and duties of commissioner; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

§22-3-1. Short title.

1 This article shall be known and cited as the "Abandoned
2 Mine Lands and Reclamation Act."

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

1 The Legislature finds that there are a substantial number of
2 acres of land throughout the state that were disturbed by
3 surface-mining operations prior to the time of present day
4 effective control and regulation. There was little or no
5 reclamation conducted and the impacts from these unre-
6 claimed lands impose social and economic costs on residents
7 in nearby and adjoining areas as well as continue to impair
8 environmental quality, prevent or damage the beneficial use
9 of land or water resources, or endanger the health and safety
10 of the public.

11 Further, the Legislature finds and declares that, due to the
12 passage of Public Law 95-87, certain areas within the
13 boundaries of this state do not meet present day standards for
14 reclamation.

15 Further, the Legislature finds that Title IV of the Surface
16 Mining Control and Reclamation Act of 1977 "Public Law 95-
17 87" provides for the collection of thirty-five cents per ton of
18 coal produced from surface mine operations and fifteen cents
19 per ton of coal produced from underground mine operations
20 in West Virginia to be collected by the secretary of the United
21 States department of the interior for a period of at least fifteen
22 years. At least fifty percent of the funds so collected are to
23 be allocated directly to the state of West Virginia to
24 accomplish reclamation of abandoned coal mining operations,
25 as of the date the state of West Virginia obtained an approved
26 abandoned mine reclamation plan in accordance with sections
27 405 and 503 of Public Law 95-87.

28 Therefore, it is the intent of the Legislature by this article
29 to vest jurisdiction and authority in the commissioner of the
30 department of energy to maintain program approval by, and
31 receipt of funds from, the United States department of the
32 interior to accomplish the desired restoration and reclamation
33 of our land and water resources.

§22-3-3. Definitions.

1 All definitions set forth in article three of chapter twenty-
2 two-a of this code shall apply to those defined terms which
3 also appear in this article, if applicable.

**§22-3-4. Abandoned land reclamation fund and objectives of fund;
lands eligible for reclamation.**

1 (a) All abandoned land reclamation funds available under
2 Title IV of Public Law 95-87, private donations received, any
3 state appropriated or transferred funds, or funds received from
4 the sale of land by the director, under this article shall be
5 deposited with the treasurer of the state of West Virginia to
6 the credit of the abandoned land reclamation fund heretofore
7 created, and expended pursuant to the requirements of this
8 article.

9 (b) Moneys in the fund may be used by the commissioner
10 for the following:

11 (1) Reclamation and restoration of land and water resources
12 adversely affected by past coal surface-mining operations,
13 including, but not limited to, reclamation and restoration of
14 abandoned surface mine areas, abandoned coal processing
15 areas and abandoned coal processing waste areas; sealing and
16 filling abandoned deep mine entries and voids; planting of land
17 adversely affected by past coal surface-mining operations to
18 prevent erosion and sedimentation; prevention, abatement,
19 treatment and control of water pollution created by coal mine
20 drainage, including restoration of stream beds and construc-
21 tion and operation of water treatment plants; prevention,
22 abatement and control of burning coal processing waste areas
23 and burning coal in situ; prevention, abatement and control
24 of coal mine subsidence; and payment of administrative
25 expenses and all other necessary expenses incurred to
26 accomplish the purpose of this article: *Provided*, That all
27 expenditures from this fund shall reflect the following
28 priorities in the order stated:

29 (A) The protection of public health, safety, general welfare
30 and property from extreme danger of adverse effects of past
31 surface mining practices;

32 (B) The protection of public health, safety and general
33 welfare from adverse effects of past coal surface mining
34 practices;

35 (C) The restoration of land and water resources and
36 environment previously degraded by adverse effects of past
37 coal surface-mining practices, including measures for the
38 conservation and development of soil, water (excluding
39 channelization), woodland, fish and wildlife, recreation
40 resources and agricultural productivity;

41 (D) Research and demonstration projects relating to the
42 development of surface-mining reclamation and water quality
43 control program methods and techniques;

44 (E) The protection, repair, replacement, construction or
45 enhancement of public facilities such as utilities, roads,
46 recreation and conservation facilities adversely affected by past
47 coal surface mining practices;

48 (F) The development of publicly owned land adversely
49 affected by past coal surface mining practices, including land
50 acquired as provided in this article for recreation and historic
51 purposes, conservation and reclamation purposes and open
52 space benefits.

53 (2) Lands and water eligible for reclamation or drainage
54 abatement expenditures under this article are those which were
55 mined for coal or which were affected by such mining,
56 wastebanks, coal processing or other coal mining processes,
57 and abandoned or left in an inadequate reclamation status
58 prior to the third day of August, one thousand nine hundred
59 seventy-seven, and for which there is no continuing reclama-
60 tion responsibility: *Provided*, That one purpose of this article
61 is to provide additional and cumulative remedies to abate the
62 pollution of the waters of the state and nothing herein
63 contained shall abridge or alter rights of action or remedies
64 now or hereafter existing, nor shall any provisions in this
65 article or any act done by virtue of this article be construed
66 as estopping the state, municipalities, public health officers or
67 persons as riparian owners or otherwise in the exercise of their
68 rights to suppress nuisances or to abate any pollution now or
69 hereafter existing or to recover damages.

70 (c) Where the governor certifies that the above objectives
71 of the fund have been achieved and there is a need for
72 construction of specific public facilities in communities
73 impacted by coal development, and other sources of federal
74 funds are inadequate and the secretary concurs, then the

75 commissioner may expend money from the fund for such
76 construction.

§22-3-5. Powers and duties of commissioner; program plans and reclamation projects.

1 (a) The commissioner shall submit to the secretary of the
2 interior a state reclamation plan and annual projects to carry
3 out the purposes of this article.

4 (b) That reclamation plan shall generally identify the areas
5 to be reclaimed, the purposes for which the reclamation is
6 proposed, the relationship of the lands to be reclaimed in the
7 proposed reclamation to surrounding areas, the specific criteria
8 for ranking and identifying projects to be funded and the legal
9 authority and programmatic capability to perform such work
10 in conformance with the provisions of this article.

11 (c) On an annual basis, the commissioner shall submit to
12 the secretary of the interior an application for the support of
13 the state program and implementation of specific reclamation
14 projects. Such annual requests shall include information as
15 may be requested by the secretary of the interior including:

16 (1) A general description of each proposed project;

17 (2) A priority evaluation of each proposed project;

18 (3) A statement of the estimated benefits in such terms as
19 number of acres restored, miles of stream improved, acres of
20 surface lands protected from subsidence, population protected
21 from subsidence, air pollution and hazards of mine and coal
22 refuse disposal area fires;

23 (4) An estimate of the cost for each proposed project;

24 (5) In the case of proposed research and demonstration
25 projects, a description of the specific techniques to be
26 evaluated or objective to be attained;

27 (6) An identification of lands or interest therein to be
28 acquired and the estimated cost; and

29 (7) In each year after the first in which a plan is filed under
30 this article, an inventory of each project funded under the
31 previous year's grant, which inventory shall include details of
32 financial expenditures on such project together with a brief
33 description of the project, including project location,

34 landowner's name, acreage and type of reclamation performed.

35 (d) The costs for each proposed project under this section
36 shall include actual construction costs, actual operation and
37 maintenance costs of permanent facilities, planning and
38 engineering costs, construction inspection costs and other
39 necessary administrative expenses.

**§22-3-6. Acquisition and reclamation of land adversely affected by
past coal surface-mining practices.**

1 (a) If the commissioner makes a finding of fact that:

2 (1) Land or water resources have been adversely affected by
3 past coal mining practices;

4 (2) The adverse effects are at a stage where, in the public
5 interest, action to restore, reclaim, abate, control or prevent
6 should be taken;

7 (3) The owners of the land or water resources where entry
8 must be made to restore, reclaim, abate, control or prevent
9 the adverse effects of past coal mining practices are not known
10 or readily available; or

11 (4) The owners will not give permission for the commis-
12 sioner, his agents, employees or contractors to enter upon such
13 property to restore, reclaim, abate, control or prevent the
14 adverse effects of past coal mining practices, then, upon giving
15 notice by mail to the owners, if known, or if not known by
16 posting notice upon the premises and advertising once in a
17 newspaper of general circulation in the county in which the
18 land lies, the commissioner, his agents, employees or
19 contractors shall have the right to enter upon the property
20 adversely affected by past coal mining practices and any other
21 property to have access to such property to do all things
22 necessary or expedient to restore, reclaim, abate, control or
23 prevent the adverse effects. Such entry shall be construed as
24 an exercise of the police power of the State for the protection
25 of public health, safety and general welfare and shall not be
26 construed as an act of condemnation of property nor of
27 trespass thereon. The moneys expended for such work and the
28 benefits accruing to any such premises so entered upon shall
29 be chargeable against such land and shall mitigate or offset
30 any claim in or any action brought by any owner of any
31 interest in such premises for any alleged damages by virtue of

32 such entry: *Provided*, That this provision is not intended to
33 create new rights of action or eliminate existing immunities.

34 (b) The commissioner, his agents, employees or contractors
35 shall have the right to enter upon any property for the purpose
36 of conducting studies or exploratory work to determine the
37 existence of adverse effects of past coal mining practices and
38 to determine the feasibility or restoration, reclamation,
39 abatement, control or prevention of such adverse effects. Such
40 entry shall be construed as an exercise of the police power of
41 the State for the protection of public health, safety and general
42 welfare and shall not be construed as an act of condemnation
43 of property nor trespass thereon.

44 (c) The commissioner may acquire any land by purchase,
45 donation or condemnation, which is adversely affected by past
46 coal mining practices, if the commissioner determines that
47 acquisition of such land is necessary to successful reclamation
48 and that:

49 (1) The acquired land, after restoration, reclamation,
50 abatement, control or prevention of the adverse effects of past
51 coal mining practices will serve recreation, historic, conserva-
52 tion, or reclamation purposes or provide open space benefits;

53 (2) Permanent facilities such as a treatment plant or a
54 relocated stream channel will be constructed on the land for
55 the restoration, reclamation, abatement, control or prevention
56 of the adverse effects of past coal mining practices; or

57 (3) Acquisition of coal refuse disposal sites and all coal
58 refuse thereon will serve the purposes of this article or that
59 public ownership is desirable to meet emergency situations and
60 prevent recurrences of the adverse effects of past coal mining
61 practices.

62 (d) Title to all lands acquired pursuant to this section shall
63 be in the name of the state of West Virginia, by the West
64 Virginia department of energy. The price paid for land
65 acquired under this section shall reflect the fair market value
66 of the land as adversely affected by past coal mining practices.

67 (e) The commissioner is hereby authorized to transfer land
68 obtained under subsection (c) of this section to the secretary.
69 The commissioner may purchase such land from the secretary
70 after reclamation at the fair market value less the state's

71 original acquisition price.

72 (f) The commissioner may accept and local political
73 subdivisions may transfer to the commissioner land belonging
74 to them to carry out the purposes set out in this article and
75 in such event they shall have a preferential right to purchase
76 said land after reclamation at the fair market value less the
77 political subdivision's cost of acquisition, but at no time shall
78 the commissioner sell such land to a political subdivision at
79 a price less than the cost of the acquisition and reclamation
80 of said land: *Provided*, That if any land sold to a political
81 subdivision under this subsection is not used for a valid public
82 purpose as specified by the commissioner in the terms and
83 conditions of the sales agreement, then all rights, title and
84 interest in such land shall revert to the West Virginia
85 department of energy. Any moneys received from such sale
86 shall be deposited in the abandoned land reclamation fund.

87 (g) Where land acquired pursuant to this section is deemed
88 to be suitable for industrial, commercial, residential or
89 recreational development, the commissioner may sell such land
90 by public sale under a system of competitive bidding at not
91 less than fair market value and pursuant to regulations
92 promulgated to ensure that such lands are put to proper use
93 consistent with State and local land use plans.

94 (h) The commissioner, if requested and after appropriate
95 public notice, shall hold a public hearing in the county in
96 which land acquired pursuant to this section is located. The
97 hearing shall be held at a time which shall afford local citizens
98 and government the maximum opportunity to participate in
99 the decision concerning the use and disposition of the land
100 after restoration, reclamation, abatement, control or preven-
101 tion of the adverse effects of past coal mining practices.

102 (i) In addition to the authority to acquire land under other
103 provisions of this section, the commissioner is authorized to
104 use money in the fund to acquire land from any federal, state
105 or local government or from a political subdivision thereof,
106 or from any person, firm, association or corporation, if he
107 determines that such is an integral and necessary element of
108 an economically feasible plan for the project to construct or
109 rehabilitate housing for persons disabled as the result of
110 employment in the mines or work incidental thereto, persons

111 displaced by acquisition of land pursuant to this section, or
112 persons dislocated as the result of adverse effects of coal
113 mining practices which constitute an emergency as provided
114 in section 410 of Public Law 95-87, or persons dislocated as
115 the result of natural disasters or catastrophic failures from any
116 cause. Such activities shall be accomplished under such terms
117 and conditions as the commissioner shall require, which may
118 include transfers of land with or without monetary consider-
119 ation: *Provided*, That to the extent that the consideration is
120 below the fair market value of the land transferred, no portion
121 of the difference between the fair market value and the
122 consideration shall accrue as a profit to such person, firm,
123 association or corporation. No part of the funds provided
124 under this article may be used to pay the actual construction
125 costs of housing. The commissioner may carry out the
126 purposes of this subsection directly or he may make grants and
127 commitments for grants, and may advance money under such
128 terms and conditions as he may require to any department,
129 agency or political subdivision of this state, or any public body
130 or nonprofit organization designated by the commis-
131 sioner.

**§22-3-7. Liens against reclaimed land; petition by landowner;
appeal; priority of liens.**

1 (a) Within six months after the completion of a project to
2 restore, reclaim, abate, control or prevent adverse effects of
3 past coal mining practices on privately owned land, the
4 commissioner shall itemize the moneys so expended and may
5 file a statement thereof in the office of the clerk of the county
6 commission in the county in which the land lies, together with
7 a notarized appraisal by an independent appraiser of the value
8 of the land before the restoration, reclamation, abatement,
9 control or prevention of adverse effects of past surface-mining
10 practices, if the moneys so expended result in a significant
11 increase in property value. Such statement shall constitute a
12 lien upon the said land. The lien shall not exceed the amount
13 determined by the appraisal to be the increase in the market
14 value of the land as a result of the restoration, reclamation,
15 abatement, control or prevention of the adverse effects of past
16 surface mining practices. No lien may be filed against the
17 property of any person in accordance with this subsection, who
18 owned the surface prior to the second day of May, one

19 thousand nine hundred seventy-seven, and who neither
20 consented to, nor participated in, nor exercised control over
21 the mining operation which necessitated the reclamation
22 performed hereunder.

23 (b) The land owner may petition the commissioner within
24 sixty days of the filing of the lien to determine the increase
25 in the market value of the land as a result of the restoration,
26 reclamation, abatement, control or prevention of the adverse
27 effects of past coal mining practices. The amount reported to
28 be the increase in value of the premises shall constitute the
29 amount of lien and shall be recorded with the statement herein
30 provided. Any party aggrieved by the decision may appeal to
31 the circuit court of the county in which the land is located.

32 (c) The statement filed pursuant to subsection (a) of this
33 section, shall constitute a lien upon the said land as of the
34 date of the expenditure of the moneys and shall have priority
35 as a lien second only to the lien of real estate taxes imposed
36 upon said land.

§22-3-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and abandoned
2 tunnels, shafts and entryways and subsidence resulting from
3 any previous coal surface-mining operation constitute a hazard
4 to the public welfare and safety and that surface impacts of
5 any underground or surface-mining operation may degrade the
6 environment. The commissioner is authorized to fill such
7 voids, seal such abandoned tunnels, shafts and entryways, and
8 reclaim surface impacts of underground or surface mines and
9 remove water and other matter from mines which the
10 commissioner determines could endanger life and property,
11 constitute a hazard to the public welfare and safety or degrade
12 the environment.

13 (b) In those instances where coal mine waste piles are being
14 reworked for conservation purposes, the incremental costs of
15 disposing of the wastes from such operations by filling voids
16 and sealing tunnels may be eligible for funding, if the disposal
17 of those wastes meets the purposes of this article.

18 (c) The commissioner may acquire by purchase, donation,
19 easement or otherwise such interest in land as he determines
20 necessary to carry out the provisions of this section.

§22-3-9. General and miscellaneous powers and duties of commissioner; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

1 (a) The commissioner is authorized to engage in any work
2 and to do all things necessary and proper, including
3 promulgation of rules and regulations, to implement and
4 administer the provisions of this article.

5 (b) The commissioner is authorized to engage in cooperative
6 projects under this article with any other agency of the United
7 States of America, any state, county or municipal agency or
8 subdivision thereof.

9 (c) The commissioner may request the attorney general, who
10 is hereby authorized to initiate, in addition to any other
11 remedies provided for in this article, in any court of competent
12 jurisdiction, an action in equity for an injunction to restrain
13 any interference with the exercise of the right to enter or to
14 conduct any work provided in this article.

15 (d) The commissioner has the authority to construct and
16 operate a plant or any facilities for the control and treatment
17 of water pollution resulting from mine drainage. The extent
18 of this control and treatment may be dependent upon the
19 ultimate use of the water: *Provided*, That this subsection shall
20 not repeal or supersede any portion of the applicable federal
21 or state water pollution control laws and no control or
22 treatment under this section may be less than that required
23 under any applicable federal or state water pollution control
24 law. The construction of any such facilities may include major
25 interceptors and other facilities appurtenant to the plant.

26 (e) All departments, boards, commissions and agencies of
27 the state shall cooperate with the commissioner by providing
28 technical expertise, personnel, equipment, materials and
29 supplies to implement and administer the provisions of this
30 article.

ARTICLE 4. RECLAMATION BOARD OF REVIEW.

§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

§22-4-2. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.

§22-4-3. Appeal from order of board; judicial review; temporary relief.

§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

1 (a) There is hereby continued a reclamation board of review
2 consisting of five members to be appointed by the governor
3 with the advice and consent of the Senate for terms of five
4 years, except that the terms of the first five members of said
5 board shall be for one, two, three, four and five years,
6 respectively, as designated by the governor at the time of the
7 appointment. Any vacancy in the office of a member of said
8 board shall be filled by appointment by the governor for the
9 unexpired term of the member whose office is vacant. Each
10 vacancy occurring on said board shall be filled by appointment
11 within sixty days after such vacancy occurs. One of the
12 appointees to such board shall be a person who, by reason
13 of his previous vocation, employment or affiliations, can be
14 classed as one capable and experienced in coal mining. One
15 of the appointees to such board shall be a person who, by
16 reason of his previous training and experience, can be classed
17 as one capable and experienced in the practice of agriculture
18 and who represents the general public interest. One of the
19 appointees to such board shall be a person who, by reason
20 of his previous training and experience, can be classed as one
21 capable and experienced in the modern forestry practices and
22 who represents the general public interest. One of the
23 appointees to such board shall be a person who, by reasons
24 of his previous training and experience, can be classed as one
25 capable and experienced in engineering. One of the appointees
26 of such board shall be a person who, by reason of his previous
27 training and experience, can be classed as one capable and
28 experienced in water pollution control or water conservation
29 problems. Not more than three members shall be members of
30 the same political party.

31 (b) The board may employ supporting staff including
32 hearings examiners to aid and assist in performing its
33 responsibilities under this article.

34 (c) Three members shall constitute a quorum and no action
35 of the board is valid unless it has the concurrence of at least
36 three members. The board shall keep a record of its
37 proceedings. Each member shall be paid as compensation for
38 his work as such member, from funds appropriated for such

39 purposes, seventy-five dollars per day when actually engaged
40 in the performance of his work as a board member. In addition
41 to such compensation, each member shall be reimbursed for
42 all reasonable and necessary expenses actually incurred in the
43 performance of his duties, except that in the event the expenses
44 are paid, or are to be paid, by a third party, the members shall
45 not be reimbursed by the state.

46 (d) Annually, one member shall be elected as chairman and
47 another member shall be elected as vice chairman. Such
48 officers shall serve for terms of one year. The governor may
49 remove any member of the board from office for inefficiency,
50 neglect of duty, malfeasance or nonfeasance, after delivery to
51 such member the charges against him in writing, together with
52 at least ten days' written notice of the time and place at which
53 the governor will publicly hear such member, either in person
54 or by counsel, in defense of the charges against him, and
55 affording the member such hearing. If such member is
56 removed from office, the governor shall file in the office of
57 the secretary of state a complete statement of the charges made
58 against such member and a complete report of the proceedings
59 thereon. In such case the action of the governor removing such
60 member from office shall be final.

**§22-4-2. Appeals to the board; hearings before board; subpoena
and subpoena duces tecum; records; findings and orders
of the board.**

1 (a) Any person having an interest which is or may be
2 adversely affected by any order of the commissioner's
3 assessment officer or a decision of the commissioner to grant,
4 deny, modify, renew or significantly revise a permit, or a
5 decision of the commissioner concerning a bond release
6 pursuant to section twenty-three, article three, chapter twenty-
7 two-a, may appeal that decision to the board or may intervene
8 in a timely manner in any such pending appeal. The person
9 so appealing to the board shall be known as the appellant,
10 and the commissioner shall be known as the appellee. The
11 appellant and appellee are deemed to be parties to the appeal.
12 Any hearing shall be subject to the requirements of chapter
13 twenty-nine-a of this code.

14 (b) The appeal shall be in writing and shall set forth the
15 action complained of and the specific grounds upon which the

16 appeal is based. Within thirty days after the appellant is
17 notified of the decision of the commissioner, or within fifteen
18 days after the appellant is notified of the decision of the
19 assessment officer, the appellant or any person with an interest
20 which is or may be adversely affected may request a hearing
21 on the reasons for the decision complained of. A notice of the
22 appeal shall be filed with the commissioner within three days
23 after the appeal is filed with the board.

24 (c) Upon the filing of the appeal, the board shall fix the
25 time and place at which the hearing on the appeal will be held,
26 which hearing shall be held within thirty days after the notice
27 of appeal is filed, and shall give the appellant, and the
28 commissioner at least twenty days' written notice thereof by
29 certified mail. The board may postpone or continue any
30 hearing upon its own motion or motion of the parties to the
31 appeal.

32 (d) Not later than five days prior to the time fixed for the
33 hearing on the appeal, the commissioner shall prepare and
34 certify to the board a complete record of the proceedings of
35 the commissioner out of which the appeal arises, including all
36 documents and correspondence related to the matter.

37 (e) The board shall hear the appeal de novo and any party
38 to the appeal may submit evidence. For the purpose of
39 conducting a hearing on an appeal, the board may require the
40 attendance of witnesses and the production of books, records
41 and papers, and it may, and at the request of any party it shall,
42 issue subpoenas for witnesses or subpoenas duces tecum to
43 compel the production of any books, records or papers,
44 directed to the sheriff of the county where witnesses, books,
45 records or papers are found, which subpoenas and subpoenas
46 duces tecum shall be served and returned in the same manner
47 as subpoenas and subpoenas duces tecum in civil litigation are
48 served and returned. The fees and allowances for mileage of
49 sheriffs and witnesses shall be the same as those permitted in
50 civil litigation in trial courts. All fees and mileage expenses
51 incurred and the expense of preparing a copy of the record
52 at the request of the appellant shall be paid by the appellant.
53 The board may visit the site of the activity or proposed activity
54 which is the subject of the hearing and take such additional
55 evidence as it considers necessary provided that all parties and
56 intervenors be given notice of the visit and are given an

57 opportunity to accompany the board.

58 (f) In case of disobedience or neglect of any subpoena or
59 subpoena duces tecum served on any person, or the refusal
60 of any witness to testify to any matter regarding which he may
61 be lawfully interrogated, the circuit court of the county in
62 which the disobedience, neglect or refusal occurs, on
63 application of the board or any member thereof, shall compel
64 obedience by attachment proceedings for contempt as in the
65 case of disobedience of the requirements of a subpoena or
66 subpoena duces tecum issued from the court of a refusal to
67 testify therein. Witnesses at the hearings shall testify under
68 oath and any member of the board may administer oaths or
69 affirmations to persons who so testify.

70 (g) A stenographic record of the testimony and other
71 evidence submitted shall be made. The record shall include all
72 of the testimony and other evidence and the rulings on the
73 admissibility of evidence, but any party may at the time object
74 to the admission of any evidence and except to the rulings of
75 the board thereon, and if the board refuses to admit evidence
76 the party offering the same may make a proffer thereof, and
77 the proffer shall be made a part of the record of the hearing.

78 (h) If upon completion of the hearing the board finds that
79 the decision appealed from was lawful and reasonable, it shall
80 make a written order affirming the same, or if the board finds
81 that the decision was not supported by substantial evidence
82 in the record considered as a whole, it shall make a written
83 order reversing or modifying the decision appealed from.
84 Every order made by the board shall contain a written finding
85 by the board of the facts upon which the order is based. On
86 all appeals to the board, the board shall issue a final decision
87 thirty days after the hearing or within thirty days after the
88 testimony presented at the hearing has been transcribed and
89 checked for accuracy. Notice of the making of such order shall
90 be given forthwith to each party to the appeal by mailing a
91 certified copy thereof to each party by registered or certified
92 mail. The order of the board shall be final unless vacated upon
93 judicial review thereof.

§22-4-3. Appeal from order of board; judicial review; temporary relief.

1 (a) Within thirty days after receipt of an order from the

2 board, any applicant, any person with an interest which is or
3 may be adversely affected, or the appellee who has participated
4 in the administrative proceedings before the board and who
5 is aggrieved by the decision of the board may obtain judicial
6 review thereof by appealing to the circuit court of Kanawha
7 County or the county in which the surface-mining operation
8 is located. Any party desiring to so appeal shall file with the
9 board a notice of appeal, designating the order appealed from,
10 stating whether the appeal is taken on questions of law,
11 questions of fact or questions of law and fact, and stating
12 specific grounds upon which the appeal is based. A copy of
13 the notice shall also be filed by the appellant with the court
14 and shall be mailed or otherwise delivered to the appellee. The
15 notice and copies thereof shall be filed and mailed or otherwise
16 delivered within thirty days after the date upon which the
17 appellant received notice from the board by certified mail of
18 the making of the order appealed from. No appeal bond may
19 be required to make effective an appeal on questions of law,
20 questions of fact or questions of law and fact.

21 (b) The filing of a notice of appeal shall not, unless
22 specifically ordered by the court, operate as a stay of the order
23 of the board. The court may, under such conditions as it may
24 prescribe, grant such temporary relief as it deems appropriate
25 pending final determination of the proceedings if:

26 (1) All parties to the proceedings have been notified and
27 given an opportunity to be heard on a request for temporary
28 relief;

29 (2) The person requesting relief shows that there is a
30 substantial likelihood that he will prevail on the merits of the
31 final determination of the proceedings; and

32 (3) The relief will not adversely affect the public health or
33 safety or cause significant imminent environmental harm to
34 land, air or water resources.

35 (c) Within thirty days after receipt of the notice of appeal,
36 the board shall prepare and file in the court the complete
37 record of the proceedings out of which the appeal arises,
38 including a transcript of the testimony and other evidence
39 which was submitted before the board. The expense of
40 preparing a copy of the record shall be taxed as a part of the
41 costs of the appeal. The appellant shall provide security for

42 costs satisfactory to the court. Upon demand by a party, the
43 board shall furnish, at the cost of the party requesting the
44 same, a copy of such record. In the event such complete record
45 is not filed in the court within the time provided for in this
46 section, either party may apply to the court to have the case
47 docketed, and the court shall order such record filed.

48 (d) Appeals taken on questions of law, fact or both, shall
49 be heard upon assignment of error filed in the case or set out
50 in the briefs of the appellant. Errors not argued by brief may
51 be disregarded. The court shall hear the appeal solely upon
52 the record made before the board.

53 (e) The court may affirm, vacate, modify, set aside or
54 remand any order of the board for further action as the court
55 may direct. Any order shall be affirmed if the court concludes
56 that the order is supported by substantial evidence based on
57 the record as a whole. The judgment of the court shall be final
58 unless reversed, vacated or modified on appeal to the supreme
59 court of appeals of West Virginia, and jurisdiction is hereby
60 conferred upon the court to hear and entertain the appeals
61 upon application made therefor in the manner and within the
62 time provided for civil appeals generally.

63 (f) The availability of the review shall not be construed to
64 limit the operation of the rights established in section twenty-
65 five, article three, chapter twenty-two-a of this code except as
66 provided therein.

67 (g) Whenever an order is issued under this section, or as
68 a result of any administrative or judicial proceeding under this
69 article, at the request of any person, a sum equal to the
70 aggregate amount of all costs and expenses, including attorney
71 fees, as determined by the board or the court to have been
72 reasonably incurred by such person for or in connection with
73 his participation in the proceedings, may be assessed against
74 either party by the board or the court.

ARTICLE 5. BOARD OF APPEALS.

§22-5-1. Board of appeals.

1 There is hereby continued a board of appeals, consisting of
2 three members. Two members of the board shall be appointed
3 by the governor, one person who by reason of previous
4 training and experience may reasonably be said to represent

5 the viewpoint of miners, and one person who by reason of
6 previous training and experience may reasonably be said to
7 represent the viewpoint of the operators. The third person,
8 who shall be chairman of the board, and who must not have
9 had any connection at any time with the coal industry or an
10 organization representing miners, shall be selected by the two
11 members appointed by the governor. The term of office of
12 members of the board shall be five years.

13 The function and duties of the board shall be to hear
14 appeals, make determinations on questions of miners'
15 entitlements due to withdrawal orders and appeals from
16 discharge or discrimination, and suspension of certification
17 certificates.

18 The chairman of the board shall have the power to
19 administer oaths and subpoena witnesses and require
20 production of any books, papers, records or other documents
21 relevant or material to the appeal inquiry.

22 Each member of the board shall receive one hundred dollars
23 per diem while actually engaged in the performance of the
24 work of the board. Each member shall be reimbursed for all
25 reasonable and necessary expenses actually incurred during the
26 performance of their duties. Each member shall receive mileage
27 expense reimbursement at the rate established by rule and
28 regulation of the commissioner of the department of finance
29 and administration for in-state travel of public employees. No
30 reimbursement for expenses shall be made except upon an
31 itemized account, properly certified by such members of the
32 board. All reimbursement for expenses shall be paid out of
33 the state treasury upon a requisition upon the state auditor.

34 Board members, before performing any duty, shall take and
35 subscribe to the oath required by section five, article IV of
36 the constitution of West Virginia.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

- §22-6-1. Declaration of legislative findings and purpose.
- §22-6-2. Definitions.
- §22-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.
- §22-6-4. Board powers and duties.
- §22-6-4a. Preliminary procedures for promulgation of rules and regulations.
- §22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.

§22-6-5. Effect of rules and regulations.

§22-6-6. Reports.

§22-6-7. Compensation and expenses of board members.

§22-6-1. Declaration of legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the congressional declara-
3 tion made in the "Federal Coal Mine Health and Safety Act
4 of 1969" that "the first priority and concern of all in the coal
5 mining industry must be the health and safety of its most
6 precious resource—the miner";

7 (2) Coal mining is highly specialized, technical and complex
8 and it requires frequent review, refinement and improvement
9 of standards to protect the health and safety of miners;

10 (3) During each session of the Legislature, coal mine health
11 and safety standards are proposed which require knowledge
12 and comprehension of scientific and technical data related to
13 coal mining;

14 (4) The formulation of appropriate regulations and practices
15 to improve health and safety and provide increased protection
16 of miners can be accomplished more effectively by persons
17 who have experience and competence in coal mining and coal
18 mine health and safety.

19 (b) In view of the foregoing findings, it is the purpose of
20 this article to:

21 (1) Continue the board of coal mine health and safety;

22 (2) Require such board to continue as standard rules and
23 regulations the coal mine health and safety provisions of this
24 code;

25 (3) Compel the board to review such standard rules and
26 regulations and, when deemed appropriate to improve or
27 enhance coal mine health and safety, to revise the same or
28 develop and promulgate new rules and regulations dealing with
29 coal mine health and safety; and

30 (4) Authorize such board to conduct such other activities
31 as it deems necessary to implement the provisions of this
32 chapter.

§22-6-2. Definitions.

1 Unless the context in which a word or phrase appears clearly
2 requires a different meaning, the words and phrases defined
3 in section one, article one-a, chapter twenty-two-a of this code
4 shall have, when used in this article, the meaning therein
5 assigned to them. For the purpose of this article "board"
6 means the board of coal mine health and safety continued by
7 section three of this article.

§22-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The board of coal mine health and safety, heretofore
2 established, is continued as provided by this article. The board
3 shall consist of seven members who shall be residents of this
4 state, and who shall be appointed as hereinafter specified in
5 this section:

6 (1) The governor shall appoint one member to represent the
7 viewpoint of those operators in this state whose individual
8 aggregate production exceeds one million tons annually and
9 one member to represent the viewpoint of those operators in
10 this state whose individual aggregate production is less than
11 one million tons annually, which tonnage shall include tonnage
12 produced by affiliated, parent and subsidiary companies and
13 tonnage produced by companies which have a common
14 director or directors, shareholder or shareholders, owner or
15 owners. When such members are to be appointed, the governor
16 may request from the major trade association representing
17 operators in this state a list of three nominees for each such
18 position on the board. All such nominees shall be persons with
19 special experience and competence in coal mine health and
20 safety. There shall be submitted with such list a summary of
21 the qualifications of each nominee. If the full lists of nominees
22 are submitted in accordance with the provisions of this
23 subdivision, the governor shall make his appointments from
24 the persons so nominated. For purposes of this subdivision,
25 the major trade association representing operators in this state
26 shall be deemed to be that association which represents
27 operators accounting for over one half of the coal produced
28 in mines in this state in the year prior to the year in which
29 the appointment is to be made.

30 (2) The governor shall appoint two members who can
31 reasonably be expected to represent the viewpoint of the

32 working miners of this state. If the major employee organi-
33 zation representing coal miners in this state is divided into
34 administrative districts, such members shall not be from the
35 same administrative district. The highest ranking official
36 within the major employee organization representing coal
37 miners within this state shall, upon request by the governor,
38 submit a list of three nominees for each such position on the
39 board: *Provided*, That if the major employee organization
40 representing coal miners in this state is divided into adminis-
41 trative districts, and if there are two vacancies to be filled in
42 accordance with the provisions of this subdivision, not more
43 than two persons on each list of three nominees shall be from
44 the same administrative district and at least three districts shall
45 be represented on the two lists submitted, and if there is one
46 vacancy to be filled, no names shall be submitted of persons
47 from the same administrative district already represented on
48 the board. Said nominees shall have a background in coal
49 mine health and safety, and shall at the time of their
50 appointment be employed in a position which involves the
51 protection of health and safety of miners. There shall be
52 submitted with such list a summary of the qualifications of
53 each nominee. If the full lists of nominees are submitted in
54 accordance with the provisions of this subdivision, the
55 governor shall make his appointments from the persons so
56 nominated.

57 (3) The governor shall appoint one public member who is
58 professionally qualified in the field of occupational health and
59 safety and who shall be (A) an employee of the institute of
60 labor studies at West Virginia University or (B) a person who
61 is engaged in or who has broad experience in occupational
62 health and safety from the perspective of the worker. Such
63 nominee shall have technical experience in occupational health
64 and safety or education and experience in such field: *Provided*,
65 That the nominee shall not have been, prior to his appoint-
66 ment to the board, employed by a mining or industrial
67 business entity in a managerial or supervisory position, or shall
68 not have been employed by the major employee organization
69 representing coal miners in this state, or shall not have been
70 a miner.

71 (4) The governor shall appoint one public member who is
72 professionally qualified in the field of occupational health and

73 safety and who shall have a degree in engineering or industrial
74 safety and a minimum of five years' experience in the field of
75 industrial safety engaged in constructing, designing, developing
76 or administering safety programs: *Provided*, That the nominee
77 shall not have been, prior to his appointment to the board,
78 employed by a mining business entity in a managerial or
79 supervisory position or shall not have been employed by the
80 major employee organization representing coal miners in this
81 state, or shall not have been a miner.

82 (5) All appointments made by the governor under the
83 provisions of subdivisions (1), (2), (3) and (4) of this subsection
84 shall be with the advice and consent of the Senate.

85 (6) The seventh member of the board shall be the commis-
86 sioner of the department of energy who shall serve as chairman
87 of the board. The commissioner shall furnish to the board such
88 secretarial, clerical, technical, research and other services as are
89 deemed necessary to the conduct of the business of the board,
90 not otherwise furnished by the board.

91 (b) Any unexpired term of members of the board under
92 prior enactments of this section shall end upon the appoint-
93 ment of members in accordance with the provisions of this
94 section. Upon the initial appointment of members, the
95 governor shall specify the length of the beginning term which
96 each member shall serve, pursuant to the following formula:

97 (1) With regard to the two members appointed in accor-
98 dance with the provisions of subdivision (1), subsection (a) of
99 this section, one member shall serve a beginning term of one
100 year, and one member shall serve a beginning term of two
101 years.

102 (2) With regard to the two members appointed in accor-
103 dance with the provisions of subdivision (2), subsection (a) of
104 this section, one member shall serve a beginning term of one
105 year and one member shall serve a beginning term of two
106 years.

107 (3) The members appointed in accordance with the provi-
108 sions of subdivisions (3) and (4), subsection (a) of this section
109 shall each be appointed to serve a beginning term of three
110 years.

111 (4) Following the beginning terms provided for in this

112 subsection, members shall be nominated and appointed in the
113 manner provided for in this section and shall serve for a term
114 of three years. Members shall be eligible for reappointment.

115 (c) The governor shall appoint a health and safety admin-
116 istrator in accordance with the provisions of section four-b of
117 this article, who shall certify all official records of the board.
118 The health and safety administrator shall be a full-time officer
119 of the board of coal mine health and safety with the duties
120 provided for in section four-b of this article. The health and
121 safety administrator shall have such education and experience
122 as the governor deems necessary to properly investigate areas
123 of concern to the board in the development of rules and
124 regulations governing mine health and safety. The governor
125 shall appoint as health and safety administrator a person who
126 has an independent and impartial viewpoint on issues
127 involving mine safety. The health and safety administrator
128 shall be a person who has not been, during the two years
129 immediately preceding his appointment, and is not during his
130 term, an officer, trustee, director, substantial shareholder or
131 employee of any coal operator, or an employee or officer of
132 an employee organization, or a spouse of any such person. The
133 health and safety administrator shall have the expertise to
134 draft proposed rules and regulations and shall prepare such
135 rules and regulations as are required by this code and on such
136 other areas as will improve coal mine health and safety.

137 (d) The board shall meet at least once during each calendar
138 month, or more often as may be necessary, and at other times
139 upon the call of the chairman, or upon the request of any three
140 members of the board. Under the direction of the board, the
141 health and safety administrator shall prepare an agenda for
142 each board meeting giving priority to the promulgation of
143 rules and regulations as may be required from time to time
144 by this code, and as may be required to improve coal mine
145 health and safety. The health and safety administrator shall
146 provide each member of the board with notice of the meeting
147 and the agenda as far in advance of the meeting as practical,
148 but in any event, at least five days prior thereto. No meeting
149 of the board shall be conducted unless said notice and agenda
150 are given to the board members at least five days in advance,
151 as provided herein, except in cases of emergency, as declared
152 by the chairman, in which event members shall be notified of

153 the board meeting and the agenda in a manner to be
154 determined by the chairman: *Provided*, That upon agreement
155 of a majority of the quorum present, any scheduled meeting
156 may be ordered recessed to another day certain without further
157 notice of additional agenda.

158 When proposed rules and regulations are to be finally
159 adopted by the board, copies of such proposed rules and
160 regulations shall be delivered to members not less than five
161 days before the meeting at which such action is to be taken.
162 If not so delivered, any final adoption or rejection of rules and
163 regulations shall be considered on the second day of a meeting
164 of the board held on two consecutive days, except that by the
165 concurrence of at least four members of the board, the board
166 may suspend this rule of procedure and proceed immediately
167 to the consideration of final adoption or rejection of rules and
168 regulations. When a member shall fail to appear at three
169 consecutive meetings of the board or at one half of the
170 meetings held during a one-year period, the health and safety
171 administrator shall notify the member and the governor of
172 such fact. Such member shall be removed by the governor
173 unless good cause for absences is shown.

174 (e) Whenever a vacancy on the board occurs, nominations
175 and appointments shall be made in the manner prescribed in
176 this section: *Provided*, That in the case of an appointment to
177 fill a vacancy, nominations of three persons for each such
178 vacancy shall be requested by and submitted to the governor
179 within thirty days after the vacancy occurs by the major trade
180 association or major employee organization, if any, which
181 nominated the person whose seat on the board is vacant. The
182 vacancy shall be filled by the governor within thirty days of
183 his receipt of the list of nominations.

184 (f) A quorum of the board shall be five members which shall
185 include the commissioner, at least one member representing
186 the viewpoint of operators and at least one member repres-
187 enting the viewpoint of the working miners, and the board may
188 act officially by a majority of those members who are present.

§22-6-4. Board powers and duties.

- 1 (a) At the organizational meeting of the board required by
- 2 subsection (c), section three of this article, the board shall
- 3 adopt as standard rules and regulations the "coal mine health

4 and safety provisions of chapter twenty-two-a of this code.”
5 Such standard rules and regulations and any other rules and
6 regulations shall be adopted by the board without regard to
7 the provisions of chapter twenty-nine-a of this code. The board
8 of coal mine health and safety shall devote its time toward
9 promulgating rules and regulations in those areas specifically
10 directed by chapter twenty-two-a of this code and those
11 necessary to prevent fatal accidents and injuries.

12 (b) The board shall review such standard rules and
13 regulations and, when deemed appropriate to improve or
14 enhance coal mine health and safety, revise the same or
15 develop and promulgate new rules and regulations dealing with
16 coal mine health and safety.

17 (c) The board shall develop, promulgate and revise, as may
18 be appropriate, rules and regulations as are necessary and
19 proper to effectuate the purposes of article two, chapter
20 twenty-two-a of this code and to prevent the circumvention
21 and evasion thereof, all without regard to the provisions of
22 chapter twenty-nine-a of this code:

23 (1) Upon consideration of the latest available scientific data
24 in the field, the technical feasibility of standards, and
25 experience gained under this and other safety statutes, such
26 rules and regulations may expand protections afforded by
27 chapter twenty-two-a of this code notwithstanding specific
28 language therein, and such rules and regulations may deal with
29 subject areas not covered by chapter twenty-two-a of this code
30 to the end of affording the maximum possible protection to
31 the health and safety of miners.

32 (2) No rules or regulations promulgated by the board of
33 mines shall reduce or compromise the level of safety or
34 protection afforded miners below the level of safety or
35 protection afforded by chapter twenty-two-a of this code.

36 (3) Any miner or representative of any miner, or any coal
37 operator shall have the power to petition the circuit court of
38 Kanawha County for a determination as to whether any rule
39 or regulation promulgated or revised reduces the protection
40 afforded miners below that provided by chapter twenty-two-
41 a of this code, or is otherwise contrary to law: *Provided*, That
42 any rule or regulation properly promulgated by the board
43 pursuant to the terms and conditions of chapter twenty-two-

44 a of this code shall create a rebuttable presumption that said
45 rule or regulation does not reduce the protection afforded
46 miners below that provided by chapter twenty-two-a of this
47 code.

48 (4) The commissioner shall cause proposed rules and
49 regulations and a notice thereof to be posted in section sixteen,
50 article one-a, chapter twenty-two-a of this code. The
51 commissioner shall deliver a copy of such proposed rules
52 and regulations and accompanying notice to each operator
53 affected. A copy of such proposed rules and regulations shall
54 be provided to any individual by the commissioner upon
55 request. The notice of proposed rules and regulations shall
56 contain a summary in plain language explaining the effect of
57 the proposed rules and regulations.

58 (5) The board shall afford interested persons a period of not
59 less than thirty days after releasing proposed rules and
60 regulations to submit written data or comments. The board
61 may, upon the expiration of such period and after consider-
62 ation of all relevant matters presented, promulgate such rules
63 and regulations with such modifications as it may deem
64 appropriate.

65 (6) On or before the last day of any period fixed for the
66 submission of written data or comments under subdivision (5)
67 of this section, any interested person may file with the board
68 written objections to a proposed rule or regulation, stating the
69 grounds therefor and requesting a public hearing on such
70 objections. As soon as practicable after the period for filing
71 such objections has expired, the board shall release a notice
72 specifying the proposed rules or regulations to which
73 objections have been filed and a hearing requested.

74 (7) Promptly after any such notice is released by the board
75 under subdivision (6) of this section, the board shall issue
76 notice of, and hold a public hearing for the purpose of
77 receiving relevant evidence. Within sixty days after completion
78 of the hearings, the board shall make findings of fact which
79 shall be public, and may promulgate such rules and regulations
80 with such modifications as it deems appropriate. In the event
81 the board determines that a proposed rule or regulation should
82 not be promulgated or should be modified, it shall within a
83 reasonable time publish the reasons for its determination.

84 (8) All rules and regulations promulgated by the board shall
85 be published in the state register and shall continue in effect
86 until modified or superseded in accordance with the provisions
87 of this chapter.

88 (d) To carry out its duties and responsibilities, the board
89 is authorized to employ such personnel, including legal
90 counsel, experts and consultants, as it deems necessary. In
91 addition, the board, within the appropriations provided for by
92 the Legislature, may conduct or contract for research and
93 studies and shall be entitled to the use of the services, facilities
94 and personnel of any agency, institution, school, college or
95 university of this state.

96 (e) The commissioner shall within sixty days of a coal
97 mining fatality or fatalities provide the board with all available
98 reports regarding such fatality or fatalities.

99 The board shall view all such reports, receive any additional
100 information, and may, on its own initiative, ascertain the cause
101 or causes of such coal mining fatality or fatalities. Within one
102 hundred twenty days of such review of each such fatality, the
103 board shall promulgate such rules and regulations as are
104 necessary to prevent the recurrence of such fatality, unless a
105 majority of the quorum present determines that no rules and
106 regulations shall assist in the prevention of the specific type
107 of fatality. Likewise, the board shall annually, not later than
108 the first day of July, review the major causes of coal mining
109 injuries during the previous calendar year, reviewing the causes
110 in detail, and shall promulgate such rules and regulations as
111 may be necessary to prevent the recurrence of such injuries.

112 Further, the board shall, on or before the tenth day of
113 January of each year, submit a report to the governor,
114 president of the Senate and speaker of the House, which report
115 shall include, but not be limited to:

116 (1) The number of fatalities during the previous calendar
117 year, the apparent reason for each fatality as determined by
118 the department of energy and the action, if any, taken by the
119 board to prevent such fatality;

120 (2) Any rules and regulations promulgated by the board
121 during the last year;

122 (3) What rules and regulations the board intends to

123 promulgate during the current calendar year;

124 (4) Any problem the board is having in its effort to
125 promulgate rules and regulations to enhance health and safety
126 in the mining industry;

127 (5) Recommendations, if any, for the enactment, repeal or
128 amendment of any statute which would cause the enhancement
129 of health and safety in the mining industry;

130 (6) Any other information the board deems appropriate;

131 (7) In addition to the report by the board, as herein
132 contained, each individual member of said board shall have
133 the right to submit a separate report, setting forth any views
134 contrary to the report of the board, and the separate report,
135 if any, shall be appended to the report of the board and be
136 considered a part thereof.

§22-6-4a. Preliminary procedures for promulgation of rules and regulations.

1 (a) Prior to the posting of proposed rules and regulations
2 as provided for in subsection (c), section four of this article,
3 the board shall observe the preliminary procedure for the
4 development of rules and regulations set forth in this section:

5 (1) During a board meeting or at any time when the board
6 is not meeting, any board member may suggest to the health
7 and safety administrator, or such administrator on his own
8 initiative may develop, subjects for investigation and possible
9 regulation;

10 (2) Upon receipt of a suggestion for investigation, the health
11 and safety administrator shall prepare a report, to be given
12 at the next scheduled board meeting, of the technical evidence
13 available which relates to such suggestion, the staff time
14 required to develop the subject matter, the legal authority of
15 the board to act on the subject matter, including a description
16 of findings of fact and conclusions of law which will be
17 necessary to support any proposed rules and regulations;

18 (3) The board shall by majority vote of those members who
19 are present determine whether the health and safety admin-
20 istrator shall prepare a draft regulation concerning the
21 suggested subject matter;

22 (4) After reviewing the draft regulation, the board shall
23 determine whether the proposed rules and regulations should
24 be posted and made available for comment as provided for
25 in section four of this article;

26 (5) The board shall receive and consider those comments to
27 the proposed rules and regulations as provided for in section
28 four of this article;

29 (6) The board shall direct the health and safety administra-
30 tor to prepare for the next scheduled board meeting findings
31 of fact and conclusions of law for the proposed rules and
32 regulations, which may incorporate comments received and
33 technical evidence developed, and which are consistent with
34 section four of this article;

35 (7) The board shall adopt or reject or modify the proposed
36 findings of fact and conclusions of law; and

37 (8) The board shall make a final adoption or rejection of
38 the rules and regulations.

39 (b) By the concurrence of at least four members of the
40 board, the board may dispense with the procedure set out in
41 (a) above or any other procedural rule established, except that
42 the board shall in all instances when adopting rules and
43 regulations prepare findings of fact and conclusions of law
44 consistent with this section and section four of this article.

45 (c) Without undue delay, the board shall adopt an order of
46 business for the conduct of meetings which will promote the
47 orderly and efficient consideration of proposed rules and
48 regulations in accordance with the provisions of this section.

**§22-6-4b. Health and safety administrator; qualifications; duties;
employees; compensation.**

1 (a) The governor shall appoint the health and safety
2 administrator of the board for a term of employment of one
3 year. The health and safety administrator shall be entitled to
4 have his contract of employment renewed on an annual basis
5 except where such renewal is denied for cause: *Provided*, That
6 the governor shall have the power at any time to remove the
7 health and safety administrator for misfeasance, malfeasance
8 or nonfeasance: *Provided, however*, That the board shall have
9 the power to remove the health and safety administrator

10 without cause upon the concurrence of five members of the
11 board.

12 (b) The health and safety administrator shall work at the
13 direction of the board, independently of the commissioner of
14 the department of energy, and shall have such authority and
15 perform such duties as may be required or necessary to
16 effectuate this article.

17 (c) In addition to the health and safety administrator, there
18 shall be such other research employees hired by the health and
19 safety administrator as the board determines to be necessary.
20 The health and safety administrator shall provide supervision
21 and direction to the other research employees of the board in
22 the performance of their duties.

23 (d) The employees of the board shall be compensated at
24 rates determined by the board. The salary of the health and
25 safety administrator shall be fixed by the governor: *Provided,*
26 That the salary of the health and safety administrator shall
27 not be reduced during his annual term of employment or upon
28 the renewal of his contract for an additional term. Such salary
29 shall be fixed for any renewed term at least ninety days before
30 the commencement thereof.

31 (e) The health and safety administrator shall review all coal
32 mining fatalities and major causes of injuries as mandated by
33 section four of this article. An analysis of such fatalities and
34 major causes of injuries shall be prepared for consideration by
35 the board within ninety days of the occurrence of the accident.

36 (f) At the direction of the board, the administrator shall also
37 conduct an annual study of occupational health issues relating
38 to employment in and around coal mines of this state and
39 submit a report to the board with findings and proposals to
40 address the issues raised in such study. The administrator shall
41 be responsible for preparing the annual reports required by
42 subsection (e), section four of this article and section six of
43 this article.

§22-6-5. Effect of rules and regulations.

1 The standard rules and regulations and any rules and
2 regulations promulgated by the board shall have the same
3 force and effect of law as if enacted by the Legislature as a
4 part of article two, chapter twenty-two-a of this code and any

5 violation of any such rule and regulation shall be deemed to
6 be a violation of law or of a health or safety standard within
7 the meaning of this chapter.

§22-6-6. Reports.

1 Prior to each regular session of the Legislature, the board
2 shall submit to the Legislature an annual report upon the
3 subject matter of this article, the progress concerning the
4 achievement of its purpose and any other relevant information,
5 including any recommendations it deems appropriate.

§22-6-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by the
2 state shall receive one hundred ten dollars per diem while
3 actually engaged in the performance of the duties of the board.
4 Each member shall be reimbursed for all reasonable and
5 necessary expenses actually incurred during the performance
6 of his duties, except that in the event the expenses are paid
7 by a third party, the member shall not be reimbursed by the
8 state. Each member shall receive meals, lodging and mileage
9 expense reimbursements at the rates established by rule and
10 regulation of the commissioner of the department of finance
11 and administration for in-state travel of public employees. The
12 reimbursement shall be paid out of the state treasury upon a
13 requisition upon the state auditor, properly certified by the
14 commissioner of the department of energy. No employer shall
15 prohibit a member of the board from exercising leave of
16 absence from his place of employment in order to attend a
17 meeting of the board or a meeting of a subcommittee of the
18 board, or to prepare for a meeting of the board, any contract
19 of employment to the contrary notwithstanding.

ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.

- §22-7-1. Declaration of public policy; legislative findings.
- §22-7-2. Definitions.
- §22-7-3. Application of article; exclusions.
- §22-7-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.
- §22-7-5. Same—Meetings; notice; general powers and duties.
- §22-7-6. Rules and regulations; notice requirements.
- §22-7-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.
- §22-7-8. Distance limitations.

- §22-7-9. Application to establish a drilling unit; contents; notice.
- §22-7-10. Establishment of drilling units; hearings; orders.
- §22-7-11. Pooling of interests in a drilling unit; limitations.
- §22-7-12. Effect of order establishing drilling unit or pooling of interest; recordation.
- §22-7-13. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §22-7-14. Operation on drilling units.
- §22-7-15. Validity of unit agreements.
- §22-7-16. Injunctive relief.
- §22-7-17. Penalties.
- §22-7-18. Construction.
- §22-7-19. Rules, regulations, orders and permits remain in effect.

§22-7-1. Declaration of public policy; legislative findings.

- 1 (a) It is hereby declared to be the public policy of this state
- 2 and in the public interest to:
 - 3 (1) Ensure the safe recovery of coal and gas;
 - 4 (2) Foster, encourage and promote the fullest practical
 - 5 exploration, development, production, recovery and utilization
 - 6 of this state's coal and gas, where both are produced from
 - 7 beneath the same surface lands, by establishing procedures,
 - 8 including procedures for the establishment of drilling units, for
 - 9 the location of shallow gas wells without substantially affecting
 - 10 the right of the gas operator proposing to drill a shallow gas
 - 11 well to explore for and produce gas; and
 - 12 (3) Safeguard, protect and enforce the correlative rights of
 - 13 gas operators and royalty owners in a pool of gas to the end
 - 14 that each such gas operator and royalty owner may obtain his
 - 15 just and equitable share of production from such pool of gas.
- 16 (b) The Legislature hereby determines and finds that gas
- 17 found in West Virginia in shallow sands or strata has been
- 18 produced continuously for more than one hundred years; that
- 19 the placing of shallow wells has heretofore been regulated by
- 20 the state for the purpose of ensuring the safe recovery of coal
- 21 and gas, but that regulation should also be directed toward
- 22 encouraging the fullest practical recovery of both coal and gas
- 23 because modern extraction technologies indicate the desirabil-
- 24 ity of such change in existing regulation and because the
- 25 energy needs of this state and the United States require
- 26 encouragement of the fullest practical recovery of both coal
- 27 and gas; that in order to encourage and ensure the fullest

28 practical recovery of coal and gas in this state and to further
29 ensure the safe recovery of such natural resources, it is in the
30 public interest to enact new statutory provisions establishing
31 a shallow gas well review board which shall have the authority
32 to regulate and determine the appropriate placing of shallow
33 wells when gas well operators and owners of coal seams fail
34 to agree on the placing of such wells, and establishing specific
35 considerations, including minimum distances to be allowed
36 between certain shallow gas wells, to be utilized by the shallow
37 gas well review board in regulating the placing of shallow
38 wells; that in order to encourage and ensure the fullest
39 practical recovery of coal and gas in this state and to protect
40 and enforce the correlative rights of gas operators and royalty
41 owners of gas resources, it is in the public interest to enact
42 new statutory provisions establishing a shallow gas well review
43 board which shall also have authority to establish drilling units
44 and order the pooling of interests therein to provide all gas
45 operators and royalty owners with an opportunity to recover
46 their just and equitable share of production.

§22-7-2. Definitions.

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

3 (1) "Board" means the West Virginia shallow gas well
4 review board provided for in section four of this article;

5 (2) "Chairman" means the chairman of the West Virginia
6 shallow gas well review board provided for in section four of
7 this article;

8 (3) "Coal operator" means any person who proposes to or
9 does operate a coal mine;

10 (4) "Coal seam" and "workable coal bed" are interchange-
11 able terms and mean any seam of coal twenty inches or more
12 in thickness, unless a seam of less thickness is being
13 commercially worked, or can in the judgment of the
14 department foreseeably be commercially worked and will
15 require protection if wells are drilled through it;

16 (5) "Commission" means the oil and gas conservation
17 commission provided for in section four, article eight of this
18 chapter;

19 (6) "Commissioner" means the oil and gas conservation
20 commissioner provided for in section four, article eight of this
21 chapter;

22 (7) "Correlative rights" means the reasonable opportunity of
23 each person entitled thereto to recover and receive without
24 waste the gas in and under a tract or tracts, or the equivalent
25 thereof;

26 (8) "Deep well" means any well drilled and completed in a
27 formation at or below the top of the uppermost member of
28 the "Onondaga Group" or at a depth of or greater than six
29 thousand feet, whichever is shallower;

30 (9) "Department" means the state department of energy
31 provided for in chapter twenty-two of this code;

32 (10) "Director" means the director for the division of oil and
33 gas provided for in section eleven, article one, chapter twenty-
34 two of this code;

35 (11) "Drilling unit" means the acreage on which the board
36 decides one well may be drilled under section ten of this article;

37 (12) "Gas" means all natural gas and all other fluid
38 hydrocarbons not defined as oil in subdivision (15) of this
39 section;

40 (13) "Gas operator" means any person who owns or has the
41 right to develop, operate and produce gas from a pool and
42 to appropriate the gas produced therefrom either for himself
43 or for himself and others. In the event that there is no gas
44 lease in existence with respect to the tract in question, the
45 person who owns or has the gas rights therein shall be
46 considered a "gas operator" to the extent of seven eighths of
47 the gas in that portion of the pool underlying the tract owned
48 by such person, and a "royalty owner" to the extent of one
49 eighth of such gas;

50 (14) "Just and equitable share of production" means, as to
51 each person, an amount of gas in the same proportion to the
52 total gas production from a well as that person's acreage bears
53 to the total acreage in the drilling unit;

54 (15) "Oil" means natural crude oil or petroleum and other

55 hydrocarbons, regardless of gravity, which are produced at the
56 well in liquid form by ordinary production methods and which
57 are not the result of condensation of gas after it leaves the
58 underground reservoir;

59 (16) "Owner" when used with reference to any coal seam,
60 shall include any person or persons who own, lease or operate
61 such coal seam;

62 (17) "Person" means any natural person, corporation, firm,
63 partnership, partnership association, venture, receiver, trustee,
64 executor, administrator, guardian, fiduciary or other represen-
65 tative of any kind, and includes any government or any
66 political subdivision or any agency thereof;

67 (18) "Plat" means a map, drawing or print showing the
68 location of one or more wells or a drilling unit;

69 (19) "Pool" means an underground accumulation of gas in
70 a single and separate natural reservoir (ordinarily a porous
71 sandstone or limestone). It is characterized by a single natural-
72 pressure system so that production of gas from one part of
73 the pool tends to or does affect the reservoir pressure
74 throughout its extent. A pool is bounded by geologic barriers
75 in all directions, such as geologic structural conditions,
76 impermeable strata, and water in the formation, so that it is
77 effectively separated from any other pools which may be
78 present in the same district or in the same geologic structure;

79 (20) "Royalty owner" means any owner of gas in place, or
80 gas rights, to the extent that such owner is not a gas operator
81 as defined in subdivision (13) of this section;

82 (21) "Shallow well" means any gas well drilled and
83 completed in a formation above the top of the uppermost
84 member of the "Onondaga Group" or at a depth less than six
85 thousand feet, whichever is shallower;

86 (22) "Tracts comprising a drilling unit" means all separately
87 owned tracts or portions thereof which are included within the
88 boundary of a drilling unit;

89 (23) "Well" means any shaft or hole sunk, drilled, bored or
90 dug into the earth or into underground strata for the
91 extraction, injection or placement of any liquid or gas, or any

92 shaft or hole sunk or used in conjunction with such extraction,
93 injection or placement. The term "well" does not include any
94 shaft or hole sunk, drilled, bored or dug into the earth for
95 the sole purpose of core drilling or pumping or extracting
96 therefrom potable, fresh or usable water for household,
97 domestic, industrial, agricultural or public use; and

98 (24) "Well operator" means any person who proposes to or
99 does locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the
2 provisions of this article shall apply to all lands located in this
3 state, under which a coal seam as defined in section two of
4 this article and section one, article one, chapter twenty-two-
5 b of this code, one thousand nine hundred thirty-one, as
6 amended, is located, however owned, including any lands
7 owned or administered by any government or any agency or
8 subdivision thereof, over which the state has jurisdiction under
9 its police power. The provisions of this article are in addition
10 to and not in derogation of or substitution for the provisions
11 of this chapter or chapter twenty-two-b of this code.

12 (b) This article shall not apply to or affect:

13 (1) Deep wells;

14 (2) Oil wells and enhanced oil recovery wells associated with
15 oil wells;

16 (3) Any shallow well permitted under article four of this
17 chapter prior to 12:01 a.m., the first day of August, one
18 thousand nine hundred seventy-eight, unless such well is, after
19 completion (whether such completion is prior or subsequent
20 to the ninth day of June, one thousand nine hundred seventy
21 eight, deepened subsequent to the ninth day of June, one
22 thousand nine hundred seventy-eight), through another coal
23 seam to another formation above the top of the uppermost
24 member of the "Onondaga Group" or to a depth of less than
25 six thousand feet, whichever is shallower;

26 (4) Any shallow well as to which no objection is made under
27 section seventeen, article one, chapter twenty-two-b of this
28 code;

29 (5) Wells as defined in subdivision (4), section one, article
30 four, chapter twenty-two-b of this code; or

31 (6) Free gas rights.

32 (c) The provisions of this article affecting applications for
33 permits to drill shallow gas wells shall only apply to such
34 applications filed after 12:01 a.m. the first day of August, one
35 thousand nine hundred seventy-eight, and the provisions of
36 article four of former chapter twenty-two affecting such
37 applications which were in effect immediately prior to the
38 ninth day of June, one thousand nine hundred seventy-eight,
39 shall apply to all such applications filed prior to 12:01 a.m.,
40 the first day of August, one thousand nine hundred seventy-
41 eight, with like effect as if this article had not been enacted.

**§22-7-4. West Virginia shallow gas well review board; membership;
method of appointment; vacancies; compensation and
expenses; staff.**

1 (a) There is hereby continued the "West Virginia Shallow
2 Gas Well Review Board" which shall be composed of three
3 members, two of whom shall be the commissioner and the
4 director. The remaining member of the board shall be a
5 registered professional mining engineer with at least ten years
6 practical experience in the coal mining industry and shall be
7 appointed by the governor, by and with the advice and consent
8 of the Senate: *Provided*, That any person so appointed while
9 the Senate of this state is not in session shall be permitted to
10 serve in an acting capacity for one year from his appointment
11 or until the next session of the Legislature, whichever is less.
12 As soon as practical after appointment and qualification of the
13 member appointed by the governor, the governor shall
14 convene a meeting of the board for the purpose of organizing
15 and electing a chairman, who shall serve as such until his
16 successor is elected by the board.

17 (b) A vacancy in the membership appointed by the governor
18 shall be filled by appointment by the governor within sixty
19 days after the occurrence of such vacancy. Before performing
20 any duty hereunder, each member of the board shall take and
21 subscribe to the oath required by section 5, article IV of the
22 Constitution of West Virginia, and shall serve thereafter until
23 his successor has been appointed and qualified.

24 (c) The member of the board appointed by the governor
25 shall receive not less than seventy-five dollars per diem while
26 actually engaged in the performance of his duties as a member
27 of the board. Each member of the board shall also be
28 reimbursed for all reasonable and necessary expenses actually
29 incurred in the performance of his duties as a member of the
30 board.

31 (d) The division of oil and gas shall furnish office and
32 clerical staff and supplies and services, including reporters for
33 hearings, as required by the board.

§22-7-5. Same—Meetings; notice; general powers and duties.

1 (a) The board shall meet and hold conferences and hearings
2 at such times and places as shall be designated by the
3 chairman. The chairman may call a meeting of the board at
4 any time. The chairman shall call a meeting of the board (1)
5 upon receipt of a notice from the director that an objection
6 to the proposed drilling or deepening of a shallow well has
7 been filed by a coal seam owner pursuant to section seventeen,
8 article one, chapter twenty-two-b of this code or that an
9 objection has been made by the director, (2) upon receipt of
10 an application to establish a drilling unit filed with the board
11 pursuant to section nine of this article, or (3) within twenty
12 days upon the written request by another member of the
13 board. Meetings called pursuant to subdivisions (1) and (2) of
14 this subsection shall be scheduled not less than ten days nor
15 more than twenty days from receipt by the chairman of the
16 notice of objection or the application to establish a drilling
17 unit. Notice of all meetings shall be given to each member of
18 the board by the chairman at least ten days in advance thereof,
19 unless otherwise agreed by the members.

20 (b) At least ten days prior to every meeting of the board
21 called pursuant to the provisions of subdivisions (1) and (2),
22 subsection (a) of this section, the chairman shall also notify
23 (1) in the case of a notice of objection, the well operator and
24 all objecting coal seam owners, and (2) in the case of an
25 application to establish a drilling unit, the applicant, all
26 persons to whom copies of the application were required to
27 be mailed pursuant to the provisions of subsection (d), section
28 nine of this article and all persons who filed written protests
29 or objections with the board in accordance with the provisions

30 of subsection (c), section nine of this article.

31 (c) A majority of the members of the board shall constitute
32 a quorum for the transaction of any business. A majority of
33 the members of the board shall be required to determine any
34 issue brought before it.

35 (d) The board is hereby empowered and it shall be its duty
36 to execute and carry out, administer and enforce the provisions
37 of this article in the manner provided herein. Subject to the
38 provisions of section three of this article, the board shall have
39 jurisdiction and authority over all persons and property
40 necessary therefor: *Provided*, That the provisions of this article
41 shall not be construed to grant to the board authority or power
42 to (1) limit production or output from or prorate production
43 of any gas well, or (2) fix prices of gas.

44 (e) The board shall have specific authority to:

45 (1) Take evidence and issue orders concerning applications
46 for drilling permits and drilling units in accordance with the
47 provisions of this article;

48 (2) Promulgate, pursuant to the provisions of chapter
49 twenty-nine-a of this code, and enforce reasonable rules and
50 regulations necessary to govern the practice and procedure
51 before the board;

52 (3) Make such relevant investigations of records and
53 facilities as it deems proper; and

54 (4) Issue subpoenas for the attendance of and sworn
55 testimony by witnesses and subpoenas duces tecum for the
56 production of any books, records, maps, charts, diagrams and
57 other pertinent documents, and administer oaths and
58 affirmations to such witnesses, whenever, in the judgment of
59 the board, it is necessary to do so for the effective discharge
60 of its duties under the provisions of this article.

§22-7-6. Rules and regulations; notice requirements.

1 (a) The board may promulgate, pursuant to the provisions
2 of chapter twenty-nine-a of this code, such reasonable rules
3 and regulations as are deemed necessary or desirable to
4 implement and make effective the provisions of this article.

5 (b) Notwithstanding the provisions of section two, article

6 seven, chapter twenty-nine-a of this code, any notice required
7 under the provisions of this article shall be given at the
8 direction of the chairman by (1) personal or substituted service
9 and if such cannot be had then by (2) certified United States
10 mail, addressed, postage and certification fee prepaid, to the
11 last known mailing address, if any, of the person being served,
12 with the direction that the same be delivered to addressee only,
13 return receipt requested, and if there be no known mailing
14 address or if the notice is not so delivered then by (3)
15 publication of such notice as a Class II legal advertisement in
16 compliance with the provisions of article three, chapter fifty-
17 nine of this code, and the publication area for such publication
18 shall be the county or counties wherein any land which may
19 be affected by the order of the board is situate. The chairman
20 shall also mail a copy of such notice to all other persons who
21 have specified to the chairman an address to which all such
22 notices may be mailed. All notices shall issue in the name of
23 the state, shall be signed by the chairman, shall specify the
24 style and number of the proceeding, the date, time and place
25 of any meeting, conference or hearing, and shall briefly state
26 the purpose of the proceeding. Proof of service or publication
27 of such notice shall be made to the board promptly and in
28 any event within the time during which the person served must
29 respond to the notice. If service is made by a person other
30 than the sheriff or the chairman, he shall make proof thereof
31 by affidavit. Failure to make proof of service or publication
32 within the time required shall not affect the validity of the
33 service of the notice.

§22-7-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of the objections
3 to proposed drilling filed by coal seam owners pursuant to
4 section seventeen, article one, chapter twenty-two-b of this
5 code, the well operator and the objecting coal seam owners
6 present or represented shall hold a conference with the board
7 to consider the objections. Such persons present or represented
8 at the conference may agree upon either the drilling location
9 as proposed by the well operator or an alternate location. Any
10 change in the drilling location from the drilling location
11 proposed by the well operator shall be indicated on the plat

12 enclosed with the notice of objection filed with the chairman
13 by the director in accordance with the provisions of section
14 seventeen, article one, chapter twenty-two-b of this code, and
15 the distance and direction to the new drilling location from
16 the proposed drilling location shall also be shown on such plat.
17 If agreement is reached at the conference by the well operator
18 and such objecting coal seam owners present or represented
19 at the conference, the board shall issue a written order stating
20 that an agreement has been reached, stating the nature of such
21 agreement, and directing the director to grant the well operator
22 a drilling permit for the location agreed upon. The original
23 of such order shall be filed with the division within five days
24 after the conference of the board at which the drilling location
25 was agreed upon and copies thereof shall be mailed by
26 registered or certified mail to the well operator and the
27 objecting coal seam owners present or represented at such
28 conference.

29 (b) If the well operator and the objecting coal seam owners
30 present or represented at the conference with the board are
31 unable to agree upon a drilling location, then, unless they
32 otherwise agree, the board shall, without recess for more than
33 one business day, hold a hearing to consider the application
34 for a drilling permit. All of the pertinent provisions of article
35 five, chapter twenty-nine-a of this code shall apply to and
36 govern such hearing. Within twenty days after the close of a
37 hearing, the board shall issue and file with the director a
38 written order directing him, subject to other matters requiring
39 approval of the director to:

40 (1) Refuse a drilling permit; or

41 (2) Issue a drilling permit for the proposed drilling location;
42 or

43 (3) Issue a drilling permit for an alternate drilling location
44 different from that requested by the well operator; or

45 (4) Issue a drilling permit either for the proposed drilling
46 location or for an alternate drilling location different from that
47 requested by the well operator, but not allow the drilling of
48 the well for a period of not more than one year from the date
49 of issuance of such permit.

50 (c) The written order of the board shall contain findings of

51 fact and conclusions based thereon concerning the following
52 safety aspects, and no drilling permit shall be issued for any
53 drilling location where the board finds from the evidence that
54 such drilling location will be unsafe:

55 (1) Whether the drilling location is above or in close
56 proximity to any mine opening, or shaft, entry, travelway,
57 airway, haulageway, drainageway or passageway, or to any
58 proposed extension thereof, in any operated or abandoned or
59 operating coal mine, or any coal mine already surveyed and
60 platted but not yet being operated;

61 (2) Whether the proposed drilling can reasonably be done
62 through an existing or planned pillar of coal, or in close
63 proximity to an existing well or such pillar of coal, taking into
64 consideration the surface topography;

65 (3) Whether the proposed well can be drilled safely, taking
66 into consideration the dangers from creeps, squeezes or other
67 disturbances due to the extraction of coal; and

68 (4) The extent to which the proposed drilling location
69 unreasonably interferes with the safe recovery of coal and gas.

70 The written order of the board shall also contain findings
71 of fact and conclusions based thereon concerning the
72 following:

73 (5) The extent to which the proposed drilling location will
74 unreasonably interfere with present or future coal mining
75 operations on the surface including, but not limited to,
76 operations subject to the provisions of article three, chapter
77 twenty-two-a of this code;

78 (6) The feasibility of moving the proposed drilling location
79 to a mined-out area, below the coal outcrop, or to some other
80 location;

81 (7) The feasibility of a drilling moratorium for not more
82 than one year in order to permit the completion of imminent
83 coal mining operations;

84 (8) The methods proposed for the recovery of coal and gas;

85 (9) The distance limitations established in section eight of
86 this article;

87 (10) The practicality of locating the well on a uniform

88 pattern with other wells;

89 (11) The surface topography and use; and

90 (12) Whether the order of the board will substantially affect
91 the right of the gas operator to explore for and produce gas.

92 (d) Any member of the board may file a separate opinion.
93 Copies of all orders and opinions shall be mailed by the board,
94 by registered or certified mail, to the parties present or
95 represented at the hearing.

§22-7-8. Distance limitations.

1 (a) If the well operator and the objecting coal seam owners
2 present or represented at the time and place fixed by the
3 chairman for consideration of the objections to the proposed
4 drilling location are unable to agree upon a drilling location,
5 then the written order of the board shall direct the director
6 to refuse to issue a drilling permit unless the following distance
7 limitations are observed:

8 (1) For all shallow wells with a depth less than three
9 thousand feet, there shall be a minimum distance of one
10 thousand feet from the drilling location to the nearest existing
11 well as defined in subsection (b) of this section; and

12 (2) For all shallow wells with a depth of three thousand feet
13 or more, there shall be a minimum distance of one thousand
14 five hundred feet from the drilling location to the nearest
15 existing well as defined in subsection (b) of this section, except
16 that where the distance from the drilling location to such
17 nearest existing well is less than two thousand feet but more
18 than one thousand five hundred feet and a coal seam owner
19 has objected, the gas operator shall have the burden of
20 establishing the need for the drilling location less than two
21 thousand feet from such nearest existing well. Where the
22 distance from the drilling location proposed by the operator
23 or designated by the board to the nearest existing well as
24 defined in subsection (b) of this section is greater than two
25 thousand feet, distance criterion will not be a ground for
26 objection by a coal seam owner.

27 (b) The words "existing well" as used in this section shall
28 mean (i) any well not plugged within nine months after being
29 drilled to its total depth and either completed in the same

30 target formation or drilled for the purpose of producing from
31 the same target formation, and (ii) any unexpired, permitted
32 drilling location for a well to the same target formation.

33 (c) The minimum distance limitations established by this
34 section shall not apply if the proposed well will be drilled
35 through an existing or planned pillar of coal required for
36 protection of a preexisting oil or gas well and the proposed
37 well will neither require enlargement of such pillar nor
38 otherwise have an adverse effect on existing or planned coal
39 mining operations.

40 (d) Nothing in this article shall be construed to empower
41 the board to order the director to issue a drilling permit to
42 any person other than the well operator filing the application
43 which is the subject of the proceedings.

§22-7-9. Application to establish a drilling unit; contents; notice.

1 (a) Whenever the board has issued an order directing the
2 director to refuse a drilling permit, the gas operator may apply
3 to the board for the establishment of a drilling unit
4 encompassing a contiguous tract or tracts if such gas operator
5 believes that such a drilling unit will afford one well location
6 for the production of gas from under the tract on which the
7 drilling permit was sought, and will be agreeable to the coal
8 seam owners.

9 (b) An application to establish a drilling unit shall be filed
10 with the board and shall contain:

11 (1) The name and address of the applicant;

12 (2) A plat prepared by a licensed land surveyor or registered
13 professional engineer showing the boundary of the proposed
14 drilling unit, the district and county in which such unit is
15 located, the acreage of the proposed drilling unit, the boundary
16 of the tracts which comprise the proposed drilling unit, the
17 names of the owners of record of each such tract, the proposed
18 well location on the proposed drilling unit, and the proposed
19 well location for which the department refused to issue a
20 drilling permit;

21 (3) The names and addresses of the royalty owners of the
22 gas underlying the tracts which comprise the proposed drilling
23 unit;

24 (4) The names and addresses of the gas operators of the
25 tracts which comprise the proposed drilling unit;

26 (5) The approximate depth and target formation to which
27 the well for the proposed drilling unit is to be drilled;

28 (6) A statement indicating whether a voluntary pooling
29 agreement has been reached among any or all of the royalty
30 owners of the gas underlying the tracts which comprise the
31 proposed drilling unit and the gas operators of such tracts;

32 (7) An affidavit of publication of the notice of intent to
33 file an application to establish a drilling unit as required in
34 subsection (c) of this section; and

35 (8) Such other pertinent and relevant information as the
36 board may prescribe by reasonable rules and regulations
37 promulgated in accordance with the provisions of section six
38 of this article.

39 (c) Prior to the filing of an application to establish a drilling
40 unit, the applicant shall cause to be published, as a Class II
41 legal advertisement in accordance with the provisions of article
42 three, chapter fifty-nine of this code, a notice of intent to file
43 an application to establish a drilling unit. Such notice shall
44 contain the information required by subdivisions (1), (4) and
45 (5), subsection (b) of this section, the name of the royalty
46 owner of the gas underlying the proposed well location on the
47 proposed drilling unit, plus an abbreviated description, or, at
48 the applicant's option, a plat of the drilling unit, disclosing the
49 county and district wherein the proposed drilling unit is to be
50 located, the post office closest to the proposed drilling unit,
51 a statement that the applicant will deliver a copy of the plat
52 required by subdivision (2) of subsection (b) to any person
53 desiring the same, the date upon which the applicant intends
54 to file the application to establish a drilling unit, and a
55 statement that written protests and objections to such
56 application may be filed with the board until a specified date,
57 which date shall be at least ten days after the date upon which
58 the applicant intends to file the application to establish a
59 drilling unit. The publication area of the notice required by
60 this subsection shall be the county or counties in which the
61 proposed drilling unit is to be located.

62 (d) At the time an application to establish a drilling unit

63 is filed, the applicant shall forward a copy thereof by registered
64 or certified mail to each and every person whose name and
65 address were included on the application in accordance with
66 the provisions of subdivisions (3) and (4), subsection (b) of this
67 section. With each such application there shall be enclosed a
68 notice (the form for which shall be furnished by the board on
69 request) addressed to each such person to whom a copy of
70 the application is required to be sent, informing him that such
71 application is being mailed to him respectively by registered
72 or certified mail, pursuant to the requirements of this article:
73 *Provided*, That the application and notice need not be
74 forwarded to those royalty owners or gas operators within the
75 boundary of the proposed drilling unit who have previously
76 agreed to voluntary pooling by separately stated document or
77 documents empowering the gas operator, by assignment or
78 otherwise, unilaterally to declare a unit.

§22-7-10. Establishment of drilling units; hearings; orders.

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of an application
3 to establish a drilling unit, the applicant shall present proof
4 that the drilling location on the proposed drilling unit has been
5 agreed to by all of the owners of the coal seams underlying
6 such drilling location; and thereafter the applicant, the royalty
7 owners of the gas underlying the tracts comprising the unit,
8 and the gas operators of the tracts comprising the unit, or such
9 of them as are present or represented, shall hold a conference
10 with the board to consider the application. Such persons
11 present or represented at the conference may agree upon the
12 boundary of the drilling unit as proposed by the applicant or
13 as changed to satisfy all valid objections of those persons
14 present or represented. Any change in the boundary of the
15 drilling unit from the boundary proposed by the applicant
16 shall be shown on the plat filed with the board as part of the
17 application. If agreement is reached at the conference upon the
18 boundary of the drilling unit among the applicants, the royalty
19 owners of the gas underlying the tracts comprising the drilling
20 unit and the gas operators of the tracts comprising such unit,
21 or such of them as are present or represented, and if such
22 agreement is approved by the board, the board shall issue a
23 written order establishing and specifying the boundary of the
24 drilling unit.

25 (b) If the applicant, the royalty owners of the gas underlying
26 the tracts comprising the drilling unit and the gas operators
27 of the tracts comprising such unit, or such of them as are
28 present or represented at the time and place fixed by the
29 chairman for consideration of the application, are unable to
30 agree upon the boundary of the drilling unit, then the board
31 shall hold a hearing without recess of more than one business
32 day to consider the application to establish a drilling unit. All
33 of the pertinent provisions of article five, chapter twenty-nine-
34 a of this code shall apply to and govern such hearing. Within
35 twenty days after the close of the hearing, the board shall issue
36 a written order either establishing a drilling unit or dismissing
37 the application. If the board determines to establish a drilling
38 unit, the order shall specify the boundary of such drilling unit.
39 In determining whether to grant or deny an application to
40 establish a drilling unit, the board shall consider:

41 (1) The surface topography and property lines of the lands
42 comprising the drilling unit;

43 (2) The correlative rights of all gas operators and royalty
44 owners therein;

45 (3) The just and equitable share of production of each gas
46 operator and royalty owner therein;

47 (4) Whether a gas operator or royalty owner objecting to
48 the drilling unit has proved by clear and convincing evidence
49 that the drilling unit is substantially smaller than the area that
50 will be produced by the proposed well; and

51 (5) Other evidence relevant to the establishment of the
52 boundary of a drilling unit.

53 (c) The board shall not grant an application to establish a
54 drilling unit, nor shall it approve any drilling unit, unless the
55 board finds that:

56 (1) The applicant has proved that the drilling location on
57 the drilling unit has been agreed to by all of the owners of
58 the coal seams underlying such drilling location;

59 (2) The director has previously refused to issue a drilling
60 permit on one of the tracts comprising the drilling unit because
61 of an order of the board;

62 (3) The drilling unit includes all acreage within the

63 minimum distance limitations provided by section eight of this
64 article, unless the gas operators and royalty owners of any
65 excluded acreage have agreed to such exclusion; and

66 (4) The drilling unit includes a portion of the acreage from
67 under which the well operator intended to produce gas under
68 the drilling permit which was refused.

69 (d) All orders issued by the board under this section shall
70 contain findings of fact and conclusions based thereon as
71 required by section three, article five, chapter twenty-nine-a of
72 this code and shall be filed with the director within twenty days
73 after the hearing. Any member of the board may file a separate
74 opinion. Copies of all orders and opinions shall be mailed by
75 the board, by registered or certified mail, to the parties present
76 or represented at the hearing.

§22-7-11. Pooling of interests in a drilling unit; limitations.

1 (a) Whenever the board establishes a drilling unit pursuant
2 to the provisions of sections nine and ten of this article, the
3 order establishing such drilling unit shall include an order
4 pooling the separately owned interests in the gas to be
5 produced from such drilling unit.

6 (b) If a voluntary pooling agreement has been reached
7 between all persons owning separate operating interests in the
8 tracts comprising the drilling unit, the order of the board shall
9 approve such agreement.

10 (c) If no voluntary pooling agreement is reached prior to
11 or during the hearing held pursuant to subsection (b), section
12 ten of this article, then at such hearing the board shall also
13 determine the pooling of interests in the drilling unit.

14 (d) Any order of the board pooling the separately owned
15 interests in the gas to be produced from the drilling unit shall
16 be upon terms and conditions which are just and equitable and
17 shall authorize the production of gas from the drilling unit;
18 shall designate the applicant as the operator to drill and
19 operate such gas well; shall prescribe the procedure by which
20 all owners of operating interests in the pooled tracts or
21 portions of tracts may elect to participate therein; shall provide
22 that all reasonable costs and expenses of drilling, completing,
23 equipping, operating, plugging, abandoning and reclaiming
24 such well shall be borne, and all production therefrom shared,

25 by all owners of operating interests in proportion to the net
26 gas acreage in the pooled tracts owned or under lease to each
27 owner; and shall make provisions for payment of all
28 reasonable costs thereof, including all reasonable charges for
29 supervision and for interest on past-due accounts, by all those
30 who elect to participate therein.

31 (e) Upon request, any such pooling order shall provide an
32 owner of an operating interest an election to be made within
33 ten days from the date of the pooling order, (i) to participate
34 in the risks and costs of the drilling of the well, or (ii) to
35 participate in the drilling of the well on a limited or carried
36 basis on terms and conditions which, if not agreed upon, shall
37 be determined by the board to be just and equitable. If the
38 election is not made within the ten-day period, such owner
39 shall be conclusively presumed to have elected the limited or
40 carried basis. Thereafter, if an owner of any operating interest
41 in any portion of the pooled tract shall drill and operate, or
42 pay the costs of drilling and operating, a well for the benefit
43 of such nonparticipating owner as provided in the order of the
44 board, then such operating owner shall be entitled to the share
45 of production from the tracts or portions thereof pooled
46 accruing to the interest of such nonparticipating owner,
47 exclusive of any royalty or overriding royalty reserved with
48 respect to such tracts or portions thereof, or exclusive of one
49 eighth of the production attributable to all unleased tracts or
50 portions thereof, until the market value of such nonparticipat-
51 ing owner's share of the production, exclusive of such royalty,
52 overriding royalty or one eighth of production, equals double
53 the share of such costs payable by or charged to the interest
54 of such nonparticipating owner.

55 (f) In no event shall drilling be initiated or completed on
56 any tract, where the gas underlying such tract has not been
57 severed from the surface thereof by deed, lease or other title
58 document, without the written consent of the person who owns
59 such tract.

60 (g) All disputes which may arise as to the costs of drilling
61 and operating a well under a pooling order issued pursuant
62 to this section shall be resolved by the board within ninety
63 days from the date of written notification to the board of the
64 existence of such dispute.

§22-7-12. Effect of order establishing drilling unit or pooling of interest; recordation.

1 (a) An order issued by the board establishing a drilling unit
2 and ordering the pooling of interests therein shall not entitle
3 the gas operator designated in such order to drill a well on
4 such drilling unit until such gas operator shall have received
5 a drilling permit in accordance with the provisions applicable
6 to alternative drilling locations set out in section seventeen,
7 article one, chapter twenty-two-b of this code. All orders
8 issued by the board establishing a drilling unit shall be filed
9 with the director and shall also direct the director to issue a
10 drilling permit for the drilling location agreed to by all of the
11 owners of the coal seams underlying such drilling location.

12 (b) A certified copy of any order of the board establishing
13 a drilling unit or a pooling of interests shall be mailed by the
14 board to the clerk of the county commission of each county
15 wherein all or any portion of the drilling unit is located, for
16 recordation in the record book of such county in which oil
17 and gas leases are normally recorded. Such recordation from
18 the time noted thereon by such clerk shall be notice of the
19 order to all persons.

§22-7-13. Judicial review; appeal to supreme court of appeals; legal representation for board.

1 (a) Any person adversely affected by an order of the board
2 shall be entitled to judicial review thereof. All of the pertinent
3 provisions of section four, article five, chapter twenty-nine-a
4 of this code shall apply to and govern such judicial review with
5 like effect as if the provisions of said section four were set forth
6 in extenso in this section.

7 (b) The judgment of the circuit court shall be final unless
8 reversed, vacated or modified on appeal to the supreme court
9 of appeals in accordance with the provisions of section one,
10 article six, chapter twenty-nine-a of this code.

11 (c) Legal counsel and services for the board in all appeal
12 proceedings in any circuit court and the supreme court of
13 appeals shall be provided by the attorney general or his
14 assistants and in any circuit court by the prosecuting attorney
15 of the county as well, all without additional compensation. The
16 board, with the written approval of the attorney general, may

- 17 employ special counsel to represent the board at any such
18 appeal proceedings.

§22-7-14. Operation on drilling units.

1 All operations including, but not limited to, the commence-
2 ment, drilling or operation of a well upon a drilling unit for
3 which a pooling order as been entered, shall be deemed for
4 all purposes the conduct of such operations upon each
5 separately owned tract in the drilling unit by the several
6 owners thereof. That portion of the production allocated to
7 a separately owned tract included in a drilling unit shall, when
8 produced, be deemed for all purposes to have been actually
9 produced from such tract by a well drilled thereon.

§22-7-15. Validity of unit agreements.

1 No agreement between or among gas operators, lessees or
2 other owners of gas rights in gas properties, entered into
3 pursuant to the provisions of this article or with a view to or
4 for the purpose of bringing about the unitized development
5 or operation of such properties, shall be held to violate the
6 statutory or common law of this state prohibiting monopolies
7 or acts, arrangements, contracts, combinations or conspiracies
8 in restraint of trade or commerce.

§22-7-16. Injunctive relief.

1 (a) Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision of this
3 article, any rule and regulation promulgated by the board
4 hereunder or any order or final decision of the board, the
5 board may apply in the name of the state to the circuit court
6 of the county in which the violations or any part thereof has
7 occurred, is occurring or is about to occur, or to the judge
8 thereof in vacation, for an injunction against such person and
9 any other persons who have been, are or are about to be,
10 involved in any practices, acts or omissions, so in violation,
11 enjoining such person or persons from any such violation or
12 violations. Such application may be made and prosecuted to
13 conclusion whether or not any such violation or violations
14 have resulted or shall result in prosecution or conviction under
15 the provisions of section seventeen of this article.

16 (b) Upon application by the board, the circuit courts of this
17 state may by mandatory or prohibitory injunction compel

18 compliance with the provisions of this article, the rules and
19 regulations promulgated by the board hereunder and all orders
20 of the board. The court may issue a temporary injunction in
21 any case pending a decision on the merits of any application
22 filed. Any other section of this code to the contrary
23 notwithstanding, the state shall not be required to furnish
24 bond or other undertaking as a prerequisite to obtaining
25 mandatory, prohibitory or temporary injunctive relief under
26 the provisions of this article.

27 (c) The judgment of the circuit court upon any application
28 permitted by the provisions of this section shall be final unless
29 reversed, vacated or modified on appeal to the supreme court
30 of appeals. Any such appeal shall be sought in the manner
31 and within the time provided by law for appeals from circuit
32 courts in other civil actions.

33 (d) The board shall be represented in all such proceedings
34 by the attorney general or his assistants and in such
35 proceedings in the circuit courts by the prosecuting attorneys
36 of the several counties as well, all without additional
37 compensation. The board, with the written approval of the
38 attorney general, may employ special counsel to represent the
39 board in any such proceedings.

40 (e) If the board shall refuse or fail to apply for an injunction
41 to enjoin a violation or threatened violation of any provision
42 of this article, any rule and regulation promulgated by the
43 board hereunder or any order or final decision of the board,
44 within ten days after receipt of a written request to do so by
45 any person who is or will be adversely affected by such
46 violation or threatened violation, the person making such
47 request may apply in his own behalf for an injunction to enjoin
48 such violation or threatened violation in any court in which
49 the board might have brought suit. The board shall be made
50 a party defendant in such application in addition to the person
51 or persons violating or threatening to violate any provision of
52 this article, any rule and regulation promulgated by the board
53 hereunder or any order of the board. The application shall
54 proceed and injunctive relief may be granted without bond or
55 other undertaking in the same manner as if the application had
56 been made by the chairman.

§22-7-17. Penalties.

1 (a) Any person who violates any provision of this article,
2 any of the rules and regulations promulgated by the board
3 hereunder or any order of the board other than a violation
4 governed by the provisions of subsection (b) of this section,
5 shall be guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not more than one thousand dollars.

7 (b) Any person who, with the intention of evading any
8 provision of this article, any of the rules and regulations
9 promulgated by the board hereunder or any order of the board
10 shall make or cause to be made any false entry or statement
11 in any application or other document permitted or required
12 to be filed under the provisions of this article, any of the rules
13 and regulations promulgated by the board hereunder or any
14 order of the board, shall be guilty of a misdemeanor, and,
15 upon conviction thereof, shall be fined not more than five
16 thousand dollars, or imprisoned in the county jail not more
17 than six months, or both fined and imprisoned.

18 (c) Any person who knowingly aids or abets any other
19 person in the violation of any provision of this article, any
20 of the rules and regulations promulgated by the board
21 hereunder or any order or final decision of the board, shall
22 be subject to the same penalty as that prescribed in this article
23 for the violation by such other person.

§22-7-18. Construction.

1 This article shall be liberally construed so as to effectuate
2 the declaration of public policy set forth in section one of this
3 article.

§22-7-19. Rules, regulations, orders and permits remain in effect.

1 The rules and regulations promulgated and all orders and
2 permits in effect upon the effective date of this article pursuant
3 to the provisions of article four-b, of former chapter twenty-
4 two of this code, shall remain in full force and effect as if such
5 rules, regulations, orders and permits were adopted by the
6 board continued in this article but all such rules, regulations,
7 orders and permits shall be subject to review by the board to
8 ensure they are consistent with the purposes and policies set
9 forth in this chapter and chapter twenty-two-b of this code.

ARTICLE 8. OIL AND GAS CONSERVATION.

- §22-8-1. Declaration of public policy; legislative findings.
- §22-8-2. Definitions.
- §22-8-3. Application of article; exclusions.
- §22-8-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
- §22-8-5. Rules and regulations; notice requirements.
- §22-8-6. Waste of oil and gas prohibited.
- §22-8-7. Drilling units and the pooling of interests in drilling units in connection with deep oil and gas wells.
- §22-8-8. Secondary recovery of oil; unit operations.
- §22-8-9. Validity of unit agreements.
- §22-8-10. Hearing procedures.
- §22-8-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.
- §22-8-12. Injunctive relief.
- §22-8-13. Special oil and gas conservation tax.
- §22-8-14. Penalties.
- §22-8-15. Construction and severability.
- §22-8-16. Rules, regulations, orders and permits remain in effect.

§22-8-1. Declaration of public policy; legislative findings.

1 (a) It is hereby declared to be the public policy of this state
2 and in the public interest to:

3 (1) Foster, encourage and promote exploration for and
4 development, production, utilization and conservation of oil
5 and gas resources;

6 (2) Prohibit waste of oil and gas resources and unnecessary
7 surface loss of oil and gas and their constituents;

8 (3) Encourage the maximum recovery of oil and gas; and

9 (4) Safeguard, protect and enforce the correlative rights of
10 operators and royalty owners in a pool of oil or gas to the
11 end that each such operator and royalty owner may obtain
12 his just and equitable share of production from such pool of
13 oil or gas.

14 (b) The Legislature hereby determines and finds that oil and
15 natural gas found in West Virginia in shallow sands or strata
16 have been produced continuously for more than one hundred
17 years; that oil and gas deposits in such shallow sands or strata
18 have geological and other characteristics different than those
19 found in deeper formations; and that in order to encourage
20 the maximum recovery of oil and gas from all productive

21 formations in this state, it is not in the public interest, with
22 the exception of shallow wells utilized in a secondary recovery
23 program, to enact statutory provisions relating to the
24 exploration for or production from oil and gas from shallow
25 wells, as defined in section two of this article, but that it is
26 in the public interest to enact statutory provisions establishing
27 regulatory procedures and principles to be applied to the
28 exploration for or production of oil and gas from deep wells,
29 as defined in said section two.

§22-8-2. Definitions.

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

3 (1) "Commission" means the oil and gas conservation
4 commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section four of
6 this article;

7 (2) "Director" means the director for the division of oil and
8 gas provided for in section eleven, article one, chapter twenty-
9 two of this code;

10 (3) "Person" means any natural person, corporation,
11 partnership, receiver, trustee, executor, administrator,
12 guardian, fiduciary or other representative of any kind, and
13 includes any government or any political subdivision or any
14 agency thereof;

15 (4) "Operator" means any owner of the right to develop,
16 operate and produce oil and gas from a pool and to
17 appropriate the oil and gas produced therefrom, either for
18 himself or for himself and others; in the event that there is
19 no oil and gas lease in existence with respect to the tract in
20 question, the owner of the oil and gas rights therein shall be
21 considered as "operator" to the extent of seven eighths of the
22 oil and gas in that portion of the pool underlying the tract
23 owned by such owner, and as "royalty owner" as to one eighth
24 interest in such oil and gas; and in the event the oil is owned
25 separately from the gas, the owner of the substance being
26 produced or sought to be produced from the pool shall be
27 considered as "operator" as to such pool;

28 (5) "Royalty owner" means any owner of oil and gas in
29 place, or oil and gas rights, to the extent that such owner is

30 not an operator as defined in subdivision (4) of this section;

31 (6) "Independent producer" means a person who is actively
32 engaged in the production of oil and gas in West Virginia, but
33 whose gross revenue from such production in West Virginia
34 does not exceed five hundred thousand dollars per year.

35 (7) "Oil" means natural crude oil or petroleum and other
36 hydrocarbons, regardless of gravity, which are produced at the
37 well in liquid form by ordinary production methods and which
38 are not the result of condensation of gas after it leaves the
39 underground reservoir;

40 (8) "Gas" means all natural gas and all other fluid
41 hydrocarbons not defined as oil in subdivision (7) of this
42 section;

43 (9) "Pool" means an underground accumulation of petro-
44 leum in a single and separate natural reservoir (ordinarily a
45 porous sandstone or limestone). It is characterized by a single
46 natural-pressure system so that production of petroleum from
47 one part of the pool affects the reservoir pressure throughout
48 its extent. A pool is bounded by geologic barriers in all
49 directions, such as geologic structural conditions, impermeable
50 strata, and water in the formations, so that it is effectively
51 separated from any other pools that may be presented in the
52 same district or on the same geologic structure;

53 (10) "Well" means any shaft or hole sunk, drilled, bored or
54 dug into the earth or underground strata for the extraction
55 of oil or gas;

56 (11) "Shallow well" means any well drilled and completed
57 in a formation above the top of the uppermost member of the
58 "Onondaga Group" or at a depth less than six thousand feet,
59 whichever is shallower;

60 (12) "Deep well" means any well drilled and completed in
61 a formation at or below the top of the uppermost member of
62 the "Onondaga Group" or at a depth of or greater than six
63 thousand feet, whichever is shallower;

64 (13) "Drilling unit" means the acreage on which one well
65 may be drilled;

66 (14) "Waste" means and includes: (a) Physical waste, as that
67 term is generally understood in the oil and gas industry; (b)

68 the locating, drilling, equipping, operating or producing of any
69 oil or gas well in a manner that causes, or tends to cause, a
70 reduction in the quantity of oil or gas ultimately recoverable
71 from a pool under prudent and proper operations, or that
72 causes or tends to cause unnecessary or excessive surface loss
73 of oil or gas; or (c) the drilling of more deep wells than are
74 reasonably required to recover efficiently and economically the
75 maximum amount of oil and gas from a pool;

76 (15) "Correlative rights" means the reasonable opportunity
77 of each person entitled thereto to recover and receive without
78 waste the oil and gas in and under his tract or tracts, or the
79 equivalent thereof; and

80 (16) "Just and equitable share of production" means, as to
81 each person, an amount of oil or gas or both substantially
82 equal to the amount of recoverable oil and gas in that part
83 of a pool underlying his tract or tracts.

84 (b) Unless the context clearly indicates otherwise, the use
85 of the word "and" and the word "or" shall be interchangeable,
86 as, for example, "oil and gas" shall mean oil or gas or both.

§22-8-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the
2 provisions of this article shall apply to all lands located in this
3 state, however owned, including any lands owned or admin-
4 istered by any government or any agency or subdivision
5 thereof, over which the state has jurisdiction under its police
6 power. The provisions of this article are in addition to and
7 not in derogation of or substitution for the provisions of article
8 one, chapter twenty-two-b of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than those utilized in secondary
11 recovery program as set forth in section eight of this arti-
12 cle;

13 (2) Any well commenced or completed prior to the ninth
14 day of March, one thousand nine hundred seventy-two, unless
15 such well is, after completion (whether such completion is
16 prior or subsequent to that date), (i) deepened subsequent to
17 that date to a formation at or below the top of the uppermost
18 member of the "Onondaga Group" or at a depth of or greater

19 than six thousand feet, whichever is shallower or (ii) involved
20 in secondary recovery operations for oil under an order of the
21 commissioner entered pursuant to section eight of this article;

22 (3) Gas storage operations or any well employed to inject
23 gas into or withdraw gas from a gas storage reservoir or any
24 well employed for storage observation; or

25 (4) Free gas rights.

26 (c) The provisions of this article shall not be construed to
27 grant to the commissioner authority or power to:

28 (1) Limit production or output, or prorate production of
29 any oil or gas well, except as provided in subdivision (6),
30 subsection (a), section seven of this article; or

31 (2) Fix prices of oil or gas.

**§22-8-4. Oil and gas conservation commissioner and commission;
commission membership; qualifications of members;
terms of members; vacancies on commission; meetings;
compensation and expenses; appointment and qualifi-
cations of commissioner; general powers and duties.**

1 (a) There is hereby continued, as provided for in subsection
2 (h) of this section, the "West Virginia Oil and Gas Conser-
3 vation Commission" which shall be composed of five members.
4 The commissioner of the department of energy and the
5 director for the division of oil and gas shall be members of
6 the commission ex officio. The remaining three members of
7 the commission shall be appointed by the governor, by and
8 with the advice and consent of the Senate. Of the three
9 members appointed by the governor, one shall be an
10 independent producer and at least one shall be a public
11 member not engaged in full-time employment in an activity
12 under the jurisdiction of the public service commission or the
13 federal energy regulatory commission. As soon as practical
14 after appointment of the members of the commission, the
15 governor shall call a meeting of the commission to be
16 convened at the state capitol for the purpose of organizing and
17 electing a chairman.

18 (b) The members of the commission appointed by the
19 governor shall be appointed for overlapping terms of six years
20 each, except that the original appointments shall be for terms

21 of two, four and six years, respectively. Each member
22 appointed by the governor shall serve until his successor has
23 been appointed and qualified. Members may be appointed by
24 the governor to serve any number of terms. The members of
25 the commission appointed by the governor, before performing
26 any duty hereunder, shall take and subscribe to the oath
27 required by section 5, article IV of the constitution of West
28 Virginia. Vacancies in the membership appointed by the
29 governor shall be filled by appointment by him for the
30 unexpired term of the member whose office shall be vacant
31 and such appointment shall be made by the governor within
32 sixty days of the occurrence of such vacancy. Any member
33 appointed by the governor may be removed by the governor
34 in case of incompetency, neglect of duty, gross immorality or
35 malfeasance in office.

36 (c) The commission shall meet at such times and places as
37 shall be designated by the chairman. The chairman may call
38 a meeting of the commission at any time, and he shall call
39 a meeting of the commission upon the written request of two
40 members or upon the written request of the oil and gas
41 conservation commissioner. Notification of each meeting shall
42 be given in writing to each member by the chairman at least
43 five days in advance of the meeting. Any three members, one
44 of which may be the chairman, shall constitute a quorum for
45 the transaction of any business as herein provided for. A
46 majority of the commission shall be required to determine any
47 issue brought before it.

48 (d) Each member of the commission appointed by the
49 governor shall receive thirty-five dollars per diem not to exceed
50 one hundred dollars per calendar year while actually engaged in
51 the performance of his duties as a member of the commission.
52 Each member of the commission shall also be reimbursed for
53 all reasonable and necessary expenses actually incurred in the
54 performance of his duties as a member of the commission.

55 (e) The commission shall appoint the oil and gas conserva-
56 tion commissioner, fix his salary within available funds, and
57 advise him regarding his duties and authority under this article
58 and consult with him prior to his reaching any final decisions
59 and entering orders hereunder. However, the commissioner has
60 full and final authority under this article with the commission
61 serving in an advisory capacity to him. The commissioner shall

62 possess a degree from an accredited college or university in
63 petroleum engineering or geology and must be a registered
64 professional engineer with particular knowledge and expe-
65 rience in the oil and gas industry.

66 (f) The oil and gas commissioner is hereby empowered and
67 it shall be his duty to execute and carry out, administer and
68 enforce the provisions of this article in the manner provided
69 herein. Subject to the provisions of section three of this article,
70 the commissioner shall have jurisdiction and authority over all
71 persons and property necessary therefor. The commissioner is
72 authorized to make such investigation of records and facilities
73 as he deems proper. In the event of a conflict between the duty
74 to prevent waste and the duty to protect correlative rights, the
75 commissioner's duty to prevent waste shall be paramount. He
76 shall serve as secretary of the oil and gas conservation
77 commission.

78 (g) Without limiting his general authority, the commissioner
79 shall have specific authority to:

80 (1) Regulate the spacing of deep wells;

81 (2) Make and enforce reasonable rules and regulations and
82 orders reasonably necessary to prevent waste, protect
83 correlative rights, govern the practice and procedure before the
84 commissioner and otherwise administer the provisions of this
85 article;

86 (3) Issue subpoenas for the attendance of witnesses and
87 subpoenas duces tecum for the production of any books,
88 records, maps, charts, diagrams and other pertinent docu-
89 ments, and administer oaths and affirmations to such
90 witnesses, whenever, in the judgment of the commissioner it
91 is necessary to do so for the effective discharge of his duties
92 under the provisions of this article; and

93 (4) Serve as technical advisor regarding oil and gas to the
94 Legislature, its members and committees, to the director for
95 the division of oil and gas, to the department of energy and
96 to any other agency of state government having responsibility
97 related to the oil and gas industry.

98 (h) After having conducted a performance audit through its
99 joint committee on government operations, pursuant to section
100 nine, article ten, chapter four of this code, the Legislature

101 hereby finds and declares that the oil and gas conservation
102 commission should be continued and reestablished. Accord-
103 ingly, notwithstanding the provisions of section four, article
104 ten, chapter four of this code, the oil and gas conservation
105 commission shall continue to exist until the first day of July,
106 one thousand nine hundred ninety-one.

§22-8-5. Rules and regulations; notice requirements.

1 (a) The commissioner may promulgate such reasonable
2 rules and regulations as he may deem necessary or desirable
3 to implement and make effective the provisions of this article
4 and the powers and authority conferred and the duties
5 imposed upon him under the provisions of this article and for
6 securing uniformity or procedure in the administration of the
7 provisions of article three, chapter twenty-nine-a of this code.

8 (b) Notwithstanding the provisions of section two, article
9 seven, chapter twenty-nine-a of this code, any notice required
10 under the provisions of this article shall be given at the
11 direction of the commissioner by (1) personal or substituted
12 service and if such cannot be had then by (2) certified United
13 States mail, addressed, postage prepaid, to the last known
14 mailing address, if any, of the person being served, with the
15 direction that the same be delivered to addressee only, return
16 receipt requested, and if there be no known mailing address
17 or if the notice is not so delivered then by (3) publication of
18 such notices as a Class II legal advertisement in compliance
19 with the provisions of article three, chapter fifty-nine of this
20 code, and the publication area for such publication shall be
21 the county or counties wherein any land which may be affected
22 by such order is situate. In addition, the commissioner shall
23 mail a copy of such notice to all other persons who have
24 specified to the commissioner an address to which all such
25 notices may be mailed. The notice shall issue in the name of
26 the state, shall be signed by the commissioner, shall specify
27 the style and number of the proceeding, the time and place
28 of any hearing, and shall briefly state the purpose of the
29 proceeding. Personal or substituted service and proof thereof
30 may be made by an officer authorized to serve process or by
31 an agent of the commissioner in the same manner as is now
32 provided by the "West Virginia Rules of Civil Procedure for
33 Trial Courts of Record" for service of process in civil actions
34 in the various courts of this state. A certified copy of any

35 pooling order entered under the provisions of this article shall
36 be presented by the commissioner to the clerk of the county
37 commission of each county wherein all or any portion of the
38 pooled tract is located, for recordation in the record book of
39 such county in which oil and gas leases are normally recorded.
40 Such recording of such order from the time noted thereon by
41 such clerk shall be notice of the order to all persons.

§22-8-6. Waste of oil or gas prohibited.

1 Waste of oil or gas is hereby prohibited.

**§22-8-7. Drilling units and the pooling of interests in drilling units
in connection with deep oil or gas wells.**

1 (a) Drilling units.

2 (1) After one deep well has been drilled establishing a pool,
3 an application to establish drilling units may be filed with the
4 commissioner by the operator of such discovery deep well or
5 by the operator of any lands directly and immediately affected
6 by the drilling of such discovery deep well, or subsequent deep
7 wells in said pool, and the commissioner shall promptly
8 schedule a hearing on said application. Each application shall
9 contain such information as the commissioner may prescribe
10 by reasonable rules and regulations promulgated by him in
11 accordance with the provisions of section five of this article.

12 (2) Upon the filing of an application to establish drilling
13 units, notice of the hearing shall be given by the commissioner.
14 Each notice shall specify the date, time and place of hearing,
15 describe the area for which a spacing order is to be entered,
16 and contain such other information as is essential to the giving
17 of proper notice.

18 (3) On the date specified in such notice, the commissioner
19 shall hold a public hearing to determine the area to be included
20 in his spacing order and the acreage to be contained by each
21 drilling unit, the shape thereof, and the minimum distance
22 from the outside boundary of the unit at which a deep well
23 may be drilled thereon. At such hearing the commissioner shall
24 consider:

25 (i) The surface topography and property lines of the lands
26 underlaid by the pool to be included in such order;

27 (ii) The plan of deep well spacing then being employed or

- 28 proposed in such pool for such lands;
- 29 (iii) The depth at which production from said pool has been
30 found;
- 31 (iv) The nature and character of the producing formation
32 or formations, and whether the substance produced or sought
33 to be produced is gas or oil;
- 34 (v) The maximum area which may be drained efficiently and
35 economically by one deep well; and
- 36 (vi) Any other available geological or scientific data
37 pertaining to said pool which may be of probative value to
38 the commissioner in determining the proper deep well drilling
39 units therefor.

40 To carry out the purposes of this article, the commissioner
41 shall, upon proper application, notice and hearing as herein
42 provided, and if satisfied after such hearing that drilling units
43 should be established, enter an order establishing drilling units
44 of a specified and approximately uniform size and shape for
45 each pool subject to the provisions of this section.

46 (4) When it is determined that an oil or gas pool underlies
47 an area for which a spacing order is to be entered, the
48 commissioner shall include in his order all lands determined
49 or believed to be underlaid by such pool and exclude all other
50 lands.

51 (5) No drilling unit established by the commissioner shall
52 be smaller than the maximum area which can be drained
53 efficiently and economically by one deep well: *Provided*, That
54 if at the time of a hearing to establish drilling units, there is
55 not sufficient evidence from which to determine the area which
56 can be drained efficiently and economically by one deep well,
57 the commissioner may enter an order establishing temporary
58 drilling units for the orderly development of the pool pending
59 the obtaining of information necessary to determine the
60 ultimate spacing for such pool.

61 (6) An order establishing drilling units shall specify the
62 minimum distance from the nearest outside boundary of the
63 drilling unit at which a deep well may be drilled. The minimum
64 distance provided shall be the same in all drilling units
65 established under said order with necessary exceptions for deep

66 wells drilled or being drilled at the time of the filing of the
67 application. If the commissioner finds that a deep well to be
68 drilled at or more than the specified minimum distance from
69 the boundary of a drilling unit would not be likely to produce
70 in paying quantities or will encounter surface conditions which
71 would substantially add to the burden or hazard of drilling
72 such deep well, or that a location within the area permitted
73 by the order is prohibited by the lawful order of any state
74 agency or court, the commissioner is authorized after notice
75 and hearing to make an order permitting the deep well to be
76 drilled at a location within the minimum distance prescribed
77 by the spacing order. In granting exceptions to the spacing
78 order, the commissioner may restrict the production from any
79 such deep well so that each person entitled thereto in such
80 drilling unit shall not produce or receive more than his just
81 and equitable share of the production.

82 (7) An order establishing drilling units for a pool shall cover
83 all lands determined or believed to be underlaid by such pool,
84 and may be modified by the commissioner from time to time,
85 to include additional lands determined to be underlaid by such
86 pool or to exclude lands determined not to be underlaid by
87 such pool. An order establishing drilling units may be modified
88 by the commissioner to permit the drilling of additional deep
89 wells on a reasonably uniform pattern at a uniform minimum
90 distance from the nearest unit boundary as provided above.
91 Any order modifying a proper order shall be made only after
92 application by an interested operator and notice and hearing
93 as prescribed herein for the original order. However, drilling
94 units established by order shall not exceed one hundred sixty
95 acres for an oil well or six hundred forty acres for a gas well.

96 (8) After the date of the notice of hearing called to establish
97 drilling units, no additional deep well shall be commenced for
98 production from the pool until the order establishing drilling
99 units has been made, unless the commencement of the deep
100 well is authorized by order of the commissioner.

101 (9) The commissioner shall, within forty-five days after the
102 filing of an application to establish drilling units for a pool
103 subject to the provisions of this section, either enter an order
104 establishing such drilling units or dismiss the application.

105 (10) As part of the order establishing a drilling unit, the

106 commissioner shall prescribe just and reasonable terms and
107 conditions upon which the royalty interests in the unit shall,
108 in the absence of voluntary agreement, be deemed to be
109 integrated without the necessity of a subsequent order
110 integrating the royalty interests.

111 (b) Pooling of interests in drilling units.

112 (1) When two or more separately owned tracts are embraced
113 within a drilling unit, or when there are separately owned
114 interests in all or a part of a drilling unit, the interested persons
115 may pool their tracts or interests for the development and
116 operation of the drilling unit. In the absence of voluntary
117 pooling and upon application of any operator having an
118 interest in the drilling unit, and after notice and hearing, the
119 commissioner shall enter an order pooling all tracts or interests
120 in the drilling unit for the development and operation thereof
121 and for sharing production therefrom. Each such pooling
122 order shall be upon terms and conditions which are just and
123 reasonable. In no event shall drilling be initiated on the tract
124 of an unleased royalty owner without his written consent.

125 (2) All operations, including, but not limited to, the
126 commencement, drilling or operation of a deep well, upon any
127 portion of a drilling unit for which a pooling order has been
128 entered, shall be deemed for all purposes the conduct of such
129 operations upon each separately owned tract in the drilling
130 unit by the several owners thereof. That portion of the
131 production allocated to a separately owned tract included in
132 a drilling unit shall, when produced, be deemed for all
133 purposes to have been actually produced from such tract by
134 a deep well drilled thereon.

135 (3) Any pooling order under the provisions of this
136 subsection (b) shall authorize the drilling and operation of a
137 deep well for the production of oil or gas from the pooled
138 acreage; shall designate the operator to drill and operate such
139 deep well; shall prescribe the time and manner in which all
140 owners of operating interests in the pooled tracts or portions
141 of tracts may elect to participate therein; shall provide that
142 all reasonable costs and expenses of drilling, completing,
143 equipping, operating, plugging and abandoning such deep well
144 shall be borne, and all production therefrom shared, by all
145 owners of operating interests in proportion to the net oil or

146 gas acreage in the pooled tracts owned or under lease to each
147 owner; and shall make provisions for payment of all
148 reasonable costs thereof, including a reasonable charge for
149 supervision and for interest on past-due accounts, by all those
150 who elect to participate therein.

151 (4) No drilling or operation of a deep well for the
152 production of oil or gas shall be permitted upon or within any
153 tract of land unless the operator shall have first obtained the
154 written consent and easement therefor, duly acknowledged and
155 placed of record in the office of the county clerk, for valuable
156 consideration of all owners of the surface of such tract of land,
157 which consent shall describe with reasonable certainty, the
158 location upon such tract, of the location of such proposed deep
159 well, a certified copy which consent and easement shall be
160 submitted by the operator to the commissioner.

161 (5) Upon request, any such pooling order shall provide just
162 and equitable alternatives whereby an owner of an operating
163 interest who does not elect to participate in the risk and cost
164 of the drilling of a deep well may elect:

165 (i) Option 1. To surrender his interest or a portion thereof
166 to the participating owners on a reasonable basis and for a
167 reasonable consideration, which, if not agreed upon, shall be
168 determined by the commissioner; or

169 (ii) Option 2. To participate in the drilling of the deep well
170 on a limited or carried basis on terms and conditions which,
171 if not agreed upon, shall be determined by the commissioner
172 to be just and reasonable.

173 (6) In the event a nonparticipating owner elects Option 2,
174 and an owner of any operating interest in any portion of the
175 pooled tract shall drill and operate, or pay the costs of drilling
176 and operating, a deep well for the benefit of such nonparticipating
177 owner as provided in the pooling order, then such
178 operating owner shall be entitled to the share of production
179 from the tracts or portions thereof pooled accruing to the
180 interest of such nonparticipating owner, exclusive of any
181 royalty or overriding royalty reserved in any leases, assignments
182 thereof or agreements relating thereto, of such tracts or
183 portions thereof, or exclusive of one eighth of the production
184 attributable to all unleased tracts or portions thereof, until the
185 market value of such nonparticipating owner's share of the

186 production, exclusive of such royalty, overriding royalty or
187 one eighth of production, equals double the share of such costs
188 payable by or charged to the interest of such nonparticipating
189 owner.

190 (7) If a dispute shall arise as to the costs of drilling and
191 operating a deep well, the commissioner shall determine and
192 apportion the costs, within ninety days from the date of
193 written notification to the commissioner of the existence of
194 such dispute.

§22-8-8. Secondary recovery of oil; unit operations.

1 Upon the application of any operator in a pool productive
2 of oil and after notice and hearing, the commissioner may
3 enter an order requiring the unit operation of such pool in
4 connection with a program of secondary recovery of oil, and
5 providing for the unitization of separately owned tracts and
6 interests within such pool, but only after finding that: (1) The
7 order is reasonably necessary for the prevention of waste and
8 the drilling of unnecessary deep wells; (2) the proposed plan
9 of secondary recovery will increase the ultimate recovery of
10 oil from the pool to such an extent that the proposed
11 secondary recovery operation will be economically feasible; (3)
12 the production of oil from the unitized pool can be allocated
13 in such a manner as to ensure the recovery by all operators
14 of their just and equitable share of such production; and (4)
15 the operators of at least three fourths of the acreage
16 (calculating partial interests on a pro rata basis for operator
17 interests on any parcel owned in common) and the royalty
18 owners of at least three fourths of the acreage (calculating
19 partial interests on a pro rata basis for royalty interests on
20 any parcel owned in common) in such pool have approved the
21 plan and terms of unit operation to be specified by the
22 commissioner in its order, such approval to be evidenced by
23 a written contract setting forth the terms of the unit operation
24 and executed by said operators and said royalty owners, and
25 filed with the commissioner on or before the day set for
26 hearing. The order requiring such unit operation shall
27 designate one operator in the pool as unit operator and shall
28 also make provision for the proportionate allocation to all
29 operators of the costs and expenses of the unit operation,
30 including reasonable charges for supervision and interest on
31 past-due accounts, which allocation shall be in the same

32 proportion that the separately owned tracts share in the
33 production of oil from the unit. In the absence of an agreement
34 entered into by the operators and filed with the commissioner
35 providing for sharing the costs of capital investment in wells
36 and physical equipment, and intangible drilling costs, the
37 commissioner shall provide by order for the sharing of such
38 costs in the same proportion as the costs and expenses of the
39 unit operation: *Provided*, That any operator who has not
40 consented to the unitization shall not be required to contribute
41 to the costs or expenses of the unit operation, or to the cost
42 of capital investment in wells and physical equipment, and
43 intangible drilling costs, except out of the proceeds from the
44 sale of the production accruing to the interest of such operator:
45 *Provided, however*, That no credit to the well costs shall be
46 adjusted on the basis of less than the average well costs within
47 the unitized area: *Provided further*, That no order entered
48 under the provisions of this section requiring unit operation
49 shall vary or alter any of the terms of any contract entered
50 into by operators and royalty owners under the provisions of
51 this section.

§22-8-9. Validity of unit agreements.

1 No agreement between or among operators, lessees or other
2 owners of oil or gas rights in oil and gas properties, entered
3 into pursuant to the provisions of this article or with a view
4 to or for the purpose of bringing about the unitized
5 development or operation of such properties, shall be held to
6 violate the statutory or common law of this state prohibiting
7 monopolies or acts, arrangements, contracts, combinations or
8 conspiracies in restraint of trade or commerce.

§22-8-10. Hearing procedures.

1 (a) Upon receipt of an application for an order of the
2 commissioner for which a hearing is required by the provisions
3 of this article, the commissioner shall set a time and place for
4 such hearing not less than ten and not more than thirty days
5 thereafter. Any scheduled hearing may be continued by the
6 commissioner upon his own motion or for good cause shown
7 by any party to the hearing. All interested parties shall be
8 entitled to be heard at any hearing conducted under the
9 provisions of this article.

10 (b) All of the pertinent provisions of article five, chapter

11 twenty-nine-a of this code shall apply to and govern the
12 hearing and the administrative procedures in connection with
13 and following such hearing, with like effect as if the provisions
14 of said article five were set forth in extenso in this subsection.

15 (c) Any such hearing shall be conducted by the commis-
16 sioner. For the purpose of conducting any such hearing, the
17 commissioner shall have the power and authority to issue
18 subpoenas and subpoenas duces tecum which shall be issued
19 and served within the time, for the fees and shall be enforced,
20 as specified in section one, article five of said chapter twenty-
21 nine-a, and all of the said section one provisions dealing with
22 subpoenas and subpoenas duces tecum shall apply to
23 subpoenas and subpoenas duces tecum issued for the purpose
24 of a hearing hereunder.

25 (d) At any such hearing any interested person may represent
26 himself or be represented by an attorney-at-law admitted to
27 practice before any circuit court of this state. Upon request
28 by the commissioner, he shall be represented at such hearing
29 by the attorney general or his assistants without additional
30 compensation. The commissioner, with the written approval of
31 the attorney general, may employ special counsel to represent
32 the commissioner at any such hearing.

33 (e) After any such hearing and consideration of all of the
34 testimony, evidence and record in the case, the commissioner
35 shall render his decision in writing. The written decision of the
36 commissioner shall be accompanied by findings of fact and
37 conclusions of law as specified in section three, article five,
38 chapter twenty-nine-a of this code, and a copy of such decision
39 and accompanying findings and conclusions shall be served by
40 certified mail, return receipt requested, upon all interested
41 persons and their attorney of record, if any.

42 The decision of the commissioner shall be final unless
43 reversed, vacated or modified upon judicial review thereof in
44 accordance with the provisions of section eleven of this article.

§22-8-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.

1 (a) Any person adversely affected by a decision of the
2 commissioner rendered after a hearing held in accordance with
3 the provisions of section ten of this article shall be entitled

4 to judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this code,
6 shall apply to and govern such judicial review with like effect
7 as if the provisions of said section four were set forth in
8 extenso in this section.

9 (b) The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme court
11 of appeals in accordance with the provisions of section one,
12 article six, chapter twenty-nine-a of this code, except that
13 notwithstanding the provisions of said section one the petition
14 seeking such review must be filed with said supreme court of
15 appeals within thirty days from the date of entry of the
16 judgment of the circuit court.

17 (c) Legal counsel and services for the commissioner in all
18 appeal proceedings in any circuit court and the supreme court
19 of appeals shall be provided by the attorney general or his
20 assistants and in any circuit court by the prosecuting attorney
21 of the county as well, all without additional compensation. The
22 commissioner, with the written approval of the attorney
23 general, may employ special counsel to represent the
24 commissioner at any such appeal proceedings.

§22-8-12. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule and regulation
4 promulgated by the commissioner hereunder or any order or
5 final decision of the commissioner, the commissioner may
6 apply in the name of the state to the circuit court of the county
7 in which the violations or any part thereof has occurred, is
8 occurring or is about to occur, or the judge thereof in vacation,
9 for an injunction against such person and any other persons
10 who have been, are or are about to be, involved in any
11 practices, acts or omissions, so in violation, enjoining such
12 person or persons from any such violation or violations. Such
13 application may be made and prosecuted to conclusion
14 whether or not any such violation or violations have resulted
15 or shall result in prosecution or conviction under the
16 provisions of section fourteen of this article.

17 (b) Upon application by the commissioner, the circuit courts
18 of this state may by mandatory or prohibitory injunction

19 compel compliance with the provisions of this article, the
20 reasonable rules and regulations promulgated by the commis-
21 sioner hereunder and all orders and final decisions of the
22 commissioner. The court may issue a temporary injunction in
23 any case pending a decision on the merits of any application
24 filed. Any other section of this code to the contrary
25 notwithstanding, the state shall not be required to furnish
26 bond or other undertaking as a prerequisite to obtaining
27 mandatory, prohibitory or temporary injunctive relief under
28 the provisions of this article.

29 (c) The judgment of the circuit court upon any application
30 permitted by the provisions of this section shall be final unless
31 reversed, vacated or modified on appeal to the supreme court
32 of appeals. Any such appeal shall be sought in the manner
33 and within the time provided by law for appeals from circuit
34 courts in other civil actions.

35 (d) The commissioner shall be represented in all such
36 proceedings by the attorney general or his assistants and in
37 such proceedings in the circuit courts by the prosecuting
38 attorneys of the several counties as well, all without additional
39 compensation. The commissioner, with the written approval of
40 the attorney general, may employ special counsel to represent
41 the commissioner in any such proceedings.

42 (e) If the commissioner shall refuse or fail to apply for an
43 injunction to enjoin a violation or threatened violation of any
44 provision of this article, any reasonable rule and regulation
45 promulgated by the commissioner hereunder or any order or
46 final decision of the commissioner, within ten days after receipt
47 of a written request to do so by any person who is or will
48 be adversely affected by such violation or threatened violation,
49 the person making such request may apply in his own behalf
50 for an injunction to enjoin such violation or threatened
51 violation in any court in which the commissioner might have
52 brought suit. The commissioner shall be made a party
53 defendant in such application in addition to the person or
54 persons violating or threatening to violate any provision of this
55 article, any reasonable rule and regulation promulgated by the
56 commissioner hereunder or any order or final decision of the
57 commissioner. The application shall proceed and injunctive
58 relief may be granted without bond or other undertaking in
59 the same manner as if the application had been made by the

60 commissioner.

§22-8-13. Special oil and gas conservation tax.

1 Owners of leases on oil and gas for the exploration,
2 development or production of oil or natural gas shall pay to
3 the commission a special oil and gas conservation tax of three
4 cents for each acre under lease, excluding from the tax the
5 first twenty-five thousand acres. The commission shall deposit
6 with the treasurer of the state of West Virginia, to the credit
7 of the special oil and gas conservation fund, all taxes collected
8 hereunder. The special oil and gas conservation fund shall be
9 a special fund and shall be administered by the commission
10 for the sole purpose of carrying out all costs necessary to carry
11 out the provisions of this article. This tax shall be paid as
12 provided herein annually on or before the first day of July,
13 one thousand nine hundred seventy-two, and on or before the
14 first day of July in each succeeding year.

§22-8-14. Penalties.

1 (a) Any person who violates any provision of this article,
2 any of the reasonable rules and regulations promulgated by
3 the commissioner hereunder or any order or any final decision
4 of the commissioner, other than a violation covered by the
5 provisions of subsection (b) of this section, shall be guilty of
6 a misdemeanor, and, upon conviction thereof, shall be fined
7 not more than one thousand dollars, and each day that a
8 violation continues shall constitute a new and separate
9 violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules and
12 regulations promulgated by the commissioner hereunder or
13 any order or final decision of the commissioner, shall make
14 or cause to be made any false entry or statement in a report
15 required under the provisions of this article, any of the
16 reasonable rules and regulations promulgated by the commis-
17 sioner hereunder or any order or final decision of the
18 commissioner, or shall make or cause to be made any false
19 entry in any record, account or memorandum required under
20 the provisions of this article, any of the reasonable rules and
21 regulations promulgated by the commissioner hereunder or
22 any order or any final decision of the commissioner, or who
23 shall omit, or cause to be omitted, from any such record,

24 account or memorandum, full, true and correct entries, or shall
25 remove from this state or destroy, mutilate, alter or falsify any
26 such record, account or memorandum, shall be guilty of a
27 misdemeanor, and, upon conviction thereof, shall be fined not
28 more than five thousand dollars, or imprisoned in the county
29 jail not more than six months, or both fined and imprisoned.

30 (c) Any person who knowingly aids or abets any other
31 person in the violation of any provision of this article, any
32 of the reasonable rules and regulations promulgated by the
33 commissioner hereunder or any order of final decision of the
34 commissioner, shall be subject to the same penalty as that
35 prescribed in this article for the violation by such other person.

§22-8-15. Construction and severability.

1 Except as provided in subsection (c), section three of this
2 article, this article shall be liberally construed so as to
3 effectuate the declaration of public policy set forth in section
4 one of this article.

5 If any section, subsection, subdivision, subparagraph,
6 sentence or clause of this article is adjudged to be unconsti-
7 tutional or invalid, such invalidation shall not affect the
8 validity of the remaining portions of this article, and, to this
9 end, the provisions of this article are hereby declared to be
10 severable.

§22-8-16. Rules, regulations, orders and permits remain in effect.

1 The rules and regulations promulgated and all orders and
2 permits in effect upon the effective date of this article pursuant
3 to the provisions of article four-a, of former chapter twenty-
4 two of this code, shall remain in full force and effect as if such
5 rules, regulations, orders and permits were adopted by the
6 director established in this chapter but all such rules,
7 regulations, orders and permits shall be subject to review by
8 the commissioner to ensure they are consistent with the
9 purposes and policies set forth in this chapter and chapter
10 twenty-two-b of this code.

**ARTICLE 9. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.**

§22-9-1. Short title.

§22-9-2. Declaration of legislative findings and policy.

§22-9-3. Definitions.

§22-9-4. Board of miner training, education and certification created; membership; method of appointment; terms.

§22-9-5. Board powers and duties.

§22-9-6. Duties of commissioner and department.

§22-9-1. Short title.

1 This article shall be cited as "The West Virginia Miner
2 Training, Education and Certification Act."

§22-9-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of
3 primary importance to the state of West Virginia;

4 (b) The highest priority and concern of this Legislature and
5 all in the coal mining industry must be the health and safety
6 of the industry's most valuable resource—the miner;

7 (c) A high priority must also be given to increasing the
8 productivity and competitiveness of the mines in this state;

9 (d) An inordinate number of miners, working on both the
10 surface in surface mining and in and at underground mines,
11 are injured during the first few months of their experience in
12 a mine;

13 (e) These injuries result in the loss of life and serious injury
14 to miners and are an impediment to the future growth of West
15 Virginia's coal industry;

16 (f) Injuries can be avoided through proper miner training,
17 education and certification;

18 (g) Mining is a technical occupation with various specialities
19 requiring individualized training and education; and

20 (h) It is the general purpose of this article to:

21 (1) Require adequate training, education and meaningful
22 certification of all persons employed in coal mines;

23 (2) Establish a board of miner training, education and
24 certification and empower it to require certain training and
25 education of all prospective miners and miners certified by the
26 state;

27 (3) Authorize a stipend for prospective miners enrolled in

28 this state's miner training, education and certification program;

29 (4) Direct the commissioner of the department of energy to
30 apply and implement the standards set by the board of miner
31 training, education and certification by establishing programs
32 for miner and prospective miner education and training; and

33 (5) Provide for a program of continuing miner education for
34 all categories of certified miners.

§22-9-3. Definitions.

1 Unless the context in which a word or phrase appears clearly
2 requires a different meaning, the words defined in section one,
3 article one-a, chapter twenty-two-a of this code shall have
4 when used in this article the meaning therein assigned to them.
5 These words include, but are not limited to, the following:
6 Division, director of the division of mines and minerals, mine
7 inspector, operator, miner, shot firer and certified electrician.

8 "Board" means the board of miner training, education and
9 certification established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as that
11 term is defined in section three, article three, chapter twenty-
12 two-a of this code, and in section two, article four of said
13 chapter; and a "mine" as that term is defined in section one,
14 article one-a, chapter twenty-two-a of this code.

§22-9-4. Board of miner training, education and certification created; membership; method of appointment; terms.

1 (a) There is hereby continued a board of miner training,
2 education and certification, which shall consist of seven
3 members, who shall be selected in the following manner:

4 (1) One member shall be appointed by the governor to
5 represent the viewpoint of surface mine operators in this state.
6 When such member is to be appointed, the governor shall
7 request from the major association representing surface coal
8 operators in this state a list of three nominees to the board.
9 The governor shall select from said nominees one person to
10 serve on the board. For purposes of this subsection, the major
11 association representing the surface coal operators in this state
12 shall be deemed to be that association, if any, which represents
13 surface mine operators accounting for over one half of the coal
14 produced in surface mines in this state in the year prior to

15 that year in which the appointment is made.

16 (2) Two members shall be appointed by the governor to
17 represent the interests of the underground operators of this
18 state. When said members are to be appointed, the governor
19 shall request from the major association representing the
20 underground coal operators in this state a list of six nominees
21 to the board. The governor shall select from said nominees
22 two persons to serve on the board. For purposes of this
23 subsection, the major association representing the under-
24 ground operators in this state shall be deemed to be that
25 association, if any, which represents underground operators
26 accounting for over one half of the coal produced in
27 underground mines in this state in the year prior to that year
28 in which the appointments are made.

29 (3) Three members shall be appointed by the governor who
30 can reasonably be expected to represent the interests of the
31 working miners in this state. If the major employee organi-
32 zation representing coal miners in this state is divided into
33 administrative districts, the employee organization of each
34 district shall, upon request by the governor, submit a list of
35 three nominees for membership on the board. If such major
36 employee organization is not so divided into administrative
37 districts, such employee organization shall, upon request by
38 the governor, submit a list of twelve nominees for membership
39 on the board. The governor shall make such appointments
40 from the persons so nominated: *Provided*, That in the event
41 nominations are made by administrative districts, not more
42 than one member shall be appointed from the nominees of any
43 one district unless there are less than three such districts in
44 this state.

45 (4) The seventh member of the board, who shall serve as
46 chairman, shall be the commissioner of the department of
47 energy.

48 (5) All appointments made by the governor under this
49 section shall be with the advice and consent of the Senate:
50 *Provided*, That persons so appointed while the Senate of this
51 state is not in session shall be permitted to serve up to one
52 year in an acting capacity, or until the next session of the
53 Legislature, whichever is less.

54 (b) The board shall be appointed by the governor. Ap-

55 pointed members shall serve for a term of three years. The
56 board shall meet at the call of the chairman, at the call of
57 the director, or upon the request of any two members of the
58 board: *Provided*, That no meeting of the board for any
59 purpose shall be conducted unless the board members are
60 notified at least five days in advance of a proposed meeting.
61 In cases of an emergency, members may be notified of a board
62 meeting by the most appropriate means of communication
63 available.

64 (c) Whenever a vacancy on the board occurs, appointments
65 shall be made in the manner prescribed in this section:
66 *Provided*, That in the case of an appointment to fill a vacancy
67 nominations shall be submitted to the governor within thirty
68 days after the vacancy occurs. The vacancy shall be filled by
69 the governor within thirty days of his receipt of the list of
70 nominations.

71 (d) Each appointed member of the board shall receive one
72 hundred ten dollars per diem while actually engaged in the
73 performance of the work of the board. Each member shall be
74 reimbursed for all reasonable and necessary expenses actually
75 incurred during the performance of their duties. Each member
76 shall receive meals, lodging and mileage expense reimburse-
77 ments at the rates established by rule and regulation of the
78 commissioner of the department of finance and administration
79 for in-state travel of public employees, which shall be paid out
80 of the state treasury upon a requisition upon the state auditor,
81 properly certified by such members of the board.

82 (e) A quorum of the board shall be four members. The
83 board may act officially by a majority of those members who
84 are present.

85 (f) The chairman of the board shall be a nonvoting member:
86 *Provided*, That in cases of a tie, the chairman shall cast the
87 deciding vote on the issue or issues under consideration.

88 (g) The director of the division of mines and minerals shall
89 serve as the secretary to the board and shall be present or send
90 an authorized representative to all meetings of the board.

§22-9-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for a
2 program of education, training and examination to be required

3 of all prospective miners and miners prior to their certification
4 in any of the various miner specialities requiring certification,
5 under this article or any other provision of this code. Such
6 specialities include, but are not limited to, underground miner,
7 surface miner, apprentice, underground mine foreman-fire
8 boss, assistant underground mine foreman-fire boss, shot firer,
9 mine electrician and belt examiner. Notwithstanding the
10 provisions of this section the commissioner may by rule or
11 regulation further subdivide the classification for certification.

12 (b) The board may require certification in other miner
13 occupational specialities: *Provided*, That no new specialty may
14 be created by the board unless certification in a new specialty
15 is made desirable by action of the federal government requiring
16 certification in a specialty not enumerated in this code.

17 (c) The board may establish criteria and standards for a
18 program of preemployment education and training to be
19 required of miners working on the surface at underground
20 mines who are not certified under the provisions of this article
21 or any other provision of this code.

22 (d) The board shall set minimum standards for a program
23 of continuing education and training of certified persons and
24 other miners on an annual basis. Prior to issuing said
25 standards, the board shall conduct public hearings at which
26 the parties may be affected by its actions may be heard. Such
27 education and training shall be provided in a manner
28 determined by the commissioner to be sufficient to meet the
29 standards established by the board.

30 (e) The board may, in conjunction with any state, local or
31 federal agency or any other person or institution, provide for
32 the payment of a stipend to prospective miners enrolled in one
33 or more of the programs of miner education, training and
34 certification provided for in this article or any other provision
35 of this code.

36 (f) The board may also, from time to time, conduct such
37 hearings and other oversight activities as may be required to
38 ensure full implementation of programs established by it.

39 (g) Nothing in this article shall be deemed to empower the
40 board to revoke or suspend any certificate issued by the
41 commissioner or the director of the division of mines and

42 minerals.

43 (h) The board may, upon its own motion or whenever
44 requested to do so by the commissioner, deem two certificates
45 issued by this state to be of equal value or deem training
46 provided or required by federal agencies to be sufficient to
47 meet training and education requirements set by it, the
48 commissioner, or by the provisions of this code.

§22-9-6. Duties of the commissioner and department.

1 The commissioner shall be empowered to promulgate,
2 pursuant to chapter twenty-nine-a of this code, such reasona-
3 ble rules and regulations as are necessary to establish a
4 program to implement the provisions of this article. Such
5 program shall include, but not be limited to, implementation
6 of a program of instruction in each of the miner occupational
7 specialties and the conduct of examinations to test each
8 applicant's knowledge and understanding of the training and
9 instruction which he is required to have prior to the receipt
10 of a certificate.

11 The commissioner is authorized and directed to utilize state
12 mine inspectors, mine safety instructors, the state mine
13 foreman examiner, private and public institutions of education
14 and such other persons as may be available to him in
15 implementing the program of instruction and examinations.

16 The commissioner may, at any time, make such recommen-
17 dations or supply such information to the board as he may
18 deem appropriate.

19 The commissioner is authorized and directed to utilize such
20 state and federal moneys and personnel as may be available
21 to the department for educational and training purposes in the
22 implementation of the provisions of this article.

**ARTICLE 10. CERTIFICATION OF UNDERGROUND AND SURFACE
COAL MINERS.**

§22-10-1. Certificate of competency and qualification or permit of apprenticeship
required of all surface and underground miners.

§22-10-2. Definitions.

§22-10-3. Permit of apprenticeship-underground miner.

§22-10-4. Permit of apprenticeship-surface miner.

§22-10-5. Supervision of apprentices.

§22-10-6. Certificate of competency and qualifications—Underground or surface
miner.

§22-10-7. Refusal to issue certificate; appeal.

§22-10-8. Limitations of article.

§22-10-9. Violations; penalties.

§22-10-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

1 Except as hereinafter provided, no person shall work or be
2 employed for the purpose of performing normal duties as a
3 surface or underground miner in any mine in this state unless
4 he holds at the time he performs such duties a certificate of
5 competency and qualification or a permit of apprenticeship
6 issued under the provisions of this article.

§22-10-2. Definitions.

1 For purposes of this article the term "surface miner" means
2 a person employed at a "surface mine," as that term is defined
3 in section three, article three, chapter twenty-two-a of this
4 code, and in section two, article four of said chapter.

5 For purposes of this article, the term "underground miner"
6 means an underground worker in a bituminous coal mine,
7 except as hereinafter provided.

8 For purposes of this article, the term "board of miner
9 training, education and certification" means that board
10 established in article nine of this chapter.

§22-10-3. Permit of apprenticeship-underground miner.

1 A permit of apprenticeship-underground miner shall be
2 issued by the director to any person who has demonstrated
3 by examination a knowledge of the subjects and skills
4 pertaining to employment in underground mines, including,
5 but not limited to, general safety, first aid, miner and operator
6 rights and responsibilities, general principles of electricity,
7 general mining hazards, roof control, ventilation, mine health
8 and sanitation, mine mapping, state and federal mining laws
9 and regulations and such other subjects as may be required
10 by the board of miner training, education and certification:
11 *Provided*, That each applicant for said permit shall complete
12 a program of education and training of at least eighty hours,
13 which shall be determined by the board of miner training,
14 education and certification and provided for and implemented
15 by the director of the division of mines and minerals: *Provided*

16 *further*, That if a sufficient number of qualified applicants
17 having successfully completed the state training program
18 provided by the state division of mines and minerals are not
19 available, the operator may request approval from the director
20 to conduct his own preemployment training program so long
21 as such training adequately covers the minimum criteria
22 determined by the board and such trainees shall be eligible for
23 the same certification as provided for trainees undergoing
24 training provided by the state.

§22-10-4. Permit of apprenticeship-surface miner.

1 A permit of apprenticeship-surface miner shall be issued by
2 the director to any person who has demonstrated by
3 examination a knowledge of the subjects and skills pertaining
4 to employment in the surface mining industry, including, but
5 not limited to, general safety, first aid, miner and operator
6 rights and responsibilities, general principles of electricity,
7 health and sanitation, heavy equipment safety, high walls and
8 spoil banks, haulage, welding safety, tippie safety, state and
9 federal mining laws and regulations and such other subjects
10 as may be required by the board of miner training, education
11 and certification: *Provided*, That each applicant for said
12 permit shall complete a program of education and training of
13 at least forty hours, which program shall be determined by the
14 board of miner training, education and certification and
15 provided for and implemented by the director of the division
16 of mines and minerals: *Provided further*, That if a sufficient
17 number of qualified applicants having successfully completed
18 the state training provided by the state division of mines and
19 minerals are not available, the operator may request approval
20 from the director to conduct his own preemployment training
21 program so long as such training adequately covers the
22 minimum criteria determined by the board and such trainees
23 shall be eligible for the same certification as provided for
24 trainees undergoing training provided by the state.

§22-10-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be known
2 as an apprentice. Any miner holding a certificate of compet-
3 ency and qualification may have one person working with him,
4 and under his supervision and direction, as an apprentice, for
5 the purpose of learning and being instructed in the duties and

6 calling of mining. Any mine foreman or fire boss or assistant
7 mine foreman or fire boss may have three persons working
8 with him under his supervision and direction, as apprentices,
9 for the purpose of learning and being instructed in the duties
10 and calling of mining: *Provided*, That a mine foreman,
11 assistant mine foreman or fire boss supervising apprentices in
12 an area where no coal is being produced or which is outby
13 the working section may have as many as five apprentices
14 under his supervision and direction, as apprentices, for the
15 purpose of learning and being instructed in the duties and
16 calling of mining or where the operator is using a production
17 section under program for training of apprentice miners,
18 approved by the board of miner training, education and
19 certification.

20 Every apprentice working at a surface mine shall be at all
21 times under the supervision and control of at least one person
22 who holds a certificate of competency and qualification.

23 In all cases, it shall be the duty of every mine operator who
24 employs apprentices to ensure that such persons are effectively
25 supervised and to instruct such persons in safe mining
26 practices. Each apprentice shall wear a red hat which identifies
27 him as such while employed at or near a mine. No person shall
28 be employed as an apprentice for a period in excess of eight
29 months, except that in the event of illness or injury, time
30 extensions shall be permitted as established by the director of
31 the division of mines and minerals.

§22-10-6. Certificate of competency and qualification—Underground or surface miner.

1 A certificate of competency and qualification as an
2 underground miner or as surface miner shall be issued by the
3 director to any person who has at least six months' total
4 experience as an apprentice and demonstrated his competence
5 as a miner by successful completion of an examination given
6 by the director or his representative in a manner and place
7 to be determined by the board of miner training, education
8 and certification: *Provided*, That all examinations shall be
9 conducted in the English language and shall be of a practical
10 nature, so as to determine the competency and qualifications
11 of the applicant to engage in the mining of coal with
12 reasonable safety to himself and his fellow employees:

13 *Provided further*, That notice of the time and place of such
14 examination shall be given to management at the mine, to the
15 local union thereat if there is a local union, and notice shall
16 also be posted at the place or places in the vicinity of the mine
17 where notices to employees are ordinarily posted. Examina-
18 tions shall also be held at such times and places, and after
19 such notice, as the board finds necessary to enable all
20 applicants for certificates to have an opportunity to qualify for
21 certification.

§22-10-7. Refusal to issue certificate; appeal.

1 If the director or his representative finds that an applicant
2 is not qualified and competent, he shall so notify the applicant
3 not more than ten days after the date of examination.

4 Any applicant aggrieved by an action of the director in
5 failing or refusing to issue a certificate of qualification and
6 competency may, within ten days notice of the action
7 complained of, appeal to the director who shall promptly give
8 the applicant a hearing and either affirm the action or take
9 such action as should have been taken.

§22-10-8. Limitations of article.

1 All persons possessing certificates of qualification heretofore
2 issued by the department of mines of this state, or hereafter
3 by the division of mines and minerals, entitling them to act
4 as mine foreman-fire bosses, or assistant mine foreman-fire
5 bosses, shall be eligible to engage at any time as miners in the
6 mines of this state. Supervisory and technically trained
7 employees of the operator, whose work contributes only
8 indirectly to mine operations, shall not be required to possess
9 a miners' certificate.

10 Notwithstanding the provisions of this article, every person
11 working as a surface miner in this state on or before the first
12 day of July, one thousand nine hundred seventy-four, shall,
13 upon application to the director, be issued a certificate of
14 competency and qualification.

§22-10-9. Violations; penalties.

1 Any person who knowingly works in or at a mine without
2 a certificate issued under the provision of this article, any
3 person who knowingly employs an uncertified miner to work

4 in or at a coal mine in this state, or, any operator who fails
5 to ensure the supervision of miners holding a certificate of
6 apprenticeship as provided for in section five of this article,
7 shall be guilty of a misdemeanor, and, upon conviction
8 thereof, shall be fined not less than fifty dollars nor more than
9 five hundred dollars.

ARTICLE 11. MINE INSPECTORS' EXAMINING BOARD.

§22-11-1. Mine inspectors' examining board .

1 There shall be a mine inspectors' examining board consisting
2 of five members who, except for the public representative on
3 such board, shall be appointed by the governor, by and with
4 the advice and consent of the Senate. Members so appointed
5 may be removed only for the same causes and in like manner
6 as elective state officers. One of the members of the board shall
7 be a representative of the public, who shall be the director of
8 the school of mines at West Virginia University. Two members
9 of the board shall be persons who by reason of previous
10 training and experience may reasonably be said to represent
11 the viewpoint of coal mine operators and two members shall
12 be persons who by reason of previous training and experience
13 may reasonably be said to represent the viewpoint of coal mine
14 workers.

15 The director of the division of mines and minerals shall be
16 an ex officio member of the board and shall serve as secretary
17 of the board, without additional compensation; but he shall
18 have no right to vote with respect to any matter before the
19 board.

20 The members of the board, except the public representative,
21 shall be appointed for overlapping terms of eight years, except
22 that the original appointments shall be for terms of two, four,
23 six and eight years, respectively. Any member whose term
24 expires may be reappointed by the governor.

25 Each member of the board shall receive fifty dollars per
26 diem while actually engaged in the performance of the work
27 of the board; and shall receive mileage at the rate of ten cents
28 for each mile actually traveled going from the home of the
29 member to the place of the meeting of the board and returning
30 therefrom, which shall be paid out of the state treasury upon
31 a requisition upon the state auditor, properly certified by such

32 members of the board.

33 The public member shall serve as chairman of the board.
34 Members of the board, before performing any duty, shall take
35 and subscribe to the oath required by section five, article IV
36 of the constitution of West Virginia.

37 The mine inspectors' examining board shall meet at such
38 times and places as shall be designated by the chairman. It
39 shall be the duty of the chairman to call a meeting of the board
40 on the written request of three members or the director of the
41 division of mines and minerals. Notice of each meeting shall
42 be given in writing to each member by the secretary at least
43 five days in advance of the meeting. Three members shall
44 constitute a quorum for the transaction of business.

45 In addition to other duties expressly set forth elsewhere in
46 this article, the board shall:

47 (1) Establish, and from time to time revise, forms of
48 application for employment as mine inspectors and forms for
49 written examinations to test the qualifications of candidates
50 for that position;

51 (2) Adopt and promulgate reasonable rules and regulations
52 relating to the examination, qualification and certification of
53 candidates for appointment as mine inspectors, and hearing for
54 removal of inspectors, required to be held by section eleven,
55 article one-a, chapter twenty-two-a of this code. All of such
56 rules and regulations shall be printed and a copy thereof
57 furnished by the secretary of the board to any person upon
58 request;

59 (3) Conduct, after public notice of the time and place
60 thereof, examinations of candidates for appointment as mine
61 inspector. By unanimous agreement of all members of the
62 board, one or more members of the board or an employee of
63 the division of mines and minerals may be designated to give
64 a candidate the written portion of the examination;

65 (4) Prepare and certify to the director of the division of
66 mines and minerals a register of qualified eligible candidates
67 for appointment as mine inspectors. The register shall list all
68 qualified eligible candidates in the order of their grades, the
69 candidate with the highest grade appearing at the top of the
70 list. After each meeting of the board held to examine such

71 candidates, and at least annually, the board shall prepare and
72 submit to the director of the division of mines and minerals
73 a revised and corrected register of qualified eligible candidates
74 for appointment as mine inspector, deleting from such revised
75 register all persons (a) who are no longer residents of West
76 Virginia, (b) who have allowed a calendar year to expire
77 without, in writing, indicating their continued availability for
78 such appointment, (c) who have been passed over for
79 appointment for three years, (d) who have become ineligible
80 for appointment since the board originally certified that such
81 person was qualified and eligible for appointment as mine
82 inspector, or (e) who, in the judgment of at least four members
83 of the board, should be removed from the register for good
84 cause;

85 (5) Cause the secretary of the board to keep and preserve
86 the written examination papers, manuscripts, grading sheets,
87 and other papers of all applicants for appointment as mine
88 inspector for such period of time as may be established by the
89 board. Specimens of the examinations given, together with the
90 correct solution of each question, shall be preserved perman-
91 ently by the secretary of the board;

92 (6) Issue a letter or written notice of qualification to each
93 successful eligible candidate;

94 (7) Hear and determine proceedings for the removal of mine
95 inspectors in accordance with the provisions of this article;

96 (8) Hear and determine appeals of mine inspectors from
97 suspension orders made by the director pursuant to the
98 provisions of section four, article one-a, chapter twenty-two-
99 a of this code: *Provided*, That an aggrieved inspector, in order
100 to appeal from any order of suspension, shall file such appeal
101 in writing with the mine inspectors' examining board not later
102 than ten days after receipt of notice of suspension. On such
103 appeal the board shall affirm the act of the director unless it
104 be satisfied from a clear preponderance of the evidence that
105 the director has acted arbitrarily;

106 (9) Make an annual report to the governor and the director
107 of the division of mines and minerals concerning the
108 administration of mine inspection personnel in the state
109 service, making such recommendations as the board considers
110 to be in the public interest.

ARTICLE 12. EMERGENCY MEDICAL PERSONNEL.

§22-12-1. Emergency personnel in coal mines.

§22-12-2. First-aid training of coal mine employees.

§22-12-1. Emergency personnel in coal mines.

1 (a) Emergency medical services personnel shall be employed
2 on each shift at every mine that: (1) Employs more than ten
3 employees and (2) more than eight persons are present on the
4 shift. Said emergency medical services personnel shall be
5 employed at their regular duties at a central location, or when
6 more than one such person is required pursuant to subsection
7 (b) or (c) at locations, convenient from quick response to
8 emergencies; and further shall have available to them at all
9 times such equipment as shall be prescribed by the director
10 of the division of mines and minerals, in consultation with the
11 director of the department of health.

12 (b) Until the first day of July, one thousand nine hundred
13 eighty-five, emergency medical services personnel shall be
14 defined as a medical service attendant as defined in article
15 four-c, chapter sixteen of this code, paramedic as defined in
16 article three-b, chapter thirty of this code, or physician
17 assistant as defined in article three-a, chapter thirty of this
18 code. At least one emergency medical services personnel shall
19 be employed at a mine for every seventy employees or any part
20 thereof who are engaged at one time, in the extraction,
21 production or preparation of coal.

22 (c) After the first day of July, one thousand nine hundred
23 eighty-five, emergency medical services personnel shall be
24 defined as a person who is certified as an emergency medical
25 technician-mining, emergency medical technician, emergency
26 medical technician-ambulance, emergency medical technician-
27 intermediate, mobile intensive care paramedic, emergency
28 medical technician-paramedic as defined in section three,
29 article four-c, chapter sixteen of this code, or physician
30 assistant as defined in section sixteen, article three-a, chapter
31 thirty of this code. At least one emergency medical services
32 personnel shall be employed at a mine for every fifty
33 employees or any part thereof who are engaged at any time,
34 in the extraction, production or preparation of coal.

35 (d) A training course designed specifically for certification
36 of emergency medical technician-mining, shall be developed at

37 the earliest practicable time by the director of health in
38 consultation with the board of miner training, education and
39 certification. The training course for initial certification as an
40 emergency medical technician-mining shall not be less than
41 sixty hours, which shall include, but is not limited to, mast
42 trouser application, basic life support skills and emergency
43 room observation or other equivalent practical exposure to
44 emergencies as prescribed by the director of the department
45 of health.

46 (e) The maintenance of a valid emergency medical techni-
47 cian-mining certificate may be accomplished without taking a
48 three year recertification examination provided that such
49 emergency medical technician-mining personnel completes an
50 eight hour annual retraining and testing program prescribed
51 by the director of health in consultation with the board of
52 miner training, education and certification.

53 (f) All emergency medical services personnel currently
54 certified as emergency medical service attendants or emergency
55 medical technicians shall receive certification as emergency
56 medical technicians without further training and examination
57 for the remainder of their three year certification period; such
58 emergency medical service attendant or emergency medical
59 technician may upon expiration of such certification become
60 certified as an emergency medical technician-mining upon
61 completion of the eight hour retraining program referred to
62 in subsection (e) above.

§22-12-2. First-aid training of coal mine employees.

1 Each coal mine operator shall provide every new employee
2 within six months of the date of his employment with the
3 opportunity for first-aid training as prescribed by the director
4 of the division of mines and minerals unless such employee
5 has previously received such training. Each coal mine
6 employee shall be required to take refresher first-aid training
7 of not less than five hours within each twenty-four months of
8 employment. The employee shall be paid regular wages, or
9 overtime pay if applicable, for all periods of first-aid training.

ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22-13-1. Oil and gas inspectors; supervising inspectors; tenure; oath and bond.

§22-13-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

§22-13-1. Oil and gas inspectors; supervising inspectors; tenure; oath and bond.

1 Notwithstanding any other provisions of law, oil and gas
2 inspectors shall be selected, serve and be removed as in this
3 article provided.

4 The director for the division of oil and gas shall divide the
5 state so as to equalize, as far as practical, the work of each
6 oil and gas inspector. He may designate a supervising inspector
7 and other inspectors as may be necessary, and may designate
8 their places of abode, at points convenient to the accomplish-
9 ment of their work.

10 The director for the division of oil and gas shall make each
11 appointment from among the three qualified eligible candi-
12 dates on the register having the highest grades. The commis-
13 sioner of the department of energy or the director for the
14 division of oil and gas, for good cause, at least thirty days
15 prior to making an appointment, strike any name from the
16 register. Upon striking any name from the register, the
17 commissioner or director, as the case may be, shall imme-
18 diately notify in writing each member of the oil and gas
19 inspectors' examining board of his action, together with a
20 detailed statement of the reasons therefor. Thereafter, the oil
21 and gas inspectors' examining board, after hearing, if it finds
22 that the action of striking such name was arbitrary or
23 unreasonable, may order the name of any candidate so stricken
24 from the register to be reinstated thereon. Such reinstatement
25 shall be effective from the date of removal from the register.

26 Any candidate passed over for appointment for three years
27 shall be automatically stricken from the register.

28 After having served for a probationary period of one year
29 to the satisfaction of the director for the division of oil and
30 gas and the commissioner, an oil and gas inspector or
31 supervising inspector shall have permanent tenure until he
32 becomes seventy years of age, subject only to dismissal for
33 cause in accordance with the provisions of section two of this
34 article. No oil and gas inspector or supervising inspector while
35 in office shall be directly or indirectly interested as owner,

36 lessor, operator, stockholder, superintendent or engineer of
37 any oil or gas drilling or producing venture or of any coal
38 mine in this state. Before entering upon the discharge of his
39 duties as an oil and gas inspector or supervising inspector, he
40 shall take the oath of office prescribed by section 5, article
41 IV of the constitution of West Virginia, and shall execute a
42 bond in the penalty of two thousand dollars, with security to
43 be approved by the director of the division of oil and gas,
44 conditioned upon the faithful discharge of his duties, a
45 certificate of which oath and bond shall be filed in the office
46 of the secretary of state.

47 The supervising inspector and oil and gas inspectors shall
48 perform such duties as are imposed upon them by this chapter
49 or chapter twenty-two-b of this code, and related duties
50 assigned by the director for the division of oil and gas upon
51 approval of the commissioner.

**§22-13-2. Oil and gas inspectors; eligibility for appointment;
qualifications; salary; expenses; removal.**

1 (a) No person is eligible for appointment as an oil and gas
2 inspector or supervising inspector unless, at the time of his
3 probationary appointment, he (1) is a citizen of West Virginia,
4 in good health, and of good character, reputation and
5 temperate habits; (2) has had at least ten years' practical
6 experience in the oil and gas industry, at least five years of
7 which, immediately preceding his original appointment shall
8 have been in the oil and gas industry in this state: *Provided,*
9 That a diploma in geology or in mining or petroleum
10 engineering shall be considered the equivalent of five years'
11 practical experience; and (3) has good theoretical and practical
12 knowledge of oil and gas drilling and production methods,
13 practices and techniques, sound safety practices and applicable
14 mining laws.

15 (b) In order to qualify for appointment as an oil and gas
16 inspector or supervising inspector, an eligible applicant shall
17 submit to a written and oral examination by the oil and gas
18 inspectors' examining board and shall furnish such evidence
19 of good health, character and other facts establishing eligibility
20 as such board may require. If such board finds after
21 investigation and examination that an applicant (1) is eligible
22 for appointment and (2) has passed all written and oral

23 examinations, the board shall add such applicant's name and
24 grade to the register of qualified eligible candidates and certify
25 its action to the director of the division of oil and gas. No
26 candidate's name may remain on the register for more than
27 three years without requalifying.

28 (c) The salary of the supervising inspector shall be not less
29 than twenty-seven thousand five hundred dollars per annum.
30 Salaries of inspectors shall be not less than twenty-two
31 thousand dollars per annum. The supervising inspector and
32 inspectors shall receive mileage expense reimbursement at the
33 rate established by rule of the commissioner of the department
34 of finance and administration for in-state travel of public
35 employees. Within the limits provided by law, the salary of
36 each inspector and of the supervising inspector shall be fixed
37 by said director subject to the approval of the commissioner
38 and the oil and gas inspectors' examining board. In fixing
39 salaries of the oil and gas inspectors and of the supervising
40 inspector, said director shall consider ability, performance of
41 duty and experience. No reimbursement for traveling expenses
42 may be made except upon an itemized account of such
43 expenses submitted by the inspector or supervising inspector,
44 as the case may be, who shall verify, upon oath, that such
45 expenses were actually incurred in the discharge of his official
46 duties.

47 (d) An inspector or the supervising inspector, after having
48 received a permanent appointment, shall be removed from
49 office only for physical or mental impairment, incompetency,
50 neglect of duty, drunkenness, malfeasance in office, or other
51 good cause.

52 Proceedings for the removal of an oil and gas inspector or
53 the supervising inspector may be initiated by said director or
54 the commissioner whenever either has reasonable grounds to
55 believe and does believe that adequate cause exists warranting
56 removal. Such a proceeding shall be initiated by a verified
57 petition, filed with the oil and gas inspectors' examining board
58 by said director or the commissioner, setting forth with
59 particularity the facts alleged. Not less than twenty reputable
60 citizens engaged in oil and gas drilling and production
61 operations in the state may petition said director or the
62 commissioner for the removal of an inspector or the
63 supervising inspector. If such petition is verified by at least one

64 of the petitioners, based on actual knowledge of the affiant,
65 and alleges facts which, if true, warrant the removal of the
66 inspector or supervising inspector, said director or the
67 commissioner shall cause an investigation of the facts to be
68 made. If, after such investigation said director or the
69 commissioner finds that there is substantial evidence which, if
70 true, warrants removal of the inspector or supervising
71 inspector, he shall file a petition with the oil and gas
72 inspectors' examining board requesting removal of the
73 inspector or supervising inspector.

74 On receipt of a petition by said director or by the
75 commissioner seeking removal of an inspector or the
76 supervising inspector, the oil and gas inspectors' examining
77 board shall promptly notify the inspector or supervising
78 inspector, as the case may be, to appear before it at a time
79 and place designated in said notice, which time shall be not
80 less than fifteen days nor more than thirty days thereafter.
81 There shall be attached to the copy of the notice served upon
82 the inspector or supervising inspector a copy of the petition
83 filed with such board.

84 At the time and place designated in said notice, the oil and
85 gas inspectors' examining board shall hear all evidence offered
86 in support of the petition and on behalf of the inspector or
87 supervising inspector. Each witness shall be sworn and a
88 transcript shall be made of all evidence taken and proceedings
89 had at any such hearing. No continuance may be granted
90 except for good cause shown.

91 The chairman of the board, said director and the commis-
92 sioner may administer oaths and subpoena witnesses.

93 An inspector or supervising inspector who willfully refuses
94 or fails to appear before such board, or having appeared,
95 refuses to answer under oath any relevant question on the
96 ground that his testimony or answer might incriminate him,
97 or refuses to accept a grant of immunity from prosecution on
98 account of any relevant matter about which he may be asked
99 to testify at such hearing before such board, forfeits his
100 position.

101 If, after hearing, the oil and gas inspectors' examining board
102 finds that the inspector or supervising inspector should be
103 removed, it shall enter an order to that effect. The decision

104 of the board shall be final and shall not be subject to judicial
105 review.

**§22-13-3. Oil and gas inspectors' examining board created;
composition; appointment, term and compensation of
members; meetings; powers and duties generally.**

1 (a) There is hereby continued an oil and gas inspectors'
2 examining board consisting of five members who, except for
3 the public representative on such board, shall be appointed by
4 the governor, by and with the advice and consent of the
5 Senate. Members may be removed only for the same causes
6 and like manner as elective state officers. One member of the
7 board who shall be the representative of the public, shall be
8 a professor in the petroleum engineering department of the
9 school of mines at West Virginia University appointed by the
10 dean of said school; two members shall be persons who by
11 reason of previous training and experience may reasonably be
12 said to represent the viewpoint of independent oil and gas
13 operators; and two members shall be persons who by reason
14 of previous training and experience may reasonably be said
15 to represent the viewpoint of major oil and gas producers.

16 The director for the division of oil and gas shall be an ex
17 officio member of the board and shall serve as secretary of
18 the board without additional compensation, but he shall have
19 no right to vote with respect to any matter before the board.

20 The members of the board, except the public representative,
21 shall be appointed for overlapping terms of eight years, except
22 that the original appointments shall be for terms of two, four,
23 six and eight years, respectively. Any member whose term
24 expires may be reappointed by the governor.

25 Each member of the board shall receive seventy-five dollars
26 per diem while actually engaged in the performance of the
27 work of the board, and shall receive mileage at the rate of
28 not more than fifteen cents for each mile actually traveled
29 going from the home of the member to the place of the
30 meeting of the board and returning therefrom, which shall be
31 paid out of the state treasury upon a requisition upon the state
32 auditor, properly certified by such members of the board.

33 The public member shall serve as chairman of the board.

34 Members of the board, before performing any duty, shall

35 take and subscribe to the oath required by section five, article
36 four of the constitution of West Virginia.

37 The board shall meet at such times and places as shall be
38 designated by the chairman. It shall be the duty of the
39 chairman to call a meeting of the board on the written request
40 of two members, or on the written request of said director or
41 the commissioner. Notice of each meeting shall be given in
42 writing to each member by the secretary at least five days in
43 advance of the meeting. Three voting members shall constitute
44 a quorum for the transaction of business.

45 (b) In addition to other powers and duties expressly set
46 forth elsewhere in this article, the board shall:

47 (1) Establish, and from time to time revise, forms of
48 application for employment as an oil and gas inspector and
49 supervising inspector and forms for written examinations to
50 test the qualifications of candidates, with such distinctions, if
51 any, in the forms for oil and gas inspector and supervising
52 inspector as the board may from time to time deem necessary
53 or advisable;

54 (2) Adopt and promulgate reasonable rules and regulations
55 relating to the examination, qualification and certification of
56 candidates for appointment, and relating to hearings for
57 removal of inspectors or the supervising inspector, required to
58 be held by this article. All of such rules and regulations shall
59 be printed and a copy thereof furnished by the secretary of
60 the board to any person upon request;

61 (3) Conduct, after public notice of the time and place
62 thereof, examinations of candidates for appointment. By
63 unanimous agreement of all members of the board, one or
64 more members of the board or an employee of the department
65 of energy may be designated to give to a candidate the written
66 portion of the examination;

67 (4) Prepare and certify to said director and the commis-
68 sioner a register of qualified eligible candidates for appoint-
69 ment as oil and gas inspectors or as supervising inspectors,
70 with such differentiation, if any, between the certification of
71 candidates for oil and gas inspectors and for supervising
72 inspectors as the board may from time to time deem necessary
73 or advisable. The register shall list all qualified eligible

74 candidates in the order of their grades, the candidate with the
75 highest grade appearing at the top of the list. After each
76 meeting of the board held to examine such candidates and at
77 least annually, the board shall prepare and submit to the said
78 director and the commissioner a revised and corrected register
79 of qualified eligible candidates for appointment, deleting from
80 such revised register all persons (a) who are no longer residents
81 of West Virginia, (b) who have allowed a calendar year to
82 expire without, in writing, indicating their continued availa-
83 bility for such appointment, (c) who have been passed over
84 for appointment for three years, (d) who have become
85 ineligible for appointment since the board originally certified
86 that such persons were qualified and eligible for appointment,
87 or (e) who, in the judgment of at least three members of the
88 board, should be removed from the register for good cause;

89 (5) Cause the secretary of the board to keep and preserve
90 the written examination papers, manuscripts, grading sheets
91 and other papers of all applicants for appointment for such
92 period of time as may be established by the board. Specimens
93 of the examinations given, together with the correct solution
94 of each question, shall be preserved permanently by the
95 secretary of the board;

96 (6) Issue a letter or written notice of qualification to each
97 successful eligible candidate;

98 (7) Hear and determine proceedings for the removal of
99 inspectors or the supervising inspector in accordance with the
100 provisions of this article;

101 (8) Hear and determine appeals of inspectors or the
102 supervising inspector from suspension orders made by said
103 director pursuant to the provisions of section two, article one
104 of chapter twenty-two-b of this code: *Provided*, That in order
105 to appeal from any order of suspension, an aggrieved inspector
106 or supervising inspector shall file such appeal in writing with
107 the oil and gas inspectors' examining board not later than ten
108 days after receipt of the notice of suspension. On such appeal
109 the board shall affirm the action of said director unless it be
110 satisfied from a clear preponderance of the evidence that said
111 director has acted arbitrarily;

112 (9) Make an annual report to the governor concerning the
113 administration of oil and gas inspection personnel in the state

114 service; making such recommendations as the board considers
115 to be in the public interest; and

116 (10) Render such advice and assistance to the director of
117 the division of oil and gas as he shall from time to time
118 determine necessary or desirable in the performance of his
119 duties.

120 (c) After having conducted a performance and fiscal audit
121 through its joint committee on government operations,
122 pursuant to section nine, article ten, chapter four of this code,
123 the Legislature hereby finds and declares that the oil and gas
124 inspectors' examining board within the department of energy
125 should be continued and reestablished. Accordingly, notwith-
126 standing the provisions of section four, article ten, chapter four
127 of this code, the oil and gas inspectors' examining board within
128 the department of energy shall continue to exist until the first
129 day of July, one thousand nine hundred eighty-seven.

CHAPTER 22A. MINES AND MINERALS.

Article

1. **Division of Mines and Minerals.**
- 1A. **Administration; Enforcement.**
2. **Underground Mine Maps.**
3. **West Virginia Surface Coal Mining and Reclamation Act.**
4. **Surface Mining and Reclamation of Minerals Other Than Coal.**
5. **Underground Clay Mine.**
6. **Open-pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.**

ARTICLE 1. DIVISION OF MINES AND MINERALS.

§22A-1-1. Division of mines and minerals.

§22A-1-2. Director of division of mines and minerals.

§22A-1-1. Division of mines and minerals.

1 The division of mines and minerals, created under the
2 provisions of section six, article one, chapter twenty-two of
3 this code, is hereby charged with the duties and responsibilities
4 set out in chapter twenty-two of this code and this chapter,
5 relating to the exploration for and development, production
6 and conservation of coal and all other minerals, except oil and
7 gas and those minerals found in association therewith as
8 provided in chapter twenty-two-b of this code. All legislative
9 findings and policies stated in chapter twenty-two of this code
10 in relation to these minerals apply to the operations of this

11 division and the provisions of this chapter.

§22A-1-2. Director of division of mines and minerals.

1 The director of the division of mines and minerals, as
2 provided in section seven, article one, chapter twenty-two of
3 this code shall have the responsibility and duties in adminis-
4 tration of the division of mines and minerals as are provided
5 in said chapter twenty-two and this chapter.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

- §22A-1A-1. Definitions.
- §22A-1A-2. Division of mines and minerals; purposes; rules and regulations.
- §22A-1A-3. Director of division of mines and minerals—Appointment.
- §22A-1A-4. Same—Powers and duties.
- §22A-1A-5. Same—Eligibility; salary.
- §22A-1A-6. Same—Oath and bond.
- §22A-1A-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
- §22A-1A-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath, bond.
- §22A-1A-9. Mine inspectors may be appointed to fill vacancy in division.
- §22A-1A-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.
- §22A-1A-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
- §22A-1A-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.
- §22A-1A-12. Commissioner, director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
- §22A-1A-13. Findings, orders and notices.
- §22A-1A-14. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.
- §22A-1A-15. Review of orders and notices by the commissioner.
- §22A-1A-16. Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators.
- §22A-1A-17. Judicial review.
- §22A-1A-18. Injunctions.
- §22A-1A-19. Penalties.
- §22A-1A-20. Discrimination.
- §22A-1A-21. Records and reports.
- §22A-1A-22. Mine foreman examiner for mine foreman-fire bosses and assistant mine foreman-fire bosses; salary.
- §22A-1A-23. Duties of mine foreman examiner.
- §22A-1A-24. Place and time for examinations.
- §22A-1A-25. Preparation of examination; notice of intention to take examination; investigation of applicant.

- §22A-1A-26. Certificates of qualification heretofore granted.
- §22A-1A-27. Mine foreman examiner to certify successful applicants to director.
- §22A-1A-28. Record of examination.
- §22A-1A-29. Withdrawal of certification.
- §22A-1A-30. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.
- §22A-1A-31. Mine rescue stations; equipment.
- §22A-1A-32. Mine rescue crews.
- §22A-1A-33. Mine rescue teams.
- §22A-1A-34. Mandatory safety programs; penalties.
- §22A-1A-35. Provisions of article severable.

§22A-1A-1. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, the following definitions shall apply to this chapter:

3 **(a) General.**

4 (1) Accident: The term "accident" means any mine explo-
5 sion, mine ignition, mine fire, or mine inundation, or injury
6 to, or death of any person.

7 (2) Agent: The term "agent" means any person charged
8 with responsibility for the operation of all or a part of a mine
9 or the supervision of the miners in a mine.

10 (3) Approved: The term "approved" means in strict
11 compliance with mining law, or, in the absence of law,
12 accepted by a recognized standardizing body or organization
13 whose approval is generally recognized as authoritative on the
14 subject.

15 (4) Commissioner, or commissioner of energy: The terms
16 "commissioner" or "commissioner of energy" means the
17 commissioner of the department of energy as provided in
18 chapter twenty-two of this code.

19 (5) Face equipment: The term "face equipment" shall mean
20 mobile or portable mining machinery having electric motors
21 or accessory equipment normally installed or operated in by the
22 last open crosscut in an entry or room.

23 (6) Imminent danger: The term "imminent danger" means
24 the existence of any condition or practice in a coal mine which
25 could reasonably be expected to cause death or serious
26 physical harm before such condition or practice can be abated.

27 (7) Mine: The term "mine" includes the shafts, slopes, drifts

28 or inclines connected with, or intended in the future to be
29 connected with, excavations penetrating coal seams or strata,
30 which excavations are ventilated by one general air current or
31 divisions thereof, and connected by one general system of mine
32 haulage over which coal may be delivered to one or more
33 points outside the mine, and the surface structures or
34 equipment connected or associated therewith which contribute
35 directly or indirectly to the mining, preparation or handling
36 of coal, or construction thereof.

37 (8) Miner: The term "miner" means any individual working
38 in a coal mine.

39 (9) Operator: The term "operator" means any firm,
40 corporation, partnership or individual operating any coal mine
41 or part thereof, or engaged in the construction of any facility
42 associated with a coal mine.

43 (10) Permissible: The term "permissible" means any
44 equipment, device or explosive that has been approved as
45 permissible by the federal mine safety and health administra-
46 tion and/or the United States bureau of mines and meets all
47 requirements, restrictions, exceptions, limitations and condi-
48 tions attached to such classification by that agency or the
49 bureau.

50 (11) Person: The term "person" means any individual
51 partnership, association, corporation, firm, subsidiary of a
52 corporation or other organization.

53 (12) Work of preparing the coal: The term "work of
54 preparing the coal" means the breaking, crushing, sizing,
55 cleaning, washing, drying, mixing, storing and loading of
56 bituminous coal or lignite, and such other work of preparing
57 such coal as is usually done by the operator of the coal mine.

58 **(b) Division of mines and minerals.**

59 (1) Board of appeals: The term "board of appeals" means
60 as provided for in article five, chapter twenty-two of this code.

61 (2) Division: The term "division" means the state division
62 of mines and minerals provided for in article one, section two
63 of this chapter and article one, chapter twenty-two of this
64 code.

65 (3) Director: The term "director" means the director of the

66 division of mines and minerals provided for in section two,
67 article one of this chapter and article one, chapter twenty-two
68 of this code.

69 (4) Mine inspector: The term "mine inspector" means a
70 state mine inspector provided for in section seven of this
71 article.

72 (5) Mine inspectors' examining board: The term "mine
73 inspectors' examining board" shall mean the mine inspectors'
74 examining board provided for in article eleven, chapter twenty-
75 two of this code.

76 (c) **Mine areas.**

77 (1) Abandoned workings: The term "abandoned workings"
78 means excavation, either caved or sealed, that is deserted and
79 in which further mining is not intended, or open workings
80 which are ventilated and not inspected regularly.

81 (2) Active workings: The term "active workings" means all
82 places in a mine that are ventilated and inspected regularly.

83 (3) Drift: The term "drift" means a horizontal or approx-
84 imately horizontal opening through the strata or in a coal seam
85 and used for the same purposes as a shaft.

86 (4) Excavations and workings: The term "excavations and
87 workings" means any or all parts of a mine excavated or being
88 excavated, including shafts, slopes, drifts, tunnels, entries,
89 rooms and working places, whether abandoned or in use.

90 (5) Inactive workings: The term "inactive workings"
91 includes all portions of a mine in which operations have been
92 suspended for an indefinite period, but have not been
93 abandoned.

94 (6) Mechanical working section: The term "mechanical
95 working section" means an area of a mine (A) in which coal
96 is loaded mechanically, (B) which is comprised of a number
97 of working places that are generally contiguous, and (C) which
98 is of such size to permit necessary supervision during shift
99 operation, including pre-shift and on-shift examinations and
100 tests required by law.

101 (7) Panel: The term "panel" means workings that are or
102 have been developed off of submain entries which do not

103 exceed three thousand feet in length.

104 (8) Return air: The term "return air" means a volume of
105 air that has passed through and ventilated all the working
106 places in a mine section.

107 (9) Shaft: The term "shaft" means a vertical opening
108 through the strata that is or may be used for the purpose of
109 ventilation, drainage, and the hoisting and transportation of
110 men and material, in connection with the mining of coal.

111 (10) Slope: The term "slope" means a plane or incline
112 roadway, usually driven to a coal seam from the surface and
113 used for the same purposes as a shaft.

114 (11) Working face: The term "working face" means any
115 place in a coal mine in which work of extracting coal from
116 its natural deposit in the earth is performed during the mining
117 cycle.

118 (12) Working place: The term "working place" means the
119 area of a coal mine in by the last open crosscut.

120 (13) Working section: The term "working section" means
121 all areas of the coal mine from the loading point of the section
122 to and including the working faces.

123 (14) Working unit: The term "working unit" means an area
124 of a mine in which coal is mined with a set of production
125 equipment; a conventional mining unit by a single loading
126 machine; a continuous mining unit by a single continuous
127 mining machine, which is comprised of a number of working
128 places.

129 **(d) Mine personnel.**

130 (1) Assistant mine foreman: The term "assistant mine
131 foreman" means a certified person designated to assist the
132 mine foreman in the supervision of a portion or the whole of
133 a mine or of the persons employed therein.

134 (2) Certified electrician: The term "certified electrician"
135 means any person who is qualified as a mine electrician and
136 who has passed an examination given by the division, or has
137 at least three years of experience in performing electrical work
138 underground in a coal mine, in the surface work areas of an
139 underground coal mine, in a surface coal mine, in a noncoal

140 mine, in the mine equipment manufacturing industry, or in any
141 other industry using or manufacturing similar equipment, and
142 has satisfactorily completed a coal mine electrical training
143 program approved by the division.

144 (3) Certified person: The term "certified person," when used
145 to designate the kind of person to whom the performance of
146 a duty in connection with the operation of a mine shall be
147 assigned, means a person who is qualified under the provisions
148 of this law to perform such duty.

149 (4) Interested persons: The term "interested persons"
150 includes the operator, members of any mine safety committee
151 at the mine affected and other duly authorized representatives
152 of the mine workers and the department.

153 (5) Mine foreman: The term "mine foreman" means the
154 certified person whom the operator or superintendent shall
155 place in charge of the inside workings of the mine and of the
156 persons employed therein.

157 (6) Qualified person: The term "qualified person" means a
158 person who has completed an examination and is considered
159 qualified on record by the division.

160 (7) Shot firer: The term "shot firer" means any person
161 having had at least two years of practical experience in coal
162 mines, who has a knowledge of ventilation, mine roof and
163 timbering, and who has demonstrated his knowledge of mine
164 gases, the use of a flame safety lamp, and other approved
165 detecting devices by examination and certification given him
166 by the division.

167 (8) Superintendent: The term "superintendent" means the
168 person who shall have, on behalf of the operator, immediate
169 supervision of one or more mines.

170 (9) Supervisor: The term "supervisor" means a superintend-
171 ent, mine foreman, assistant mine foreman, or any person
172 specifically designated by the superintendent or mine foreman
173 to supervise work or employees and who is acting pursuant
174 to such specific designation and instructions.

175 (e) Electrical.

176 (l) Armored cable: The term "armored cable" means a cable
177 provided with a wrapping of metal, usually steel wires or tapes,

- 178 primarily for the purpose of mechanical protection.
- 179 (2) Borehole cable: The term "borehole cable" means a cable
180 designed for vertical suspension in a borehole or shaft and
181 used for power circuits in the mine.
- 182 (3) Branch circuit: The term "branch circuit" means any
183 circuit, alternating current or direct current, connected to and
184 leading from the main power lines.
- 185 (4) Cable: The term "cable" means a standard conductor
186 (single conductor cable) or a combination of conductors
187 insulated from one another (multiple conductor cable).
- 188 (5) Circuit breaker: The term "circuit breaker" means a
189 device for interrupting a circuit between separable contacts
190 under normal or abnormal conditions.
- 191 (6) Delta connected: The term "delta connected" means a
192 power system in which the windings or transformers or a.c.
193 generators are connected to form a triangular phase relation-
194 ship, and with phase conductors connected to each point of
195 the triangle.
- 196 (7) Effectively grounded: The term "effectively grounded" is
197 an expression which means grounded through a grounding
198 connection of sufficiently low impedance (inherent or
199 intentionally added or both) so that fault grounds which may
200 occur cannot build up voltages in excess of limits established
201 for apparatus, circuits or systems so grounded.
- 202 (8) Flame-resistant cable, portable: The term "flame-
203 resistant cable, portable" means a portable flame-resistant
204 cable that has passed the flame tests of the Federal Mine
205 Safety and Health Administration.
- 206 (9) Ground or grounding conductor (mining): The term
207 "ground or grounding conductor (mining)," also referred to as
208 a safety ground conductor, safety ground and frame ground,
209 means a metallic conductor used to connect the metal frame
210 or enclosure of any equipment, device or wiring system with
211 a mine track or other effective grounding medium.
- 212 (10) Grounded (earthed): The term "grounded (earthed)"
213 means that the system, circuit or apparatus referred to is
214 provided with a ground.

- 215 (11) High voltage: The term “high voltage” means voltages
216 of more than one thousand volts.
- 217 (12) Lightning arrestor: The term “lightning arrestor” means
218 a protective device for limiting surge voltage on equipment by
219 discharging or by passing surge current; it prevents continued
220 flow of follow current to ground and is capable of repeating
221 these functions as specified.
- 222 (13) Low voltage: The term “low voltage” means up to and
223 including six hundred sixty volts.
- 224 (14) Medium voltage: The term “medium voltage” means
225 voltages from six hundred sixty-one to one thousand volts.
- 226 (15) Mine power center or distribution center: The term
227 “mine power center or distribution center” means a combined
228 transformer or distribution unit, complete within a metal
229 enclosure from which one or more low-voltage power circuits
230 are taken.
- 231 (16) Neutral (derived): The term “neutral (derived)” means
232 a neutral point or connection established by the addition of
233 a “zig-zag” or grounding transformer to a normally under-
234 ground power system.
- 235 (17) Neutral point: The term “neutral point” means the
236 connection point of transformer or generator windings from
237 which the voltage to ground is nominally zero, and is the point
238 generally used for system groundings in wye-connected a.c.
239 power system.
- 240 (18) Portable (trailing) cable: The term “portable (trailing)
241 cable” means a flexible cable or cord used for connecting
242 mobile, portable or stationary equipment in mines to a trolley
243 system or other external source of electric energy where
244 permanent mine wiring is prohibited or is impracticable.
- 245 (19) Wye-connected: The term “wye-connected” means a
246 power system connection in which one end of each phase
247 windings or transformers or a.c. generators are connected
248 together to form a neutral point, and a neutral conductor may
249 or may not be connected to the neutral point, and the neutral
250 point may or may not be grounded.
- 251 (20) Zig-zag transformer (grounding transformer): The term
252 “zig-zag transformer (grounding transformer)” means a

253 transformer intended primarily to provide a neutral point for
254 grounding purposes.

§22A-1A-2. Division of mines and minerals; purposes; rules and regulations.

1 The division of mines and minerals shall have as its purpose
2 the supervision of the execution and enforcement of the
3 provisions of this chapter and, in carrying out the aforesaid
4 purposes, it shall give prime consideration to the protection
5 of the safety and health of persons employed within or at the
6 mines of this state. In addition, the division shall, consistent
7 with the aforesaid prime consideration, protect and preserve
8 mining property and property used in connection therewith.

9 The division is hereby given authority, where authorized and
10 in the manner prescribed in this chapter, to enact such rules
11 and regulations as may be necessary to effectuate the above-
12 stated purposes, all under the supervision, review and approval
13 of the commissioner.

§22A-1A-3. Director of division of mines and minerals—Appointment.

1 There shall be a director of the division, who shall be
2 appointed by the commissioner of the department of energy
3 as provided for in section eight, article one of chapter twenty-
4 two.

§22A-1A-4. Same—Powers and duties.

1 The director of the division of mines and minerals shall have
2 full charge of the division. He shall have the power and duty
3 to:

4 (1) Supervise and direct the execution and enforcement of
5 the provisions of this chapter.

6 (2) Recommend the appointment and compensation of
7 deputy directors of the division to the commissioner.

8 (3) Employ such assistants, clerks, stenographers and other
9 employees as may be necessary to fully and effectively carry
10 out the provisions of this law and fix their compensation,
11 except as otherwise provided in this article.

12 (4) Assign mine inspectors hired by the commissioner to

13 divisions or districts in accordance with the provisions of
14 section seven of this article as may be necessary to fully and
15 effectively carry out the provisions of this law, including the
16 training of inspectors for the specialized requirements of
17 surface mining, shaft and slope sinking and surface installa-
18 tions and to supervise and direct such mine inspectors in the
19 performance of their duties.

20 (5) Suspend, for good cause, any mine inspector without
21 compensation for a period not exceeding thirty days in any
22 calendar year.

23 (6) Prepare report forms to be used by mine inspectors in
24 making their findings, orders and notices, upon inspections
25 made in accordance with this chapter.

26 (7) Hear and determine applications made by mine opera-
27 tors for the annulment or revision of orders made by mine
28 inspectors, and to make inspections of mines, in accordance
29 with the provisions of this article.

30 (8) Cause a properly indexed permanent and public record
31 to be kept of all inspections made by himself or by mine
32 inspectors.

33 (9) Make annually a full and complete written report of the
34 administration of his division to the commissioner, the
35 governor and the Legislature of the state for the year ending
36 the thirtieth day of June. Such report shall include the number
37 of visits and inspections of mines in the state by mine
38 inspectors, the quantity of coal, coke and other minerals
39 (excluding oil and gas) produced in the state, the number of
40 men employed, number of mines in operation, statistics with
41 regard to health and safety of persons working in the mines
42 including the causes of injuries and deaths, improvements
43 made, prosecutions, the total funds of the division from all
44 sources identifying each source of such funds, the expenditures
45 of the division, the surplus or deficit of the division at the
46 beginning and end of the year, the amount of fines collected,
47 the amount of fines imposed, the value of fines pending, the
48 number and type of violations found, the amount of fines
49 imposed, levied and turned over for collection, the total
50 amount of fines levied but not paid during the prior year, the
51 titles and salaries of all inspectors and other officials of the
52 division, the number of inspections made by each inspector,

53 the number and type of violations found by each inspector:
54 *Provided*, That no inspector shall be identified by name in this
55 report. Such reports shall be filed with the commissioner, the
56 governor and the Legislature on or before the thirty-first day
57 of December of the same year for which it was made, and shall
58 upon proper authority be printed and distributed to interested
59 persons.

60 (10) Call or subpoena witnesses, for the purpose of
61 conducting hearings into mine fires, mine explosions or any
62 mine accident; to administer oaths and to require production
63 of any books, papers, records or other documents relevant or
64 material to any hearing, investigation or examination of any
65 mine permitted by this chapter. Any witness so called or
66 subpoenaed shall receive forty dollars per diem and shall
67 receive mileage at the rate of fifteen cents for each mile
68 actually traveled, which shall be paid out of the state treasury
69 upon a requisition upon the state auditor, properly certified
70 by such witness.

71 (11) Institute civil actions for relief, including permanent or
72 temporary injunctions, restraining orders, or any other
73 appropriate action in the appropriate federal or state court
74 whenever any operator or his agent violates or fails or refuses
75 to comply with any lawful order, notice or decision issued by
76 the director or his representative.

77 (12) Perform all other duties which are expressly imposed
78 upon him by the provisions of this chapter.

79 (13) Make all records of the division open for inspection of
80 interested persons and the public.

81 (14) In conjunction with the commissioner of the depart-
82 ment of energy, adopt programs, regulations and procedures
83 designed to assist the small coal operator with obtaining
84 permits and meeting the environmental protection perfor-
85 mance standards for strip and underground coal mining
86 operations within the state. For the purposes of this
87 subdivision, a small coal operator is one who is anticipated
88 to mine less than two hundred thousand tons per year, but
89 the division in determining tonnage shall consider wholly
90 owned subsidiaries to be the same operation as the parent
91 corporation.

92 (15) Issue all permits, which the director is specifically
93 authorized by the provisions of this chapter to issue, as
94 expeditiously as possible with prime consideration given to the
95 protection of the safety and health of all persons employed
96 within or at the mines of this state. In so doing he shall utilize
97 the technical and logistical support made available by the
98 deputy directors of safety, health and training; permitting; and
99 inspection and enforcement.

§22A-1A-5. Same—Eligibility; salary.

1 The director shall be a citizen of West Virginia, shall be a
2 competent person of good repute and temperate habits with
3 demonstrated interest and experience in coal mining. The
4 director shall devote all of his time to the duties of his office
5 and shall not be directly or indirectly interested financially in
6 any mine. The salary of the director shall be set by the
7 commissioner, with reimbursement for traveling expenses
8 incurred in the discharge of his official duties, which shall be
9 paid out of the state treasury upon a requisition upon the state
10 auditor, properly certified by the commissioner.

§22A-1A-6. Same—Oath and bond.

1 The director shall, before entering upon the discharge of his
2 duties, take the oath of office prescribed by section 5, article
3 IV of the constitution of West Virginia, and shall execute a
4 bond in the penalty of two thousand dollars, with security to
5 be approved by the governor, conditioned upon the faithful
6 discharge of his duties, a certificate of which oath and which
7 bond shall be filed in the office of the secretary of state.

**§22A-1A-7. Mine inspectors; districts and divisions; employment;
tenure; oath; bond.**

1 Notwithstanding any other provisions of law, mine inspec-
2 tors shall be selected, serve and be removed as in this article
3 provided.

4 The director shall divide the state into not more than forty-
5 five mining districts and not more than five mining divisions,
6 so as to equalize, as far as practical, the work of each
7 inspector. He may assign inspectors to districts, designate and
8 assign not more than one inspector-at-large to each division
9 and one assistant inspector-at-large. He shall designate the
10 places of abode of inspectors at points convenient to the mines

11 of their respective districts, and, in the case of inspectors and
12 assistant inspectors-at-large, their respective divisions.

13 Except as in the next preceding paragraph provided, all
14 mine inspectors appointed after the mine inspectors' examining
15 board has certified to the commissioner an adequate register
16 of qualified eligible candidates in accordance with section
17 eleven of this article, so long as such register contains the
18 names of at least three qualified eligible candidates, shall be
19 appointed from the names on such register. Each original
20 appointment shall be made by the commissioner for a
21 probationary period of not more than one year.

22 The commissioner shall make each appointment from
23 among the three qualified eligible candidates on the register
24 having the highest grades: *Provided*, That the commissioner
25 may, for good cause, at least thirty days prior to making an
26 appointment, strike any name from the register. Upon striking
27 any name from the register, the commissioner shall imme-
28 diately notify in writing each member of the mine inspectors'
29 examining board of his action, together with a detailed
30 statement of the reasons therefor. Thereafter, the mine
31 inspectors' examining board, after hearing, if it finds that the
32 action of the commissioner was arbitrary or unreasonable, may
33 order the name of any candidate so stricken from the register
34 to be reinstated thereon. Such reinstatement shall be effective
35 from the date of removal from the register.

36 Any candidate passed over for appointment for three years
37 shall be automatically stricken from the register.

38 After having served for a probationary period of one year
39 to the satisfaction of the commissioner, a mine inspector shall
40 have permanent tenure, subject only to dismissal for cause in
41 accordance with the provisions of section eleven of this article.
42 No mine inspector, while in office, shall be directly or
43 indirectly interested as owner, lessor, operator, stockholder,
44 superintendent or engineer of any coal mine. Before entering
45 upon the discharge of his duties as a mine inspector, he shall
46 take the oath of office prescribed by the section 5, article IV
47 of the constitution of West Virginia and shall execute a bond
48 in the penalty of two thousand dollars, with security to be
49 approved by the director, conditioned upon the faithful
50 discharge of his duties, a certificate of which oath and bond

51 shall be filed in the office of the secretary of state.

52 The district inspectors, inspectors-at-large and assistant
53 inspectors-at-large, together with the director and the
54 commissioner, shall make all inspections authorized by articles
55 one-a and two of this chapter and shall perform such other
56 duties as are imposed upon mine inspectors by articles one-
57 a, two and six of this chapter, and article ten of chapter
58 twenty-two of this code.

**§22A-1A-8. Mine safety instructors; qualifications; employment;
compensation; tenure; oath; bond.**

1 The division shall employ eleven or more mine safety
2 instructors. To be eligible for employment as a mine safety
3 instructor, the applicant shall be (1) a citizen of West Virginia,
4 in good health, not less than twenty-five years of age, and of
5 good character, reputation and temperate habits, and (2) a
6 person who has had at least five years' experience in first aid
7 and mine rescue work and who has had practical experience
8 with dangerous gases found in coal mines, and who has a
9 practical knowledge of mines, mining methods, mine ventila-
10 tion, sound safety practices and applicable mining laws.

11 In order to qualify for appointment as a mine safety
12 instructor, an eligible applicant shall submit to a written and
13 oral examination, given by the mine inspectors' examining
14 board. The examination shall relate to the duties to be
15 performed by a safety instructor and may, subject to the
16 approval of the mine inspectors' examining board, be prepared
17 by the director.

18 If the board finds after investigation and examination that
19 the applicant (1) is eligible for appointment, and (2) has passed
20 all oral and written examinations with a grade of at least
21 eighty percent, the board shall add such applicant's name and
22 grade to a register of qualified eligible candidates and certify
23 its action to the commissioner. The commissioner may then
24 appoint one of the candidates from the three having the
25 highest grades.

26 The salary for a mine safety instructor shall be not less than
27 twenty-one thousand six hundred seventy-two dollars per year,
28 and shall be fixed by the commissioner, who shall take into
29 consideration ability, performance of duty and experience.

30 Such instructor shall devote all of his time to the duties of
31 his office. No reimbursement for traveling expenses shall be
32 made except on an itemized accounting for such expenses
33 submitted by the instructor, who shall verify upon oath that
34 such expenses were actually incurred in the discharge of his
35 official duties.

36 Except as expressly provided in this section to the contrary,
37 all provisions of this article relating to the eligibility,
38 qualification, appointment, tenure and removal of mine
39 inspectors shall be applicable to mine safety instructors.

§22A-1A-9. Mine inspectors may be appointed to fill vacancy in division.

1 Notwithstanding any other provisions of law, if a vacancy
2 occurs in any appointive position within the division, any mine
3 inspector having permanent tenure, if qualified, may be
4 appointed to such appointive position by the commissioner.

§22A-1A-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

1 The division shall employ five or more electrical inspectors.
2 To be eligible for employment as an electrical inspector, the
3 applicant shall be: (1) A citizen and resident of West Virginia,
4 in good health, not less than twenty-five years of age, and of
5 good character, reputation and of temperate habits; and (2)
6 a person who has had seven years' practical electrical
7 experience in coal mines, or a degree in electrical engineering
8 from an accredited electrical engineering school and one year's
9 practical experience in underground coal mining.

10 In order to qualify for appointment as a mine electrical
11 inspector, an eligible applicant shall submit to a written and
12 oral examination given by the mine inspectors' examining
13 board. The examination shall relate to the duties to be
14 performed by an electrical inspector. If the board finds after
15 investigation and examination that the applicant (1) is eligible
16 for appointment and (2) has passed all oral and written
17 examinations with a grade of at least ninety percent, the board
18 shall add such applicant's name and grade to a register of
19 qualified eligible candidates and certify its action to the
20 commissioner. The commissioner may then appoint one of the
21 candidates from the three having the highest grade.

22 The salary of a mine electrical inspector shall be not less
23 than thirty thousand four hundred eighty dollars per year, and
24 shall be fixed by the commissioner, who shall take into
25 consideration ability, performance of duty and experience. No
26 reimbursement for traveling expenses shall be made except on
27 an itemized accounting for such expense submitted by the
28 electrical inspector, who shall verify upon oath that such
29 expenses were actually incurred in the discharge of his official
30 duties.

31 Mine electrical inspectors, before entering upon the
32 discharge of their duties, shall take and subscribe to the oath
33 and shall execute a bond in the same penal sum, with surety
34 approved by the director, all as is required by this article in
35 the case of mine inspectors.

36 Except as expressly provided in this section to the contrary,
37 all provisions of this article relating to the eligibility,
38 qualifications, appointment, tenure and removal of mine
39 inspectors shall be applicable to mine electrical inspectors.

**§22A-1A-11. Eligibility for appointment as mine inspector;
qualifications; salary and expenses; removal.**

1 (a) No person shall be eligible for appointment as a mine
2 inspector unless, at the time of his probationary appointment,
3 he (1) is a citizen of West Virginia, in good health, not less
4 than twenty-four years of age, and of good character,
5 reputation and temperate habits; (2) has had at least six years'
6 practical experience in coal mines, at least three years of
7 which, immediately preceding his original appointment, shall
8 have been in mines of this state: *Provided*, That graduation
9 from any accredited college of mining engineering shall be
10 considered the equivalent of two years' practical experience;
11 (3) has had practical experience with dangerous gases found
12 in coal mines; and (4) has a good theoretical and practical
13 knowledge of mines, mining methods, mine ventilation, sound
14 safety practices and applicable mining laws.

15 (b) In order to qualify for appointment as a mine inspector,
16 an eligible applicant shall submit to a written and oral
17 examination by the mine inspectors' examining board and
18 furnish such evidence of good health, character and other facts
19 establishing eligibility as the board may require. If the board

20 finds after investigation and examination that an applicant: (1)
21 Is eligible for appointment and (2) has passed all written and
22 oral examinations, with a grade of at least eighty percent, the
23 board shall add such applicant's name and grade to the register
24 of qualified eligible candidates and certify its action to the
25 commissioner. No candidate's name shall remain in the register
26 for more than three years without requalifying.

27 (c) Salaries of district inspectors shall not be less than
28 twenty-eight thousand fifty-six dollars per year; assistant
29 inspector-at-large, not less than thirty thousand one hundred
30 eight dollars per year; inspectors-at-large, not less than thirty-
31 one thousand five hundred seventy-two dollars per year, and
32 they shall receive mileage at the rate of not less than twenty
33 cents for each mile actually traveled in the discharge of their
34 official duties in a privately owned vehicle. Within the limits
35 provided by law, the salary of each inspector shall be fixed
36 by the commissioner, subject to the approval of the mine
37 inspectors' examining board. In fixing salaries of mine
38 inspectors, the commissioner shall consider ability, perfor-
39 mance of duty and experience. No reimbursement for traveling
40 expenses shall be made except on an itemized account of such
41 expenses submitted by the inspector, who shall verify upon
42 oath, that such expenses were actually incurred in the
43 discharge of his official duties. Every inspector shall be
44 afforded compensatory time or compensation of at least his
45 regular rate for all time in excess of forty-two hours per week.

46 (d) Any mine inspector who has fulfilled the requirements
47 of this section with respect to employment and who has served
48 satisfactorily as a mine inspector for a minimum period of one
49 year and who has terminated his employment as a mine
50 inspector, upon successfully passing a physical examination,
51 may be reinstated as a mine inspector within two years after
52 terminating his employment with the approval of the
53 examining board and the commissioner.

54 (e) A mine inspector, after having received a permanent
55 appointment, shall be removed from office only for physical
56 or mental impairment, incompetency, neglect of duty,
57 drunkenness, malfeasance in office, or other good cause.

58 Proceedings for the removal of a mine inspector may be
59 initiated by the director or commissioner whenever there is

60 reasonable cause to believe that adequate cause exists,
61 warranting removal. Such a proceeding shall be initiated by
62 a verified petition, filed with the board by the director or
63 commissioner, setting forth with particularity the facts alleged.
64 Not less than twenty reputable citizens, who are operators or
65 employees in mines in the state, may petition the director for
66 the removal of a mine inspector. If such petition is verified
67 by at least one of the petitioners, based on actual knowledge
68 of the affiant and alleged facts, which, if true, warrant the
69 removal of the inspector, the director shall cause an
70 investigation of the facts to be made. If, after such investiga-
71 tion, the director finds that there is substantial evidence,
72 which, if true, warrants removal of the inspector, he shall file
73 a petition with the board requesting removal of the inspector.

74 On receipt of a petition by the director or the commissioner
75 seeking removal of a mine inspector, the board shall promptly
76 notify the inspector to appear before it at a time and place
77 designated in said notice, which time shall be not less than
78 fifteen days thereafter. There shall be attached to the copy of
79 the notice served upon the inspector a copy of the petition filed
80 with the board.

81 At the time and place designated in said notice, the board
82 shall hear all evidence offered in support of the petition and
83 on behalf of the inspector. Each witness shall be sworn, and
84 a transcript shall be made of all evidence taken and
85 proceedings had at any such hearing. No continuance shall be
86 granted except for good cause shown. The chairman of the
87 board and the director shall have power to administer oaths
88 and subpoena witnesses.

89 Any mine inspector who shall willfully refuse or fail to
90 appear before the board, or having appeared, shall refuse to
91 answer under oath any relevant question on the ground that
92 his testimony or answer might incriminate him, or shall refuse
93 to waive immunity from prosecution on account of any
94 relevant matter about which he may be asked to testify at any
95 such hearing before the board, shall forfeit his position.

96 If, after hearing, the board finds that the inspector should
97 be removed, it shall enter an order to that effect. The decision
98 of the board shall be final and shall not be subject to judicial
99 review.

§22A-1A-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.

1 In order to qualify for an appointment as a surface mine
2 inspector, under the provisions of this article, an eligible
3 applicant shall have had at least five years' practical experience
4 in surface mines, at least one year of which, immediately
5 preceding his original appointment, shall have been in surface
6 mines in this state, and submit to a written and oral
7 examination given by the mine inspectors' examining board.
8 The examination shall relate to the duties to be performed by
9 a surface mine inspector and may, subject to the approval of
10 the mine inspectors' examining board, be prepared by the
11 director.

12 If the board finds after investigation and examination that
13 the applicant (1) is eligible for appointment, and (2) has passed
14 all oral and written examinations with a grade of at least
15 eighty percent, the board shall add such applicant's name and
16 grade to a register of qualified eligible candidates and certify
17 its action to the commissioner. The commissioner may then
18 appoint one of the candidates from the three having the
19 highest grades.

20 All such appointees shall be citizens of West Virginia, in
21 good health, not less than twenty-five years of age, of good
22 character and reputation and temperate in habits. No person
23 shall be eligible for permanent appointment as a surface mine
24 inspector until he has served in a probationary status for a
25 period of one year to the satisfaction of the commissioner.

26 Surface mine inspectors serving as such on the effective date
27 of this section may continue to serve through their probation-
28 ary period, and if eligible as prescribed by this section, may
29 qualify for appointment during such probationary period in
30 accordance with the provisions of this section.

31 However, surface mine inspectors employed on the effective
32 date of this section and who have served to the satisfaction
33 of the commissioner for a period of two years or more may
34 continue to serve on a permanent tenure basis. In the
35 performance of duties devolving upon surface mine inspectors,
36 they shall be responsible to the director of the division of
37 mines and minerals.

38 The salary of the surface mine inspector supervisor shall be
39 not less than twenty-four thousand four hundred eighty dollars
40 per year. Salaries of surface mine inspectors shall be not less
41 than twenty-one thousand seven hundred eighty dollars per
42 year. In the discharge of their official duties in privately owned
43 vehicles, surface mine inspectors and the surface mine
44 inspector supervisor shall receive mileage at the rate of not less
45 than twenty cents per mile.

46 A surface mine inspector, after having received a permanent
47 appointment, shall be removed from office only for physical
48 or mental impairment, incompetency, neglect of duty,
49 drunkenness, malfeasance in office, or other good cause.

§22A-1A-12. Commissioner, director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.

1 The commissioner, director, or his authorized representative,
2 shall have authority to visit, enter, and examine any mine,
3 whether underground or on the surface, and may call for the
4 assistance of any district mine inspector or inspectors whenever
5 such assistance is necessary in the examination of any mine.
6 The operator of every coal mine shall furnish the commissioner
7 or his authorized representative proper facilities for entering
8 such mine and making examination or obtaining information.

9 If miners at any time or one of their authorized represen-
10 tatives have reason to believe that dangerous conditions are
11 existing or that the law is not being complied with, they may
12 request the director to have an immediate investigation made.

13 Mine inspectors shall devote their full time and undivided
14 attention to the performance of their duties, and they shall
15 examine all of the mines in their respective districts at least
16 four times annually, and as often, in addition thereto, as the
17 director may direct, or the necessities of the case or the
18 condition of the mine or mines may require, with no advance
19 notice of inspection provided to any person, and they shall
20 make a personal examination of each working face and all
21 entrances to abandoned parts of the mine where gas is known
22 to liberate, for the purpose of determining whether an
23 imminent danger, referred to in section thirteen of this article,
24 exists in any such mine, or whether any provision of article
25 two of this chapter is being violated or has been violated

26 within the past forty-eight hours in any such mine.

27 In addition to the other duties imposed by articles one-a and
28 two of this chapter, it shall be the duty of each inspector to
29 note each violation he finds and issue a finding, order, or
30 notice, as appropriate for each violation so noted. During the
31 investigation of any accident, any violation may be noted
32 whether or not the inspector actually observes the violation
33 and whether or not the violation exists at the time the
34 inspector notes the violation, so long as the inspector has clear
35 and convincing evidence the violation has occurred or is
36 occurring.

37 The mine inspector shall visit the scene of each fatal accident
38 occurring in any mine within his district and shall make an
39 examination into the particular facts of such accident; make
40 a report to the director, setting forth the results of such
41 examination, including the condition of the mine and the cause
42 or causes of such fatal accident, if known, and all such reports
43 shall be made available to the interested parties, upon written
44 requests.

45 At the commencement of any inspection of a coal mine by
46 an authorized representative of the commissioner, the
47 authorized representative of the miners at the mine at the time
48 of such inspection shall be given an opportunity to accompany
49 the authorized representative of the commissioner on such
50 inspection.

§22A-1A-13. Findings, orders and notices.

1 (a) If, upon any inspection of a coal mine, an authorized
2 representative of the commissioner finds that an imminent
3 danger exists, such representative shall determine the area
4 throughout which such danger exists, and thereupon shall issue
5 forthwith an order requiring the operator of the mine or his
6 agent to cause immediately all persons, except those referred
7 to in subdivisions (1), (2), (3) and (4), subsection (c) of this
8 section, to be withdrawn from and to be prohibited from
9 entering such area until an authorized representative of the
10 commissioner determines that such imminent danger no longer
11 exists.

12 All employees on the inside and outside of a mine who are
13 idled as a result of the posting of a withdrawal order by a

14 mine inspector shall be compensated by the operator at their
15 regular rates of pay for the period they are idled, but not more
16 than the balance of such shift. If such order is not terminated
17 prior to the next working shift, all such employees on that shift
18 who are idled by such order shall be entitled to full
19 compensation by the operator at their regular rates of pay for
20 the period they are idled, but for not more than four hours
21 of such shift.

22 (b) If, upon any inspection of a coal mine, an authorized
23 representative of the commissioner finds that there has been
24 a violation of the law, but the violation has not created an
25 imminent danger, he shall issue a notice to the operator or
26 his agent, fixing a reasonable time for the abatement of the
27 violation. If, upon the expiration of the period of time, as
28 originally fixed or subsequently extended, an authorized
29 representative of the commissioner finds that the violation has
30 not been totally abated, and if he also finds that the period
31 of time should not be further extended, he shall find the extent
32 of the area affected by the violation and shall promptly issue
33 an order requiring the operator of such mine or his agent to
34 cause immediately all persons, except those referred to in
35 subdivisions (1), (2), (3) and (4), subsection (c) of this section,
36 to be withdrawn from, and to be prohibited from entering such
37 area until an authorized representative of the commissioner
38 determines that the violation has been abated.

39 (c) The following persons shall not be required to be
40 withdrawn from or prohibited from entering any area of the
41 coal mine subject to an order issued under this section:

42 (1) Any person whose presence in such area is necessary,
43 in the judgment of the operator or an authorized representative
44 of the commissioner, to eliminate the condition described in
45 the order;

46 (2) Any public official whose official duties require him to
47 enter such area;

48 (3) Any representative of the miners in such mine who is,
49 in the judgment of the operator or an authorized representative
50 of the commissioner, qualified to make coal mine examina-
51 tions or who is accompanied by such a person and whose
52 presence in such area is necessary for the investigation of the
53 conditions described in the order; and

54 (4) Any consultant to any of the foregoing.

55 (d) Notices and orders issued pursuant to this section shall
56 contain a detailed description of the conditions or practices
57 which cause and constitute an imminent danger or a violation
58 of any mandatory health or safety standard and, where
59 appropriate, a description of the area of the coal mine from
60 which persons must be withdrawn and prohibited from
61 entering.

62 (e) Each notice or order issued under this section shall be
63 given promptly to the operator of the coal mine or his agent
64 by an authorized representative of the commissioner issuing
65 such notice or order, and all such notices and orders shall be
66 in writing and shall be signed by such representative and
67 posted on the bulletin board at the mine.

68 (f) A notice or order issued pursuant to this section may
69 be modified or terminated by an authorized representative of
70 the commissioner.

71 (g) Each finding, order, and notice made under this section
72 shall promptly be given to the operator of the mine to which
73 it pertains by the person making such finding, order or notice.

**§22A-1A-14. Powers and duties of electrical inspectors as to
inspections, findings and orders; reports of electrical
inspectors.**

1 In order that the electrical inspector may properly perform
2 the duties required of him, he shall devote his whole time and
3 attention to the duties of his office, and he shall have the right
4 to enter any coal mine for the purpose of inspecting electrical
5 equipment, and if he finds during his inspection any defects
6 in the electrical equipment which are covered by law and may
7 be detrimental to the lives or health of the workmen, he shall
8 have the authority to order the operator, in writing, to remedy
9 such defects within a prescribed time, and to prohibit the
10 continued operation of such electrical equipment after such
11 time, unless such defects have been corrected.

12 The electrical inspector shall examine each mine in his
13 division at least once each year or as often as the director may
14 deem necessary.

15 It shall be the duty of the electrical inspector, after

16 completing his examination of a mine, to prepare a report
17 describing his findings in said mine in a manner and form
18 designated by the director. The original report shall be
19 forwarded to the operator or his representative whose duty it
20 shall be to post it in some conspicuous place open to
21 examination by any interested person or persons. The report
22 shall show the date of inspection, a list of equipment, and any
23 other information that the director may deem necessary.

§22A-1A-15. Review of orders and notices by the commissioner.

1 (a) (1) An operator, issued an order pursuant to the
2 provisions of section thirteen of this article, or any represen-
3 tative of miners in any mine affected by such order or by any
4 modification or termination of such order, may apply to the
5 commissioner for review of the order within thirty days of
6 receipt thereof or within thirty days of its modification or
7 termination. An operator, issued a notice pursuant to
8 subsection (b), section thirteen of this article, or any
9 representative of miners in any mine affected by such notice,
10 may, if he believes that the period of the time fixed in such
11 notice for the abatement of the violation is unreasonable,
12 apply to the commissioner for review of the notice within
13 thirty days of the receipt thereof. The applicant shall send a
14 copy of such application to the representative of miners in the
15 affected mine, or the operator, as appropriate. Upon receipt
16 of such application, the commissioner shall cause such
17 investigation to be made as he deems appropriate. Such
18 investigation shall provide an opportunity for a public hearing,
19 at the request of the operator or the representative of miners
20 in such mine, to enable the operator and the representative
21 of miners in such mine to present information relating to the
22 issuance and continuance of such order or the modification
23 or termination thereof or to the time fixed in such notice. The
24 filing of an application for review under this law shall not
25 operate as a stay of any order or notice.

26 (2) The operator and the representative of the miners shall
27 be given written notice of the time and place of the hearing
28 at least five days prior to the hearing.

29 (b) Upon receiving the report of such investigation, the
30 commissioner shall make findings of fact, and he shall issue
31 a written decision, incorporating therein an order vacating,

32 affirming, modifying or terminating the order, or the
33 modification or termination of such order, or the notice
34 complained of and incorporate his findings therein.

35 (c) In view of the urgent need for prompt decision of
36 matters submitted to the commissioner under this law, all
37 actions which the commissioner takes under this section shall
38 be taken as promptly as practicable, consistent with adequate
39 consideration of the issues involved.

40 (d) Pending completion of the investigation required by this
41 section, the applicant may file with the commissioner a written
42 request that the commissioner grant temporary relief from any
43 modification or termination of any order, or from any order
44 issued under section thirteen of this article, except an order
45 issued under section fourteen of this article, together with a
46 detailed statement giving reasons for granting such relief. The
47 commissioner may grant such relief, under such conditions as
48 he may prescribe, if:

49 (1) A hearing has been held in which all parties were given
50 an opportunity to be heard;

51 (2) The applicant shows that there is substantial likelihood
52 that the findings of the commissioner will be favorable to the
53 applicant; and

54 (3) Such relief will not adversely affect the health and safety
55 of miners in the coal mine.

56 No temporary relief shall be granted in the case of a notice
57 issued under section thirteen of this article.

**§22A-1A-16. Posting of notices, orders and decisions; delivery to
agent of operator; names and addresses to be filed
by operators.**

1 (a) At each coal mine there shall be maintained an office
2 with a conspicuous sign designating it as the office of the mine,
3 and a bulletin board at such office or at some conspicuous
4 place near an entrance of the mine, in such manner that
5 notices, orders and decisions required by this law or regulation
6 to be posted on the mine bulletin board may be posted
7 thereon, be easily visible to all persons desiring to read them,
8 and be protected against damage by weather and against
9 unauthorized removal. A copy of any notice, order or decision

10 required by this law to be given to an operator shall be
11 delivered to the office of the affected mine, and a copy shall
12 be immediately posted on the bulletin board of such mine by
13 the operator or his agent.

14 (b) The commissioner shall cause a copy of any notice,
15 order or decision required by this law to be given to an
16 operator to be mailed immediately to a representative of the
17 miners. Such notice, order or decision shall be available for
18 public inspection.

19 (c) In order to ensure prompt compliance with any notice,
20 order or decision issued under this law, the authorized
21 representative of the commissioner may deliver such notice,
22 order or decision to an agent of the operator and such agent
23 shall immediately take appropriate measures to ensure
24 compliance with such notice, order or decision.

25 (d) Each operator of a coal mine shall file with the director
26 the name and address of such mine and the name and address
27 of the person who controls or operates the mine. Any revisions
28 in such names or addresses shall be promptly filed with the
29 director. Each operator of a coal mine shall designate a
30 responsible official at such mine as the principal officer in
31 charge of health and safety at such mine, and such official shall
32 receive a copy of any notice, order or decision issued under
33 this law affecting such mine. In any case, where the coal mine
34 is subject to the control of any person not directly involved
35 in the daily operations of the coal mine, there shall be filed
36 with the director the name and address of such person and
37 the name and address of a principal official of such person
38 who shall have overall responsibility for the conduct of an
39 effective health and safety program at any coal mine subject
40 to the control of such person and such official shall receive
41 a copy of any notice, order or decision issued affecting any
42 such mine. The mere designation of a health and safety official
43 under this subsection shall not be construed as making such
44 official subject to any penalty under this law.

§22A-1A-17. Judicial review.

1 (a) Any order or decision issued by the commissioner under
2 this law, except an order or decision under section thirteen of
3 this article shall be subject to judicial review by the circuit
4 court of the county in which the mine affected is located or

5 the circuit court of Kanawha County upon the filing in such
6 court or with the judge thereof in vacation of a petition by
7 any person aggrieved by the order or decision praying that the
8 order or decision be modified or set aside in whole or in part,
9 except that the court shall not consider such petition unless
10 such person has exhausted the administrative remedies
11 available under this law and files within thirty days from date
12 of such order or decision.

13 (b) The party making such appeal shall forthwith send a
14 copy of such petition for appeal, by registered mail, to the
15 other party. Upon receipt of such petition for appeal, the
16 commissioner shall promptly certify and file in such court a
17 complete transcript of the record upon which the order or
18 decision complained of was issued. The court shall hear such
19 petition on the record made before the commissioner. The
20 findings of the commissioner, if supported by substantial
21 evidence on the record considered as a whole, shall be
22 conclusive. The court may affirm, vacate or modify any order
23 or decision or may remand the proceedings to the commis-
24 sioner for such further action as it may direct.

25 (c) In the case of a proceeding to review any order or
26 decision issued by the commissioner under this law, except an
27 order or decision pertaining to an order issued under
28 subsection (a), section thirteen of this article or an order or
29 decision pertaining to a notice issued under subsection (b),
30 section thirteen of this article, the court may, under such
31 conditions as it may prescribe, grant such temporary relief as
32 it deems appropriate pending final determination of the
33 proceedings if

34 (A) All parties to the proceeding have been notified and
35 given an opportunity to be heard on a request for temporary
36 relief;

37 (B) The person requesting such relief shows that there is a
38 substantial likelihood that he will prevail on the merits of the
39 final determination of the proceeding; and

40 (C) Such relief will not adversely affect the health and safety
41 of miners in the coal mine.

42 (d) The judgment of the court shall be subject to review only
43 by the supreme court of appeals of West Virginia upon a writ

44 of certiorari filed in such court within sixty days from the entry
45 of the order and decision of the circuit court upon such appeal
46 from the commissioner.

47 (e) The commencement of a proceeding under this section
48 shall not, unless specifically ordered by the court, operate as
49 a stay of the order or decision of the commissioner.

50 (f) Subject to the direction and control of the attorney
51 general, attorneys appointed for the commissioner may appear
52 for and represent him in any proceeding instituted under this
53 section.

§22A-1A-18. Injunctions.

1 The commissioner may institute a civil action for relief,
2 including a permanent or temporary injunction, restraining
3 order, or any other appropriate order in the circuit court of
4 the county in which the mine is located or the circuit court
5 of Kanawha county, whenever the operator or his agent (a)
6 violates or fails or refuses to comply with any order or decision
7 issued under this law, or (b) interferes with, hinders or delays
8 the director or his authorized representative in carrying out
9 the provisions of this law, or (c) refuses to admit such
10 representatives to the mine, or (d) refuses to permit the
11 inspection of the mine, or the investigation of an accident or
12 occupational disease occurring in, or connected with, such
13 mine, or (e) refuses to furnish any information or report
14 requested by the director in furtherance of the provisions of
15 this law, or (f) refuses to permit access to, and copying of,
16 such records as the director determines necessary in carrying
17 out the provisions of this law. Each court shall have
18 jurisdiction to provide such relief as may be appropriate.
19 Except as otherwise provided herein, any relief granted by the
20 court to enforce an order under clause (a) of this section shall
21 continue in effect until the completion or final termination of
22 all proceedings for review of such order under this law, unless,
23 prior thereto, the circuit court granting such relief sets it aside
24 or modifies it. In any action instituted under this section to
25 enforce an order or decision issued by the commissioner after
26 a public hearing, the findings of the commissioner, if
27 supported by substantial evidence on the record considered as
28 a whole, shall be conclusive.

§22A-1A-19. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or regulation or who
3 violates any other provisions of this law, shall be assessed a
4 civil penalty by the commissioner under subdivision (3) of this
5 subsection, which penalty shall be not more than three
6 thousand dollars, for each such violation. Each such violation
7 shall constitute a separate offense. In determining the amount
8 of the penalty, the commissioner shall consider the operator's
9 history of previous violations, the appropriateness of such
10 penalty to the size of the business of the operator charged,
11 the gravity of the violation and the demonstrated good faith
12 of the operator charged in attempting to achieve rapid
13 compliance after notification of a violation.

14 (2) Any miner who knowingly violates any health or safety
15 provision of this chapter or health or safety rule or regulation
16 promulgated pursuant to this chapter shall be subject to a civil
17 penalty assessed by the commissioner under subdivision (3) of
18 this subsection which penalty shall not be more than two
19 hundred fifty dollars for each occurrence of such violation.

20 (3) A civil penalty shall be assessed by the commissioner
21 only after the person charged with a violation under this
22 chapter or rule or regulation promulgated pursuant to this
23 chapter has been given an opportunity for a public hearing
24 and the commissioner has determined, by a decision incorpo-
25 rating his findings of fact therein, that a violation did occur,
26 and the amount of the penalty which is warranted, and
27 incorporating, when appropriate, an order therein requiring
28 that the penalty be paid. Any hearing under this section shall
29 be of record.

30 (4) If the person against whom a civil penalty is assessed
31 fails to pay the penalty within the time prescribed in such
32 order, the commissioner shall file a petition for enforcement
33 of such order in any appropriate circuit court. The petition
34 shall designate the person against whom the order is sought
35 to be enforced as the respondent. A copy of the petition shall
36 forthwith be sent by certified mail, return receipt requested,
37 to the respondent and to the representative of the miners at
38 the affected mine or the operator, as the case may be, and
39 thereupon the commissioner shall certify and file in such court
40 the record upon which such order sought to be enforced was
41 issued. The court shall have jurisdiction to enter a judgment

42 enforcing, modifying, and enforcing as so modified, or setting
43 aside in whole or in part the order and decision of the
44 commissioner or it may remand the proceedings to the
45 commissioner for such further action as it may direct. The
46 court shall consider and determine de novo all relevant issues,
47 except issues of fact which were or could have been litigated
48 in review proceedings before a circuit court under section
49 eighteen of this article, and upon the request of the respondent,
50 such issues of fact which are in dispute shall be submitted to
51 a jury. On the basis of the jury's findings the court shall
52 determine the amount of the penalty to be imposed. Subject
53 to the direction and control of the attorney general, attorneys
54 appointed for the commissioner may appear for and represent
55 him in any action to enforce an order assessing civil penalties
56 under this subdivision.

57 (b) Any operator who knowingly violates a health or safety
58 provision of this chapter or health or safety rule or regulation
59 promulgated pursuant to this chapter, or knowingly violates
60 or fails or refuses to comply with any order issued under
61 section thirteen of this article, or any order incorporated in
62 a final decision issued under this article, except an order
63 incorporated in a decision under subsection (a) of this section
64 or subsection (b), section twenty of this article, shall be
65 assessed a civil penalty by the commissioner under subdivision
66 (3), subsection (a) of this section, of not more than five
67 thousand dollars, and for a second or subsequent violation
68 assessed a civil penalty of not more than ten thousand dollars.

69 (c) Whenever a corporate operator knowingly violates a
70 health or safety provision of this chapter or health or safety
71 rules or regulations promulgated pursuant to this chapter, or
72 knowingly violates or fails or refuses to comply with any order
73 issued under this law or any order incorporated in a final
74 decision issued under this law, except an order incorporated
75 in a decision issued under subsection (a) of this section or
76 subsection (b), section twenty of this article, any director,
77 officer or agent of such corporation who knowingly autho-
78 rized, ordered or carried out such violation, failure or refusal,
79 shall be subject to the same civil penalties that may be imposed
80 upon a person under subsections (a) and (b) of this section.

81 (d) Whoever knowingly makes any false statement, repres-
82 entation or certification in any application, record, report, plan

83 or other document filed or required to be maintained pursuant
84 to this law or any order or decision issued under this law, shall
85 be guilty of a misdemeanor, and, upon conviction thereof,
86 shall be fined not more than five thousand dollars or
87 imprisoned in the county jail not more than six months, or
88 both fined and imprisoned. The conviction of any person
89 under this subsection shall result in the revocation of any
90 certifications held by him under this chapter which certified
91 him or authorized him to direct other persons in coal mining
92 by operation of law and shall bar him from being issued any
93 such license under this chapter, except a miner's certification,
94 for a period of not less than one year or for such longer period
95 as may be determined by the commissioner.

96 (e) Whoever wilfully distributes, sells, offers for sale,
97 introduces or delivers in commerce any equipment for use in
98 a coal mine, including, but not limited to, components and
99 accessories of such equipment, who wilfully misrepresents such
100 equipment as complying with the provisions of this law, or
101 with any specification or regulation of the commissioner
102 applicable to such equipment, and which does not so comply,
103 shall be guilty of a misdemeanor, and, upon conviction
104 thereof, shall be subject to the same fine and imprisonment
105 that may be imposed upon a person under subsection (d) of
106 this section.

§22A-1A-20. Discrimination.

1 (a) No person shall discharge or in any other way
2 discriminate against or cause to be discharged or discriminated
3 against any miner or any authorized representative of miners
4 by reason of the fact that he believes or knows that such miner
5 or representative (1) has notified the commissioner, his
6 authorized representative, or an operator, directly or
7 indirectly, of any alleged violation or danger, (2) has filed,
8 instituted or caused to be filed or instituted any proceeding
9 under this law, (3) has testified or is about to testify in any
10 proceeding resulting from the administration or enforcement
11 of the provisions of this law. No miner or representative shall
12 be discharged or in any other way discriminated against or
13 caused to be discriminated against because a miner or
14 representative has done (1), (2) or (3) above.

15 (b) Any miner or a representative of miners who believes

16 that he has been discharged or otherwise discriminated against,
17 or any miner who has not been compensated by an operator
18 for lost time due to the posting of a withdrawal order, may,
19 within thirty days after such violation occurs, apply to the
20 appeals board for a review of such alleged discharge,
21 discrimination, or failure to compensate. A copy of the
22 application shall be sent to such person who shall be the
23 respondent. Upon receipt of such application, the appeals
24 board shall cause such investigation to be made as it deems
25 appropriate. Such investigation shall provide an opportunity
26 for a public hearing at the request of any party to enable the
27 parties to present information relating to such violation. The
28 parties shall be given written notice of the time and place of
29 the hearing at least five days prior to the hearing. Mailing of
30 the notice of hearing to the charged party at his last address
31 of record as reflected in the records of the department of
32 energy shall be deemed adequate notice to the charged party.
33 Such notice shall be by certified mail, return receipt requested.
34 Any such hearing shall be of record. Upon receiving the report
35 of such investigation, the board shall make findings of fact.
36 If it finds that such violation did occur, it shall issue a decision
37 within forty-five days, incorporating an order therein,
38 requiring the person committing such violation to take such
39 affirmative action to abate the violation as the board deems
40 appropriate, including, but not limited to, the rehiring or
41 reinstatement of the miner or representative of miners to his
42 former position with back pay, and also pay compensation for
43 the idle time as a result of a withdrawal order. If it finds that
44 there was no such violation, it shall issue an order denying
45 the application. Such order shall incorporate the board's
46 finding therein. If the proceedings under this section relative
47 to discharge are not completed within forty-five days of the
48 date of discharge due to delay caused by the operator, the
49 miner shall be automatically reinstated until the final
50 determination. If such proceedings are not completed within
51 forty-five days of the date of discharge due to delay caused
52 by the board, then the board may, at its option, reinstate the
53 miner until the final determination. If such proceedings are not
54 completed within forty-five days of the date of discharge due
55 to delay caused by the miner the board shall not reinstate the
56 miner until the final determination.

57 (c) Whenever an order is issued under this section, at the

58 request of the applicant, a sum equal to the aggregate amount
59 of all costs and expenses including the attorney's fees as
60 determined by the board to have been reasonably incurred by
61 the applicant for, or in connection with, the institution and
62 prosecution of such proceedings, shall be assessed against the
63 person committing such violation.

§22A-1A-21. Records and reports.

1 In addition to such records as are specifically required by
2 this law, every operator of a coal mine shall establish and
3 maintain such records, make such reports, and provide such
4 information, as the commissioner may reasonably require from
5 time to time to enable him to perform his functions under this
6 law. The director is authorized to compile, analyze, and
7 publish, either in summary or detailed form, such reports or
8 information so obtained. Except to the extent otherwise
9 specifically provided by this law, all records, information,
10 reports, findings, notices, orders, or decisions required or
11 issued pursuant to or under this law may be published from
12 time to time, may be released to any interested person, and
13 shall be made available for public inspection.

**§22A-1A-22. Mine foreman examiner for mine foremen-fire bosses
and assistant mine foremen-fire bosses; salary.**

1 The commissioner shall appoint a mine foreman examiner
2 to examine and certify mine foremen-fire bosses, assistant mine
3 foremen-fire bosses and mine examiners or fire bosses. Such
4 mine foremen examiners shall be paid a minimum salary of
5 thirty-one thousand thirty-two dollars per year.

§22A-1A-23. Duties of mine foreman examiner.

1 The duties of the mine foreman examiner shall be to:
2 (a) Prepare and conduct examinations of mine foremen,
3 assistant mine foremen and fire bosses;
4 (b) Prepare and certify to the commissioner a register of all
5 persons who successfully completed the examination with a
6 passing grade of eighty percent.

§22A-1A-24. Place and time for examinations.

1 The director shall determine the location where the mine
2 foreman examiner shall meet for the purpose of holding

3 examinations, and at least two weeks' notice of the time and
4 place where the examinations are to be held shall be given.

5 The examinations shall be given at any location where there
6 are at least five men to be tested, and adequate facilities to
7 conduct such examination. The office of the secretary to the
8 mine foreman examiner shall be located in the capitol complex
9 in Charleston. All records pertaining to the examinations shall
10 be kept at such office.

**§22A-1A-25. Preparation of examination; notice of intention to
take examination; investigation of applicants.**

1 The mine foreman examiner shall, with the approval of the
2 director, prepare, and from time to time, modify examinations
3 to be administered applicants for certification as mine foremen
4 and fire bosses.

5 All persons who desire to appear for examination shall
6 notify the mine foreman examiner of their intentions to
7 appear, if possible, not less than ten days prior to the date
8 set for the examination. The mine foreman examiner shall
9 inquire into the character and qualifications of the applicants
10 who present themselves for examination.

§22A-1A-26. Certificates of qualification heretofore granted.

1 Certificates of qualification of service heretofore granted
2 shall have equal value with certificates of qualifications
3 granted under this law.

**§22A-1A-27. Mine foreman examiner to certify successful appli-
cants to director.**

1 The mine foreman examiner shall certify to the director, on
2 a form furnished by him, every person whose examination
3 shall disclose his fitness for the duties of mine foreman,
4 assistant mine foreman, and fire boss, as above classified, and
5 the director shall prepare certificates of qualification for the
6 successful applicants and send them to the mine foreman
7 examiner for distribution.

§22A-1A-28. Record of examination.

1 The mine foreman examiner shall send to the director the
2 answers and all other papers of the applicants, together with
3 the tally sheets and a list of the questions and answers as

- 4 prepared by the mine foreman examiner which shall be filed
5 in the division as public documents.

§22A-1A-29. Withdrawal of certification.

1 (a) *Charge of breach of duty.*—A mine inspector, the
2 director, or the commissioner may charge a mine foreman,
3 assistant mine foreman, fire boss or any other certified person
4 with neglect or failure to perform any duty mandated pursuant
5 to article one or two of this chapter. The charge shall state
6 the name of the person charged, the duty or duties he is alleged
7 to have violated, the approximate date and place so far as is
8 known of the violation of duty, the capacity of the person
9 making the charge, and shall be verified on the basis of
10 information and belief or personal knowledge. The charge is
11 initiated by filing it with the director or with the board of
12 appeals. A copy of any charge filed with the board of appeals
13 or any member thereof, shall be transmitted promptly to the
14 director. The director shall maintain a file of each charge and
15 of all related documents which shall be open to the public.

16 (b) *Evaluation of charge by board of appeals.*—Within
17 twenty days after receipt of the charge the board shall evaluate
18 the charge and determine whether or not a violation of duty
19 has been stated. In making such a determination the board
20 shall evaluate all documents submitted to it by all persons to
21 determine as nearly as possible the substance of the charge and
22 if the board of appeals is unable to determine the substance
23 of the charge it may request the director to investigate the
24 charge. Upon request, the director shall cause the charge to
25 be investigated and report the results of the investigation to
26 the board of appeals within ten days of his receipt of the
27 charge. If the board determines that probable cause exists to
28 support the allegation that the person charged has violated his
29 duty, the board by the end of the twenty-day period shall set
30 a date for hearing which date shall be within eighty days of
31 the filing of the charge. Notice of the hearing or notice of
32 denial of the hearing for failure to state a charge and a copy
33 of the charge shall be mailed by certified mail, return receipt
34 requested, to the charging party, the charged party, the
35 commissioner, the director, the representative of the miner or
36 miners affected, and to any interested person of record.
37 Thereafter the board shall maintain the file of the charge which
38 shall contain all documents, testimony and other matters filed

39 which shall be open for public inspection.

40 (c) *Hearing.*—The board of appeals shall hold a hearing,
41 may appoint a hearing examiner to take evidence and report
42 to the board of appeals within the time allotted, may direct
43 or authorize taking of oral depositions under oath by any
44 participant, or adopt any other method for the gathering of
45 sworn evidence which affords the charging party, the charged
46 party, the director and any interested party of record due
47 process of law and a fair opportunity to present and make a
48 record of evidence. Any member of the board shall have the
49 power to administer oaths. The board may subpoena witnesses
50 and require production of any books, papers, records, or other
51 documents relevant or material to the inquiry. The board shall
52 consider all evidence offered in support of the charge and on
53 behalf of the persons so charged at the time and place
54 designated in the notice. Each witness shall be sworn and a
55 transcript shall be made of all evidence presented in any such
56 hearing. No continuance shall be granted except for good
57 cause shown.

58 At the conclusion of the hearing the board shall proceed to
59 determine the case upon consideration of all the evidence
60 offered and shall render a decision containing its findings and
61 conclusions of law. If the board finds by a preponderance of
62 the evidence that the certificate or certificates of the charged
63 person should be suspended or revoked, as hereinafter
64 provided, it shall enter an order to that effect. No renewal of
65 the certificate shall be granted except as herein provided.

66 (d) *Failure to cooperate.*—Any person charged who shall,
67 without just cause refuse or fail to appear before the board
68 or cooperate in the investigation or gathering of evidence shall
69 forfeit his certificate or certificates for a period to be
70 determined by the board, not to exceed five years, and such
71 certificate or certificates may not be renewed except upon a
72 successful completion of the examination prescribed by the law
73 for mine foremen, assistant mine foremen, fire bosses or other
74 certified persons.

75 (e) *Penalties.*—The board may suspend or revoke the
76 certificate or certificates of a charged party for a minimum of
77 thirty days or more including an indefinite period or may
78 revoke permanently the certificate or certificates of the charged

79 party, as it sees fit, subject to the prescribed penalties and
80 monetary fines imposed elsewhere in this chapter.

81 (f) *Integrity of penalties imposed.*—No person whose
82 certification is suspended or revoked under this provision can
83 perform any duties under any other certification issued under
84 chapter twenty-two-a of this code, during the period of the
85 suspension imposed herein.

86 (g) Any party adversely affected by a final order or decision
87 issued by the board hereunder shall be entitled to judicial
88 review thereof pursuant to section four, article five, chapter
89 twenty-nine-a of this code.

**§22A-1A-30. Certification of mine foreman or assistant mine
foreman whose license to engage in similar activities
suspended in another state.**

1 Any person whose license, certificate or similar authority to
2 perform any supervisory or fire boss duties in another state
3 has been suspended or revoked by that state cannot be certified
4 under any provision of this chapter during the period of such
5 suspension or revocation in the other state.

§22A-1A-31. Mine rescue stations; equipment.

1 The director is hereby authorized to purchase, equip and
2 operate for the use of said division such mine rescue stations
3 and equipment as he may deem necessary.

§22A-1A-32. Mine rescue crews.

1 The director is hereby authorized to have trained and
2 employed at the rescue stations, operated by the division
3 within the state, such rescue crews as he may deem necessary.
4 Each member of a rescue crew shall devote four hours each
5 month for training purposes and shall be available at all times
6 to assist in rescue work at explosions and mine fires. Regular
7 members shall receive for such services the sum of thirty-two
8 dollars per month, and captains shall receive thirty-five dollars
9 per month, payable on requisition approved by the director.
10 The director may remove any member of a rescue crew at any
11 time.

12 After the effective date of this article, it shall be the duty
13 and responsibility of the division to see that all rescue teams
14 be properly trained by a qualified instructor of the division

15 or such persons who have a certificate of training from the
16 Federal Mine Safety and Health Administration.

17 To qualify for membership of a mine rescue crew, an
18 applicant shall be not more than fifty years of age and shall
19 pass on at least an annual basis a physical examination by a
20 licensed physician. A record that such examination was taken,
21 together with pertinent data relating thereto, shall be kept on
22 file by the operator, and a copy shall be furnished to the
23 director. All rescue or recovery teams performing recovery
24 work shall be under the jurisdiction of the division guided by
25 the mine rescue apparatus and auxiliary equipment manual.

26 When engaged in rescue work required by an explosion, fire
27 or other emergency at a mine, all members of mine rescue
28 teams assigned to rescue operations shall, during the period
29 of their rescue work, be employees of the operator of the mine
30 where the emergency exists, and shall be compensated by the
31 operator at the rate established in the area for such work. In
32 no case shall this rate be less than the prevailing wage rate
33 in the industry for the most skilled class of inside mine labor.
34 During the period of their emergency employment, members
35 of mine rescue teams shall be protected by the workers'
36 compensation subscription of such emergency employer.

37 During the recovery work and prior to entering any mine
38 at the start of each shift, all rescue or recovery teams shall
39 be properly informed of existing conditions and work to be
40 performed by the designated company official in charge.

41 For every two teams performing rescue or recovery work
42 underground, one six-member team shall be stationed at the
43 mine portal.

44 Two-way communication and lifeline or its equivalent shall
45 be provided at each fresh air base for all mine rescue or
46 recovery teams, and no mine rescue team member shall
47 advance more than one thousand feet inby the fresh air base:
48 *Provided*, That if a life may possibly be saved and existing
49 conditions do not create an unreasonable hazard to mine
50 rescue team members, such rescue team may advance a
51 distance agreed upon by those persons directing the mine
52 rescue or recovery operations: *Provided, however*, That lifeline
53 or its equivalent shall be provided inby each fresh air base for
54 all mine rescue or recovery teams.

55 Each rescue or recovery team performing work with
56 breathing apparatus shall be provided with a backup team of
57 equal strength, stationed at each fresh air base.

58 A rescue or recovery team shall immediately return to the
59 fresh air base when any team member's atmospheric pressure
60 depletes to sixty atmospheres.

§22A-1A-33. Mine rescue teams.

1 It shall be the duty of any mine operator employing fifty
2 or more employees to have available for mine rescue work a
3 trained mine rescue team, the members of which shall work
4 in the general area of the mine. In the event of any fire,
5 explosion or recovery operations in or about any mine the
6 director is hereby authorized to call and assign any rescue team
7 for the protection of employees and the preservation of
8 property. The director also may assign mine rescue and
9 recovery work to inspectors, instructors, or other qualified
10 employees of the division as he may deem desirable.

§22A-1A-34. Mandatory safety programs; penalties.

1 (a) The commissioner, in consultation with the state board
2 of coal mine health and safety, shall promulgate rules and
3 regulations in accordance with chapter twenty-nine-a of this
4 code, detailing the requirements for mine safety programs to
5 be established by coal operators, as provided in subsection (b)
6 of this section. The regulations may require different types of
7 safety programs to be developed, depending upon the output
8 of the particular mine, the number of employees of the
9 particular mine, the location of the particular mine, the
10 physical features of the particular mine or any other factor
11 deemed relevant by the commissioner.

12 (b) Within six months of the date when the regulations
13 required in subsection (a), above, become final, each operator
14 shall develop and submit to the director a comprehensive mine
15 safety program for each mine, in accordance with such
16 regulations. Each employee of the mine shall be afforded an
17 opportunity to review and submit comments to the director
18 regarding the modification or revision of such program, prior
19 to submission of such program to the director. Upon
20 submission of such program the director shall have ninety days
21 to approve, reject or modify such program. If the program is

22 rejected, the director shall give the operator a reasonable time
 23 to correct and resubmit such program. Each program which
 24 is approved shall be reviewed, at least annually, by the
 25 director. An up-to-date copy of each program shall be placed
 26 on file in the division of mines and minerals and further copies
 27 shall be made available to the miners of each mine and their
 28 representatives. Each operator shall undertake all efforts
 29 necessary to assure total compliance with the appropriate
 30 safety program at each mine and shall fully implement all
 31 portions of such program.

32 (c) Any person violating any provision of this section is
 33 guilty of a misdemeanor, and, upon conviction thereof, shall
 34 be fined not less than one hundred nor more than one
 35 thousand dollars, or imprisoned in the county jail for not more
 36 than six months, or both fined and imprisoned.

§22A-1A-35. Provisions of article severable.

1 The various provisions of this article shall be construed as
 2 separable and severable, and should any of the provisions,
 3 sentences, clauses, or parts thereof be construed or held
 4 unconstitutional or for any reason be invalid, the remaining
 5 provisions of this article shall not be thereby affected.

ARTICLE 2. UNDERGROUND MINE MAPS.

- §22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archives; final survey and map; penalties.
- §22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.
- §22A-2-3. Fans.
- §22A-2-4. Ventilation in mines in general.
- §22A-2-5. Unused and abandoned parts of mine.
- §22A-2-6. Movement of mining equipment.
- §22A-2-7. When underground mine foreman-fire boss required; assistants; certification.
- §22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.
- §22A-2-9. Slopes, incline planes and haulage roads.
- §22A-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.
- §22A-2-11. Boreholes.
- §22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.
- §22A-2-13. Daily inspection of working places; records.

- §22A-2-14. Safety inspections; removal of gases.
- §22A-2-15. Dangerous places.
- §22A-2-16. Examinations of reports of fire bosses.
- §22A-2-17. Ascertainment, record and removal of all dangers.
- §22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.
- §22A-2-19. Death or resignation of mine foreman; successor.
- §22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.
- §22A-2-21. Fire bosses to have no superior officers.
- §22A-2-22. Unlawful to enter mine until fire boss reports it safe; exceptions.
- §22A-2-23. Authority of fire boss to perform other duties.
- §22A-2-24. Control of coal dust; rock dusting.
- §22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.
- §22A-2-26. Roof support; examination and testing; correction of dangerous conditions; roof bolt recovery.
- §22A-2-27. Canopies or cabs; electric face equipment.
- §22A-2-28. Equipment to conform with height of seam.
- §22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.
- §22A-2-30. Surface magazines for explosives.
- §22A-2-31. Transportation of explosives.
- §22A-2-32. Underground storage of explosives.
- §22A-2-33. Preparation of shots; blasting practices.
- §22A-2-34. Misfires of explosives.
- §22A-2-35. Other blasting devices.
- §22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.
- §22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
- §22A-2-38. Transportation of miners by cars; self-propelled equipment; belts.
- §22A-2-39. Belt conveyor; installation; maintenance.
- §22A-2-40. General provisions.
- §22A-2-41. Bonding track used as power conductor.
- §22A-2-42. Telephone service or communication facilities.
- §22A-2-43. Electric equipment in mines.
- §22A-2-44. Hand-held electric drills and rotating tools; trailing cables.
- §22A-2-45. Installation of lighting.
- §22A-2-46. Welding and cutting.
- §22A-2-47. Responsibility for care and maintenance of face equipment.
- §22A-2-48. When respiratory equipment to be worn; control of dust.
- §22A-2-49. Safeguards for mechanical equipment.
- §22A-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.
- §22A-2-51. Housekeeping.
- §22A-2-52. Storage of flammable liquids in lamphouse.
- §22A-2-53. Smoking in and around surface structures.
- §22A-2-53a. Railroad cars; dumping areas.
- §22A-2-54. Duties of persons subject to article; rules and regulations of operators.

- §22A-2-55. Protective equipment and clothing.
- §22A-2-55a. Safety helmets.
- §22A-2-56. Checking systems.
- §22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.
- §22A-2-58. Fire protection.
- §22A-2-59. First-aid equipment.
- §22A-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first-aid equipment; use of special capsule for removal of personnel.
- §22A-2-61. Coal storage bins; recovery tunnels; coal storage piles.
- §22A-2-62. Thermal coal dryers and plants.
- §22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
- §22A-2-64. Sealing permanently closed or abandoned mines.
- §22A-2-65. Mining close to abandoned workings.
- §22A-2-66. Explosion or accident; notice; investigation by division of mines and minerals.
- §22A-2-67. Written report of accident.
- §22A-2-68. Preservation of evidence following accident or disaster.
- §22A-2-69. Fire in and about mine; notification of director and district mine inspector.
- §22A-2-70. Shafts and slopes.
- §22A-2-71. Right of miner to refuse to operate unsafe equipment; procedure; discrimination.
- §22A-2-72. Long wall and short wall mining.
- §22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules and regulations; time limits therefor.
- §22A-2-74. Control of respirable dust.
- §22A-2-75. Coal operators—Procedure before operating near oil and gas wells.
- §22A-2-76. Reopening old or abandoned mines.
- §22A-2-77. Monthly report by operator of mine.
- §22A-2-78. Examinations to determine compliance with permits.
- §22A-2-79. Provisions of article severable.

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

1 The mapping of all coal mines shall be supervised by a
2 competent engineer or land surveyor. The work of such
3 engineer or land surveyor shall be supervised by either a civil
4 engineer or a mining engineer certified by the board of
5 engineers, which exists by authority of section three, article
6 thirteen, chapter thirty of this code, or a licensed land surveyor
7 approved by the board of examiners of land surveyors as

8 provided by section three, article thirteen-a of said chapter
9 thirty. To each map supervised by the engineer or land
10 surveyor there shall be affixed thereto the seal of a certified
11 or professional engineer or licensed land surveyor, which shall
12 be identical to the design authorized by the board of engineers,
13 as provided in section nine, article thirteen of said chapter
14 thirty or board of examiners of land surveyors as provided by
15 section eleven, article thirteen-a of said chapter thirty. Every
16 map certified shall have the professional engineer's or land
17 surveyor's signature and certificate, in addition to his seal, in
18 the following form:

19 "I, the undersigned, hereby certify that this map is correct
20 and shows all the information, to the best of my knowledge
21 and belief, required by the laws of this State, and covers the
22 period ending _____

23 _____ P. E.
24 (Either Civil or Mining Engineer
25 or Land Surveyor)."

26 The operator of every underground coal mine shall make,
27 or cause to be made, an accurate map of such mine, on a scale
28 of not less than one hundred, and not more than five hundred
29 feet to the inch. The map of such mine shall show:

- 30 (1) Name and address of the mine;
- 31 (2) The scale and orientation of the map;
- 32 (3) The property or boundary lines of the mine;
- 33 (4) The shafts, slopes, drifts, tunnels, entries, rooms,
34 crosscuts and all other excavations and auger and strip mined
35 areas of the coalbed being mined;
- 36 (5) All drill holes that penetrate the coalbed being mined;
- 37 (6) Dip of the coalbed;
- 38 (7) The outcrop of the coalbed within the bounds of the
39 property assigned to the mine;
- 40 (8) The elevations of tops and bottoms of shafts and slopes,
41 and the floor at the entrance to drift and tunnel openings;
- 42 (9) The elevation of the floor at intervals of not more than
43 two hundred feet in:

44 (a) At least one entry of each working section, and main
45 and cross entries;

46 (b) The last line of open crosscuts of each working section,
47 and main and cross entries before such sections and main and
48 cross entries are abandoned; and

49 (c) Rooms advancing toward or adjacent to property or
50 boundary lines or adjacent mines;

51 (10) Contour lines passing through whole number elevations
52 of the coalbed being mined, the spacing of such lines not to
53 exceed ten-foot elevation levels, except that a broader spacing
54 of contour lines may be approved for steeply-pitching coalbeds
55 by the person authorized so to do under the federal act; and
56 contour lines may be placed on overlays or tracings attached
57 to mine maps;

58 (11) As far as practicable the outline of existing and
59 extracted pillars;

60 (12) Entries and air courses with the direction of airflow
61 indicated by arrows;

62 (13) The location of all surface mine ventilation fans, which
63 location may be designated on the mine map by symbols;

64 (14) Escapeways;

65 (15) The known underground workings in the same coalbed
66 on the adjoining properties within one thousand feet of such
67 mine workings and projections;

68 (16) The location of any body of water dammed in the mine
69 or held back in any portion of the mine, but such bodies of
70 water may be shown on overlays or tracings attached to the
71 mine maps used to show contour lines, as provided under
72 subdivision (10) of this section;

73 (17) The elevation of any body of water dammed in the
74 mine or held back in any portion of the mine;

75 (18) The abandoned portion or portions of the mine;

76 (19) The location and description of at least two permanent
77 base line points coordinated with the underground and surface
78 mine traverses, and the location and description of at least two
79 permanent elevation bench marks used in connection with

- 80 establishing or referencing mine elevation surveys;
- 81 (20) Mines above or below;
- 82 (21) Water pools above;
- 83 (22) The location of the principal streams and bodies of
84 water on the surface;
- 85 (23) Either producing or abandoned oil and gas wells
86 located within five hundred feet of such mine and any
87 underground area of such mine;
- 88 (24) The location of all high pressure pipelines, high voltage
89 power lines and principal roads;
- 90 (25) The location of railroad tracks and public highways
91 leading to the mine, and mine buildings of a permanent nature
92 with identifying names shown;
- 93 (26) Where the overburden is less than one hundred feet,
94 occupied dwellings; and
- 95 (27) Such other information as may be required under the
96 federal act or by the department of mines.
- 97 The operator of every underground coal mine shall extend,
98 or cause to be extended, on or before the first day of March
99 and on or before the first day of September of each year, such
100 mine map thereof to accurately show the progress of the
101 workings as of the first day of July and the first day of January
102 of each year. Such map shall be kept up to date by temporary
103 notations, which shall include:
- 104 (1) The location of each working face of each working
105 place;
- 106 (2) Pillars mined or other such second mining;
- 107 (3) Permanent ventilation controls constructed or removed,
108 such as seals, overcasts, undercasts, regulators and permanent
109 stoppings, and the direction of air currents indicated; and
- 110 (4) Escapeways designated by means of symbols.
- 111 Such map shall be revised and supplemented at intervals
112 prescribed under the federal act on the basis of a survey made
113 or certified by such engineer or surveyor, and shall be kept
114 by the operator in a fireproof repository located in an area

115 on the surface chosen by the operator to minimize the danger
116 of destruction by fire or other hazard.

117 Such map and any revision and supplement thereof shall be
118 available for inspection by a federal mine inspector, by mine
119 health and safety instructors, by miners in the mine and their
120 representatives and by operators of adjacent coal mines and
121 by persons owning, leasing or residing on surface areas of such
122 mines or areas adjacent to such mines, and a copy of such
123 map and any revision and supplement thereof shall be
124 promptly filed with the division of mines and minerals. The
125 operator shall also furnish to persons expressly entitled thereto
126 under the federal act, upon request, one or more copies of such
127 maps and any revision and supplement thereof. Such map or
128 revision and supplement thereof shall be kept confidential and
129 its contents shall not be divulged to any other person, except
130 to the extent necessary to carry out the provisions of the
131 federal act and this chapter and in connection with the
132 functions and responsibilities of the secretary of housing and
133 urban development.

134 Surveying calculations and mapping of underground coal
135 mines which were or are opened or reopened after the first
136 of July, one thousand nine hundred sixty-nine, shall be done
137 by the rectangular coordinate traversing method and meridians
138 carried through and tied between at least two parallel entries
139 of each development panel and panels or workings adjacent
140 to mine boundaries or abandoned workings. These surveys
141 shall originate from at least three permanent survey monu-
142 ments on the surface of the mine property. The monuments
143 shall be clearly referenced and described in the operator's
144 records. Elevations shall be tied to either the United States
145 geological survey or the United States coast and geodetic
146 survey bench mark system, be clearly referenced and described
147 on such map.

148 Underground coal mines operating on the first of July, one
149 thousand nine hundred sixty-nine, and not using the rectan-
150 gular coordinate traversing method shall, within two years of
151 such date, convert to this procedure for surveying calculations
152 and mapping. Meridians shall be carried through and tied
153 between at least two parallel entries of each development panel
154 and panels or workings adjacent to mine boundaries or
155 abandoned workings. These surveys shall originate from at

156 least three permanent survey monuments on the surface of the
157 mine property. The monuments shall be clearly referenced and
158 described in the coal mine operator's records. Elevations shall
159 be tied to either the United States geological survey or the
160 United States coast and geodetic survey bench mark system,
161 be clearly referenced and described on such map.

162 The operator of such underground coal mine shall, by
163 reasonable proof, demonstrate to the director or to any federal
164 mine inspector concerned, at any time, that a diligent search
165 was made for all existing and available maps and survey data
166 for the workings on the adjoining properties. The operator
167 shall further be able to show proof to the director or to any
168 federal mine inspector concerned, that a suitable method was
169 used to insure accuracy in the methods used in transposing
170 other workings to the map of such mine.

171 There shall be an archive of underground coal mine maps
172 maintained at the office of the director. The archive shall:

- 173 (1) Be secured in a fireproof and burglarproof vault;
- 174 (2) Have an appropriate map identification system; and
- 175 (3) Have adequate map microfilming facilities.

176 Whenever an operator permanently closes or abandons an
177 underground coal mine, or temporarily closes an underground
178 coal mine for a period of more than ninety days, he shall
179 promptly notify the division of mines and minerals and the
180 federal mine inspector of the district in which such mine is
181 located of such closure. Within sixty days of the permanent
182 closure or abandonment of an underground coal mine, or,
183 when an underground coal mine is temporarily closed, upon
184 the expiration of a period of ninety days from the date of
185 closure, the operator shall file with the division of mines and
186 minerals and such federal mine inspector a copy of the mine
187 map revised and supplemented to the date of the closure. Such
188 copy of the mine map shall be certified by a certified or
189 professional engineer or licensed surveyor as aforesaid and
190 shall be available for public inspection.

191 Any person having a map or surveying data of any worked
192 out or abandoned underground coal mine shall make such
193 map or data available to the division to copy or reproduce
194 such material.

195 Any person who fails or refuses to discharge any duty
196 imposed upon him by this section shall be guilty of a
197 misdemeanor, and, upon conviction thereof, shall be fined not
198 less than five hundred dollars nor more than one thousand
199 dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.

1 Every operator of a coal mine, before making any new or
2 additional openings, shall submit to the director, for his
3 information and approval, a general plan showing the
4 proposed system of ventilation and ventilating equipment of
5 the openings, with their location and relative positions to
6 adjacent developments; no such new or additional openings
7 shall be made until approved by the director, in consultation
8 with the deputy directors of permitting and safety, health and
9 training. The director shall promptly approve any such plans
10 submitted, if the proposed system of ventilation and ventilating
11 equipment meet the requirements of this article.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which extend
2 for more than two hundred feet underground and which are
3 opened after the effective date of this article, shall be produced
4 by a mechanically operated fan or mechanically operated fans.
5 Ventilation by means of a furnace is prohibited in any mine.
6 The fan or fans shall be kept in continuous operation, unless
7 written permission to do otherwise be granted by the director.
8 In case of interruption to a ventilating fan or its machinery
9 whereby the ventilation of the mine is interrupted, immediate
10 action shall be taken by the mine operator or his management
11 personnel, in all mines, to cut off the power and withdraw the
12 men from the face regions or other areas of the mine affected.
13 If ventilation is restored in fifteen minutes, the face regions
14 and other places in the affected areas where gas (methane) is
15 likely to accumulate, shall be reexamined by a certified person;
16 and if found free of explosive gas, power may be restored and
17 work resumed. If ventilation is not restored in fifteen minutes,
18 all underground employees shall be removed from the mine,
19 all power shall be cut off in a timely manner, and the
20 underground employees shall not return until ventilation is

21 restored and the mine examined by certified persons, mine
22 examiners, or other persons holding a certificate to make
23 preshift examination.

24 (b) All main fans installed after the effective date of this
25 article shall be located on the surface in fireproof housings
26 offset not less than fifteen feet from the nearest side of the
27 mine opening, equipped with fireproof air ducts, provided with
28 explosion doors or a weak wall, and operated from an
29 independent power circuit. In lieu of the requirements for the
30 location of fans and pressure-relief facilities, a fan may be
31 directly in front of, or over a mine opening: *Provided*, That
32 such opening is not in direct line with possible forces coming
33 out of the mine if an explosion occurs: *Provided, however*,
34 That there is another opening having a weak-wall stopping or
35 explosion doors that would be in direct line with forces coming
36 out of the mine. All main fans shall be provided with pressure-
37 recording gauges or water gauges. A daily inspection shall be
38 made of all main fans and machinery connected therewith by
39 a certified electrician and a record, kept of the same in a book
40 prescribed for this purpose or by adequate facilities provided
41 to permanently record the performance of the main fans and
42 to give warning of an interruption to a fan.

43 (c) Auxiliary fans and tubing shall be permitted to be used
44 in lieu of or in conjunction with line brattice to provide
45 adequate ventilation to the working faces: *Provided*, That
46 auxiliary fans be so located and operated to avoid recirculation
47 of air at any time. Auxiliary fans shall be approved and
48 maintained as permissible.

49 (d) If the auxiliary fan is stopped or fails, the electrical
50 equipment in the place shall be stopped and the power
51 disconnected at the power source until ventilation in the
52 working place is restored. During such stoppage, the
53 ventilation shall be by means of the primary air current
54 conducted into the place in a manner to prevent accumulation
55 of methane.

56 (e) In places where auxiliary fans and tubing are used, the
57 ventilation between shifts, weekends and idle shifts shall be
58 provided to face areas with line brattice or the equivalent to
59 prevent accumulation of methane.

60 (f) If the air passing through the auxiliary fan or tubing

61 contains gas in excess of one percent, the current shall at once
62 be switched off and the trailing cable shall forthwith be
63 disconnected from the power supply until the place is
64 pronounced safe.

65 (g) The director may require that when continuous mine
66 equipment is being used, all face ventilating systems using
67 auxiliary fans and tubing shall be provided with machine-
68 mounted diffuser fans, and such fans shall be continuously
69 operated during mining operations.

70 (h) In the event of a fire or explosion in any coal mine, the
71 ventilating fan or fans shall not intentionally be started,
72 stopped, speed increased or decreased or the direction of the
73 air current changed without the approval of the general mine
74 foreman, and, if he is not immediately available, a represen-
75 tative of the division. A duly authorized representative of the
76 employees should be consulted if practical under the
77 circumstances.

§22A-2-4. Ventilation of mines in general.

1 (a) The operator or mine foreman of every coal mine,
2 whether worked by shaft, slope, or drift, shall provide and
3 hereafter maintain for every such mine adequate ventilation.
4 In all mines the quantity of air passing through the last open
5 crosscut between the intake and return in any pair or set of
6 entries shall be not less than nine thousand cubic feet of air
7 per minute and as much more as is necessary to dilute and
8 render harmless and carry away flammable and harmful gases.
9 All working faces in a working section between the intake and
10 return airway entries shall be ventilated with a minimum
11 quantity of three thousand cubic feet of air per minute and
12 as much more as is necessary to dilute and render harmless
13 and carry away flammable and harmful gases. The quantity
14 of air reaching the last crosscut in pillar sections may be less
15 than nine thousand cubic feet of air per minute if at least nine
16 thousand cubic feet of air per minute is being delivered to the
17 intake of the pillar line. The air current shall under any
18 conditions have a sufficient volume and velocity to reduce and
19 carry away smoke from blasting and any flammable or
20 harmful gases. All active underground working places in a
21 mine shall be ventilated by a current of air containing not less
22 than nineteen and five-tenths percent of oxygen, not more than

23 five-tenths percent of carbon dioxide, and no harmful
24 quantities of other noxious or poisonous gases.

25 (b) Airflow shall be maintained in all intake and return air
26 courses of a mine, and where multiple fans are used, neutral
27 areas created by pressure equalization between main fans shall
28 not be permitted. Production activities in working faces shall
29 cease while tubing, line brattice, or other ventilation devices
30 are being installed in by the machine operator.

31 (c) Properly installed and adequately maintained line
32 brattice or other approved devices shall be continuously used
33 from the last open crosscut of an entry or room of each
34 working section to provide adequate ventilation to the working
35 faces for the miners and to remove flammable, explosive, and
36 noxious gases, dust, and explosive fumes. When damaged by
37 falls or otherwise, such line brattice or other devices shall be
38 repaired immediately.

39 (d) Brattice cloth used underground shall be of flame-
40 resistant material. The space between the line brattice or other
41 approved device and the rib shall be large enough to permit
42 the flow of a sufficient volume and velocity of air to keep the
43 working face clear of flammable, explosive, and noxious gases,
44 dust and explosive fumes.

45 (e) Each working unit newly developed in virgin coal
46 hereafter, shall be ventilated by a separate split of air:
47 *Provided*, That areas already under development and in areas
48 where physical conditions prevent compliance with this
49 provision, the director may grant temporary relief from
50 compliance until such time as physical conditions make
51 compliance possible. The quantity of air reaching the last
52 crosscut shall not be less than nine thousand cubic feet of air
53 per minute and shall under any condition have sufficient
54 volume and velocity to reduce and carry away smoke and
55 flammable or harmful gases from each working face in the
56 section.

57 (f) As working places advance, crosscuts for air shall be
58 made not more than eighty feet apart. Where necessary to
59 render harmless and carry away noxious or flammable gases,
60 line brattice or other approved methods of ventilation shall be
61 used so as to properly ventilate the face. All crosscuts between
62 the main intake and return airways not required for passage

63 of air and equipment shall be closed with stoppings substan-
64 tially built with incombustible or fire-resistive material so as
65 to keep working places well ventilated. In mines where it
66 becomes necessary to provide larger pillars for adequate roof
67 support, working places shall not be driven more than two
68 hundred feet without providing a connection that will allow
69 the free flow of air currents. In such cases, a minimum of
70 twelve thousand cubic feet of air a minute shall be delivered
71 to the last open crosscut and as much more as is necessary
72 to dilute and render harmless and carry away flammable and
73 noxious gases.

74 (g) In special instances for the construction of sidetracks,
75 haulageways, airways, or openings in shaft bottom or slope
76 bottom layouts where the size and strength of pillars is
77 important, the director may issue a permit approving greater
78 distances. The permit shall specify the conditions under which
79 such places may be driven.

80 (h) In all mines a system of bleeder openings on air courses
81 designed to provide positive movement of air through and/or
82 around abandoned or caved areas, sufficient to prevent
83 dangerous accumulation of gas in such areas and to minimize
84 the effect of variations in atmospheric pressure shall be made
85 a part of pillar recovery plans projected after the first day of
86 July, one thousand nine hundred seventy-one.

87 (i) If a bleeder return is closed as a result of roof falls or
88 water during pillar recovery operations, pillar operations may
89 continue without reopening the bleeder return if at least twenty
90 thousand cubic feet of air per minute is delivered to the intake
91 of the pillar line.

92 (j) No operator or mine foreman shall permit any person
93 to work where he is unable to maintain the quantity and
94 quality of the air current as heretofore required: *Provided,*
95 That such provisions shall not prohibit the employment of men
96 to make place of employment safe.

97 (k) The ventilation of any mine shall be so arranged by
98 means of air locks, overcasts, or undercasts, that the use of
99 doors on passageways where men or equipment travel may be
100 kept to a minimum. Where doors are used in a mine they shall
101 be erected in pairs so as to provide a ventilated air lock unless
102 the doors are operated mechanically.

103 (l) A crosscut shall be provided at or near the face of each
104 entry or room before such places are abandoned.

105 (m) Overcasts or undercasts shall be constructed of
106 incombustible material and maintained in good condition.

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned after the
2 first day of July, one thousand nine hundred seventy-one, shall
3 be sealed or ventilated. If such workings are sealed, the sealing
4 shall be done with incombustible material in a manner
5 prescribed by the director, and one or more of the seals of
6 every sealed area shall be fitted with a pipe and cap or valve
7 to permit the sampling of gases and measuring of hydrostatic
8 pressure behind the seals. For the purpose of this section,
9 working within a panel shall not be deemed to be abandoned
10 until such panel is abandoned.

11 (b) Air that has passed through an abandoned area or an
12 area which is inaccessible or unsafe for inspection or air that
13 has been used to ventilate seals shall not be used to ventilate
14 any working place in any working mine. No air which has been
15 used to ventilate an area from which the pillars have been
16 removed shall be used to ventilate any working place in a
17 mine, except that such air, if it does not contain 0.25 volume
18 percent or more of methane, may be used to ventilate enough
19 advancing working places immediately adjacent to the line of
20 retreat to maintain an orderly sequence of pillar recovery on
21 a set of entries. Before sealed areas, temporary or permanent,
22 are reopened, the director shall be notified.

MOVEMENT OF EQUIPMENT

§22A-2-6. Movement of mining equipment.

1 Mining equipment being transported or trammed under-
2 ground, other than ordinary sectional movements, shall be
3 transported or trammed by qualified personnel under the
4 supervision of a certified foreman. When equipment is being
5 transported or trammed, no person shall be permitted to be
6 inby the equipment in the ventilating split that is passing over
7 such equipment. To avoid accidental contact with power lines,
8 face equipment shall be insulated and assemblies removed, if
9 necessary, so as to provide clearance.

MINE FOREMAN**§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.**

1 (a) In every underground mine where five or more persons
2 are employed in a period of twenty-four hours, the operator
3 shall employ at least one person certified in accordance with
4 the provisions of article nine, chapter twenty-two of this code
5 as a mine foreman-fire boss. Each applicant for certification
6 as a mine foreman-fire boss shall, at the time he is issued a
7 certificate of competency: (1) Be a resident or employed in a
8 mine in this state; (2) have had at least five years' experience
9 in the underground working, ventilation and drainage of a coal
10 mine, which shall include at least eighteen months' experience
11 on or at a working section of an underground mine or be a
12 graduate of the school of mines at West Virginia University
13 or of another accredited mining engineering school or be a
14 graduate of an accredited engineering school with a bachelor's
15 degree in mining engineering technology, electrical, mechanical
16 or civil engineering; and have had at least two years' practical
17 experience in an underground mine, which shall include at
18 least eighteen months' experience on or at a working section
19 of an underground mine; or be a graduate of an accredited
20 college or university with an associate degree in mining,
21 electrical, mining engineering technology, mechanical engineer-
22 ing or civil engineering and have had at least four years'
23 practical experience in an underground mine, which shall
24 include at least eighteen months' experience on or at a working
25 section of an underground mine; and (3) have demonstrated
26 his knowledge of dangerous mine gases and their detection,
27 mine safety, first aid, safety appliances, state and federal
28 mining laws and regulations and other subjects by completing
29 such training, education and examinations as may be required
30 of him under article nine, chapter twenty-two of this code.

31 (b) In mines in which the operations are so extensive that
32 the duties devolving upon the mine foreman-fire boss cannot
33 be discharged by one man, one or more assistant mine
34 foreman-fire bosses may be designated. Such persons shall act
35 under the instruction of the mine foreman-fire boss, who shall
36 be responsible for their conduct in the discharge of their duties.
37 Each assistant so designated shall be certified under the

38 provisions of article nine, chapter twenty-two of this code.
39 Each applicant for certification as assistant mine foreman-fire
40 boss shall, at the time he is issued a certificate of competency,
41 possess all of the qualifications required of a mine foreman-
42 fire boss: *Provided*, That he shall at the time he is certified
43 be required to have at least three years' experience in the
44 underground working, ventilation and drainage of coal mines,
45 which shall include eighteen months on or at a working section
46 of an underground mine or be a graduate of the school of
47 mines at West Virginia University or of another accredited
48 mining engineering school or be a graduate of an accredited
49 engineering school with a bachelor's degree in mining
50 engineering technology, electrical, mechanical or civil
51 engineering; and have had twelve months' practical experience
52 in an underground mine, all of which shall have been on or
53 at a working section or be a graduate of an accredited college
54 or university with an associate degree in mining, electrical,
55 mining engineering technology, mechanical or civil engineering
56 and have had at least two years' practical experience in an
57 underground mine, which shall include at least eighteen
58 months' experience on or at a working section of an
59 underground mine.

60 (c) Until the first day of January, one thousand nine
61 hundred seventy-seven, in mines in which the operations are
62 so extensive that all the duties devolving upon the mine
63 foreman-fire boss cannot be discharged by one man, compe-
64 tent persons having had at least three years' experience in coal
65 mines may be designated as assistants, who shall act under the
66 mine foreman-fire boss' instructions and the mine foreman-fire
67 boss shall be responsible for their conduct in the discharge of
68 their duties under such designation.

69 (d) Any person holding a mine foreman's certificate issued
70 by any other state may act in the capacity of mine foreman-
71 fire boss in any mine in this state until the next regular mine
72 foreman-fire boss' examination held by the division, but not
73 to exceed a maximum of ninety days.

74 (e) After the first day of July, one thousand nine hundred
75 seventy-four, all duties heretofore performed by persons
76 certified as mine foreman, assistant mine foreman or fire boss
77 shall be performed by persons certified as underground mine
78 foreman-fire boss or an assistant underground mine foreman-

79 fire boss.

80 After the first day of July, one thousand nine hundred
81 seventy-four, every certificate heretofore issued to an assistant
82 mine foreman or fire boss shall be deemed to be of equal value
83 to a certificate issued hereafter to an assistant mine foreman-
84 fire boss, and every certificate heretofore issued to a mine
85 foreman shall be deemed to be of equal value to a certificate
86 issued hereafter to a mine foreman-fire boss.

**§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props;
drainage of water; man doors; instruction of apprentice
miners.**

1 (a) The duties of the mine foreman shall be to keep a careful
2 watch over the ventilating apparatus, the airways, traveling
3 ways, pumps and drainage. He shall see that, as the miners
4 advance their excavations, proper breakthroughs are made so
5 as to ventilate properly the mine; that all loose coal, slate and
6 rock overhead in the working places and along the haulways
7 are removed or carefully secured so as to prevent danger to
8 persons employed in such mines, and that sufficient suitable
9 props, caps, timbers, roof bolts, or other approved methods
10 of roof supports are furnished for the places where they are
11 to be used and delivered at suitable points. The mine foreman
12 shall have all water drained or hauled out of the working
13 places where practicable, before the miners enter, and such
14 working places shall be kept dry as far as practicable while
15 the miners are at work. It shall be the duty of the mine
16 foreman to see that proper crosscuts are made, and that the
17 ventilation is conducted by means of such crosscuts through
18 the rooms by means of checks or doors placed on the entries
19 or other suitable places, and he shall not permit any room to
20 be opened in advance of the ventilation current. The mine
21 foreman or other certified persons designated by him, shall
22 measure the air current with an anemometer or other approved
23 device at least weekly at the inlet and outlet at or near the
24 faces of the advanced headings, and shall keep a record of such
25 measurements in a book or upon a form prescribed by the
26 director. Signs directing the way to outlets or escapeways shall
27 be conspicuously placed throughout the mine.

28 (b) After the first day of July, one thousand nine hundred
29 seventy-one, hinged man doors, at least thirty inches square

30 or the height of the coal seam, shall be installed between the
31 intake and return at intervals of three hundred feet when the
32 height of the coal is below forty-eight inches and at intervals
33 of five hundred feet when the height of the coal is above forty-
34 eight inches.

35 (c) The duties of the mine foreman and assistant mine
36 foreman shall include the instruction of apprentice miners in
37 the hazards incident to any new work assignments; to assure
38 that any individual given a work assignment in the working
39 face without prior experience on the face is instructed in the
40 hazards incident thereto and supervised by a miner with
41 experience in the tasks to be performed.

§22A-2-9. Slopes, incline planes and haulage roads.

1 The mine foreman shall require that all slopes, incline planes
2 and haulage roads used by any person in the mine shall
3 conform to the provisions of this article.

§22A-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

1 On all haulways, where hauling is done by machinery of any
2 kind, the mine foreman shall provide for a proper system of
3 signals, and a conspicuous light or approved trip reflector on
4 the rear of every trip or train of cars when in motion in a
5 mine. When hoisting or lowering of miners occurs in the
6 morning before daylight, or in the evening after darkness, at
7 any mine operated by shaft, the mine foreman shall provide
8 and maintain at the shaft mouth a light of stationary character,
9 sufficient to show the landing and all surrounding objects
10 distinctly, and sufficient light of a stationary character shall
11 be located at the bottom of the shaft so that persons coming
12 to the bottom may clearly discern the cages and other objects
13 contiguous thereto. The mine foreman shall require that no
14 cages on which miners are riding shall be lifted or lowered at
15 a rate of speed greater than one thousand feet per minute and
16 that no mine cars, either empty or loaded, shall be hoisted
17 while miners are being lowered, and no cage having an
18 unstable self-dump platform shall be used for the carrying of
19 miners unless the same is provided with some device by which
20 it may be securely locked when miners are being hoisted or
21 lowered into the mine: *Provided, however,* That during the
22 initial development of a mine, and only until the shafts are

23 joined, miners shall be permitted to ride cages with one empty
24 car which has been bolted or strapped to the cage.

§22A-2-11. Boreholes.

1 It shall further be the duty of the mine foreman to have
2 boreholes kept not less than twenty feet in advance of the face,
3 one each twenty feet on sides of the working places that are
4 being driven toward and in dangerous proximity to an
5 abandoned mine or part of a mine which may contain
6 inflammable gases or which is filled with water. These holes
7 shall be drilled whenever any working place in an underground
8 mine approaches within fifty feet of abandoned workings in
9 such mine, as shown by surveys made and certified by a
10 competent engineer or surveyor, or within two hundred feet
11 of any abandoned workings of such mine which cannot be
12 inspected.

**§22A-2-12. Instruction of employees and supervision of apprentices;
annual examination of persons using flame safety
lamps; records of examination; maintenance of
methane detectors, etc.**

1 The division shall prescribe and establish a course of
2 instruction in mine safety and particularly in dangers incident
3 to such employment in mines and in mining laws and rules,
4 which course of instruction shall be successfully completed
5 within twelve weeks after any person shall be first employed
6 as a miner. It shall further be the duty and responsibility of
7 the division to see that such course shall be given to all persons
8 as above provided after their first being employed in any mine
9 in this state.

10 It shall be the duty of the mine foreman or the assistant
11 mine foreman of every coal mine in this state to see that every
12 person employed to work in such mine shall, before beginning
13 work therein, be instructed in the particular danger incident
14 to his work in such mine, and be furnished a copy of the
15 mining laws and rules of such mine. It shall be the duty of
16 every mine operator who employs apprentices, as that term is
17 used in sections three and four, article ten, chapter twenty-two
18 of this code to ensure that the apprentices are effectively
19 supervised with regard to safety practices and to instruct
20 apprentices in safe mining practices. Every apprentice shall
21 work under the direction of the mine foreman or his assistant

22 mine foreman and they shall be responsible for his safety. The
23 mine foreman or assistant mine foreman may delegate the
24 supervision of an apprentice to an experienced miner, but the
25 foreman and his assistant mine foreman shall remain
26 responsible for the apprentice. During the first ninety days of
27 employment in a mine, the apprentice shall work within sight
28 and sound of the mine foreman, assistant mine foreman, or
29 an experienced miner, and in such a location that the mine
30 foreman, assistant mine foreman or experienced miner can
31 effectively respond to cries for help of the apprentice. Such
32 location shall be on the same side of any belt, conveyor or
33 mining equipment.

34 Persons whose duties require them to use a flame safety
35 lamp or other approved methane detectors shall be examined
36 at least annually as to their competence by a qualified official
37 from the division and a record of such examination shall be
38 kept by the operator and the division. Flame safety lamps and
39 other approved methane detectors shall be given proper
40 maintenance and shall be tested before each working shift.
41 Each operator shall provide for the proper maintenance and
42 care of the permissible flame safety lamp or any other
43 approved device for detecting methane and oxygen deficiency
44 by a person trained in such maintenance, and, before each
45 shift, care shall be taken to ensure that such lamp or other
46 device is in a permissible condition.

§22A-2-13. Daily inspection of working places; records.

1 Before the beginning of any shift upon which they shall
2 perform supervisory duties, the mine foreman or his assistant
3 shall review carefully and countersign all books and records
4 reflecting the conditions and the areas under their supervision,
5 exclusive of equipment logs, which the operator is required to
6 keep under this chapter. The mine foreman, assistant mine
7 foreman or fire boss shall visit and carefully examine each
8 working place in which miners will be working at the
9 beginning of each shift before any face equipment is energized
10 and shall examine each working place in the mine at least once
11 every two hours each shift while such miners are at work in
12 such places, and shall direct that each working place shall be
13 secured by props, timbers, roof bolts, or other approved
14 methods of roof support or both where necessary to the end
15 that the working places shall be made safe. The mine foreman

16 or his assistants upon observing a violation or potential
17 violation of article two of this chapter or any regulation or
18 any plan or agreement promulgated or entered into thereunder
19 shall arrange for the prompt correction thereof. The foreman
20 shall not permit any miner other than a certified foreman, fire
21 boss, assistant mine foreman, assistant mine foreman-fire boss
22 or pumper to be on a working section by himself. Should the
23 mine foreman or his assistants find a place to be in a
24 dangerous condition, they shall not leave the place until it is
25 made safe, or shall remove the persons working therein until
26 the place is made safe by some competent person designated
27 for that purpose.

28 He shall place his initials, time and the date at or near each
29 place he examines. He shall also record any dangerous
30 conditions and practices found during his examination in a
31 book provided for that purpose.

§22A-2-14. Safety inspections; removal of gases.

1 It shall be the duty of the mine foreman, assistant mine
2 foreman or fire boss to examine all working places under his
3 supervision for hazards at least once every two hours during
4 each coal-producing shift, or more often if necessary for safety.
5 In all mines such examinations shall include tests with an
6 approved detector for methane and oxygen deficiency and may
7 also include tests with a permissible flame safety lamp. It shall
8 also be his duty to remove as soon as possible after its
9 discovery any accumulations of explosive or noxious gases in
10 active workings, and where practicable, any accumulations of
11 explosive or noxious gases in the worked out and abandoned
12 portions of the mine. It shall be the duty of the mine foreman,
13 assistant mine foreman or fire boss to examine each mine
14 within three hours prior to the beginning of a shift and before
15 any miner in such shift enters the active workings of the mine.

§22A-2-15. Dangerous places.

1 The mine foreman shall direct and see that all dangerous
2 places and the entrance or entrances to worked out and
3 abandoned places in all mines are properly dangered off across
4 the openings.

§22A-2-16. Examinations of reports of fire bosses.

1 The mine foreman shall also, each day, read carefully and

2 countersign with ink or indelible pencil all reports entered in
3 the record book of the fire bosses, and he shall supervise the
4 fire boss or fire bosses, except as hereinafter provided in
5 section twenty-one of this article.

§22A-2-17. Ascertainment, record and removal of all dangers.

1 The mine foreman shall give prompt attention to the
2 removal of all dangers reported to him by his assistants, the
3 fire boss, or any other person working in the mine, and in
4 case it is impracticable to remove the danger at once, he shall
5 notify all persons whose safety is menaced thereby to remain
6 away from the area where the dangerous condition exists. He
7 or his assistants or certified persons designated by him, shall
8 at least once each week travel and examine the air courses,
9 roads and openings that give access to old workings or falls,
10 and make a record of the condition of all places where danger
11 has been found, with ink or indelible pencil in a book provided
12 for that purpose.

§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.

1 The mine foreman shall notify, in writing, the operator or
2 superintendent of the mine, and the director, of his inability
3 to comply with any of the requirements of this law, and it shall
4 then become the duty of such operator or superintendent
5 promptly to attend to the matter complained of by the mine
6 foreman so as to enable him to comply with the provisions
7 hereof. Every operator of a mine shall furnish all supplies
8 necessary for the mine foreman to comply with the require-
9 ments of this law after being requested to do so in writing by
10 the mine foreman.

§22A-2-19. Death or resignation of mine foreman; successor.

1 In case of the death or resignation of a mine foreman, the
2 superintendent or manager shall appoint a certified man to act
3 as mine foreman.

FIRE BOSS

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

1 It shall be the duty of the fire boss, or a certified person

2 acting as such, to prepare a danger signal (a separate signal
3 for each shift) with red color at the mine entrance at the
4 beginning of his shift or prior to his entering the mine to make
5 his examination and, except for those persons already on
6 assigned duty, no person except the mine owner, operator, or
7 agent, and only then in the case of necessity, shall pass beyond
8 this danger signal until the mine has been examined by the
9 fire boss or other certified person and the mine or certain parts
10 thereof reported by him to be safe. When reported by him to
11 be safe, the danger sign or color thereof shall be changed to
12 indicate that the mine is safe in order that employees going
13 on shift may begin work. Each person designated to make such
14 fire boss examinations shall be assigned a definite underground
15 area of such mine, and, in making his examination shall
16 examine all active working places in the assigned area and
17 make tests with a permissible flame safety lamp for accum-
18 ulations of methane and oxygen deficiency; examine seals and
19 doors; examine and test the roof, face, and ribs in the working
20 places and on active roadways and travelways, approaches to
21 abandoned workings and accessible falls in active sections. He
22 shall place his initials and the date at or near the face of each
23 place he examines. Should he find a condition which he
24 considers dangerous to persons entering such areas, he shall
25 place a conspicuous danger sign at all entrances to such place
26 or places. Only persons authorized by the mine management
27 to enter such places for the purpose of eliminating the
28 dangerous condition shall enter such place or places while the
29 sign is posted. Upon completing his examination he shall
30 report by suitable communication system or in person the
31 results of this examination to a certified person designated by
32 mine management to receive and record such report, at a
33 designated station on the surface of the premises of the mine
34 or underground, before other persons enter the mine to work
35 in such coal-producing shifts. He shall also record the results
36 of his examination with ink or indelible pencil in a book
37 prescribed by the director kept for such purpose at a place
38 on the surface of the mine designated by mine management.
39 All records of daily and weekly reports, as prescribed herein,
40 shall be open for inspection by interested persons.

§22A-2-21. Fire bosses to have no superior officers.

1 In the performance of the duties devolving upon fire bosses,

2 or certified persons acting as such, they shall have no superior
3 officers, but all the employees working inside of such mine or
4 mines shall be subordinate to them in their particular work.

§22A-2-22. Unlawful to enter mine until fire boss reports it safe; exceptions.

1 No person shall enter such mine or mines for any purpose
2 at the beginning of work upon shift therein until such signal
3 or warning has been given by the fire boss or bosses as to
4 the safety thereof, as by statute provided, except under the
5 direction of the fire boss or bosses, and then for the purpose
6 of assisting in making the mine safe: *Provided, however,* That
7 miners regularly employed on a shift during which the mine
8 is being preshift examined by a fire boss or certified person
9 shall be permitted to leave or enter the mine in the
10 performance of their duties.

§22A-2-23. Authority of fire boss to perform other duties.

1 Notwithstanding any other provision in this article con-
2 tained, any person who holds a certificate issued by the
3 division certifying his competency to act as fire boss may
4 perform the duties of a fire boss and any other duties,
5 statutory or otherwise, for which he is qualified, in the same
6 mine or section and on the same day or shift.

COAL DUST AND ROCK DUST

§22A-2-24. Control of coal dust; rock dusting.

1 (a) In all mines, dangerous accumulations of fine, dry coal
2 and coal dust shall be removed from the mine, and all dry
3 and dusty operating sections and haulageways and conveyors
4 and back entries shall be rock dusted or dust allayed by such
5 other methods as may be approved by the director.

6 (b) All mines or locations in mines that are too wet or too
7 high in incombustible content for a coal dust explosion to
8 initiate or propagate are not required to be rock dusted during
9 the time any of these conditions prevail. Coal dust and other
10 dust in suspension in unusual quantities shall be allayed by
11 sprinkling or other dust allaying devices.

12 (c) In all dry and dusty mines or sections thereof, rock dust

13 shall be applied and maintained upon the roof, floor and sides
14 of all operating sections, haulageways and parallel entries
15 connected thereto by open crosscuts. Back entries shall be rock
16 dusted. Rock dust shall be so applied to include the last open
17 crosscut of rooms and entries, and to within forty feet of faces.
18 Rock dust shall be maintained in such quantity that the
19 incombustible content of the mine dust that could initiate or
20 propagate an explosion shall not be less than sixty-five
21 percent, but the incombustible content in back entries shall not
22 be less than eighty percent.

23 (d) Rock dust shall not contain more than five percent by
24 volume of quartz or free silica particles and shall be pulverized
25 so that one hundred percent will pass through a twenty mesh
26 screen and seventy percent or more will pass through a two
27 hundred mesh screen.

ROOF—FACE—RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a
2 continuing basis a program to improve the roof control system
3 of each coal mine and the means and measures to accomplish
4 such system. The roof and ribs of all active underground
5 roadways, travelways, and working places shall be supported
6 or otherwise controlled adequately to protect persons from
7 falls of the roof or ribs. A roof control plan and revisions
8 thereof suitable to the roof conditions and mining systems of
9 each coal mine and approved by the director, in consultation
10 with the deputy directors of permitting and safety, health and
11 training, shall be adopted and set out in printed form before
12 new operations. The safety committee of the miners of each
13 mine where such committee exists shall be afforded the
14 opportunity to review and submit comments and recommen-
15 dations to the director and operator concerning the develop-
16 ment, modification or revision of such roof control plans. The
17 plan shall show the type of support and spacing approved by
18 the director. Such plan shall be reviewed periodically, at least
19 every six months by the director, taking into consideration any
20 falls of roof or rib or inadequacy of support of roof or ribs.
21 A copy of the plan shall be furnished to the director or his
22 authorized representative and shall be available to the miners

23 and their representatives.

24 (b) The operator, in accordance with the approved plan,
25 shall provide at or near each working face and at such other
26 locations in the coal mine, as the director may prescribe, an
27 ample supply of suitable materials of proper size with which
28 to secure the roof thereof of all working places in a safe
29 manner. Safety posts, jacks, or other approved devices shall
30 be used to protect the workmen when roof material is being
31 taken down, crossbars are being installed, roof bolt holes are
32 being drilled, roof bolts are being installed, and in such other
33 circumstances as may be appropriate. Loose roof and over
34 hanging or loose faces and ribs shall be taken down or
35 supported. When overhangs or brows occur along rib lines
36 they shall be promptly removed. All sections shall be
37 maintained as near as possible on center. Except in the case
38 of recovery work, supports knocked out shall be replaced
39 promptly. Apprentice miners shall not be permitted to set
40 temporary supports on a working section without the direct
41 immediate supervision of a certified miner.

42 (c) The operator of a mine has primary responsibility to
43 prevent injuries and deaths resulting from working under
44 unsupported roof. Every operator shall require that no person
45 may proceed beyond the last permanent support unless
46 adequate temporary support is provided or temporary support
47 is not required under an approved roof control plan and
48 absence of such support will not pose a hazard to the miners.

49 (d) The immediate supervisor of any area in which
50 unsupported roof is located shall not direct or knowingly
51 permit any person to proceed beyond the last permanent
52 support unless adequate temporary support is provided or
53 temporary support is not required under an approved roof
54 control plan and absence of such support will not pose a
55 hazard to the miners.

56 (e) No miner shall proceed beyond the last permanent
57 support in violation of a direct or standing order of an
58 operator, a foreman or an assistant foreman, unless adequate
59 temporary support is provided or temporary support is not
60 required under an approved roof control plan and absence of
61 such support will not pose a hazard to the miner.

62 (f) The immediate supervisor of each miner who will be

63 engaged in any activity involving the securing of roof or rib
64 during a shift shall, at the onset of any such shift, orally review
65 those parts of the roof control plan relevant to the type of
66 mining and roof control to be pursued by such miner. The
67 time and parts of the plan reviewed shall be recorded in a log
68 book kept for such purpose. Each log book entry so recorded
69 shall be signed by such immediate supervisor making such
70 entry.

71 (g) Any action taken against a miner due in whole or in
72 part to his refusal to work under unsupported roof, where such
73 work would constitute a violation of this section, is prohibited
74 as an act of discrimination pursuant to section twenty, article
75 one-a of this chapter. Upon a finding of discrimination by the
76 appeals board pursuant to subsection (b), section twenty,
77 article one-a of this chapter, the miner shall be awarded by
78 the appeals board all reliefs available pursuant to subsections
79 (b) and (c), section twenty, article one-a of this chapter.

**§22A-2-26. Roof support; examination and testing; correction of
dangerous conditions; roof bolt recovery.**

1 (a) The method of mining followed in any coal mine shall
2 not expose the miner to unusual dangers from roof falls. The
3 width of roadways shall not exceed fourteen feet unless
4 additional support is added cross sectional. During the
5 development of intersections, the roof between the tangents of
6 the arches in the entry or room shall be supported with
7 artificial roof supports prior to the development of such
8 intersections. All areas where the arch is broken shall be
9 considered as having unsupported roof and such roof should
10 have artificial roof supports installed prior to any other work
11 being performed in the area.

12 (b) Where miners are exposed to danger from falls of roof,
13 face, and ribs, the operator shall examine and test the roof
14 face, and ribs before any work or machine is started, and as
15 frequently thereafter as may be necessary to insure safety.
16 When dangerous conditions are found, they shall be corrected
17 immediately.

18 (c) Roof bolts shall not be recovered where complete
19 extraction of pillars is attempted, where adjacent to clay veins
20 or at the locations of other irregularities, whether natural or
21 otherwise, that induce abnormal hazards. Where roof bolt

22 recovery is permitted, it shall be conducted only in accordance
23 with methods prescribed in the approved roof control plan,
24 and shall be conducted by experienced miners and only where
25 adequate temporary support is provided.

§22A-2-27. Canopies or cabs; electric face equipment.

1 An authorized representative of the director may require in
2 any coal mine where the height of the coal bed permits that
3 electric face equipment, including shuttle cars, be provided
4 with substantially constructed canopies or cabs to protect the
5 miners operating such equipment from roof falls and from rib
6 and face rolls.

§22A-2-28. Equipment to conform with height of seam.

1 The use of underground mining equipment of a size that
2 does not conform to the height of the seam being mined, which
3 creates unsafe working conditions for the miner operating the
4 equipment or others, is prohibited. The board of coal mine
5 health and safety shall promulgate such rules and regulations
6 as are necessary to effectuate this section.

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

1 Permissible explosives or permissible blasting devices only
2 shall be used in blasting coal or other material in underground
3 coal mines. It shall be unlawful to have, use or store any
4 nonpermissible explosive or nonpermissible blasting devices in
5 any coal mine or on the premises of the mine, without a permit
6 from the director.

§22A-2-30. Surface magazines for explosives.

1 Separate surface magazines shall be provided for storage of
2 explosives, detonators and blasting heater elements. Surface
3 magazines shall be constructed of incombustible materials, be
4 reasonably bulletproof and with no metal or sparking material
5 exposed inside the magazine. Surface magazines shall be
6 provided with doors constructed of at least one-fourth inch
7 steel plate lined with a two-inch thickness of wood or the
8 equivalent, properly screened ventilators, and with no openings
9 except for entrances and ventilation, and shall be kept locked

10 securely when unattended. The area for a distance of at least
11 twenty-five feet in all directions shall be kept free of materials
12 of a combustible nature; suitable warning signs shall be
13 erected, so located that a bullet passing directly through the
14 face of the sign will not strike the magazine. The location of
15 magazines shall be not less than two hundred feet from any
16 mine openings, occupied buildings or public roads unless
17 barricaded. If magazines are illuminated electrically, the lamps
18 shall be of vapor-proof type, properly installed and wired, and
19 smoking and open lights shall be prohibited in or near any
20 magazine.

§22A-2-31. Transportation of explosives.

1 Individual containers used to carry permissible explosives or
2 detonators shall be constructed of substantial, nonconductive
3 materials, kept closed and maintained in good condition.
4 When explosives or detonators are transported underground
5 in cars moved by means of locomotives, ropes, or other motive
6 power, they shall be in substantially covered cars or in special
7 substantially built covered containers used specifically for
8 transporting detonators or explosives. Any container used for
9 transportation or storage of explosives shall be properly
10 identified or marked. Explosives or detonators shall not be
11 hauled into or out of a mine within five minutes preceding
12 or following a man trip. Where explosives and detonators are
13 transported underground by belts, they shall be handled in the
14 following manner: In the original and unopened cases, in
15 special closed cases constructed of nonconductive material, or
16 in suitable, individual containers. Clearance requirements shall
17 be a minimum of eighteen inches; stop controls shall be
18 provided at loading and unloading points, and an attendant
19 shall supervise the loading and unloading. Neither explosives
20 nor detonators shall be transported on flight or shaking
21 conveyors, mechanical loading machines, locomotives,
22 scrapers, cutting machines, drill trucks, or any self-propelled
23 mobile equipment. If explosives and detonators are trans-
24 ported in the same explosives car or in the same special
25 container, they shall be separated by at least four inches of
26 hardwood partition or the equivalent; the bodies of such cars
27 or containers shall be constructed or lined with nonconductive
28 material. No hand loader shall take into any mine any larger
29 quantity of explosives or detonators than he may reasonably

30 expect to use in any one shift.

§22A-2-32. Underground storage of explosives.

1 Explosives and detonators stored underground shall be kept
2 in section boxes or magazines of substantial construction with
3 no metal exposed on the inside, and be located at least fifteen
4 feet from roadways and power wires in a well rock-dusted
5 location, protected from falls of roof. If not kept in separate
6 boxes or magazines not less than five feet apart, they may be
7 kept in the same box or magazine if separated by at least a
8 four-inch hardwood partition or the equivalent. Not more than
9 a forty-eight hour supply of explosives or detonators shall be
10 stored underground in section boxes or magazines. These
11 boxes or magazines shall be kept at least one hundred feet
12 from the faces and out of the direct line of blasting.

§22A-2-33. Preparation of shots; blasting practices.

1 (a) Only a certified "shot firer" designated by mine
2 management shall be permitted to handle explosives and do
3 blasting. Only electric detonators of proper strength fired with
4 permissible shot firing units shall be used except under special
5 permits as hereinafter provided, and drill holes shall be
6 stemmed with at least twenty-four inches of incombustible
7 material, or at least one half of the length of the hole shall
8 be stemmed if the hole is less than four feet in depth, unless
9 other permissible stemming devices or methods are used. Drill
10 holes shall not be drilled beyond the limits of the cut, and as
11 far as practicable, cuttings and dust shall be cleaned from the
12 holes before the charge is inserted. Charges of explosives
13 exceeding one and one-half pounds, but not exceeding three
14 pounds, shall be used only if drill holes are six feet or more
15 in depth. Ample warning shall be given before shots are fired,
16 and care shall be taken to determine that all persons are in
17 the clear before firing. Miners shall be removed from adjoining
18 places and other places when there is danger of shots blowing
19 through. No shots shall be fired in any place known to liberate
20 explosive gas, until such place has been properly examined by
21 a competent person who is designated by mine management
22 for that purpose, and no shots shall be fired in any place where
23 gas is detected with a permissible flame safety lamp until such
24 gas has been removed by means of ventilation. After firing any
25 shot, or shots, the person firing the same shall not return to

26 the working the face until the smoke has been cleared away
27 and then he shall make a careful examination of the working
28 face before leaving the place or before performing any other
29 work in the place.

30 (b) Multiple shooting in coal or rock or both is authorized
31 only under permit issued by the director. Permission to shoot
32 more than ten shots simultaneously may be granted by the
33 director only after consultation with interested persons, and
34 the deputy director of safety, health and training, and such
35 shooting will be performed by special methods and under
36 precautions prescribed by the director. All multiple shooting
37 in bottom or roof rock shall be performed in intake air, except
38 by special permit from the director, after consultation with
39 interested persons and the deputy director of safety, health and
40 training, as heretofore provided. Multiple blasting of more
41 than ten shots performed under any permit granted by the
42 director under this section shall be done only on noncoal-
43 producing shifts or idle days, except as may be provided as
44 a condition of the permit granted.

45 (c) Regular or short interval delay detonators may be used
46 for blasting purposes with written permission from the director
47 after consultation with the deputy director of safety, health
48 and training. Regular delay detonators shall not be used for
49 blasting coal, but may be used for grading above or below coal
50 seams and during shaft, slope, tunnel work and in faults or
51 wants. Where short-interval delay detonators are permitted by
52 said director to be used, the shot firing circuit must be tested
53 with a blasting galvanometer before firing, and the leg wires
54 connected in series. No instantaneous, regular, or zero-delay
55 detonators are to be fired in conjunction with short-interval
56 delay detonators. The delay interval between dependent rows
57 must not be less than twenty-five milliseconds or more than
58 one hundred milliseconds, and the entire series of any one
59 round shall nor provide a delay of more than five hundred
60 milliseconds between the first and last shot. The total number
61 of charged holes to be fired during any one round must not
62 exceed the limit permitted by the director. Misfires must be
63 tested with a blasting galvanometer before removing.

64 (d) Electrical equipment shall not be operated in the face
65 areas, and only work in connection with timbering and general
66 safety shall be performed while boreholes are being charged.

67 Shots shall be fired promptly after charging. Mudcaps
68 (adobes) or any other unconfined shots shall not be permitted
69 in any coal mine. No solid shooting shall be permitted without
70 written permission of the division.

71 (e) Blasting cables shall be well insulated and shall be as
72 long as may be necessary to permit persons authorized to fire
73 shots to get in a safe place out of the line of fire. The cable,
74 when new, shall be at least one hundred twenty-five feet in
75 length and never less than one hundred feet. Shooting cables
76 shall be kept away from power wires and all other sources of
77 electric current, connected to the leg wires by the person who
78 fires the shot, staggered as to length or well separated at the
79 detonator leg wires, and shunted at the battery until ready to
80 connect to the blasting unit.

§22A-2-34. Misfires of explosives.

1 (a) Where misfires occur with electric detonators, a waiting
2 period of at least five minutes shall elapse before anyone
3 returns to the shot. After such failure, the blasting cable shall
4 be disconnected from the source of power and the battery ends
5 short-circuited before electric connections are examined.

6 (b) Explosives shall be removed by firing a separate charge
7 at least two feet away from and parallel to the misfired charge
8 or by washing the stemming and the charge from the borehole
9 with water, or by inserting and firing a new primer after the
10 stemming has been washed out.

11 (c) A careful search of the working place, and, if necessary,
12 of the coal after it reaches the tippie shall be made after
13 blasting a misfired hole, to recover any undetonated explosive.

14 (d) The handling of a misfired shot shall be under the direct
15 supervision of the mine foreman or a certified person
16 designated by him.

§22A-2-35. Other blasting devices.

1 (a) The provisions governing the handling, storage, trans-
2 portation and use of permissible explosives shall apply to all
3 other blasting devices employing a heater element when used
4 underground.

5 (b) Where compressed air is used for blasting, the airlines
6 shall be grounded at the compressor and, if practical, at other

7 low-resistant ground connections along the lines. They shall
8 not be connected in any way to rails, waterlines, or other
9 electric return conductors and shall be adequately insulated
10 and protected where they cross electric wires, underneath
11 track, or at places where equipment passes over or under.
12 Steel, copper, or other airlines connected therewith shall not
13 be handled or repaired when air pressure is in the line. Shutoff
14 valves shall be installed every thousand feet in all compressed-
15 air blasting lines and at all points where branch lines leave
16 the main line and blowdown valves shall not be less than fifty
17 feet from the face and shall be around a corner.

18 (c) When misfires occur with any other blasting devices,
19 they shall be handled in a safe manner and under the
20 supervision of the mine foreman or a certified person
21 designated by him.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 (a) The operator of every coal mine worked by shaft shall
2 provide and maintain a metal tube, telephone or other
3 approved means of communication from the top to the bottom
4 and intermediate landings of such shafts, suitably adapted to
5 the free passage of sound, through which conversation may
6 be held between persons at the top and at the bottom of the
7 shaft; a standard means of signaling; an approved safety catch,
8 bridle chains, automatic stopping device, or automatic
9 overwind; a sufficient cover overhead on every cage used for
10 lowering or hoisting persons; an approved safety gate at the
11 top of the shaft; and an adequate brake on the drum of every
12 machine used to lower or hoist persons in such shaft. Such
13 operator shall have the machinery used for lowering and
14 hoisting persons into or out of the mine kept in safe condition,
15 equipped with a reliable indicator, and inspected once in each
16 twenty-four hours by a qualified electrician. Where a hoisting
17 engineer is required, he shall be readily available at all times
18 when men are in the mine. He shall operate the empty cage
19 up and down the shaft at least one round trip at the beginning
20 of each shift, and after the hoist has been idle for one hour
21 or more before hoisting or lowering men; there shall be cut
22 out around the side of the hoisting shaft or driven through

23 the solid stata at the bottom thereof, a traveling way, not less
24 than five feet high and three feet wide to enable a person to
25 pass the shaft in going from one side of it to the other without
26 passing over or under the cage or other hoisting apparatus.
27 Positive stop blocks or derails shall be placed near the top and
28 at all intermediate landings of slopes and surface inclines and
29 at approaches to all shaft landings. A waiting station with
30 sufficient room, ample clearance from moving equipment, and
31 adequate seating facilities shall be provided where men are
32 required to wait for man trips or man cages, and the miners
33 shall remain in such station until the man trip or man cage
34 is available.

35 (b) No operator of any coal mine worked by shaft, slope
36 or incline, shall place in charge of any engine or drum used
37 for lowering or hoisting persons employed in such mine any
38 but competent and sober engineers or drum runners; and no
39 engineer or drum runner in charge of such machinery shall
40 allow any person, except such as may be designated for this
41 purpose by the operator, to interfere with any part of the
42 machinery; and no person shall interfere with any part of the
43 machinery; and no person shall interfere with or intimidate the
44 engineer or drum runner in the discharge of his duties. Where
45 the mine is operated or worked by shaft or slope, a minimum
46 space of two and one-half square feet per person shall be
47 available for each person on any cage or car where men are
48 transported. In no instance shall more than twenty miners be
49 transported on a cage or car without the approval of the
50 director, in consultation with the deputy director of safety,
51 health and training. No person shall ride on a loaded cage or
52 car in any shaft, slope, or incline: *Provided*, That this shall
53 not prevent any trip rider from riding in the performance of
54 his authorized duties. No engineer shall be required for
55 automatically operated cages, elevators, or platforms. Cages
56 and elevators shall have an emergency power source unless
57 provided with other escapeway facilities.

58 (c) Each automatic elevator shall be provided with a
59 telephone or other effective communication system by which
60 aid or assistance can be obtained promptly.

61 (d) A "stop" switch shall be provided in the automatic
62 elevator compartment that will permit the elevator to be
63 stopped at any location in the shaft.

TRANSPORTATION**§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed, installed
3 and maintained in a manner consistent with speed and type
4 of haulage operations being conducted to ensure safe
5 operation. Where transportation of personnel is exclusively by
6 rail, track shall be maintained to within five hundred feet of
7 the nearest working face.

8 (b) Track switches, except room and entry development
9 switches, shall be provided with properly installed throws,
10 bridle bars and guard rails; switch throws and stands, where
11 possible, shall be placed on the clearance side.

12 (c) Haulage roads on entries developed after the first day
13 of July, one thousand nine hundred seventy-one, shall have
14 a continuous, unobstructed clearance of at least twenty-four
15 inches from the farthest projection of any moving equipment
16 on the clearance side.

17 (d) On haulage roads where trolley lines are used, the
18 clearance shall be on the side opposite the trolley lines.

19 (e) On the trolley wire or "tight" side, after the effective date
20 of this article, there shall be at least twelve inches of clearance
21 from the farthest projection of any moving equipment.

22 (f) Warning lights or reflective signs or tapes shall be
23 installed along haulage roads at locations of abrupt or sudden
24 changes in the overhead clearance.

25 (g) The clearance space on all haulage roads shall be kept
26 free of loose rock, coal, supplies or other material: *Provided,*
27 That not more than twenty-four inches need be kept free of
28 such obstructions.

29 (h) Ample clearance shall be provided at all points where
30 supplies are loaded or unloaded along haulage roads or
31 conveyors, which in no event shall be less than twenty-four
32 inches.

33 (i) Shelter holes shall be provided along haulage entries
34 driven after the first day of July, one thousand nine hundred

35 seventy-one, where locomotive, rope or animal haulage is used.
36 Such shelter holes shall be spaced not more than one hundred
37 feet apart; they shall be on the side of the entry opposite the
38 trolley wire: *Provided*, That where belt haulage and secondary
39 track haulage are located in the same entry, shelter holes may
40 be on the trolley wire and feeder wire side if the trolley wire
41 and feeder wire are guarded in a manner approved by the
42 director.

43 (j) Shelter holes made after the effective date of this article
44 shall be at least five feet in depth, not more than four feet
45 in width, and as high as the traveling space. Room necks and
46 crosscuts may be used as shelter holes even though their width
47 exceeds four feet.

48 (k) Shelter holes shall be kept clear of refuse and other
49 obstructions.

50 (l) After the effective date of this article, shelter holes shall
51 be provided at switch throws and manually operated
52 permanent doors.

53 (m) No steam locomotive shall be used in mines where
54 miners are actually employed in the extraction of coal, but this
55 shall not prevent operation of a steam locomotive through any
56 tunnel haulway or part of a mine that is not in actual
57 operation and producing coal.

58 (n) Underground equipment powered by internal combus-
59 tion engines using petroleum products, alcohol, or any other
60 compound shall not be used in a coal mine.

61 (o) Locomotives, personnel carriers, mine cars, supply cars,
62 shuttle cars, and all other haulage equipment shall be
63 maintained in a safe operating condition. Each locomotive,
64 personnel carrier, barrier tractor and other related equipment
65 shall be equipped with a suitable lifting jack and handle. An
66 audible warning device and headlights shall be provided on
67 each locomotive and each shuttle car. All other mobile
68 equipment, using the face areas of the mine, purchased after
69 the first day of July, one thousand nine hundred seventy-one,
70 shall be provided with a conspicuous light or other approved
71 device so as to reduce the possibility of collision.

72 (p) No persons other than those necessary to operate a trip
73 or car shall ride on any loaded car or on the outside of any

74 car. Where pusher locomotives are not used, the locomotive
75 operator shall have an assistant to assist him in his duties.

76 (q) The pushing of trips, except for switching purposes, is
77 prohibited on main haulage roads: *Provided*, That nothing
78 herein shall prohibit the use of a pusher locomotive to assist
79 the locomotive pulling a trip. Motormen and trip riders shall
80 use care in handling locomotives and cars. It shall be their duty
81 to see that there is a conspicuous light on the front and rear
82 of each trip or train of cars when in motion: *Provided*, That
83 trip lights need not be used on cars being shifted to and from
84 loading machines, on cars being handled at loading heads
85 during gathering operations at working faces, or on trips being
86 pulled by animals. No person except the operator or his
87 assistant shall ride on locomotives or loaded cars. An empty
88 car or cars shall be used to provide a safe distance between
89 the locomotive and the material car when rail, pipe or long
90 timbers are being hauled. A safe clearance shall be maintained
91 between the end car of trips placed on side tracks and moving
92 traffic. On haulage roads the clearance point shall be marked
93 with an approved device.

94 (r) No motorman, trip rider or brakeman shall get on or
95 off cars, trips or locomotives while they are in motion, except
96 that a trip rider or brakeman may get on or off the rear end
97 of a slowly moving trip or the stirrup of a slowly moving
98 locomotive to throw a switch, align a derail or open or close
99 a door.

100 (s) Flying or running switches and riding on the front
101 bumper of a car or locomotive are prohibited. Back poling
102 shall be prohibited except with precaution to the nearest
103 turning point (not over eighty feet), or when going up
104 extremely steep grades and then only at slow speed. The
105 operator of a shuttle car shall face in the direction of travel
106 except during the loading operation when he shall face the
107 loading machine.

108 (t) (l) A system of signals, methods or devices shall be used
109 to provide protection for trips, locomotives and other
110 equipment coming out onto tracks used by other equipment.

111 (2) In any coal mine where more than three hundred fifty
112 tons of coal are produced on any shift in each twenty-four
113 hour period, a dispatcher shall be on duty when there are

114 movements of track equipment underground, including time
115 when there is no production of coal. Such traffic shall move
116 only at the direction of the dispatcher.

117 (3) The dispatcher's only duty shall be to direct traffic.
118 Where a dispatcher is employed, no person shall move a
119 locomotive, personnel carrier or self-propelled equipment on
120 or onto haulageways without instructions from the dispatcher.

121 (4) Any dispatcher's station provided after the effective date
122 of this article shall be on the surface.

123 (5) All self-propelled track equipment shall be equipped
124 with two-way communications.

125 (u) Motormen shall inspect locomotives, and report any
126 mechanical defects found to the proper supervisor before a
127 locomotive is put in operation.

128 (v) A locomotive following another trip shall maintain a
129 distance of at least three hundred feet from the rear end of
130 the trip ahead, unless such locomotive is coupled to the trip
131 ahead.

132 (w) Positive stopblocks or derails shall be installed on all
133 tracks near the top and at landings of shafts, slopes, and
134 surface inclines. Positive-acting stopblocks or derails shall be
135 used where necessary to protect persons from danger of
136 runaway haulage equipment.

137 (x) Shuttle cars shall not be altered by the addition of
138 sideboards so as to inhibit the view of the operator.

139 (y) Mining equipment shall not be parked within fifteen feet
140 of a check curtain or fly curtain.

**§22A-2-38. Transportation of miners by cars; self-propelled
equipment; belts.**

1 (a) Man trips shall be pulled, unless self-propelled, at safe
2 speeds consistent with the condition of roads and type of
3 equipment used, but not to exceed twelve miles an hour. Each
4 man trip shall be under the charge of a certified person or
5 other competent person designated by a mine foreman or
6 assistant mine foreman. It shall be operated independently of
7 any loaded trip of coal or other heavy material, but may
8 transport tools, small machine parts and supplies. When mine

9 cars are used for man trips, a locomotive shall be used on each
10 end of the trip.

11 (b) Cars on the man trip shall not be overloaded, and
12 sufficient cars in good mechanical condition shall be provided.
13 Sufficient space shall be afforded so that no miner shall have
14 to be transported in a hazardous position.

15 (c) No person shall ride under the trolley wire unless the
16 man cars used are suitably covered and insulated. No person
17 shall ride on loaded timber cars, loaded supply trucks, empty
18 timber cars or empty supply trucks which are not equipped
19 with side guards, on top of locomotives, on chain conveyors,
20 inside shuttle cars, on the tops of machinery or equipment,
21 or on the sides of machinery or equipment, except for
22 operators of such machinery or equipment.

23 (d) Miners shall not load or unload before the cars in which
24 they are to ride, or are riding, come to a full stop. Miners
25 shall proceed in an orderly manner to and from man trips.

26 (e) When belts are used for transporting miners, a minimum
27 clearance of eighteen inches shall be maintained between the
28 belt and the roof or crossbars, projecting equipment, cap
29 pieces, overhead cables, wiring and other objects. Visible
30 reflectors shall be placed where projected equipment, cap
31 pieces, overhead cables, wiring or other pieces cross the belt
32 line. Where the height of the coal seam permits, the clearance
33 shall not be less than twenty-four inches.

34 (f) The belt speed shall not exceed two hundred fifty feet
35 per minute where the minimum overhead clearance is eighteen
36 inches, or three hundred feet per minute where the minimum
37 overhead clearance is twenty-four inches, while miners are
38 loading, unloading, or being transported. A signaling system
39 or method shall be provided for stopping the belt and miners
40 shall ride not less than six feet apart.

41 (g) An assistant mine foreman or some other person
42 designated by the mine foreman shall supervise the loading and
43 unloading of belts and man trips. Where miners are required
44 to cross over belts, adequate and safe facilities shall be
45 provided.

46 (h) Positive-acting stop controls shall be installed along all
47 belt conveyors used to transport miners, and such controls

48 shall be readily accessible, and maintained so that the belt can
49 be stopped or started at any location.

50 (i) Belt conveyors used for man trips shall be stopped while
51 men are loading or unloading.

52 (j) There shall be at least thirty-six inches of side clearance
53 where miners board or leave such belt conveyors.

54 (k) Adequate illumination including colored lights or
55 reflective signs shall be installed at all loading and unloading
56 stations. Such colored lights and reflective signs shall be so
57 located as to be observable to all persons riding the belt
58 conveyor.

59 (l) Telephone or other suitable communications shall be
60 provided at points where miners are regularly loaded on or
61 unloaded from belt conveyors.

62 (m) After supplies have been transported on man trip cars,
63 such cars shall be examined for unsafe conditions prior to the
64 transportation of miners.

65 (n) While trackmen are working on haulageways, the
66 dispatcher, or if there is no dispatcher, such other person
67 responsible for communications with haulage crews shall give
68 notice to haulage crews to maintain traffic under a slow and
69 safe operating speed at the point of construction or repair.

§22A-2-39. Belt conveyor; installation; maintenance.

1 (a) On or after the first day of July, one thousand nine
2 hundred seventy-one, all conveyor belts acquired for use
3 underground shall be flame-resistant conveyor belts.

4 (b) A clear travelway at least twenty-four inches wide shall
5 be provided on both sides of all belt conveyors installed after
6 the first day of July, one thousand nine hundred seventy-one.
7 Where roof supports are installed within twenty-four inches of
8 a belt conveyor, a clear travelway at least twenty-four inches
9 wide shall be provided on the side of such support farthest
10 from the conveyor.

11 (c) On belt conveyors that do not transport men, stop and
12 start controls shall be installed at intervals not to exceed one
13 thousand feet. Such controls shall be properly installed and
14 positioned so as to be readily accessible.

- 15 (d) Persons shall not cross moving belt conveyors, except
16 where suitable crossing facilities are provided.
- 17 (e) All belt conveyors shall be inspected for frozen rollers,
18 rock falls, and fires, following the last production shift each
19 week, also before holidays, vacation periods, and each
20 production shift, with records kept of daily inspection.
- 21 (f) Deluge-type water sprays, water sprinklers, dry chemical
22 sprinkler system or foam generators (designed to be automat-
23 ically activated in the event of a fire or rise in the temperature
24 at or near the belt drive) shall be installed at each main and
25 secondary conveyor drive.
- 26 (g) All underground belt conveyors shall be equipped with
27 slippage and sequence switches.
- 28 (h) Telephones or other suitable communications shall be
29 provided at points where supplies are regularly loaded or
30 unloaded from the belt conveyors.
- 31 (i) After supplies have been transported on belt conveyors,
32 such belts shall be examined for unsafe conditions prior to the
33 transportation of miners.

ELECTRICITY

§22A-2-40. General provisions.

- 1 Operators of coal mines in which electricity is used as a
2 means of power shall comply with the following provisions:
- 3 (1) All surface transformers, unless of a construction which
4 will eliminate shock hazards, or unless installed at least eight
5 feet above ground, shall be enclosed in a house or surrounded
6 by a fence at least six feet high. If the enclosure is of metal,
7 it shall be grounded effectively. The gate or door to the
8 enclosure shall be kept locked at all times, unless authorized
9 persons are present.
- 10 (2) Underground transformers shall be air cooled or cooled
11 with noninflammable liquid or inert gas.
- 12 (3) Underground stations containing circuit breakers filled
13 with inflammable liquids shall be put on a separate split of
14 air or ventilated to the return air, and shall be of fireproof
15 construction.
- 16 (4) Transformers shall be provided with adequate overload

17 protection.

18 (5) "Danger -- High Voltage" signs with the voltage
19 indicated shall be posted conspicuously on all transformer
20 enclosures, high-potential switchboards and other high-
21 potential installations.

22 (6) Dry insulating platforms of rubber or other suitable
23 nonconductive material shall be kept in place at each
24 switchboard and at stationary machinery where shock hazards
25 exist.

26 (7) Capacitors used for power factor connection shall be
27 noninflammable liquid filled. Suitable drain-off resistors or
28 other means to protect miners against electric shock following
29 removal of power shall be provided.

30 (8) All unattended underground loading points where
31 electric driven hydraulic systems are used shall utilize a
32 fireproof oil or emulsion.

33 (9) Before electrical changes are made to permissible
34 equipment for use in a mine, they shall be approved by the
35 director.

36 (10) Reverse current protection shall be provided at storage
37 battery charging stations to prevent the storage batteries from
38 energizing the power circuits in the event of power failure.

39 (11) In all mines all junction or distribution boxes used for
40 making multiple power connections inby the last open crosscut
41 shall be permissible.

42 (12) All hand-held electric drills, blower and exhaust fans,
43 electric pumps, and such other low horsepower electric face
44 equipment which are taken into or used inby the last open
45 crosscut of any coal mine shall be permissible.

46 (13) All electric face equipment which is taken into or used
47 inby the last open crosscut of any coal mine shall be
48 permissible.

49 (14) In mines operated in coal seams which are located at
50 elevations above the water table, the phrase "coal seams above
51 the water table" means coal seams in a mine which are located
52 at an elevation above a river or the tributary of a river into
53 which a local surface water system naturally drains.

54 (15) The operator of each coal mine shall maintain in
55 permissible condition all electric face equipment, which is
56 taken into or used in by the last open crosscut of any mine.

57 (16) Except where permissible power connection units are
58 used, all power-connection points out by the last open crosscut
59 shall be in intake air.

60 (17) All power circuits and electric equipment shall be
61 deenergized before work is done on such circuits and
62 equipment, except when necessary for trouble shooting or
63 testing.

64 (18) Energized trolley wires may be repaired only by a
65 person trained to perform electrical work and to maintain
66 electrical equipment and the operator of a mine shall require
67 that such persons wear approved and tested insulated shoes
68 and wireman's gloves.

69 (19) No electrical work shall be performed on low-,
70 medium-, or high-voltage distribution circuits or equipment,
71 except by a qualified person or by a person trained to perform
72 electrical work and to maintain electrical equipment under the
73 direct supervision of a qualified person. Disconnecting devices
74 shall be locked out and suitably tagged by the persons who
75 perform such work, except that in cases where locking out is
76 not possible, such devices shall be opened and suitably tagged
77 by such persons who installed them, or, if such persons are
78 unavailable, by persons authorized by the operator or his
79 agent.

80 (20) All electric equipment shall be examined weekly, tested,
81 and properly maintained by a qualified person to assure safe
82 operating conditions. When a potentially dangerous condition
83 is found on electric equipment, such equipment shall be
84 removed from service until such condition is corrected. A
85 record of such examinations shall be kept and made available
86 to an authorized representative of the director and to the
87 miners in such mine.

88 (21) All electric conductors shall be sufficient in size and
89 have adequate current-carrying capacity and be of such
90 construction that a rise in temperature resulting from normal
91 operation will not damage the insulating material.

92 (22) All electrical connections or splices in conductors shall

93 be mechanically and electrically efficient, and suitable
94 connectors shall be used. All electrical connections or splices
95 in insulated wire shall be reinsulated at least to the same degree
96 of protection as the remainder of the wire.

97 (23) Cables shall enter metal frames of motors, splice boxes,
98 and electric compartment only through proper fittings. When
99 insulated wire, other than cables, pass through metal frames,
100 the holes shall be substantially bushed with insulated bushings.

101 (24) All power wire (except trailing cables on mobile
102 equipment, specially designed cables conducting high-voltage
103 power to underground rectifying equipment or transformers,
104 or bare or insulated ground and return wires) shall be
105 supported on well-installed insulators and shall not contact
106 combustible material, roof or ribs.

107 (25) Power wires and cables, including, but not limited to,
108 phone communication and control wires, except trolley wires,
109 trolley feeder wires and bare signal wires, shall be insulated
110 adequately and fully protected. The provisions of this
111 subdivision shall not become effective until the first day of
112 January, one thousand nine hundred seventy-eight.

113 (26) Automatic circuit-breaking devices or fuses of the
114 correct type and capacity shall be installed so as to protect
115 all electric equipment and circuits against short circuit and
116 overloads. Three-phase motors on all electric equipment shall
117 be provided with overload protection that will deenergize all
118 three phases in the event that any phase is overloaded.

119 (27) Incandescent lamps installed along haulageways and at
120 other locations shall not contact combustible material, and if
121 powered from trolley or direct current feeder circuits, need not
122 be provided with separate short circuits or overload protection,
123 if the lamp is not more than eight feet in distance from such
124 circuits.

125 (28) In all main power circuits, disconnecting switches shall
126 be installed underground within five hundred feet of the
127 bottoms of shafts and boreholes through which main power
128 circuits enter the underground area of the mine and within five
129 hundred feet of all other places where main power circuits
130 enter the underground area of the mine.

131 (29) All electric equipment shall be provided with switches

132 or other controls that are safely designed, constructed and
133 installed.

134 (30) Each underground, exposed power conductor that
135 leads underground shall be equipped with suitable lightning
136 arrestors of approved type within one hundred feet of the point
137 where the circuit enters the mine. Lightning arrestors shall be
138 connected to a low-resistance grounding medium on the
139 surface which shall be separated from neutral ground by a
140 distance of not less than twenty-five feet.

141 (31) Except for areas of a coal mine inby the last open
142 crosscut, incandescent lamps may be used to illuminate
143 underground areas. When incandescent lamps are used in a
144 track entry or belt entry or near track entries to illuminate
145 special areas other than structures, the lamps shall be installed
146 in weatherproof sockets located in positions such that the
147 lamps will not come in contact with any combustible material.
148 Lamps used in all other places must be of substantial
149 construction and be fitted with a glass enclosure.

150 (32) An authorized representative of the director may
151 require in any mine that electric face equipment be provided
152 with devices that will permit the equipment to be deenergized
153 quickly in the event of an emergency.

154 (33) An authorized representative of the director shall
155 require manually operated emergency stop switches, designed
156 to deenergize the traction motor circuit when the contractors
157 or controller fail to open, to be installed on all battery powered
158 tractors, taken into or used inby the last open crosscut of any
159 entry or room.

160 (34) Trailing cables used in coal mines shall meet the
161 requirements for flame-resistant cables.

162 (35) Short circuit protection for trailing cables shall be
163 provided by an automatic circuit breaker or other no less
164 effective device approved by the director of adequate current-
165 interrupting capacity in each ungrounded conductor.
166 Disconnecting devices used to disconnect power from trailing
167 cables shall be plainly marked and identified and such devices
168 shall be equipped or designed in such a manner that it can
169 be determined by visual observation that the power is
170 disconnected.

171 (36) When two or more trailing cables junction to the same
172 distribution center, means shall be provided to assure against
173 connecting a trailing cable to the wrong size circuit breaker.

174 (37) One temporary splice may be made in any trailing
175 cable. Such trailing cable may only be used for the next
176 twenty-four hour period. No temporary splice shall be made
177 in a trailing cable within twenty-five feet of the machine,
178 except cable reel equipment. Temporary splices in trailing
179 cables shall be made in a workmanlike manner and shall be
180 mechanically strong and well insulated. Trailing cables or hand
181 cables which have exposed wires or which have splices that
182 heat or spark under load shall not be used. As used in this
183 section, the term "splice" means a mechanical joining of one
184 or more conductors that have been severed.

185 (38) When permanent splices in trailing cables are made,
186 they shall be:

187 (A) Mechanically strong with adequate electrical conductiv-
188 ity and flexibility,

189 (B) Effectively insulated and sealed so as to exclude
190 moisture, and

191 (C) Vulcanized or otherwise treated with suitable materials
192 to provide flame-resistant qualities and good bonding to the
193 outer jacket.

194 (39) Trailing cables shall be clamped to machines in a
195 manner to protect the cables from damage and to prevent
196 strain on the electrical connections. No cables will be hung in
197 a manner which will damage the insulation or conductors.

198 (40) Trailing cables shall be adequately protected to prevent
199 damage by mobile equipment.

200 (41) Trailing cable and power cable connections to junction
201 boxes and to electrical equipment shall not be made or broken
202 under load.

203 (42) All metallic sheaths, armors and conduits enclosing
204 power conductors shall be electrically continuous throughout
205 and shall be grounded by methods approved by an authorized
206 representative of the director.

207 (43) Except where waived by the director, metallic frames,

208 casings and other enclosures of electric equipment that can
209 become alive through failure of insulation or by contact with
210 energized parts shall be grounded, and on or before the first
211 day of January, one thousand nine hundred seventy-eight,
212 shall have a ground monitoring system.

213 (44) In instance where single-phase 110-220 volt circuits are
214 used to feed electrical equipment, the only method of
215 grounding that will be approved is the connection of all
216 metallic frames, casings and other enclosure of such equipment
217 to a separate grounding conductor which establishes a
218 continuous connection to a grounded center tap of the
219 transformer.

220 (45) The attachment of grounding wires to a mine tract or
221 other grounded power conductor will be approved if separate
222 clamps, suitable for such purpose, are used and installed to
223 provide a solid connection.

224 (46) The frames of all offtrack direct-current machines and
225 the enclosures of related detached components shall be
226 effectively grounded or otherwise maintained at no less safe
227 voltages.

228 (47) Installation of silicon diodes shall be restricted to
229 electric equipment receiving power from a direct-current
230 system with one polarity grounded. Where such diodes are
231 used on circuits having a nominal voltage rating of two
232 hundred fifty, they must have a forward current rating of four
233 hundred amperes or more, and have a peak inverse voltage
234 rating of four hundred or more. Where such diodes are used
235 on circuits having nominal voltage rating of five hundred fifty,
236 they must have a forward current rating of two hundred fifty
237 amperes or more, and have a peak inverse voltage rating of
238 eight hundred or more.

239 (48) In addition to the grounding diode, a polarizing diode
240 must be installed in the machine control circuit to prevent
241 operation of the machine when the polarity of a trailing cable
242 is reversed.

243 (49) When installed on permissible equipment, all grounding
244 diodes, over-current devices, and polarizing diodes must be
245 placed in explosion-proof compartments.

246 (50) High-voltage lines, both on the surface and under-

247 ground, shall be deenergized and grounded before work is
248 performed on them, except that repairs may be permitted, in
249 the case of energized surface high-voltage lines, if such repairs
250 are made by a qualified person in accordance with procedures
251 and safeguards, including, but not limited to, a requirement
252 that the operator of such mine provide, test and maintain
253 protective devices in making such repairs.

254 (51) When two or more persons are working on an
255 energized high-voltage surface line simultaneously, and any
256 one of them is within reach of another, such persons shall not
257 be allowed to work on different phases or on equipment with
258 different potentials.

259 (52) All persons performing work on energized high-voltage
260 surface lines shall wear protective rubber gloves, sleeves, and
261 climber guards if climbers are worn. Protective rubber gloves
262 shall not be worn wrong side out or without protective leather
263 gloves. Protective devices worn by a person assigned to
264 perform repairs on high-voltage surface lines shall be worn
265 continuously from the time he leaves the ground until he
266 returns to the ground, and, if such devices are employed for
267 extended periods, such person shall visually inspect the
268 equipment assigned him for defects before each use, and, in
269 no case, less than twice each day.

270 (53) Disconnecting or cutout switches on energized high-
271 voltage surface lines shall be operated only with insulated
272 sticks, fuse tongs or pullers which are adequately insulated and
273 maintained to protect the operator from the voltage to which
274 he is exposed. When such switches are operated from the
275 ground, the person operating such devices shall wear protective
276 rubber gloves.

277 (54) Solely for purposes of grounding ungrounded high-
278 voltage power systems, grounded messenger wires used to
279 suspend the cables of such systems may be used as a grounding
280 medium.

281 (55) When not in use, power circuits underground shall be
282 deenergized on idle days and idle shifts, except that rectifiers
283 and transformers may remain energized.

284 (56) High-voltage circuits entering the underground area of
285 any coal mine shall be protected by suitable circuit breakers

286 of adequate interrupting capacity. Such breakers shall be
287 equipped with devices to provide protection against undervol-
288 tage, grounded phase, short circuit and overcurrent.

289 (57) Circuit breakers protecting high-voltage circuits
290 entering an underground area of any coal mine shall be located
291 on the surface and in no case installed either underground or
292 within a drift.

293 (58) One circuit breaker may be used to protect two or more
294 branch circuits, if the circuit breaker is adjusted to afford
295 overcurrent protection for the smallest conductor.

296 (59) The grounding resistor, where required, shall be of the
297 proper ohmic value to limit the voltage drop in the grounding
298 circuit external to the resistor to not more than one hundred
299 volts under fault conditions. The grounding resistor shall be
300 rated for maximum fault current continuously and insulated
301 from ground for a voltage equal to the phase-to-phase voltage
302 of the system.

303 (60) High-voltage circuits extending underground and
304 supplying portable mobile or stationary high-voltage equip-
305 ment shall contain either a direct or derived neutral which shall
306 be grounded through a suitable resistor at the source
307 transformers, and a grounding circuit, originating at the
308 grounded side of the grounding resistor, shall extend along
309 with the power conductors and serve as a grounding conductor
310 for the frames of all high-voltage equipment supplied power
311 from the circuit, except that the director or his authorized
312 representative may permit ungrounded high-voltage circuits to
313 be extended underground to feed stationary electrical
314 equipment if such circuits are either steel armored or installed
315 in grounded, rigid steel conduit throughout their entire length,
316 and upon his finding that such exception does not pose a
317 hazard to the miners. Within one hundred feet of the point
318 on the surface where high-voltage circuits enter the under-
319 ground portion of the mine, disconnecting devices shall be
320 installed and so equipped or designed in such a manner that
321 it can be determined by visual observation that the power is
322 disconnected, except that the director or his authorized
323 representative may permit such devices to be installed at a
324 greater distance from such area of the mine if he determines,
325 based on existing physical conditions, that such installation

326 will be more accessible at a greater distance and will not pose
327 any hazard to the miners.

328 (61) High-voltage resistance grounded systems serving
329 portable or mobile equipment shall include a fail-safe ground
330 check circuit to monitor continuously the grounding circuit to
331 assure continuity, and the fail-safe ground check circuit shall
332 cause the circuit breaker to open when either the ground or
333 pilot check wire is broken, or other no less effective device
334 approved by the director or his authorized representative to
335 assure such continuity.

336 (62) Underground high-voltage cables used in resistance
337 grounded systems shall be equipped with metallic shields
338 around each power conductor with one or more ground
339 conductors having a total cross-sectional area of not less than
340 one half the power conductor, and with an insulated internal
341 or external conductor not smaller than No. 10 (A.W.G.) for
342 the ground continuity check circuit.

343 (63) All such cables shall be adequate for the intended
344 current and voltage. Splices made in such cables shall provide
345 continuity of all components.

346 (64) Single-phase loads, such as transformer primaries, shall
347 be connected phase-to-phase.

348 (65) All underground high-voltage transmission cables shall
349 be installed only in regularly inspected air courses and
350 haulageways, and shall be covered, buried, or placed so as to
351 afford protection against damage, guarded where men
352 regularly work or pass under them unless they are six and one-
353 half feet or more above the floor or rail, securely anchored,
354 properly insulated, and guarded at ends, and covered,
355 insulated, or placed to prevent contact with trolley wires and
356 other low-voltage circuits.

357 (66) Disconnecting devices shall be installed at the begin-
358 ning of branch lines in underground high-voltage circuits and
359 equipped or designed in such a manner that it can be
360 determined by visual observation that the circuit is deenergized
361 when the switches are open.

362 (67) Circuit breakers and disconnecting switches under-
363 ground shall be marked for identification.

364 (68) In the case of high-voltage cables used as trailing
365 cables, temporary splices shall not be used and all permanent
366 splices shall be made in accordance with the manufacturers'
367 specifications.

368 (69) Frames, supporting structures and enclosures of
369 stationary, portable, or mobile underground high-voltage
370 equipment and all high-voltage equipment supplying power to
371 such equipment receiving power from resistance grounded
372 systems shall be effectively grounded to the high-voltage
373 ground.

374 (70) Low- and medium-voltage power circuits serving three-
375 phase alternating current equipment serving portable or mobile
376 equipment shall be protected by suitable circuit breakers of
377 adequate interrupting capacity which are properly tested and
378 maintained as prescribed by the director. Such breakers shall
379 be equipped with devices to provide protection against under
380 voltage, grounded phase, short circuit and overcurrent.

381 (71) Power centers and portable transformers shall be
382 deenergized before they are moved from one location to
383 another, except that, when equipment powered by sources
384 other than such centers or transformers is not available, the
385 director may permit such centers and transformers to be
386 moved while energized, if he determines that another
387 equivalent or greater hazard may otherwise be created, and if
388 they are moved under the supervision of a qualified person,
389 and if such centers and transformers are examined prior to
390 such movement by such person and found to be grounded by
391 methods approved by an authorized representative of the
392 director and otherwise protected from hazards to the miner.
393 A record shall be kept of such examinations. High-voltage
394 cables, other than trailing cables, shall not be moved or
395 handled at any time while energized, except that when such
396 centers and transformers are moved while energized as
397 permitted under this section, energized high-voltage cables
398 attached to such centers and transformers may be moved only
399 by a qualified person and the operator of such mine shall
400 require that such person wear approved and tested insulated
401 wireman's gloves.

402 (72) Low- and medium-voltage three-phase alternating-
403 current circuits used underground shall contain either a direct

404 or derived neutral which shall be grounded through a suitable
405 resistor at the power center, and a grounding circuit,
406 originating at the grounded side of the grounding resistor, shall
407 extend along with the power conductors and serve as a
408 grounding conductor for the frames of all the electrical
409 equipment supplied power from the circuit, except that the
410 director or his authorized representative may permit under-
411 ground low- and medium-voltage circuits to be used under-
412 ground to feed such stationary electrical equipment if such
413 circuits are either steel armored or installed in grounded rigid
414 steel conduit throughout their entire length. The grounding
415 resistor, where required, shall be of the proper ohmic value
416 to limit the ground fault current to twenty-five amperes. The
417 grounding resistor shall be rated for maximum fault current
418 continuously and insulated from ground for a voltage equal
419 to the phase-to-phase voltage of the system.

420 (73) Low- and medium-voltage resistance grounded systems
421 serving portable or mobile equipment shall include a fail-safe
422 ground check circuit to monitor continuously the grounding
423 circuit to assure continuity which ground check circuit shall
424 cause the circuit breaker to open when either the ground or
425 pilot check wire is broken, or other not less effective device
426 approved by the director or his authorized representative to
427 assure such continuity, except that an extension of time, not
428 in excess of twelve months, may be permitted by the director
429 on a mine-to-mine basis if he determines that such equipment
430 is not available. Cable couplers shall be constructed so that
431 the ground check continuity conductor shall be broken first
432 and the ground conductors shall be broken last when the
433 coupler is being uncoupled.

434 (74) Disconnecting devices shall be installed in conjunction
435 with circuit breakers serving portable or mobile equipment to
436 provide visual evidence that the power is connected.

437 (75) Circuit breakers shall be marked for identification.

438 (76) Single-phase loads shall be connected phase-to-phase.

439 (77) Trailing cables for medium-voltage circuits shall
440 include grounding conductors, a ground check conductor, and
441 grounded metallic shields around each power conductor or a
442 ground metallic shield over the assembly, except that on
443 equipment employing cable reels, cables without shields may

444 be used if the insulation is rated two thousand volts or more.

445 (78) Trolley wires and trolley feeder wires shall be provided
446 with cutout switches at intervals of not more than two
447 thousand feet and near the beginning of all branch lines.

448 (79) Trolley wires and trolley feeder wires shall be provided
449 with overcurrent protection.

450 (80) Trolley wires and trolley feeder wires, high-voltage
451 cables, and transformers shall not be located within fifteen feet
452 of the last open crosscut and shall be kept at least one hundred
453 fifty feet from pillar workings.

454 (81) Trolley wires, trolley feeder wires, and bare signal wires
455 shall be insulated adequately where they pass through doors
456 and stoppings and where they cross other power wires and
457 cables. Trolley wires and trolley feeder wires shall be guarded
458 adequately:

459 (A) At all points where men are required to work or pass
460 regularly under the wires.

461 (B) On both sides of all doors and stoppings.

462 (C) At man-trip stations.

463 (82) Temporary guards shall be provided where trackmen
464 and other persons work in close proximity to trolley wires and
465 trolley feeder wires.

466 (83) Adequate precaution shall be taken to ensure that
467 equipment being moved along haulageways will not come in
468 contact with trolley wires or trolley feeder wires.

469 (84) Trolley and feeder wires shall be installed as fol-
470 lows: Where installed on permanent haulage, they shall be:

471 (A) At least six inches outside the track gauge line.

472 (B) Kept taut and not permitted to touch the roof, rib or
473 crossbars. Particular care shall be taken where they pass
474 through door openings to preclude bare wires from coming in
475 contact with combustible material.

476 (C) Installations of trolley wire hangers shall be provided
477 within three feet of each splice in a trolley wire.

§22A-2-41. Bonding track used as power conductor.

1 Where track is used as a power conductor, rails and switches
2 on main entries shall be bonded and cross-bonded in such
3 manner as to assure adequate return. At least one rail on
4 secondary track-haulage roads shall be welded or bonded at
5 every joint, and cross bonds shall be installed at intervals of
6 not more than two hundred feet: *Provided, however,* That rail
7 joints in such secondary haulage roads need not be bonded
8 where a copper feeder adequate in size parallels the track and
9 is electrically connected thereto at intervals of not more than
10 two hundred feet by cross bonds.

§22A-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communication
2 facilities shall be provided in all mines at least one of which
3 shall be in service at all times as follows:

4 (a) A telephone or equivalent two-way communication
5 facility shall be located on the surface within five hundred feet
6 of all main portals, and shall be installed either in a building
7 or in a box-like structure designed to protect the facilities from
8 damage by inclement weather. At least one of these commun-
9 ication facilities shall be at a location where a responsible
10 person who is always on duty when miners are underground
11 can hear the facility and respond immediately in the event of
12 an emergency. "Two-way communication facility" shall mean
13 a system maintained to allow voice contact to come in and
14 out of the working section at all times.

15 (b) (1) Telephones or equivalent two-way communication
16 facilities provided at each working section shall be located not
17 more than five hundred feet outby the last open crosscut and
18 not more than eight hundred feet from the farthest point of
19 penetration of the working places on such section.

20 (2) The incoming communication signal shall activate an
21 audible alarm, distinguishable from the surrounding noise
22 level, or a visual alarm that can be seen by a miner regularly
23 employed on the working section.

24 (3) If a communication system other than telephones is used
25 and its operation depends entirely upon power from the mine
26 electric system, means shall be provided to permit continued
27 communication in the event the mine electric power fails or
28 is cut off: *Provided,* That where trolley phones and telephones

29 are both used, an alternate source of power for the trolley
30 phone system is not required.

31 (4) Telephones or equivalent two-way communication
32 facilities shall be maintained in good operating condition at
33 all times. In the event of any failure in the system that results
34 in loss of communication, repairs shall be started immediately,
35 and the system restored to operating condition as soon as
36 possible.

37 (5) Where required by the director, trucks used for haulage
38 of coal, miners, or supplies by an operator shall be equipped
39 with two-way communication instruments.

40 (c) On or after the first day of January, one thousand nine
41 hundred seventy-eight, unless the director for good cause
42 grants a waiver, all such telephones or equivalent two-way
43 communications shall be connected to regular telephonic and
44 other means of communication available in the community so
45 that in the event of an emergency, emergency medical
46 attendants or other personnel can communicate from within
47 the mine directly to health care facilities.

48 (d) Telephone lines and cables shall be carried on insulators
49 installed on the opposite side from power or trolley wires, and
50 where they cross power or trolley wires, they shall be insulated
51 adequately. Lightning arrestors shall be provided at the points
52 where telephone circuits enter the mine.

§22A-2-43. Electric equipment in mines.

1 (a) Electric equipment shall not be taken into or operated
2 in any place where methane can be detected with a flame safety
3 lamp or other approved methane detector at any point not less
4 than eight inches from the roof, face, or rib.

5 (b) In all mines, electric haulage locomotives operated from
6 trolley wire and other electrical equipment or devices which
7 may ignite gas shall not be used in return air, unless permission
8 is granted by the director for a specified area. For the purpose
9 of this provision, air used to ventilate a section of a mine shall
10 not be considered return air until such time as the air has
11 ventilated all of the workings in the section.

12 (c) No person shall be placed in charge of a coal-cutting
13 machine in any mine who is not a qualified person, capable

14 of determining the safety of the roof and sides of the working
15 places and of detecting the presence of explosive gas, unless
16 they are accompanied by a certified or qualified person who
17 has passed such an examination.

18 (d) In any mine no machine shall be brought in by the last
19 breakthrough next to the working face until the machine man
20 shall have made an inspection for gas in the place where the
21 machine is to work. If explosive gas in excess of one percent
22 is found in the place, the machine shall not be taken in until
23 the danger is removed.

24 (e) In working places a safety lamp, or other suitable
25 approved apparatus for the detection of explosive gas, shall
26 be provided for use with each mining machine when working,
27 and should any indication of explosive gas in excess of one
28 percent appear on the flame of the safety lamp, or on other
29 apparatus used for the detection of explosive gas, the person
30 in charge shall immediately stop the machine, cut off the
31 current at the nearest switch and report the condition to the
32 mine foreman or supervisor. The machine shall not again be
33 started in such place until the condition found has been
34 corrected and been pronounced safe by a certified person.

35 (f) No electric equipment shall be operated in a mine for
36 a longer period than twenty minutes without an examination
37 as above described being made for gas; and if gas is found
38 in excess of one percent, the current shall at once be switched
39 off the machine, and the trailing cable shall forthwith be
40 disconnected from the power supply until the place is
41 pronounced safe.

42 (g) Machine runners and helpers shall use care while
43 operating mining machines. They shall not permit any person
44 to remain near the machine while it is in operation. They shall
45 examine the roof of the working place to see that it is safe
46 before starting to operate the machine. They shall not move
47 the machine while the cutter chain is in motion.

§22A-2-44. Hand-held electric drills and rotating tools; trailing cables.

1 Electric drills and other electrically operated rotating tools
2 intended to be held in the hand shall have the electric switch
3 constructed so as to break the circuit when the hand releases

4 the switch and shall be equipped with friction or safety
5 clutches.

§22A-2-45. Installation of lighting.

1 Electric lights or other approved methods of lighting shall
2 be installed so that they do not come in contact with
3 combustible materials, and the wires shall be supported by
4 suitable insulators and fastened securely to the power
5 conductors.

§22A-2-46. Welding and cutting.

1 (a) A record shall be kept of oxygen and gas tanks or
2 cylinders taking into a mine and the date shall be recorded
3 when they are removed from the mine. No more tanks or
4 cylinders than necessary to perform efficiently the work shall
5 be permitted underground at one time.

6 (b) Propane torches may be used in lieu of blowtorches.

7 (c) Welding and cutting may be done in mines: *Provided,*
8 That all equipment and gauges are maintained in safe
9 condition and not abused, that suitable precautions are taken
10 against ignition of methane, coal dust, or combustible
11 materials, that means are provided for prompt extinguishment
12 of fires accidentally started, and that only persons who have
13 demonstrated competency in welding and cutting are entrusted
14 to do this work. Adequate eye protection shall be used by all
15 persons doing welding or cutting, and precautions shall be
16 taken to prevent other persons from exposure that might be
17 harmful to their eyes.

18 (d) Transportation of oxygen and gas tanks or cylinders
19 shall be permitted on self-propelled machinery or belt
20 conveyors specially equipped for safe holding of the containers
21 in transportation. In no instance shall such transportation be
22 permitted in conjunction with any man trip.

23 (e) Empty oxygen and gas tanks or cylinders shall be
24 marked "empty" and shall be removed from the mine promptly
25 in safe containers provided for transportation of the same.

26 (f) When tanks and cylinders are not in use and when they
27 are being transported, valve protection caps and plugs shall
28 be placed on all tanks or cylinders for which caps and plugs
29 are available. No oxygen tanks, gas tanks or cylinders shall

30 be transported with the hoses and gauges attached thereto.

31 (g) In all mines a certified person shall examine for gas with
32 permissible flame safety lamps or other approved detectors
33 before and during welding or cutting in, at or near working
34 faces. The safety of the equipment and methods used in such
35 cases shall be subject to approval of the director. If equipment
36 is mobile, it shall be removed outby the last open break-
37 through before cutting and welding may be performed on such
38 equipment.

§22A-2-47. Responsibility for care and maintenance of face equipment.

1 Mine operators shall maintain face equipment in safe
2 operating condition. Equipment operators shall exercise
3 reasonable care in the operation of the equipment entrusted
4 to them and shall promptly report defects known to them.

§22A-2-48. When respiratory equipment to be worn; control of dust.

1 Miners exposed for short periods to gas-, dust-, fume-, and
2 mist-inhalation hazards shall wear permissible respiratory
3 equipment. Dust shall be controlled by the use of permissible
4 dust collectors or other approved methods.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

1 (a) The cutter chains of mining machines shall be locked
2 securely by mechanical means or electrical interlocks while
3 such machines are parked or being trammed. Loading
4 machines shall not be trammed with loading arms in motion,
5 except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts of
7 machinery which are within seven feet of the floor, ground or
8 platform level, unless isolated, shall be guarded adequately.
9 Repair pits shall be kept covered or guarded at all times when
10 not in use. Machinery shall not be lubricated or repaired while
11 in motion, except where safe remote lubricating devices are
12 used. Machinery shall not be started until the person
13 lubricating or repairing it has given a clear signal. Guards
14 which have been removed shall be replaced before the

15 machinery is again put into use. Provision shall be made to
16 prevent accumulations of spilled lubricants.

17 (c) Mechanically operated grinding wheels shall be equipped
18 with safety washers, substantial retaining hoods, and, unless
19 goggles are used, eye shields.

20 (d) No person shall stand along the side of the boom, or
21 pass or stand along the loading head or cutting head, on a
22 continuous miner or loading machine in operation.

23 (e) Braking devices shall be guarded to prevent accidental
24 release. When required by the director, track-mounted mobile
25 equipment shall be equipped with workable sanding devices.

26 (f) On and after the first day of January, one thousand nine
27 hundred seventy-eight, all battery powered equipment shall be
28 equipped with an under-voltage indicator which will indicate
29 when the voltage is less than three fourths of its rated capacity,
30 at which time such equipment shall be withdrawn from use
31 except for the purpose of returning the vehicle to the
32 recharging station.

SURFACE STRUCTURES AND PRACTICES

**§22A-2-50. Procurement of dust-tight electrical equipment;
fireproof construction; dust control; repairs; welding;
handrails and toeboards; protection of personnel on
conveyors; back guards on ladders; walkways or
safety devices around thickeners.**

1 (a) In unusually dusty locations, electric motors, switches
2 and controls shall be of dust-tight construction or enclosed
3 with reasonably dust-tight housings or enclosures.

4 (b) After the first day of July, one thousand nine hundred
5 seventy-one, all structures erected on the surface within one
6 hundred feet of any mine opening shall be of fireproof
7 construction.

8 (c) Means and methods shall be provided to assure that
9 structures and the immediate area surrounding the same shall
10 be reasonably free of coal dust accumulations.

11 (d) Where coal is dumped at or near air intake openings,
12 reasonable provisions shall be made to prevent dust from
13 entering the mine.

14 (e) Where repairs are being made to the plant, proper
15 scaffolding and proper overhead protection shall be provided
16 for workmen wherever necessary.

17 (f) Welding shall not be done in dusty atmospheres and
18 dusty locations shall be well cleaned, and fire-fighting
19 apparatus shall be readily available during welding.

20 (g) Stairways, elevated platforms and runways shall be
21 equipped with handrails. Railroad car trimmer platforms are
22 excepted from such requirement.

23 (h) Elevated platforms and stairways shall be provided with
24 toeboards where necessary, and they shall be kept clear of
25 refuse and ice and maintained in good repair.

26 (i) Personnel who are required frequently and regularly to
27 travel on belts or chain conveyors extended to heights of more
28 than ten feet shall be provided with adequate space and
29 protection in order that they may work safely. Permanent
30 ladders extending more than ten feet shall be provided with
31 back guards. Walkways around thickeners that are less than
32 four feet above the walkway shall be adequately guarded.
33 Employees required to work over thickeners shall wear a safety
34 harness adequately secured, unless walkways or other suitable
35 safety devices are provided.

§22A-2-51. Housekeeping.

1 Good housekeeping shall be practiced in and around mine
2 buildings and yards. Such practices include cleanliness, orderly
3 storage of materials, and the removal of possible sources of
4 injury, such as stumbling hazards, protruding nails and broken
5 glass.

§22A-2-52. Storage of flammable liquids in lamphouse.

1 Naphtha or other flammable liquids in lamphouses shall be
2 kept in approved containers or other safe dispensers.

§22A-2-53. Smoking in and around surface structures.

1 Smoking in or about surface structures shall be restricted
2 to places where it will not cause fire or an explosion.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas.

1 Employees handling railroad cars shall have access to and
2 use an approved distinct audible signaling device to give
3 warning when cars are in motion. Where required by rule or
4 regulation, safety belts shall be worn and properly attached
5 by all car droppers handling railroad cars. All dumping ramps
6 shall be of a sufficient width to ensure safe operation of
7 vehicles used thereon.

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

1 (a) It shall be the duty of the operator, mine foreman,
2 supervisors, mine examiners, and other officials to comply
3 with and to see that others comply with the provisions of this
4 article.

5 (b) It shall be the duty of all employees and checkweighmen
6 to comply with this article and to cooperate with management
7 and the department of energy and division of mines and
8 minerals in carrying out the provisions hereof.

9 (c) Reasonable rules and regulations of an operator for the
10 protection of employees and preservation of property that are
11 in harmony with the provisions of this article and other
12 applicable laws shall be complied with. They shall be printed
13 on cardboard or in book form in the English language and
14 posted at some conspicuous place about the mine or mines,
15 and given to each employee upon request.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or goggles
2 to protect their eyes. All employees shall have approved
3 goggles or shields and use the same where there is a hazard
4 from flying particles, or other eye hazards.

5 (b) Employees engaged in haulage operations and all other
6 persons employed around moving equipment on the surface
7 and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which
9 may injure hands is handled, but gloves with gauntleted cuffs
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine.

13 (e) Approved safety goggles or eyeshields shall be worn by
14 all persons while being transported in open-type man trips.

15 (f) A self-rescue device approved by the director shall be
16 worn by each person underground or kept within his
17 immediate reach, and such device shall be provided by the
18 operator. The self-rescue device shall be adequate to protect
19 such miner for one hour or longer. Each operator shall train
20 each miner in the use of such device, and refresher training
21 courses for all underground employees shall be held during
22 each calendar year.

§22A-2-55a. Safety helmets.

1 All surface mine employees shall be required to wear safety
2 helmets when working in areas where there is a possible danger
3 of head injury from impact, or from falling or flying objects,
4 or from electrical shock and burns: *Provided*, That such
5 employees shall not be required to wear such safety helmet
6 while operating machinery equipped with a falling object
7 protective structure which satisfies the impact and penetration
8 requirements established by the American National Standards
9 Institute, Safety Requirements for Industrial Head Protection,
10 Standard Z89.1, unless the director finds that the dangers set
11 forth herein may be present: *Provided, however*, That such
12 employees shall be required to wear safety helmets while not
13 operating such equipment including period of travel to and
14 from such equipment.

15 The safety helmets required hereunder shall meet the
16 specifications for such helmets as prescribed by the mine health
17 and safety administration.

§22A-2-56. Checking systems.

1 Each mine shall have a check-in and check-out system that
2 will provide positive identification upon the person of every
3 individual underground. An accurate record of the people in
4 the mine, which shall consist of a written record, a check
5 board, or a time-clock record, shall be kept on the surface in
6 a place that will not be affected in the event of an explosion.
7 Said record shall bear a number or name identical to the
8 identification check fastened to the belt of all persons going

9 underground.

§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

1 (a) No miner, worker or other person shall knowingly injure
2 any shaft, lamp, instrument, air course, or brattice, or obstruct
3 or throw open airways, or carry matches or open lights in the
4 places worked by safety lights, or disturb any part of the
5 machinery or appliances, open a door closed for directing
6 ventilation and not close it again, or enter any part of a mine
7 against caution, or disobey any order of any mine foreman
8 or assistant mine foreman given in carrying out any of the
9 provisions of this section.

10 (b) Open lights, smoking, and smokers' articles, including
11 matches, are prohibited in all mines. No person shall at any
12 time enter mines with or carry therein any matches, pipes,
13 cigars, cigarettes, or any device for making lights or fire not
14 authorized or approved. The operator shall at frequent
15 intervals search, or cause to be searched, any person, including
16 his clothing and material belongings, entering or about to enter
17 the mine, or inside the mine, to prevent such person from
18 taking or carrying therein any of the above-mentioned articles.

19 (c) No person shall at any time carry into any mine any
20 intoxicants or enter any mine while under the influence of
21 intoxicants.

§22A-2-58. Fire protection.

1 (a) Suitable fire protection shall be provided at surface
2 installations of fans, shops, tipples, and preparation plants,
3 substations, hoist rooms and compressor stations.

4 (b) Fire drills and demonstration of various types of
5 available fire-fighting equipment shall be held for employees
6 at least every six months.

7 (c) The location of pipelines, location of valves, and fire
8 taps shall be shown on a map of the mine and kept available
9 at the mine office at all times.

10 (d) Each coal mine shall be provided with suitable fire-
11 fighting equipment adapted for the size and condition of the
12 mine. Fire-fighting equipment required under this article shall
13 meet the following requirements:

14 (1) Waterlines shall be capable of delivering fifty gallons
15 of water at a nozzle pressure of fifty pounds per square inch.

16 (2) A portable water car shall be of at least one thousand
17 gallons capacity, and shall have at least three hundred feet of
18 fire hose with nozzles. A portable water car shall be capable
19 of providing a flow through the hose of fifty gallons of water
20 per minute at a nozzle pressure of fifty pounds per square inch.

21 (3) A portable chemical car shall carry enough chemicals to
22 provide a fire extinguishing capacity equivalent to that of a
23 portable water car.

24 (4) A portable foam-generating machine shall have facilities
25 and equipment for supplying the machine with thirty gallons
26 of water per minute at thirty pounds per square inch for a
27 period of thirty-five minutes.

28 (5) A portable fire extinguisher shall be either a multipur-
29 pose dry chemical type, containing a nominal weight of five
30 pounds of dry powder and enough expellant to apply the
31 powder; or a foam-producing type containing at least two and
32 one-half gallons of foam-producing liquid and enough
33 expellant to supply the foam. Only fire extinguishers approved
34 by the Underwriters Laboratories, Inc. or Factor Mutual
35 Laboratories, carrying appropriate labels as to type and
36 purpose shall be used after the first day of July, one thousand
37 nine hundred seventy-one, and all new portable fire extin-
38 guishers acquired for use in a coal mine shall be of the
39 multipurpose dry chemical type, having a 2A 10BC or higher
40 rating.

41 (6) The fire hose shall be rubber-lined, mildew-proof and
42 the cover shall be of flame-resistant qualities, meeting
43 requirements for hose in Bureau of Mines Schedule 2G, except
44 that the test flame shall be applied to the outer surface rather
45 than to an open end. The bursting pressure shall be at least
46 four times higher than the static water at the mine location;
47 the maximum water pressure in the hose nozzle shall not
48 exceed 100 p.s.i.g.

49 (e) Each working section of coal mines producing three
50 hundred tons or more per shift shall be provided with two
51 portable fire extinguishers and two hundred forty pounds of
52 bagged rock dust; waterlines shall extend to each section

53 loading point and be equipped with enough fire hose to reach
54 each working face unless the section loading point is provided
55 with one of the following: (1) Two portable water cars or (2)
56 two portable chemical cars, or (3) one portable water car or
57 one portable chemical car and either a portable foam-
58 generating machine or a portable high-pressure rock-dusting
59 machine, fitted with at least two hundred fifty feet of hose and
60 supplied with at least sixty sacks of rock dust.

61 (f) In all coal mines, waterlines shall be installed parallel to
62 the entire length of belt conveyors and shall be equipped with
63 fire hose outlets with valves at three-hundred-foot intervals
64 along each belt conveyor and at tailpieces. At least five
65 hundred feet of fire hose with fittings suitable for connection
66 with each belt conveyor waterline system shall be stored at
67 strategic locations along the belt conveyor. Waterlines may be
68 installed in entries adjacent to the conveyor entry belt as long
69 as the outlets project into the belt conveyor entry. Each
70 working section of coal mines producing less than three
71 hundred tons of coal per shift shall be provided with two
72 portable fire extinguishers, two hundred forty pounds of
73 bagged rock dust and at least five hundred gallons of water
74 and at least three pails of ten-quart capacity. In lieu of the
75 five hundred gallon water supply, a waterline with sufficient
76 hose to reach the working places, a portable water car of five
77 hundred fifty gallons capacity, or a portable all-purpose dry
78 powder chemical car of at least one hundred twenty-five
79 pounds capacity may be provided.

80 (g) In mines producing three hundred tons of coal or more
81 per shift, waterlines shall be installed parallel to all haulage
82 tracks using mechanized equipment in the track or adjacent
83 entry and shall extend to the loading point of each working
84 section. Waterlines shall be equipped with outlet valves at
85 intervals of not more than five hundred feet, and five hundred
86 feet of fire hose with fittings suitable for connection with such
87 waterlines shall be provided at strategic locations. Two
88 portable water cars, readily available, may be used in lieu of
89 waterlines prescribed under this subsection.

90 (h) In mines producing less than three hundred tons of coal
91 per shift, there shall be provided at five-hundred-foot intervals
92 in all main and secondary haulage roads: (1) A tank of water
93 of at least fifty-five gallon capacity with at least three pails

94 of not less than ten-quart capacity, or (2) not less than two
95 hundred forty pounds of bagged rock dust.

96 (i) Each track or off-track locomotive, self-propelled man-
97 trip car, or personnel carrier shall be equipped with one
98 portable fire extinguisher.

99 (j) Two portable fire extinguishers shall be provided at each
100 permanent electrical installation. One portable fire extin-
101 guisher and two hundred forty pounds of rock dust shall be
102 provided at each temporary electrical installation.

103 (k) Two portable fire extinguishers and two hundred forty
104 pounds of rock dust shall be provided at each permanent
105 underground oil storage station. One portable fire extinguisher
106 shall be provided at each working section where twenty-five
107 gallons or more of oil are stored in addition to extinguishers
108 required under subsection (e) of this section.

109 (l) One portable fire extinguisher or two hundred forty
110 pounds of rock dust and water shall be provided at locations
111 where welding, cutting, or soldering with arc or flame is being
112 done.

113 (m) At each wooden door through which power lines pass
114 there shall be one portable fire extinguisher or two hundred
115 forty pounds of rock dust within twenty-five feet of the door
116 on the intake air side.

117 (n) At each mine producing three hundred tons of coal or
118 more per shift, there shall be readily available the following
119 materials at locations not exceeding two miles from each
120 working section:

121 (1) One thousand board feet of brattice boards

122 (2) Two rolls of brattice cloth

123 (3) Two handsaws

124 (4) Twenty-five pounds of 8° nails

125 (5) Twenty-five pounds of 10° nails

126 (6) Twenty-five pounds of 16° nails

127 (7) Three claw hammers

128 (8) Twenty-five bags of wood fiber plaster or ten bags of

129 cement (or equivalent material for stoppings)

130 (9) Five tons of rock dust.

131 (10) At each mine producing less than three hundred tons
132 of coal per shift, the above materials shall be available at the
133 mine: *Provided, however,* That the emergency materials for
134 one or more mines may be stored at a central warehouse or
135 building supply company and such supply must be the
136 equivalent of that required for all mines involved and within
137 one hour's delivery time from each mine. This exception shall
138 not apply where the active working sections are more than two
139 miles from the surface.

§22A-2-59. First-aid equipment.

1 (a) Each operator of an underground coal mine shall
2 maintain a supply of first-aid equipment at each of the
3 following locations:

4 (1) At the mine dispatcher's office and on the surface in
5 close proximity to the mine entry.

6 (2) At the bottom of each regularly traveled slope or shaft;
7 however, where the bottom of such slope or shaft is not more
8 than one thousand feet from the surface, such first-aid supplies
9 may be maintained on the surface at the entrance of the mine.

10 (3) At a point in each working section not more than five
11 hundred feet outby the active working face or faces.

12 (b) The first-aid equipment required to be maintained shall
13 include at least the following:

14 (1) One stretcher

15 (2) One broken-back board

16 (3) Twenty-four triangular bandages

17 (4) Eight four-inch bandage compresses

18 (5) Sixteen two-inch bandage compresses

19 (6) Twelve one-inch adhesive compresses

20 (7) One foille

21 (8) Two cloth blankets

22 (9) One rubber blanket

- 23 (10) Two tourniquets
24 (11) One one-ounce bottle of aromatic spirits of ammonia
25 (12) Two inflatable plastic arm splints
26 (13) Two inflatable plastic leg splints
27 (14) Six small splints, metal or wooden
28 (15) Two cold packs
- 29 (c) All first-aid supplies required to be maintained under the
30 section shall be stored in suitable sanitary, dust-tight,
31 moisture-proof containers and such supplies shall be accessible
32 to the miners.
- 33 (d) No first-aid material shall be removed or diverted
34 without authorization, except in case of accident in or about
35 the mine.
- 36 (e) On all occasions when a person becomes sick or injured
37 underground to the extent that he must go to the surface, he
38 shall be accompanied by one or more persons.

**§22A-2-60. Accessible outlets; safe roadways for emergencies;
accessibility of first-aid equipment; use of special
capsule for removal of personnel.**

1 (a) No operator or mine foreman of any coal mine shall
2 employ any person to work in such mine, or permit any
3 persons to be in the mine for the purpose of working therein
4 unless they are provided with two openings or outlets to each
5 seam, separated by natural strata, such openings to be not less
6 than three hundred feet apart, if the mine be worked by shaft;
7 if the mine be worked by shaft and slope, such openings shall
8 be separated by one hundred feet of natural strata; and not
9 less than fifty feet apart at the outlets, if worked by slope or
10 drift; but this requirement of a distance of three hundred feet
11 between openings or outlets to shaft mines shall not apply
12 where such openings or outlets have been made prior to the
13 first day of July, one thousand nine hundred seventy-one.

14 (b) At least two separate and distinct travelable passageways
15 designated as escapeways shall be maintained to ensure
16 passage at all times to any person, including disabled persons.
17 The escapeway openings to the surface shall be separated in
18 such manner as shall be prescribed by the director. If at least

19 two escapeways are not available for any reason, all miners
20 in the affected area other than those requisite to remedy the
21 situation shall be withdrawn from the affected area until such
22 time as the escapeway is made passable. Where the height of
23 the coal bed is more than five feet, the escapeways shall be
24 maintained at a height of at least five feet excluding necessary
25 roof support, and the travelway in such escapeway shall be
26 maintained at a width of at least six feet, excluding necessary
27 roof support and in those situations where the height of the
28 coal bed is less than five feet the escapeway should be
29 maintained to the height of the coal bed excluding any
30 necessary roof support, and the travelway in such escapeway
31 shall be maintained at a width of at least six feet. At least
32 one escapeway ventilated with intake air, maintained to the
33 last open crosscut, shall be provided from each working
34 section continuously to the nearest available opening on the
35 surface, and shall be maintained in safe condition and properly
36 marked. Mine openings shall be adequately protected to
37 prevent the entrance into the underground area of the mine
38 of floodwater. Escape facilities approved by the director,
39 properly maintained and frequently tested, shall be present at
40 or in each escape shaft or slope to allow all persons, including
41 disabled persons, to escape quickly to the surface in event of
42 an emergency. Return airways entries designated as escape-
43 ways shall be provided with permissible two-way communica-
44 tion systems to the surface, and such systems shall be located
45 at points not to exceed every four thousand feet. On or after
46 the first day of April, one thousand nine hundred seventy-
47 eight, each operator shall provide lifeline cords, with reflective
48 material at twenty-five foot intervals, from the last open
49 crosscut to the surface along a designated escapeway ventilated
50 by return air: *Provided*, That in case of a shaft mine such
51 lifeline cords shall extend from the last open crosscut to the
52 bottom of the designated escape shaft. Such lifeline cord shall
53 be of durable construction sufficient to allow miners to see and
54 to use effectively to guide themselves out of the mine in the
55 event of an emergency.

56 (c) Escapeways shall be inspected and traveled at least once
57 each week by a certified mine examiner who shall place his
58 initials and the date in a conspicuous place or places and who
59 shall file a written report thereon which shall be kept on the
60 surface.

61 (d) When new coal mines are opened, not more than twenty
62 miners shall be allowed at any one time in any mine until a
63 connection has been made between the two mine openings, and
64 such connection shall be made as soon as possible.

65 (e) When only one opening is available because of final
66 mining of pillars, not more than twenty miners shall be
67 allowed in such mine at any one time, and the distance
68 between the mine opening and working face shall not exceed
69 five hundred feet.

70 (f) First-aid materials and such other equipment as the
71 director may require shall be maintained within five hundred
72 feet of each area in which miners are regularly working to
73 which they may have access in case of an emergency and for
74 protection against hazards.

75 (g) Each working area of the mine not serviced by track-
76 mounted or rubber-tired vehicles which uses conveyor belts for
77 removal of coal shall be equipped with a special capsule in
78 which an injured person can be placed and transported on the
79 belt to the surface or to other transportation facilities. The
80 director shall within nine months of the eighth day of July,
81 one thousand nine hundred seventy-seven, promulgate
82 standards and guidelines, or allow to continue in effect any
83 present standards and guidelines, as to what such "special
84 capsule" as used in this subsection shall include. Each section
85 of the mine using or serviced by track-mounted or rubber-tired
86 equipment shall have readily available a vehicle which can be
87 used to promptly remove a person in case of injury.

§22A-2-6l. Coal storage bins; recovery tunnels; coal storage piles.

1 (a) Coal storage bins hereafter constructed with vertical
2 sides fifty feet or over in height shall be provided with
3 ventilators or louvers or both to provide adequate ventilation.
4 Where roofs are constructed over coal storage bins, adequate
5 ventilation shall be provided by stacks, ventilators, louvers or
6 mechanical means.

7 (b) Where cutting or welding is performed at any location
8 where coal is stored, means of prompt extinguishment of any
9 fire accidentally started shall be provided, and the area where
10 cutting or welding is performed shall be adequately watered
11 down and rock-dusted.

12 (c) A qualified person shall test for methane with a methane
13 detector prior to and during cutting and welding operations
14 inside or underneath a coal storage bin.

15 (d) Electric motors, switches and controls for coal storage
16 bins hereafter acquired shall be of dust-tight construction.

17 (e) Repairs to electric equipment shall not be made when
18 the surrounding atmosphere contains dangerous amounts of
19 gas or dust.

20 (f) Where electric lights are used in recovery tunnels of over
21 one hundred feet in length, the wiring shall be in rigid conduit
22 and shall be enclosed in waterproof receptacles.

23 (g) An escapeway shall be provided from any recovery
24 tunnel hereafter constructed to a safe place on the surface;
25 such escapeway shall be at least thirty inches in diameter and
26 where inclined, a ladder shall be provided to extend full length
27 of the escapeway to facilitate emergency exit.

28 (h) Extreme caution shall be exercised by all employees
29 required to work at or near coal storage piles during coal
30 recovery operations to avoid injury by coal slides or by being
31 in or drawn into a chute.

§22A-2-62. Thermal coal dryers and plants.

1 Thermal coal dryer plants shall be hereafter constructed,
2 maintained and operated in compliance with the following
3 provisions:

4 (1) Good housekeeping shall be practiced in and around
5 thermal dryer plants.

6 (2) Adequate fire-fighting facilities shall be provided on all
7 floors.

8 (3) When welding and cutting operations are to be
9 performed in a dryer structure, the area shall be wetted down
10 thoroughly and adequate fire-fighting apparatus shall be
11 readily available during the operation.

12 (4) Only qualified persons shall be permitted to operate
13 dryers; however, this provision shall not prohibit qualified
14 persons from training other persons to become qualified
15 operators.

16 (5) Dryer control panels shall be provided with audible and
17 visible alarm devices; such devices should be adjusted to
18 function at somewhat less than maximum dryer temperature.

19 (6) A bypass or relief stack equipped with an automatically
20 operated damper shall be provided for bypassing gases from
21 the heating units to the outside atmosphere during emergency
22 or normal shutdown operations.

23 (7) Thermal coal dryers hereafter installed shall not be
24 enclosed except that roofs may be used. Whenever it is deemed
25 necessary to enclose thermal dryers, such equipment shall be
26 in a fireproof structure.

27 (8) Dryer installations and discharge stacks shall be
28 protected with adequate explosion release vents that open to
29 the outside atmosphere.

30 (9) Thermal coal dryers shall be located at a safe distance
31 from tipples, cleaning plants, mine openings and surface
32 buildings, such as oil storage areas, explosive magazines, and
33 other buildings where coal dust, sparks and flames are likely
34 to enter and become ignited or otherwise cause danger of fires.

35 (10) Dryers shall be equipped with quick-response heat
36 control devices which, in the event of superelevated temper-
37 atures, will automatically divert the hot inlet gases into a
38 bypass stack, thereby bypassing the drying chamber and at the
39 same time stopping the fuel from being supplied to the air
40 heater.

41 (11) All dryers, conveyors and other fine coal transporting
42 machines shall be constructed as dust-tight as practicable.
43 Where necessary, such equipment shall be provided with
44 removable covers for inspection and cleaning and shall be
45 provided with vent pipes to the outside atmosphere to permit
46 the escape of distilled gases.

47 (12) Dryers shall be examined thoroughly after normal and
48 emergency shutdown for fires and coal dust accumulations.

49 (13) Dryer controls, valves and mechanical equipment shall
50 be frequently inspected, and no dryer shall be operated with
51 defective mechanical equipment.

52 (14) The gauges of temperature control instruments shall be
53 of the recording type.

- 54 (15) Operating rules suitable for the characteristics of each
55 dryer system and the materials processed shall be developed
56 and shall be available at the control panel.
- 57 (16) Electrical equipment, electrical wiring and lighting
58 fixtures shall be of dust-tight construction.
- 59 (17) Adequate illumination shall be provided.
- 60 (18) Dryers shall not be operated beyond their rated
61 evaporation capacity.
- 62 (19) Fluid bed dryers shall be provided with water sprays
63 of sufficient capacity for use in event of fire.
- 64 (20) After shutdowns, thermal dryers shall be cleared of hot
65 coals so as to minimize ignitions on succeeding startups.
- 66 (21) Thermal coal dryers previously installed in a tippie or
67 cleaning plant shall be separated where practicable from other
68 working areas by substantial partitions capable of providing
69 greater resistance to explosion pressures than an exterior wall
70 or walls.
- 71 (22) When it is necessary to use extension cables for
72 emergency illumination, such lighting devices shall be dust-
73 tight and adequately guarded. When it becomes necessary to
74 perform work in dryer system bins or any other dusty areas,
75 permissible cap lamps shall be used for illumination.

§22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

- 1 (a) After the first day of July, one thousand nine hundred
2 seventy-one, no mine shall be opened or reopened unless prior
3 approval has been obtained from the commissioner of the
4 department of energy, which approval shall not be unreason-
5 ably withheld. The operator shall pay for such approval a fee
6 of ten dollars, which payment shall be tendered with the
7 operator's application for such approval: *Provided*, That mines
8 producing coal solely for the operator's use shall be issued a
9 permit without charge if coal production will be less than fifty
10 tons a year.

11 (b) Within thirty days after the first day of January of each
12 year, the operator of each mine holding a certificate evidencing
13 approval of the commissioner to open a mine shall apply for
14 the extension of such certificate of approval for an additional
15 year. Such approval, evidenced by a certificate of the
16 commissioner, shall be granted as a matter of right and
17 without charge if, at the time such application is made, the
18 operator is in compliance with the provisions of section
19 seventy-seven of this article and has paid or otherwise appealed
20 all coal mine assessments imposed under article one-a, chapter
21 twenty-two-a of this code. Applications for extension of such
22 certificates of approval not submitted within the time required
23 shall be processed as an application to open or reopen a mine
24 and shall be accompanied by a fee of ten dollars.

25 (c) Certificates of approval issued pursuant to this section
26 shall not be transferable.

27 (d) The provisions of this section shall be printed on the
28 reverse side of every certificate issued hereunder.

29 (e) The district mine inspector shall be contacted for a
30 preinspection of the area proposed for underground mining
31 prior to the issuance of any new opening approval.

§22A-2-64. Sealing permanently closed or abandoned mines.

1 (a) After the first day of July, one thousand nineteen
2 hundred seventy-one, when any coal mine is worked out or
3 indefinitely closed, such mine openings shall be properly sealed
4 within ninety days after the mine is abandoned.

5 (b) Mines temporarily inactive for less than ninety days
6 shall be adequately fenced with conspicuous signs prohibiting
7 the possible entrance of unauthorized persons.

8 (c) Shaft openings shall be effectively capped or filled.
9 Filling shall be for the entire depth of the shaft. Caps shall
10 consist of a six inch thick concrete cap or other equivalent
11 means approved by the director.

12 (d) Caps shall be equipped with a vent pipe at least two
13 inches in diameter extending for a distance of at least fifteen
14 feet above the surface shaft.

§22A-2-65. Mining close to abandoned workings.

1 Any operator working up to an abandoned coal mine may
2 be permitted to work to his property line, if approved by the
3 director, but in such cases precaution must be taken as
4 provided in this article.

§22A-2-66. Explosion or accident; notice; investigation by division of mines and minerals.

1 Whenever, by reason of any explosion or other accident in
2 or about any coal mine or the machinery connected therewith,
3 loss of life, or serious personal injury shall occur, it shall be
4 the duty of the superintendent of the mine, and in his absence,
5 the mine foreman in charge of the mine, to give immediate
6 notice to the director and the inspector of the district, stating
7 the particulars of such accident. If anyone is killed, the
8 inspector shall immediately go the scene of such accident and
9 make such recommendations and render such assistance as he
10 may deem necessary for the future safety of the men, and
11 investigate the cause of such explosion or accident and make
12 a record thereof which he shall preserve with the other records
13 in his office, the cost of such records to be paid by the division,
14 and a copy shall be furnished to the operator and other
15 interested parties. To enable him to make such investigation,
16 he shall have the power to compel the attendance of witnesses
17 and to administer oaths or affirmations. The director shall
18 have the right to appear and testify and to offer any testimony
19 that may be relevant to the questions and to cross-examine
20 witnesses.

§22A-2-67. Written report of accident.

1 Whenever any accident occurs in or about any coal mine
2 to any employee or person connected with the mining
3 operation, resulting in personal injury or death, the operator
4 shall, within twenty-four hours, report the same in writing to
5 the director and to the district mine inspector of the district
6 in which the accident occurs, giving full details thereof upon
7 forms furnished by the director.

§22A-2-68. Preservation of evidence following accident or disaster.

1 Following a mine accident resulting in the death of one or
2 more persons and following any mine disaster, the evidence
3 surrounding such occurrence shall not be disturbed after
4 recovery of bodies or injured persons until an investigation by

5 the division has been completed.

§22A-2-69. Fire in and about mine; notification of director and district mine inspector.

1 The operator or mine foreman, upon the discovery of fire
2 in or about a mine, shall immediately notify the director and
3 the district mine inspector in whose district the mine is located.

§22A-2-70. Shafts and slopes.

1 (a) *When mine examiner to be employed; qualifications.—*
2 During the sinking of a shaft or the driving of a slope to a
3 coal bed or while engaged in underground construction work,
4 or relating thereto, the operator shall assign a mine examiner
5 to such project areas. Such mine examiner shall have a
6 certificate of competency valid only for the type of work
7 stipulated thereon and issued to him by the division of mines
8 and minerals after he has passed an examination given by the
9 division of mines and minerals. He shall, at the time he takes
10 the examination, have a minimum of five years' experience in
11 shaft sinking, slope driving and underground construction;
12 moreover, he shall be able to detect methane with a flame
13 safety lamp and have a thorough knowledge of the ventilation
14 of shafts, slopes and mines, and the machinery connected
15 therewith, and finally, he shall be a person of good moral
16 character with temperate habits.

17 (b) *Mine examiner or certified person acting as such; duties*
18 *generally; records open for inspection.—*In all shafts and
19 slopes within three hours immediately preceding the beginning
20 of a work shift and before any workmen in such shift, other
21 than those who may be designated to make the examinations,
22 enter the underground areas of such shafts or slopes, a certified
23 foreman or mine examiner, designated by the operator of such
24 shaft or slope to do so, shall make an examination of such
25 areas. Each person designated to make such examinations shall
26 make tests with a permissible flame safety lamp for accum-
27 ulations of methane and oxygen deficiency, and examine sides
28 of shafts and ribs and roof of all slopes. Should he find a
29 condition which he considers dangerous to persons, he shall
30 place a conspicuous danger sign at all entrances to such places.
31 He shall record the results of his examination with ink or
32 indelible pencil in a book prescribed by the director, kept at
33 a place on the surface designated by mine management. All

34 records as prescribed herein shall be open for inspection by
35 interested persons.

36 (c) *Approvals and permits.*—An approval shall be obtained
37 from the division before work is started. A permit shall be
38 obtained from the division (1) to stop fan when miners are
39 in shafts or slopes; (2) to use electrical machinery in shafts or
40 slopes; (3) to use electric lights in shafts or slopes; (4) to use
41 welders, torches and like equipment in shafts or slopes; (5) to
42 hoist more than four miners at one time in buckets or cars;
43 (6) to shoot more than fifteen shots in one series.

44 (d) *Records.*—The foreman in charge on each shift shall
45 keep a daily report of conditions and practices. The foreman
46 in charge on each shift shall read and countersign the reports
47 of the previous shift. Unsatisfactory conditions and practices
48 reported shall be repeated on daily reports until corrected.
49 Hoists, buckets, cars, ropes and appliances thereto shall be
50 examined by a qualified person before the start of each shift
51 and a written record kept. Deaths from accidents or previous
52 injuries shall be reported immediately by wire to the office of
53 the director and to the district mine inspector or the inspector-
54 at-large. A written report of all injuries and deaths shall be
55 mailed to the division and district mine inspector promptly.
56 Immediate notice shall be given the office of the director, the
57 district mine inspector and the inspector-at-large in the event
58 of an ignition of gas, or serious accident to miners or
59 equipment. All permits and approvals must be available for
60 inspection by all interested persons.

61 (e) *General.*—The foreman on shift shall have at least five
62 years' experience in shafts or slopes. New-employees shall be
63 instructed in the dangers and rules incident to their work.
64 Conspicuous bulletin boards and warning signs shall be
65 maintained. Unauthorized persons shall not be permitted
66 around shafts or slopes. First-aid material shall be maintained
67 at the operation as required by section fifty-nine of this article.
68 The scene of a fatal accident shall be left unchanged until an
69 investigation is made by all interested persons. All employees
70 and others around the operation shall wear hard-toe shoes and
71 hard-top hats. Goggles or other eye protection shall be worn
72 when cutting, welding or striking where particles may fly.
73 Gears, belts and revolving parts of machinery shall be properly
74 guarded. Hand tools shall be in good condition. Sides of

75 shafts, ribs and roof of all slopes shall be closely observed for
 76 loose and dangerous conditions. Loose brows, ribs and top in
 77 slopes shall be taken down or supported; loose ribs in shafts
 78 shall be scaled. Miners shall be hoisted and lowered under
 79 power in shafts and slopes. All hoists must have two positive
 80 breaking devices. At least three wraps of rope shall remain on
 81 the hoist drum at all times. Wire ropes shall not be less than
 82 three-fourths inches in diameter, and of a design to prevent
 83 excessive spinning or turning when hoisting.

84 When heavy materials are hoisted, a large rope shall be used
 85 if necessary. A hoisting engineer shall be in constant
 86 attendance while men are in shaft. Head frames shall be
 87 constructed substantially. Noise from machinery shall not
 88 interfere with signals. The standard signal code, whistle or bell
 89 shall be used for hoisting:

- 90 One signal Hoist
- 91 One signal Stop
- 92 Two signals Lower
- 93 Three signals Man cage
- 94 One signal from hoisting engineer Miners
 95 board cage

96 Hoist signals shall be posted in front of the hoisting
 97 engineer. The shaft opening shall be enclosed by a fence five
 98 feet high. Buckets shall not be loaded within six inches of the
 99 top rim. Buckets shall have a positive lock on the handle or
 100 bale to prevent bucket from crumpling while being hoisted.
 101 Positive coupling devices shall be used on buckets or cars
 102 (hooks with safety catches or threaded clevis). Emergency
 103 devices for escape shall be provided while shafts are under
 104 construction. Miners shall not ride on or work from rims of
 105 buckets. Buckets or cars shall not be lowered without a signal
 106 from working area. Only sober and competent engineers shall
 107 be permitted to operate hoists. No intoxicating liquors or
 108 intoxicated persons shall be permitted in or around any shaft,
 109 slope or machinery. Lattice type platforms shall be used.

110 (f) *Explosives.*—Explosives and blasting caps being taken
 111 into or removed from the operation shall be transported and
 112 kept in approved nonconducting receptacles (unopened cartons
 113 or cases are permissible). Explosives shall not be primed until
 114 ready to be inserted into holes. Handling of explosives and

115 loading of holes shall be under the strict supervision of a
116 qualified person or shotfirer. No more explosives or caps than
117 are required to shoot one round shall be taken into shafts.
118 Adobe, mudcapped or unconfined shots shall not be fired.
119 Holes shall be stemmed tightly and full into the mouth.
120 Blasting caps shall be inserted in line with the explosive. Leg
121 wires of blasting caps and buss wires shall be kept shunted
122 until connected. Shooting cables shall be shunted at firing
123 devices and before connecting to leg wires. Only approved
124 shooting devices shall be used. Shots shall be fired promptly
125 after the round of holes are charged. Warnings shall be given
126 before shots are fired by shouting "Fire" three times slowly
127 after those notified have withdrawn. The blasting circuit shall
128 be wired in series or parallel series. All shooting circuits shall
129 be tested with a galvanometer by a qualified person before
130 shooting. A careful examination for misfires shall be made
131 after each shot. Persons shall not return to the face until
132 smoke and dust have cleared away. The shooting cable shall
133 be adequately insulated and have a substantial covering; be
134 connected by the person firing the shot; and be kept away from
135 power circuits. Misfires shall be removed by firing separate
136 holes or by washing; shall not be drilled out; and shall be
137 removed under supervision of a foreman or qualified person.
138 Separate magazines for the storage of explosives and
139 detonators shall be located not less than three hundred feet
140 from openings or other structures. Magazines for the storage
141 of explosives and detonators shall be separated at least fifty
142 feet. Magazines shall be located behind barricades. The outside
143 of magazines shall be constructed of incombustible material.
144 Rubbish and combustible material shall not be permitted to
145 accumulate around or in magazine. Warning signs, to be seen
146 in all directions, shall be posted near magazines.

147 (g) *Electrical*.—Power cables installed in slopes shall be
148 placed in conduit away from the belt as far as possible. Surface
149 transformers shall be elevated at least eight feet from the
150 ground or enclosed by a fence six feet high, grounded if metal;
151 shall be properly grounded; shall be installed so that they will
152 not present a fire hazard; and shall be guarded by sufficient
153 danger signs.

154 Electric equipment shall be in good condition, clean and
155 orderly; shall be equipped with guards around moving parts;

156 and shall be grounded with effective frame grounds on motors
157 and control boxes.

158 All electric wires shall be installed and supported on
159 insulators. All electric equipment shall be protected by dual
160 element fuse or circuit breakers.

161 (h) *Ventilation*.—Ventilating fans shall be offset from portal
162 at least fifteen feet; shall be installed so that the ventilating
163 current is not contaminated by dust, smoke or gases; shall be
164 effectively frame grounded; and shall be provided with fire
165 extinguishers.

166 All shafts and slopes shall be ventilated adequately and
167 continuously with fresh air. Air tubing shall deliver not less
168 than nine thousand feet per minute at the working area or as
169 much more as the inspector may require.

170 (i) *Gases*.—A foreman shall be in attendance at all times in
171 shafts and slopes who has passed an examination given by the
172 division as to his competency in the use of flame safety lamps.

173 An examination shall be made before and after shooting by
174 the foreman on shift. The foreman shall have no superior in
175 the performance of his duties. A lighted flame safety lamp or
176 other approved detector shall be carried at all times by the
177 foreman when in the working area and weekly gas analysis
178 made. In all shafts and slopes within three hours immediately
179 preceding the beginning of a work shift and before any
180 workmen in such shift, other than those who may be
181 designated to make the examinations, enter the underground
182 areas of such shafts or slopes, a certified mine foreman or mine
183 examiner designated by the operator of such shaft or slope to
184 do so, shall make an examination of such area. Evidence of
185 official examination shall be left at the face by marking date
186 and initials.

187 Gases should be removed under the supervision of the
188 foreman in charge. Smoking shall not be permitted inside of
189 shafts or slopes.

190 (j) *Drilling*.—Dust allaying or dust collecting devices shall
191 be used while drilling.

192 (k) *Lights to be used in shafts*.—Only approved electric cap
193 lights shall be used in shafts. Other lights shall be of explosive-

194 proof type. Lights shall be suspended in shafts by cable or
195 chain other than the power conductor. In slopes lights must
196 be substantially installed. Power cables shall be of an approved
197 type. Power cables shall not be taut from shaft collar to light.
198 Power cables shall be in good condition and free of improper
199 splices. Lights shall be suspended not less than twenty feet
200 above where miners are working. Lights shall be removed from
201 shaft and power cut off when shooting. In slopes lights must
202 be removed a safe distance when shots are fired. Lights shall
203 not be replaced in shafts or slopes until examination has been
204 made for gas by the mine examiner and found clear. Front
205 of light shall be protected by a substantial metal type guard.
206 Lights shall be protected from falling objects from above by
207 a metal hood. The lighting circuit shall be properly fused.
208 Electric lights shall not be used in gaseous atmospheres. A
209 lighted flame safety lamp or approved detector shall be kept
210 for use at the face while miners are at work.

**§22A-2-71. Right of miner to refuse to operate unsafe equipment;
procedure; discrimination.**

1 No miner shall be required to operate unsafe equipment. On
2 or before the first day of January, one thousand nine hundred
3 eighty-one, the board of coal mine health and safety shall by
4 rule or regulation establish a procedure for resolving disputes
5 arising out of the refusal by a miner to operate such alleged
6 unsafe equipment. No action shall be taken against a miner
7 by an operator unless such miner is found to have acted in
8 bad faith and without good cause by the director or his
9 authorized representative.

§22A-2-72. Long wall and short wall mining.

1 (a) The Legislature finds that new methods of extracting
2 coal known as long wall or short wall mining is being used
3 in this state. The board of coal mine health and safety shall
4 investigate or cause to be investigated the technology,
5 procedures and techniques used in such mining methods and
6 shall promulgate by the first day of January, one thousand
7 nine hundred eighty-one, and continuously update the same,
8 rules and regulations governing long wall and short wall
9 mining, which rules and regulations shall have as their
10 paramount objective, the health and safety of the persons
11 involved in such operations, and which said regulations shall

12 include, but not be limited to, the certification of personnel
13 involved in such operation.

14 (b) The commissioner may modify the application of any
15 provision of this section to a mine if the commissioner
16 determines that an alternative method of achieving the result
17 of such provision exists which will at all times guarantee no
18 less than the same measure of protection afforded the miners
19 of such mine by such provision, or that the application of such
20 provision to such mine will result in a diminution of the health
21 of, or safety to, the miners in such mine. The commissioner
22 shall give notice to the operator and the representative of
23 miners in the affected mine, as appropriate, and shall cause
24 such investigation to be made as he deems appropriate. Such
25 investigation shall provide an opportunity for a hearing, at the
26 request of such operator or representative or other interested
27 party, to enable the operator and the representative of miners
28 in such mine or other interested party to present information
29 relating to the modification of such provision. The commis-
30 sioner shall issue a decision incorporating his findings of fact
31 therein, and send a copy thereof to the operator and the
32 representative of the miners, as appropriate. Any such hearing
33 shall be of record.

§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules and regulations; time limits therefor.

1 The board of coal mine health and safety shall investigate
2 or cause to be investigated the technology, procedures and
3 techniques used in the construction of shafts, slopes, surface
4 facilities, and the safety hazards, attendant therewith, and shall
5 promulgate rules and regulations governing the construction
6 of shafts and slopes; and shall promulgate by the first day of
7 January, one thousand nine hundred eighty-one, rules and
8 regulations governing the construction of surface facilities.

9 The board of coal mine health and safety shall continuously
10 update such rules and regulations governing the construction
11 of shafts, slopes and surface facilities, which rules and
12 regulations shall have as their paramount concern, the health
13 and safety of the persons involved in such operations, and such
14 rules and regulations shall include, but not be limited to, the

15 certification of all supervisors, the certification and training of
16 hoist operators and shaft workers, the certification of blasters,
17 and approval of plans. The provisions of such rules and
18 regulations may be enforced against operators and construction
19 companies in accord with the provisions of article one-
20 a of this chapter. For purposes of this chapter, a construction
21 company shall be deemed an operator.

§22A-2-74. Control of respirable dust.

1 Each operator shall maintain the concentration of respirable
2 dust in the mine atmosphere during each shift to which miners
3 in active workings of such mine are exposed below such level
4 as the board may establish. The board may promulgate rules
5 and regulations governing respirable dust, including, but not
6 limited to, dust standards, sampling procedures, sampling
7 devices, equipment and sample analysis by using the data
8 gathered by the federal mine safety and health administration
9 and, or the federal bureau of mines.

10 Any operator found to be in violation of such standards
11 shall bring itself into compliance with such standards and rules
12 and regulations of the board or the commissioner may
13 thereafter order such operator to discontinue such opera-
14 tion.

**§22A-2-75. Coal operators—Procedure before operating near oil
and gas wells.**

1 (a) Before a coal operator conducts underground mining
2 operations within five hundred feet of any well, including the
3 driving of an entry or passageway, or the removal of coal or
4 other material, the coal operator shall file with the division
5 of mines and minerals and forward to the well operator by
6 certified mail, return receipt requested, its mining maps and
7 plans (which it is required to prepare, file and update to and
8 with the regulatory authority) for the area within five hundred
9 feet of the well, together with a notice, on a form furnished
10 by the director, informing them that the mining maps and
11 plans are being filed or mailed pursuant to the requirements
12 of this section.

13 Once these mining maps and plans are filed with the division
14 the coal operator may proceed with its underground mining
15 operations in the manner and as projected on such plans or

16 maps, but shall not remove, without the consent of the
17 director, any coal or other material or cut any passageway
18 nearer than two hundred feet of any completed well or well
19 that is being drilled. The coal operator shall, at least every six
20 months while mining within the five hundred foot area, update
21 its mining maps and plans and file the same with the director
22 and the well operator.

23 (b) Application may be made at any time to the director
24 by a coal operator for leave to conduct underground mining
25 operations within two hundred feet of any well or to mine
26 through any well, by petition, duly verified, showing the
27 location of the well, the workings adjacent to the well and the
28 mining operations contemplated within two hundred feet of
29 the well or through such well, and praying the approval of
30 the same by the director and naming the well operator as a
31 respondent. The coal operator shall file such petition with the
32 director and mail a true copy to the well operator by certified
33 mail, return receipt requested.

34 The petition shall notify the well operator that it may answer
35 the petition within five days after receipt, and that in default
36 of an answer the director may approve the proposed
37 operations as requested if it be shown by the petitioner or
38 otherwise to the satisfaction of the director that such
39 operations are in accordance with the law and with the
40 provisions of this article. If the well operator files an answer
41 which requests a hearing, one shall be held within ten days
42 of such answer and the director shall fix a time and date and
43 give both the coal operator and well operator five days' written
44 notice of the same by certified mail, return receipt requested.
45 At the hearing, the well operator and coal operator, as well
46 as the director, shall be permitted to offer any competent and
47 relevant evidence. Upon conclusion of the hearing, the director
48 shall grant the request of the coal operator or refuse to grant
49 the same, or make such other decision with respect to such
50 proposed underground operation as in its judgment is just and
51 reasonable under all circumstances and in accordance with law
52 and the provisions of this article: *Provided*, That a grant by
53 the director of a request to mine through a well shall require
54 an acceptable test to be conducted by the coal operator
55 establishing that such mining through can be done safely.

56 If a hearing is not requested by the well operator or if the

57 well operator gives, in writing, its consent to the coal operator
58 to mine within closer than two hundred feet of the specified
59 well, the director shall grant the request of the coal operator
60 within five days after the petition's original five day answer
61 period if the director determines that such operations are just,
62 reasonable and in accordance with law and the provisions of
63 this article.

64 The director shall docket and keep a record of all such
65 proceedings. From any such final decision or order of the
66 director, either the well operator or coal operator, or both,
67 may, within ten days, appeal to the circuit court of the county
68 in which the well subject to said petition is located. The
69 procedure in the circuit court shall be substantially as provided
70 in section four, article five, chapter twenty-nine-a of this code,
71 with the director being named as a respondent. From any final
72 order or decree of circuit court, an appeal may be taken to
73 the supreme court of appeals as heretofore provided.

74 A copy of the document or documents evidencing the action
75 of the director with respect to such petition shall promptly be
76 filed with the director of the division of oil and gas.

77 (c) Before a coal operator conducts surface or strip mining
78 operations as defined in this chapter, within two hundred feet
79 of any well, including the removal of coal and other material,
80 the operator shall file with the director and furnish to the well
81 operator by certified mail, return receipt requested, its mining
82 maps and plans (which it is required to prepare, file and
83 update to and with the regulatory authority) for the area
84 within two hundred feet of the well, together with a notice,
85 on a form furnished by the director, informing them that the
86 mining maps and plans are being filed or mailed pursuant to
87 the requirements of this section, and representing that the
88 planned operations will not unreasonably interfere with access
89 to or operation of the well and will not damage the well. In
90 addition, the coal operator shall furnish the well operator with
91 evidence that it has in force public liability insurance, with at
92 least the minimum coverage required by article three, of this
93 chapter and the rules and regulations promulgated thereto and
94 thereunder.

95 Once these mining maps and plans are filed with the
96 director, the coal operator may proceed with its surface or

97 strip mining operations in the manner and as projected on such
98 plans or maps, so long as such surface mining operations do
99 not unreasonably interfere with access to, or operation of, the
100 well or do not damage the well.

101 (d) The filing of petitions and notices with the director as
102 herein provided may be complied with by mailing such petition
103 or notice to the director by certified mail, return receipt
104 requested.

GENERAL PROVISIONS

§22A-2-76. Reopening old or abandoned mines.

1 No person, without first giving to the commissioner ten
2 days' written notice thereof, shall reopen for any purposes any
3 old or abandoned mine wherein water or mine seepage has
4 collected or become impounded or exists in such manner or
5 quantity that upon the opening of such mine, such water or
6 seepage may drain into any stream or watercourse. Such notice
7 shall state clearly the name or names of the owner or owners
8 of the mine proposed to be opened, its exact location, and the
9 time of the proposed opening thereof.

10 Upon receipt of such notice, the commissioner shall have
11 his representative present at the mine at the time designated
12 in the notice for such opening, who shall have full supervision
13 of the work of opening such mine with full authority to direct
14 the work in such manner as to him seems proper and necessary
15 to prevent the flow of mine water or seepage from such mine
16 in such manner or quantity as will kill or be harmful to the
17 fish in any stream or watercourse into which such mine water
18 seepage may flow directly or indirectly.

§22A-2-77. Monthly report by operator of mine.

1 The operator of every coal mine shall, on or before the end
2 of each calendar month, file with the director a report covering
3 the preceding calendar month on forms furnished by the
4 director. Such reports shall state the number of accidents
5 which have occurred, the number of persons employed, the
6 days worked and the actual tonnage of coal mined.

§22A-2-78. Examinations to determine compliance with permits.

1 Whenever permits are issued by the department of energy,

- 2 frequent examinations shall be made by the mine inspector
- 3 during the tenure of the permit to determine that the
- 4 requirements and limitations of the permit are complied with.

§22A-2-79. Provisions of article severable.

- 1 The various provisions of this article shall be construed as
- 2 separable and severable, and should any of the provisions,
- 3 sentences, clauses, or parts thereof be construed or held
- 4 unconstitutional or for any reason be invalid, the remaining
- 5 provisions of this article shall not be thereby affected.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

- §22A-3-1. Short title.
- §22A-3-2. Legislative findings and purpose; jurisdiction vested in department of energy; authority of commissioner and director of division of mines and minerals; apportionment of responsibility; interdepartmental cooperation.
- §22A-3-3. Definitions.
- §22A-3-4. Reclamation; duties and functions of commissioner.
- §22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
- §22A-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.
- §22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.
- §22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.
- §22A-3-9. Permit application requirements and contents.
- §22A-3-9a. Application for permit to mine two acres or less; requirements; fee; mining requirements; approval; prevention of attempts to improperly circumvent provisions of this article.
- §22A-3-10. Reclamation plan requirements.
- §22A-3-11. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.
- §22A-3-12. General environmental protection performance standards for surface mining; variances.
- §22A-3-13. Pilot program for the growing of grapes on reclaimed areas.
- §22A-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.
- §22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs, progress maps.
- §22A-3-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.

- §22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
- §22A-3-18. Approval, denial, revision and prohibition of permit.
- §22A-3-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
- §22A-3-20. Public notice; written objections; public hearings; informal conferences.
- §22A-3-21. Decision of commissioner on permit application; hearing thereon.
- §22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain area; exceptions; taxation of minerals underlying land designated unsuitable.
- §22A-3-23. Release of performance bond or deposits; application; notice; duties of commissioner; public hearings; final maps on grade release.
- §22A-3-24. Water rights and replacement; waiver of replacement.
- §22A-3-25. Citizen suits; order or court; damages.
- §22A-3-26. Surface-mining operations not subject to article.
- §22A-3-27. Leasing of lands owned by state for surface mining of coal.
- §22A-3-28. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.
- §22A-3-29. Existing permits and performance bond conversion; exemption from design criteria.
- §22A-3-30. Experimental practices.
- §22A-3-31. Certification and training of blasters.
- §22A-3-32. Surface miner certification required.
- §22A-3-33. Certification of surface-mine foremen.
- §22A-3-34. Monthly report by operator.
- §22A-3-35. Applicability and enforcement of laws safeguarding life and property; regulations; authority of division of mines and minerals regarding enforcing safety laws.
- §22A-3-36. Conflicting provisions.
- §22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.
- §22A-3-38. Severability.
- §22A-3-39. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.
- §22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.
- §22A-3-1. Short Title.**
- 1 This article shall be known and cited as the “West Virginia
2 Surface Coal Mining and Reclamation Act.”
- §22A-3-2. Legislative findings and purpose; jurisdiction vested in department of energy; authority of commissioner and director of division of mines and minerals; apportionment of responsibility; interdepartmental cooperation.**

1 (a) The Legislature finds that it is essential to the economic
2 and social well-being of the citizens of the state of West
3 Virginia to strike a careful balance between the protection of
4 the environment and the economical mining of coal needed to
5 meet energy requirements.

6 Further, the Legislature finds that there is great diversity in
7 terrain, climate, biological, chemical and other physical
8 conditions in parts of this nation where mining is conducted;
9 that the state of West Virginia in particular needs an
10 environmentally sound and economically healthy mining
11 industry; and by reason of the above it may be necessary for
12 the commissioner, as provided in article four, chapter twenty-
13 two of this code to promulgate regulations which vary from
14 federal regulations as is provided for in sections 101 (f) and
15 201 (c) (9) of the Surface Mining Control and Reclamation
16 Act of 1977 "Public Law 95-87."

17 Further, the Legislature finds that unregulated surface coal
18 mining operations may result in disturbances of surface and
19 underground areas that burden and adversely affect commerce,
20 public welfare and safety by destroying or diminishing the
21 utility of land for commercial, industrial, residential,
22 recreational, agricultural and forestry purposes; by causing
23 erosion and landslides; by contributing to floods; by polluting
24 the water and river and stream beds; by destroying fish,
25 aquatic life and wildlife habitats; by impairing natural beauty;
26 by damaging the property of citizens; by creating hazards
27 dangerous to life and property; and by degrading the quality
28 of life in local communities, all where proper mining and
29 reclamation is not practiced.

30 (b) Therefore, it is the purpose of this article to:

31 (1) Expand the established and effective statewide program
32 to protect the public and the environment from the adverse
33 affects of surface-mining operations;

34 (2) Assure that the rights of surface and mineral owners and
35 other persons with legal interest in the land or appurtenances
36 to land are adequately protected from such operations;

37 (3) Assure that surface-mining operations are not conducted
38 where reclamation as required by this article is not feasible;

39 (4) Assure that surface-mining operations are conducted in
40 a manner to adequately protect the environment;

41 (5) Assure that adequate procedures are undertaken to
42 reclaim surface areas as contemporaneously as possible with
43 the surface-mining operations;

44 (6) Assure that adequate procedures are provided for public
45 participation where appropriate under this article;

46 (7) Assure the exercise of the full reach of state common
47 law, statutory and constitutional powers for the protection of
48 the public interest through effective control of surface-mining
49 operations; and

50 (8) Assure that the coal production essential to the nation's
51 energy requirements and to the state's economic social well-
52 being is provided.

53 (c) In recognition of these findings and purposes, the
54 Legislature hereby vests authority in the commissioner of the
55 department of energy to:

56 (1) Administer and enforce the provisions of this article as
57 it relates to surface mining to accomplish the purposes of this
58 article;

59 (2) Conduct hearings and conferences or appoint persons to
60 conduct them in accordance with this article;

61 (3) Promulgate, administer and enforce regulations pursu-
62 ant to this article;

63 (4) Enter into a cooperative agreement with the secretary of
64 the United States department of the interior to provide for
65 state regulations of surface-mining operations on federal lands
66 within West Virginia consistent with section 523 of Public Law
67 95-87; and

68 (5) Administer and enforce regulations promulgated
69 pursuant to this chapter to accomplish the requirements of
70 programs under Public Law 95-87.

71 (d) The commissioner of the department of energy and the
72 director of the division of mines and minerals shall cooperate
73 with respect to departmental programs and records to effect
74 an orderly and harmonious administration of the provisions
75 of this article. The commissioner of the department of energy

76 may avail himself of any services which may be provided by
77 other state agencies in this state and other states or by agencies
78 of the federal government, and may reasonably compensate
79 them for such services. Also, he may receive any federal funds,
80 state funds or any other funds, and enter into cooperative
81 agreements, for the reclamation of land affected by surface
82 mining.

§22A-3-3. Definitions.

1 As used in this article, unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner so
5 that the treated water shall not violate the effluent limitations
6 or cause a violation of the water quality standards established
7 for the river, stream or drainway into which such water is
8 released.

9 (b) "Affected area" means, when used in the context of
10 surface-mining activities, all land and water resources within
11 the permit area which are disturbed or utilized during the term
12 of the permit in the course of surface-mining and reclamation
13 activities. "Affected area" means, when used in the context of
14 underground mining activities, all surface land and water
15 resources affected during the term of the permit (1) by surface
16 operations or facilities incident to underground mining
17 activities or (2) by underground operations.

18 (c) "Adjacent areas" means, for the purpose of permit
19 application, renewal, revision, review and approval, those land
20 and water resources, contiguous to or near a permit area, upon
21 which surface-mining and reclamation operations conducted
22 within a permit area during the life of such operations may
23 have an impact. "Adjacent areas" means, for the purpose of
24 conducting surface-mining and reclamation operations, those
25 land and water resources contiguous to or near the affected
26 area upon which surface-mining and reclamation operations
27 conducted within a permit area during the life of such
28 operations may have an impact.

29 (d) "Applicant" means any person who has or should have
30 applied for any permit pursuant to this article.

31 (e) "Approximate original contour" means that surface

32 configuration achieved by the backfilling and grading of the
33 disturbed areas so that the reclaimed area, including any
34 terracing or access roads, closely resembles the general surface
35 configuration of the land prior to mining and blends into and
36 complements the drainage pattern of the surrounding terrain,
37 with all highwalls and spoil piles eliminated: *Provided*, That
38 water impoundments may be permitted pursuant to subdivi-
39 sion (8), subsection (b), section twelve of this article: *Provided*,
40 *however*, That minor deviations may be permitted in order to
41 minimize erosion and sedimentation, retain moisture to assist
42 revegetation, or to direct surface runoff.

43 (f) "Assessment officer" means an employee of the depart-
44 ment, other than a surface-mining reclamation supervisor,
45 inspector or inspector-in-training, appointed by the commis-
46 sioner to issue proposed penalty assessments and to conduct
47 informal conferences to review notices, orders and proposed
48 penalty assessments.

49 (g) "Breakthrough" means the release of water which has
50 been trapped or impounded, or the release of air into any
51 underground cavity, pocket or area as a result of surface-
52 mining operations.

53 (h) "Coal processing wastes" means earth materials which
54 are or have been combustible, physically unstable, or acid-
55 forming or toxic-forming, which are wasted or otherwise
56 separated from product coal, and slurried or otherwise
57 transported from coal processing plants after physical or
58 chemical processing, cleaning or concentrating of coal.

59 (i) "Commissioner" means the commissioner of the depart-
60 ment of energy or commissioner of energy.

61 (j) "Department" means the department of energy.

62 (k) "Director" means the director of the division of mines
63 and minerals.

64 (l) "Disturbed area" means an area where vegetation, topsoil
65 or overburden has been removed or placed by surface-mining
66 operations, and reclamation is incomplete.

67 (m) "Division" means the division of mines and minerals of
68 the department of energy.

69 (n) "Imminent danger to the health or safety of the public"

70 means the existence of such condition or practice, or any
71 violation of a permit or other requirement of this article, which
72 condition, practice or violation could reasonably be expected
73 to cause substantial physical harm or death to any person
74 outside the permit area before such condition, practice or
75 violation can be abated. A reasonable expectation of death or
76 serious injury before abatement exists if a rational person,
77 subjected to the same conditions or practices giving rise to the
78 peril, would not expose himself to the danger during the time
79 necessary for the abatement.

80 (o) "Minerals" means clay, coal, flagstone, gravel, lime-
81 stone, manganese, sand, sandstone, shale, iron ore and any
82 other metal or metallurgical ore.

83 (p) "Operation" means those activities conducted by an
84 operator who is subject to the jurisdiction of this article.

85 (q) "Operator" means any person who is granted or who
86 should obtain a permit to engage in any activity covered by
87 this article.

88 (r) "Permit" means a permit to conduct surface-mining
89 operations pursuant to this article.

90 (s) "Permit area" means the area of land indicated on the
91 approved proposal map submitted by the operator as part of
92 his application showing the location of perimeter markers and
93 monuments and shall be readily identifiable by appropriate
94 markers on the site.

95 (t) "Permittee" means a person holding a permit issued
96 under this article.

97 (u) "Person" means any individual, partnership, firm,
98 society, association, trust, corporation, other business entity or
99 any agency, unit or instrumentality of federal, state or local
100 government.

101 (v) "Prime farmland" has the same meaning as that
102 prescribed by the United States secretary of agriculture on the
103 basis of such factors as moisture availability, temperature
104 regime, chemical balance, permeability, surface layer compo-
105 sition, susceptibility to flooding and erosion characteristics,
106 and which historically have been used for intensive agricultural
107 purposes and as published in the federal register.

108 (w) "Surface mine," "surface mining" or "surface-mining
109 operations" means:

110 (1) Activities conducted on the surface of lands for the
111 removal of coal, or, subject to the requirements of section
112 fourteen of this article, surface operations and surface impacts
113 incident to an underground coal mine, including the drainage
114 and discharge therefrom. Such activities include excavation for
115 the purpose of obtaining coal, including, but not limited to,
116 such common methods as contour, strip, auger, mountaintop
117 removal, boxcut, openpit and area mining; the uses of
118 explosives and blasting; reclamation in situ distillation or
119 retorting, leaching or other chemical or physical processing;
120 and the cleaning, concentrating, or other processing or
121 preparation, and loading of coal for commercial purposes at
122 or near the mine site; and

123 (2) The areas upon which the above activities occur or
124 where such activities disturb the natural land surface. Such
125 areas shall also include any adjacent land, the use of which
126 is incidental to any such activities; all lands affected by the
127 construction of new roads or the improvement or use of
128 existing roads to gain access to the site of such activities and
129 for haulage; and excavations, workings, impoundments, dams,
130 ventilation shafts, entryways, refuse banks, dumps, stockpiles,
131 overburden piles, spoil banks, culm banks, tailings, holes or
132 depressions, repair areas, storage areas, processing areas,
133 shipping areas and other areas upon which are sited structures,
134 facilities, or other property or materials on the surface,
135 resulting from or incident to such activities: *Provided*, That
136 such activities do not include the extraction of coal incidental
137 to the extraction of other minerals where coal does not exceed
138 sixteen and two-thirds percent of the tonnage of minerals
139 removed for purposes of commercial use or sale, or coal
140 prospecting subject to section seven of this article: *Provided*,
141 *however*, That permanent facilities not within the area being
142 mined and not directly involved in the excavation, loading,
143 storage or processing of the coal shall not be subject to the
144 provisions of this article. Such facilities include, but are not
145 limited to, offices, garages, bathhouses, parking areas, and
146 maintenance and supply areas.

147 (x) "Underground mine" means the surface effects asso-
148 ciated with the shaft, slopes, drifts or inclines connected with

149 excavations penetrating coal seams or strata and the
150 equipment connected therewith which contribute directly or
151 indirectly to the mining, preparation or handling of coal.

152 (y) "Significant, imminent environmental harm to land, air
153 or water resources" means the existence of any condition or
154 practice, or any violation of a permit or other requirement of
155 this article, which condition, practice or violation could
156 reasonably be expected to cause significant and imminent
157 environmental harm to land, air or water resources. The term
158 "environmental harm" means any adverse impact on land, air
159 or water resources, including, but not limited to, plant, wildlife
160 and fish, and the environmental harm is imminent if a
161 condition or practice exists which is causing such harm or may
162 reasonably be expected to cause such harm at any time before
163 the end of the abatement time set by the commissioner. Any
164 environmental harm is significant if that harm is appreciable
165 and not immediately repairable.

§22A-3-4. Reclamation; duties and functions of commissioner.

1 (a) The commissioner shall administer the provisions of this
2 article relating to surface-mining operations. The commis-
3 sioner shall have within his jurisdiction and supervision all
4 lands and areas of state, mined or susceptible of being mined,
5 for the removal of coal and all other lands and areas of the
6 state deforested, burned over, barren or otherwise denuded,
7 unproductive and subject to soil erosion and waste. Included
8 within such lands and areas shall be lands seared and denuded
9 by chemical operations and processes, abandoned coal mining
10 areas, swamplands, lands and areas subject to flowage
11 easements and backwaters from river locks and dams, and
12 river, stream, lake and pond shore areas subject to soil erosion
13 and waste. The jurisdiction and supervision exercised by the
14 commissioner shall be consistent with other provisions of this
15 chapter.

16 (b) The commissioner shall have the authority to:

17 (1) Promulgate rules and regulations, in accordance with the
18 provisions of chapter twenty-nine-a of this code, to implement
19 the provisions of this article: *Provided*, That the commissioner
20 shall give notice by publication of the public hearing required
21 in article three, chapter twenty-nine-a of this code: *Provided*,
22 *however*, That any forms, handbooks or similar materials

23 having the effect of a rule or regulation as defined in article
24 three, chapter twenty-nine-a of this code were issued,
25 developed or distributed by the commissioner pursuant to or
26 as a result of a rule or regulation, shall be subject to the
27 provisions of article three, chapter twenty-nine-a of this code;

28 (2) Make investigations or inspections necessary to ensure
29 complete compliance with the provisions of this code;

30 (3) Conduct hearings or appoint persons to conduct
31 hearings under provisions of this article or rules and
32 regulations adopted by the commissioner; and for the purpose
33 of any investigation or hearing hereunder, the commissioner,
34 or his designated representative, may administer oaths or
35 affirmations, subpoena witnesses, compel their attendance,
36 take evidence and require production of any books, papers,
37 correspondence, memoranda, agreements or other documents
38 or records relevant or material to the inquiry;

39 (4) Enforce the provisions of this article as provided herein;
40 and

41 (5) Appoint such advisory committees as may be of
42 assistance to the commissioner in the development of programs
43 and policies: *Provided*, That such advisory committees shall,
44 in each instance, include members representative of the general
45 public.

46 (c)(1) After the commissioner has adopted the regulations
47 required by this article, any person may petition the
48 commissioner to initiate a proceeding for the issuance,
49 amendment or appeal of a rule under this article.

50 (2) The petition shall be filed with the commissioner and
51 shall set forth the facts which support the issuance, amendment
52 or appeal of a rule under this article.

53 (3) The commissioner may hold a public hearing or may
54 conduct such investigation or proceeding as he considers
55 appropriate in order to determine whether the petition should
56 be granted or denied.

57 (4) Within ninety days after filing of a petition described in
58 subdivision (1) of this subsection, the commissioner shall either
59 grant or deny the petition. If the commissioner grants the
60 petition, he shall promptly commence an appropriate

61 proceeding in accordance with the provisions of chapter
62 twenty-nine-a of this code. If the commissioner denies the
63 petition, he shall notify the petitioner in writing setting forth
64 the reasons for the denial.

**§22A-3-5. Surface-mining reclamation supervisors and inspectors;
appointment and qualifications; salary.**

1 The commissioner shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed to carry
3 out the purposes of this article and appoint them as such. All
4 such appointees shall be qualified civil service employees, but
5 no person shall be eligible for such appointment until he has
6 served in a probationary status for a period of one year to
7 the satisfaction of the commissioner.

8 Every surface-mining reclamation supervisor shall be paid
9 not less than thirty thousand dollars per year. Every surface
10 mining reclamation inspector shall be paid not less than
11 twenty-five thousand dollars per year.

**§22A-3-6. Duties of surface-mining reclamation inspectors and
inspectors in training.**

1 Except as otherwise provided in this article, surface-mining
2 reclamation inspectors and inspectors in training shall make
3 all necessary surveys and inspections of surface-mining
4 operations required by the provisions of this article, shall
5 administer and enforce all surface-mining laws, rules and
6 regulations, and shall perform such other duties and services
7 as may be prescribed by the commissioner. Such inspectors
8 shall give particular attention to all conditions of each permit
9 to ensure complete compliance therewith. Such inspectors shall
10 note and describe all violations of this article and immediately
11 report such violations to the commissioner in writing,
12 furnishing at the same time a copy of such report to the
13 operator concerned.

**§22A-3-7. Notice of intention to prospect, requirements therefor;
bonding; commissioner's authority to deny or limit;
postponement of reclamation; prohibited acts;
exceptions.**

1 (a) Any person intending to prospect for coal in an area not
2 covered by a surface-mining permit, in order to determine the
3 location, quantity or quality of a natural coal deposit, making

4 feasibility studies or for any other purpose shall file with the
5 commissioner, at least fifteen days prior to commencement of
6 any disturbance associated with prospecting, a notice of
7 intention to prospect, which notice shall include a description
8 of the prospecting area, the period of supposed prospecting
9 and such other information as required by rules or regulations
10 promulgated pursuant to this section: *Provided*, That prior to
11 the commencement of such prospecting, the commissioner may
12 issue an order denying or limiting permission to prospect
13 where he finds that prospecting operations will damage or
14 destroy a unique natural area, or will cause serious harm to
15 water quality, or that the operator has failed to satisfactorily
16 reclaim other prospecting sites, or that there has been an abuse
17 of prospecting by previous prospecting operations in the area.

18 (b) Notice of intention to prospect shall be made in writing
19 on forms prescribed by the commissioner and shall be signed
20 and verified by the applicant. The notice shall be accompanied
21 by (1) a United States geological survey topographic map
22 showing by proper marking the crop line and the name, where
23 known, of the seam or seams to be prospecting, and (2) a bond,
24 or cash, or collateral securities or certificates of the same type
25 and form and in the same manner as provided in section eleven
26 of this article, in the amount of five hundred dollars per acre
27 or fraction thereof for the total estimated disturbed area. If
28 such bond is used, it shall be payable to the state of West
29 Virginia and conditioned that the operator shall faithfully
30 perform the requirements of this article as they relate to
31 backfilling and revegetation of the disturbed area.

32 (c) Any person prospecting under the provisions of this
33 section shall ensure that such prospecting is conducted in
34 accordance with the performance standards in section twelve
35 of this article for all lands disturbed in explorations, including
36 excavations, roads, drill holes, and the removal of necessary
37 facilities and equipment.

38 (d) Information submitted to the commissioner pursuant to
39 this section as confidential, concerning trade secrets or
40 privileged commercial or financial information, which relates
41 to the competitive rights of the person or entity intended to
42 prospect the described area, shall not be available for public
43 examination.

44 (e) Any person who conducts any prospecting activities
45 which substantially disturb the natural land surface in
46 violation of this section or regulations issued pursuant thereto
47 shall be subject to the provisions of sections sixteen and
48 seventeen of this article.

49 (f) No operator shall remove more than two hundred and
50 fifty tons of coal without the specific written approval of the
51 commissioner.

52 (g) The bond accompanying said notice of intention to
53 prospect shall be released by the commissioner when the
54 operator demonstrates that a permanent species of vegetative
55 cover is established.

56 (h) In the event an operator desires to mine the area
57 currently being prospected, and has requested and received an
58 appropriate surface mine application (S.M.A.) number, the
59 commissioner may permit the postponement of the reclama-
60 tion of the area prospected. Any part of a prospecting
61 operation, where reclamation has not been postponed as
62 provided above, shall be reclaimed within a period of three
63 months from disturbance.

64 (i) For the purpose of this section, the word "prospect" or
65 "prospecting" does not include core drilling related solely to
66 taxation or highway construction.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations unless
2 such person has first obtained a permit from the commissioner
3 in accordance with the following:

4 (a) Within two months after the secretary of the interior
5 approves a permanent state program for West Virginia, all
6 surface-mining operators shall file an application for a permit
7 or modification of a valid existing permit or underground
8 opening approval relating to those lands to be mined eight
9 months after that approval.

10 (b) No later than eight months after the secretary's approval
11 of a permanent state program for West Virginia, no person

12 may engage in or carry out, on lands within this state, any
13 surface-mining operations unless such person has first obtained
14 a permit from the commissioner: *Provided*, That those persons
15 conducting such operations under a permit or underground
16 opening approval issued in accordance with section 502 (c) of
17 Public Law 95-87, and in compliance therewith, may conduct
18 such operations beyond such period if an application for a
19 permit or modification of a valid existing permit or under-
20 ground opening approval was filed within two months after
21 the secretary's approval, and the administrative decision
22 pertaining to the granting or denying of such permit has not
23 been made by the commissioner.

24 (c) All permits issued pursuant to the requirements of this
25 article shall be issued for a term not to exceed five years:
26 *Provided*, That if the applicant demonstrates that a specified
27 longer term is reasonably needed to allow the applicant to
28 obtain necessary financing for equipment and the opening of
29 the operation, and if the application is full and complete for
30 such specified longer term, the commissioner may extend a
31 permit for such longer term: *Provided, however*, That subject
32 to the prior approval of the commissioner, a successor in
33 interest to a permittee who applies for a new permit within
34 thirty days of succeeding to such interest, and who is able to
35 obtain the bond coverage of the original permittee, may
36 continue surface-mining and reclamation operations according
37 to the approved mining and reclamation plan of the original
38 permittee until such successor's application is granted or
39 denied.

40 (d) Proof of insurance shall be required on an annual basis.

41 (e) A permit shall terminate if the permittee has not
42 commenced the surface-mining operations covered by such
43 permit within three years of the date the permit was issued:
44 *Provided*, That the commissioner may grant reasonable
45 extensions of time upon a showing that such extensions are
46 necessary by reason of litigation precluding such commence-
47 ment, or threatening, substantial economic loss to the
48 permittee, or by reason of conditions beyond the control and
49 without the fault or negligence of the permittee: *Provided*,
50 *however*, That with respect to coal to be mined for use in a
51 synthetic fuel facility or specific major electric generating
52 facility, the permittee shall be deemed to have commenced

53 surface-mining operations at such time as the construction of
54 the synthetic fuel or generating facility is initiated.

55 (f) Each application for a new surface-mining permit filed
56 pursuant to this article shall be accompanied by a fee of five
57 hundred dollars. All permit fees provided for in this section
58 or elsewhere in this article shall be collected by the commis-
59 sioner and deposited with the treasurer of the state of West
60 Virginia to the credit of the operating permit fees fund and
61 shall be used, upon requisition of the commissioner, for the
62 administration of this article.

63 (g) Prior to the issuance of any permit, the commissioner
64 of energy shall ascertain from the commissioner of labor
65 compliance with section fourteen, article five, chapter twenty-
66 one of this code. Upon issuance of the permit, the commis-
67 sioner of energy shall forward a copy to the commissioner of
68 labor, who shall assure continued compliance under such
69 permit.

§22A-3-9. Permit application requirements and contents.

1 (a) The surface-mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit applicant;
3 (B) the owner of record of the property, surface and mineral,
4 to be mined; (C) the holders of record of any leasehold interest
5 in the property; (D) any purchaser of record of the property
6 under a real estate contract; (E) the operator, if he is a person
7 different from the applicant; and (F) if any of these are
8 business entities other than a single proprietor, the names and
9 addresses of the principals, officers and resident agent;

10 (2) The names and addresses of the owners of record of all
11 surface and subsurface areas contiguous to any part of the
12 proposed permit area: *Provided*, That all residents living on
13 property contiguous to the proposed permit area shall be
14 notified by the applicant, by registered or certified mail, of
15 such application on or before the first day of publication of
16 the notice provided for in subdivision (6) of this subsection;

17 (3) A statement of any current surface-mining permits held
18 by the applicant in the state and the permit number and each
19 pending application;

20 (4) If the applicant is a partnership, corporation, association

21 or other business entity, the following where applicable: The
22 names and addresses of every officer, partner, resident agent,
23 director or person performing a function similar to a director,
24 together with the names and addresses of any person owning
25 of record ten percent or more of any class of voting stock of
26 the applicant; and a list of all names under which the
27 applicant, officer, director, partner or principal shareholder
28 previously operated a surface-mining operation in the United
29 States within the five-year period preceding the date of
30 submission of the application;

31 (5) A statement of whether the applicant, or any officer,
32 partner, director, principal shareholder of the applicant, any
33 subsidiary, affiliate or persons controlled by or under common
34 control with the applicant, has ever been an officer, partner,
35 director or principal shareholder in a company which has ever
36 held a federal or state mining permit which in the five-year
37 period prior to the date of submission of the application has
38 been permanently suspended or revoked or has had a mining
39 bond or similar security deposited in lieu of bond forfeited
40 and, if so, a brief explanation of the facts involved;

41 (6) A copy of the applicant's advertisement to be published
42 in a newspaper of general circulation in the locality of the
43 proposed permit area at least once a week for four successive
44 weeks. The advertisement shall contain in abbreviated form the
45 information required by this section including the ownership
46 and map of the tract location and boundaries of the proposed
47 site so that the proposed operation is readily locatable by local
48 residents, the location of the office of the department of energy
49 where the application is available for public inspection and
50 stating that written protests will be accepted by the commis-
51 sioner until a certain date which shall be at least thirty days
52 after the last publication of the applicant's advertisement;

53 (7) A description of the type and method of surface-mining
54 operation that exists or is proposed, the engineering techniques
55 used or proposed, and the equipment used or proposed to be
56 used;

57 (8) The anticipated starting and termination dates of each
58 phase of the surface-mining operation and the number of acres
59 of land to be affected;

60 (9) A description of the legal documents upon which the

61 applicant bases his legal right to enter and conduct surface-
62 mining operations on the proposed permit area and whether
63 that right is the subject of pending court litigation: *Provided,*
64 That nothing in this article may be construed as vesting in the
65 commissioner the jurisdiction to adjudicate property-rights
66 disputes;

67 (10) The name of the watershed and location of the surface
68 stream or tributary into which surface and pit drainage will
69 be discharged;

70 (11) A determination of the probable hydrologic consequen-
71 ces of the mining and reclamation operations, both on and off
72 the mine site, with respect to the hydrologic regime, quantity
73 and quality of water in surface and ground water systems,
74 including the dissolved and suspended solids under seasonal
75 flow conditions and the collection of sufficient data for the
76 mine site and surrounding areas so that an assessment can be
77 made by the commissioner of the probable cumulative impacts
78 of all anticipated mining in the area upon the hydrology of
79 the area, and particularly upon water availability: *Provided,*
80 That this determination shall not be required until such time
81 as hydrologic information on the general area prior to mining
82 is made available from an appropriate federal or state agency
83 or, if existing and in the possession of the applicant, from the
84 applicant: *Provided, however,* That the permit application
85 shall not be approved until the information is available and
86 is incorporated into the application;

87 (12) Accurate maps to an appropriate scale clearly showing:
88 (A) The land to be affected as of the date of application; (B)
89 the area of land within the permit area upon which the
90 applicant has the legal right to enter and conduct surface-
91 mining operations; and (C) all types of information set forth
92 on enlarged topographical maps of the United States
93 geological survey of a scale of 1:24,000 or larger, including all
94 man-made features and significant known archaeological sites
95 existing on the date of application. In addition to other things
96 specified by the commissioner, the map shall show the
97 boundary lines and names of present owners of record of all
98 surface areas abutting the proposed permit area and the
99 location of all structures within one thousand feet of the
100 proposed permit area;

101 (13) Cross-section maps or plans of the proposed affected
102 area, including the actual area to be mined, prepared by or
103 under the direction of and certified by a person approved by
104 the commissioner, showing pertinent elevation and location of
105 test borings or core samplings, where required by the
106 commissioner, and depicting the following information: (A)
107 The nature and depth of the various strata or overburden; (B)
108 the location of subsurface water, if encountered, and its
109 quality; (C) the nature and thickness of any coal or rider seams
110 above the seam to be mined; (D) the nature of the stratum
111 immediately beneath the coal seam to be mined; (E) all mineral
112 crop lines and the strike and dip of the coal to be mined,
113 within the area of land to be affected; (F) existing or previous
114 surface-mining limits; (G) the location and extent of known
115 workings of any underground mines, including mine openings
116 to the surface; (H) the location of any significant aquifers; (I)
117 the estimated elevation of the water table; (J) the location of
118 spoil, waste or refuse areas and topsoil preservation areas; (K)
119 the location of all impoundments for waste or erosion control;
120 (L) any settling or water treatment facility or drainage system;
121 (M) constructed or natural drainways and the location of any
122 discharges to any surface body of water on the area of land
123 to be affected or adjacent thereto; and (N) adequate profiles
124 at appropriate cross sections of the anticipated final surface
125 configuration that will be achieved pursuant to the operator's
126 proposed reclamation plan;

127 (14) A statement of the result of test borings or core samples
128 from the permit area, including: (A) Logs of the drill holes;
129 (B) the thickness of the coal seam to be mined and analysis
130 of the chemical and physical properties of the coal; (C) the
131 sulfur content of any coal seam; (D) chemical analysis of
132 potentially acid or toxic forming sections of the overburden;
133 and (E) chemical analysis of the stratum lying immediately
134 underneath the coal to be mined: *Provided*, That the
135 provisions of this subdivision may be waived by the commis-
136 sioner with respect to the specific application by a written
137 determination that such requirements are unnecessary;

138 (15) For those lands in the permit application which a
139 reconnaissance inspection suggests may be prime farmlands, a
140 soil survey shall be made or obtained according to standards
141 established by the secretary of agriculture in order to confirm

142 the exact location of such prime farmlands;

143 (16) A reclamation plan as presented in section ten of this
144 article;

145 (17) Information pertaining to coal seams, test borings, core
146 samplings or soil samples as required by this section shall be
147 made available to any person with an interest which is or may
148 be adversely affected: *Provided*, That information which
149 pertains only to the analysis of the chemical and physical
150 properties of the coal, except information regarding mineral
151 or elemental content which is potentially toxic to the
152 environment, shall be kept confidential and not made a matter
153 of public record;

154 (18) When requested by the commissioner, the climatolog-
155 ical factors that are peculiar to the locality of the land to be
156 affected, including the average seasonal precipitation, the
157 average direction and velocity of prevailing winds, and the
158 seasonal temperature ranges; and

159 (19) Other information that may be required by rules and
160 regulations reasonably necessary to effectuate the purposes of
161 this article.

162 (b) If the commissioner finds that the probable total annual
163 production at all locations of any coal surface-mining operator
164 will not exceed one hundred thousand tons, the determination
165 of probable hydrologic consequences and the statement of the
166 result of test borings or core samplings shall, upon the written
167 request of the operator, be performed by a qualified public
168 or private laboratory designated by the commissioner and a
169 reasonable cost of the preparation of such determination and
170 statement shall be assumed by the department from funds
171 provided by the United States department of the interior
172 pursuant to Public Law 95-87.

173 (c) Before the first publication of the applicant's advertise-
174 ment, each applicant for a surface-mining permit shall file,
175 except for that information pertaining to the coal seam itself,
176 a copy of the application for public inspection in the nearest
177 office of the department of energy as specified in the
178 applicant's advertisement.

179 (d) Each applicant for a permit shall be required to submit
180 to the commissioner as part of the permit application a

181 certificate issued by an insurance company authorized to do
182 business in this state covering the surface-mining operation for
183 which the permit is sought, or evidence that the applicant has
184 satisfied state self-insurance requirements. The policy shall
185 provide for personal injury and property damage protection
186 in an amount adequate to compensate any persons damaged
187 as a result of surface coal mining and reclamation operations,
188 including use of explosives, and entitled to compensation
189 under the applicable provisions of state law. The policy shall
190 be maintained in full force and effect during the terms of the
191 permit or any renewal, including the length of all reclamation
192 operations.

193 (e) Each applicant for a surface-mining permit shall submit
194 to the commissioner as part of the permit application a
195 blasting plan where explosives are to be used, which shall
196 outline the procedures and standards by which the operator
197 will meet the provisions of the blasting performance standards.

198 (f) The applicant shall file as part of his permit application
199 a schedule listing all notices of violation, bond forfeitures,
200 permit revocations, cessation orders or permanent suspension
201 orders resulting from a violation of Public Law 95-87, this
202 article or any law or regulation of the United States or any
203 department or agency of any state pertaining to air or
204 environmental protection received by the applicant in
205 connection with any surface-mining operation during the
206 three-year period prior to the date of application, and
207 indicating the final resolution of any notice of violation,
208 forfeiture, revocation, cessation or permanent suspension.

209 (g) Within five working days of receipt of an application for
210 a permit, the commissioner shall notify the operator in writing,
211 stating whether the application is complete and whether the
212 operator's advertisement may be published. If the application
213 is not complete, the commissioner shall state in writing why
214 the application is incomplete.

**§22A-3-9a. Application for permit to mine two acres or less;
requirements; fee; mining requirements; approval;
prevention of attempts to improperly circumvent
provisions of this article.**

1 (a) Application for a permit to engage in surface mining of
2 two acres or less shall be made in writing on forms prescribed

3 by the director and shall be signed and verified by the
4 applicant. The application shall be accompanied by:

5 (1) Accurate maps prepared by or under the direction of
6 and certified by a person approved by the director, to an
7 appropriate scale clearly showing: The land to be affected as
8 of the date of application; the area of land within the permit
9 area upon which the applicant has the legal right to enter and
10 conduct surface-mining operations; and all types of informa-
11 tion set forth on enlarged topographical maps of the United
12 States geological survey of a scale of 1:24,000 or larger,
13 including all man-made features and significant known
14 archaeological sites existing on the date of application. In
15 addition to other things specified by the director, the map shall
16 show: The boundary lines and names of present owners of
17 record of all surface areas abutting the proposed permit area;
18 the location of all structures within one thousand feet of the
19 proposed area; and cross-section maps or plans of the
20 proposed affected area, including the actual area to be mined;

21 (2) The name of owner of the surface of the land to be
22 mined;

23 (3) The name of owner of the coal to be mined;

24 (4) A reasonable estimate of the number of acres of coal
25 that would be mined: *Provided*, That in no event may such
26 number of acres to be mined exceed two acres;

27 (5) Representative cross-sections showing existing and
28 proposed site conditions;

29 (6) A reclamation plan as presented in section eleven of this
30 article;

31 (7) A certificate of insurance certifying that the applicant
32 has in force a public liability insurance policy issued by an
33 insurance company authorized to do business in this state
34 affording personal injury protection in accordance with
35 subsection (d), section ten of this article;

36 (8) A bond, or cash or collateral securities or certificates of
37 the same type, in the form as prescribed by the director and
38 in the minimum amount of five thousand dollars per acre, for
39 a maximum disturbance of two acres, exclusive of roadways
40 and temporary spoil placement. The bond shall be payable to

41 the state of West Virginia and conditioned that the applicant
42 shall complete regrading to approximate original contour and
43 revegetation of all disturbed areas; and

44 (9) A copy of the applicant's advertisement to be published
45 for at least one week in a newspaper of general circulation in
46 the locality of the proposed permit area.

47 (b) A filing fee for the permit in the amount of five hundred
48 dollars. The permit is valid for a period of five years.

49 (c) A permittee under this section shall conduct surface-
50 mining operations so as to minimize the disturbances to the
51 prevailing hydrologic balance at the mine site and in associated
52 off-site areas and to the quality and quantity of water in
53 surface and ground water systems both during and after
54 surface-mining operations and during reclamation by:
55 Avoiding acid or other toxic mine drainage; and conducting
56 surface-mining operations so as to prevent to the extent
57 possible, using the best technology currently available,
58 additional contributions of suspended solids to streamflow or
59 runoff outside the permit area, but in no event may
60 contributions be in excess of requirements set by applicable
61 state law.

62 (d) Due to the two acre maximum of disturbed area, the
63 director shall promulgate rules to authorize the director to
64 tentatively approve permits. Such rules shall also provide that
65 final approval shall be granted or denied within thirty days
66 of submission of the application.

67 (e) Two or more operations will have to meet all three of
68 the following components before being considered related:

69 (1) They must occur within twelve months of each other;

70 (2) They are physically related in that drainage from both
71 operations flow into the same watershed at or before a point
72 within five aerial miles of either operation; and

73 (3) They are under common ownership or control, directly
74 or indirectly.

§22A-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a surface-
2 mining permit application shall include, in the degree of detail

3 necessary to demonstrate that reclamation required by this
4 article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface mining
6 over the estimated life of these operations and the size,
7 sequence and timing of the operations for which it is
8 anticipated that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit
10 prior to any mining, including: (A) The uses existing at the
11 time of the application and, if such land has a history of
12 previous mining, the uses which preceded any mining; (B) the
13 capability of the land prior to any mining to support a variety
14 of uses, giving consideration to soil and foundation charac-
15 teristics, topography and vegetation cover and, if applicable,
16 a soil survey prepared pursuant to subdivision (15), subsection
17 (a), section nine of this article; and (C) the best information
18 available on the productivity of the land prior to mining,
19 including appropriate classification as prime farm lands, and
20 the average yield of food, fiber, forage or wood products from
21 such lands obtained under high levels of management;

22 (3) The use which is proposed to be made of the land
23 following reclamation, including a discussion of the utility and
24 capacity of the reclaimed land to support a variety of
25 alternative uses and the relationship of such use to existing
26 land use policies and plans, and the comments of any owner
27 of the surface, other state agencies and local governments,
28 which would have to initiate, implement, approve or authorize
29 the proposed use of the land following reclamation;

30 (4) A detailed description of how the proposed post mining
31 land use is to be achieved and the necessary support activities
32 which may be needed to achieve the proposed land use;

33 (5) The engineering techniques proposed to be used in
34 mining and reclamation and a description of the major
35 equipment; a plan for the control of surface water drainage
36 and of water accumulation; a plan where appropriate, for
37 backfilling, soil stabilization and compacting, grading,
38 revegetation and a plan for soil reconstruction, replacement
39 and stabilization pursuant to the performance standards in
40 subdivision (7), subsection (b), section twelve of this article for
41 those food, forage and forest lands identified therein; and a
42 statement as to how the operator plans to comply with each

43 of the applicable requirements set out in section twelve or
44 thirteen of this article;

45 (6) A detailed estimated timetable for the accomplishment
46 of each major step in the reclamation plan;

47 (7) The consideration which has been given to conducting
48 surface-mining operations in a manner consistent with surface
49 owner plans and applicable state and local land use plans and
50 programs;

51 (8) The steps to be taken to comply with applicable air and
52 water quality laws and regulations and any applicable health
53 and safety standards;

54 (9) The consideration which has been given to developing
55 the reclamation plan in a manner consistent with local physical
56 environmental and climatological conditions;

57 (10) All lands, interests in lands or options on such interests
58 held by the applicant or pending bids on interests in lands by
59 the applicant, which lands are contiguous to the area to be
60 covered by the permit;

61 (11) A detailed description of the measures to be taken
62 during the surface-mining and reclamation process to assure
63 the protection of: (A) The quality of surface and ground water
64 systems, both on- and off-site, from adverse effects of the
65 surface-mining operation; (B) the rights of present users to
66 such water; and (C) the quantity of surface and ground water
67 systems, both on- and off-site, from adverse effects of the
68 surface-mining operation or to provide alternative sources of
69 water where such protection of quantity cannot be assured;

70 (12) The results of tests borings which the applicant has
71 made at the area to be covered by the permit, or other
72 equivalent information and data in a form satisfactory to the
73 commissioner, including the location of subsurface water, and
74 an analysis of the chemical properties, including acid forming
75 properties of the mineral and overburden: *Provided*, That
76 information which pertains only to the analysis of the chemical
77 and physical properties of the coal, except information
78 regarding such mineral or elemental contents which are
79 potentially toxic in the environment, shall be kept confidential
80 and not made a matter of public record;

81 (13) The consideration which has been given to maximize
82 the utilization and conservation of the solid fuel resource being
83 recovered so that re-affecting the land in the future can be
84 minimized; and

85 (14) Such other requirements as the commissioner may
86 prescribe by regulation.

87 (b) The reclamation plan shall be available to the public for
88 review except for those portions thereof specifically exempted
89 in subsection (a) of this section.

**§22A-3-11. Performance bonds; amount and method of bonding;
bonding requirements; special reclamation tax and
fund; prohibited acts; period of bond liability.**

1 (a) After a surface-mining permit application has been
2 approved pursuant to this article, but before a permit has been
3 issued, each operator shall furnish bond, on a form to be
4 prescribed and furnished by the commissioner, payable to the
5 state of West Virginia and conditioned upon the operator
6 faithfully performing all of the requirements of this article and
7 of the permit. The amount of the bond shall be one thousand
8 dollars for each acre or fraction thereof. The bond shall cover
9 (1) the entire permit area, or (2) that increment of land within
10 the permit area upon which the operator will initiate and
11 conduct surface-mining and reclamation operations within the
12 initial term of the permit. If the operator chooses to use
13 incremental bonding, as succeeding increments of surface
14 mining and reclamation operations are to be initiated and
15 conducted within the permit area, the operator shall file with
16 the commissioner an additional bond or bonds to cover such
17 increments in accordance with this section: *Provided*, That
18 once the operator has chosen to proceed with bonding either
19 the entire permit area or with incremental bonding, he shall
20 continue bonding in that manner for the term of the permit:
21 *Provided, however*, That the minimum amount of bond
22 furnished shall be ten thousand dollars.

23 (b) The period of liability for performance bond coverage
24 shall commence with issuance of a permit and continue for
25 the full term of the permit plus any additional period necessary
26 to achieve compliance with the requirements in the reclamation
27 plan of the permit.

28 (c) (1) The form of the performance bond shall be approved
29 by the commissioner and may include, at the option of the
30 operator, surety bonding, collateral bonding (including cash
31 and securities), establishment of an escrow account, self-
32 bonding or a combination of these methods. If collateral
33 bonding is used, the operator may elect to deposit cash, or
34 collateral securities or certificates as follows: Bonds of the
35 United States or its possessions, of the federal land bank, or
36 of the homeowners' loan corporation; full faith and credit
37 general obligation bonds of the state of West Virginia, or other
38 states, and of any county, district or municipality of the state
39 of West Virginia or other states; or certificates of deposit in
40 a bank in this state, which certificates shall be in favor of the
41 department. The cash deposit or market value of such
42 securities or certificates shall be equal to or greater than the
43 sum of the bond. The commissioner shall, upon receipt of any
44 such deposit of cash, securities or certificates, promptly place
45 the same with the treasurer of the state of West Virginia whose
46 duty it shall be to receive and hold the same in the name of
47 the state in trust for the purpose for which the deposit is made
48 when the permit is issued. The operator making the deposit
49 shall be entitled from time to time to receive from the state
50 treasurer, upon the written approval of the commissioner, the
51 whole or any portion of any cash, securities or certificates so
52 deposited, upon depositing with him in lieu thereof, cash or
53 other securities or certificates of the classes herein specified
54 having value equal to or greater than the sum of the bond.

55 (2) The commissioner may approve an alternative bonding
56 system if it will (A) reasonably assure that sufficient funds will
57 be available to complete the reclamation, restoration and
58 abatement provisions for all permit areas which may be in
59 default at any time, and (B) provide a substantial economic
60 incentive for the permittee to comply with all reclamation
61 provisions.

62 (d) The commissioner may accept the bond of the applicant
63 itself without separate surety when the applicant demonstrates
64 to the satisfaction of the commissioner the existence of a
65 suitable agent to receive service of process and a history of
66 financial solvency and continuous operation sufficient for
67 authorization to self-insure.

68 (e) It shall be unlawful for the owner of surface or mineral

69 rights to interfere with the present operator in the discharge
70 of his obligations to the state for the reclamation of lands
71 disturbed by him.

72 (f) All bond releases shall be accomplished in accordance
73 with the provisions of section twenty-three of this article.

74 (g) All special reclamation taxes deposited by the commis-
75 sioner with the treasurer or the state of West Virginia to the
76 credit of the special reclamation fund prior to the effective date
77 of this article shall be transferred to the special reclamation
78 fund created by this section and shall be expended pursuant
79 to the provisions of this subsection: *Provided*, That no taxes
80 transferred into the special reclamation fund created by this
81 section shall be subject to refund. The fund shall be
82 administered by the commissioner, and he is authorized to
83 expend the moneys in the fund for the reclamation and
84 rehabilitation of lands which were subjected to permitted
85 surface-mining operations and abandoned after the third day
86 of August, one thousand nine hundred seventy-seven, where
87 the amount of the bond posted and forfeited on such land is
88 less than the actual cost of reclamation. The commissioner
89 may also expend such amounts as are reasonably necessary to
90 implement and administer the provisions of this chapter and
91 chapters twenty-two-a and twenty-two-b of this code.

92 Whenever the special reclamation fund established by this
93 subsection sinks below one million dollars at the end of any
94 given quarterly period, every person then conducting coal
95 surface-mining operations shall contribute into said fund a
96 sum equal to one cent per ton of clean coal mined thereafter.
97 This fee shall be collected by the state tax commissioner in
98 the same manner as the West Virginia business and occupation
99 tax in accordance with the provisions of chapter eleven of this
100 code and shall be deposited by him with the treasurer of the
101 state of West Virginia to the credit of the special reclamation
102 fund. At the beginning of each quarter, the commissioner shall
103 advise the state tax commissioner and the governor of the
104 assets, excluding payments, expenditures and liabilities, in the
105 fund. If such assets are below one million dollars, a notice of
106 assessment shall be given to all operators by the state tax
107 commissioner and the one cent per ton assessment shall be
108 collected until the end of the quarter in which the fund's assets,
109 excluding payments, expenditures and liabilities are in excess

110 of two million dollars.

§22A-3-12. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the commissioner pursuant to this
2 article to conduct surface-mining operations shall require that
3 such surface-mining operations will meet all applicable
4 performance standards of this article, and other requirements
5 as the commissioner shall promulgate.

6 (b) The following general performance standards shall be
7 applicable to all surface mines and shall require the operation
8 as a minimum to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior
14 to any mining, or higher or better uses of which there is
15 reasonable likelihood so long as the use or uses do not present
16 any actual or probable hazard to public health or safety or
17 pose any actual or probable threat of water diminution or
18 pollution, and the permit applicants' declared proposed land
19 use following reclamation is not deemed to be impractical or
20 unreasonable, inconsistent with applicable land use policies
21 and plans, involves unreasonable delay in implementation, or
22 is violative of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials,
26 and grade in order to restore the approximate original
27 contour: *Provided*, That in surface mining which is carried out
28 at the same location over a substantial period of time where
29 the operation transects the coal deposit, and the thickness of
30 the coal deposits relative to the volume of the overburden is
31 large and where the operator demonstrates that the overburden
32 and other spoil and waste materials at a particular point in
33 the permit area or otherwise available from the entire permit
34 area is insufficient, giving due consideration to volumetric
35 expansion, to restore the approximate original contour, the
36 operator, at a minimum, shall backfill, grade and compact,

37 where advisable, using all available overburden and other spoil
38 and waste materials to attain the lowest practicable grade but
39 not more than the angle of repose, to provide adequate
40 drainage and to cover all acid-forming and other toxic
41 materials, in order to achieve an ecologically sound land use
42 compatible with the surrounding region: *Provided, however,*
43 That in surface mining where the volume of overburden is
44 large relative to the thickness of the coal deposit and where
45 the operator demonstrates that due to volumetric expansion
46 the amount of overburden and other spoil and waste materials
47 removed in the course of the mining operation is more than
48 sufficient to restore the approximate original contour, the
49 operator shall, after restoring the approximate contour,
50 backfill, grade and compact, where advisable, the excess
51 overburden and other spoil and waste materials to attain the
52 lowest grade but not more than the angle of repose, and to
53 cover all acid-forming and other toxic materials, in order to
54 achieve an ecologically sound land use compatible with the
55 surrounding region and, such overburden or spoil shall be
56 shaped and graded in such a way as to prevent slides, erosion
57 and water pollution and is revegetated in accordance with the
58 requirements of this article: *Provided, further,* That the
59 commissioner shall promulgate rules and regulations governing
60 variances to the requirements for return to approximate
61 original contour or highwall elimination and where adequate
62 material is not available from surface-mining operations
63 permitted after the effective date of this article for (A)
64 underground mining operations existing prior to the third day
65 of August, one thousand nine hundred seventy-seven, or (B)
66 for areas upon which surface mining prior to the first day of
67 July, one thousand nine hundred seventy-seven, created
68 highwalls;

69 (4) Stabilize and protect all surface areas, including spoil
70 piles, affected by the surface-mining operation to effectively
71 control erosion and attendant air and water pollution;

72 (5) Remove the topsoil from the land in a separate layer,
73 replace it on the backfill area, or if not utilized immediately,
74 segregate it in a separate pile from other spoil and, when the
75 topsoil is not replaced on a backfill area within a time short
76 enough to avoid deterioration of the topsoil, maintain a
77 successful vegetative cover by quick growing plants or by other

78 similar means in order to protect topsoil from wind and water
79 erosion and keep it free of any contamination by other acid
80 or toxic material: *Provided*, That if topsoil is of insufficient
81 quantity or of poor quality for sustaining vegetation, or if
82 other strata can be shown to be more suitable for vegetation
83 requirements, then the operator shall remove, segregate and
84 preserve in a like manner such other strata which is best able
85 to support vegetation;

86 (6) Restore the topsoil or the best available subsoil which
87 is best able to support vegetation;

88 (7) Ensure that all prime farm lands are mined and
89 reclaimed in accordance with the specifications for soil
90 removal, storage, replacement and reconstruction established
91 by the United States secretary of agriculture and the soil
92 conservation service pertaining thereto. The operator, as a
93 minimum, shall be required to: (A) Segregate the A horizon
94 of the natural soil, except where it can be shown that other
95 available soil materials will create a final soil having a greater
96 productive capacity, and if not utilized immediately, stockpile
97 this material separately from other spoil, and provide needed
98 protection from wind and water erosion or contamination by
99 other acid or toxic material; (B) segregate the B horizon of
100 the natural soil, or underlying C horizons or other strata, or
101 a combination of such horizons or other strata that are shown
102 to be both texturally and chemically suitable for plant growth
103 and that can be shown to be equally or more favorable for
104 plant growth than the B horizon, in sufficient quantities to
105 create in the regraded final soil a root zone of comparable
106 depth and quality to that which existed in the natural soil, and
107 if not utilized immediately, stockpile this material separately
108 from other spoil and provide needed protection from wind and
109 water erosion or contamination by other acid or toxic
110 material; (C) replace and regrade the root zone material
111 described in subparagraph (B) above with proper compaction
112 and uniform depth over the regraded spoil material; and (D)
113 redistribute and grade in a uniform manner the surface soil
114 horizon described in subparagraph (A) above;

115 (8) Create, if authorized in the approved surface-mining and
116 reclamation plan and permit, permanent impoundments of
117 water on mining sites as part of reclamation activities in
118 accordance with regulations promulgated by the commissioner;

119 (9) Where augering is the method of recovery, seal all auger
120 holes with an impervious and noncombustible material in
121 order to prevent drainage except where the commissioner
122 determines that the resulting impoundment of water in such
123 auger holes may create a hazard to the environment or the
124 public welfare and safety: *Provided*, That the commissioner
125 may prohibit augering if necessary to maximize the utilization,
126 recoverability or conservation of the mineral resources or to
127 protect against adverse water quality impacts;

128 (10) Minimize the disturbances to the prevailing hydrologic
129 balance at the mine site and in associated off-site areas and
130 to the quality and quantity of water in surface and ground
131 water systems both during and after surface-mining operations
132 and during reclamation by: (A) Avoiding acid or other toxic
133 mine drainage; (B) conducting surface-mining operations so as
134 to prevent to the extent possible, using the best technology
135 currently available, additional contributions of suspended
136 solids to streamflow or runoff outside the permit area, but in
137 no event shall contributions be in excess of requirements set
138 by applicable state or federal law; (C) constructing an
139 approved drainage system pursuant to subparagraph (B) of
140 this subdivision prior to commencement of surface-mining
141 operations, such system to be certified by a person approved
142 by the commissioner to be constructed as designed and as
143 approved in the reclamation plan; (D) avoiding channel
144 deepening or enlargement in operations requiring the discharge
145 of water from mines; (E) unless otherwise authorized by the
146 commissioner, cleaning out and removing temporary or large
147 settling ponds or other siltation structures after disturbed areas
148 are revegetated and stabilized, and depositing the silt and
149 debris at a site and in a manner approved by the commis-
150 sioner; (F) restoring recharge capacity of the mined area to
151 approximate premining conditions; and (G) such other actions
152 as the commissioner may prescribe;

153 (11) With respect to surface disposal of mine wastes,
154 tailings, coal processing wastes and other wastes in areas other
155 than the mine working excavations, stabilize all waste piles in
156 designated areas through construction in compacted layers,
157 including the use of noncombustible and impervious materials
158 if necessary, and assure the final contour of the waste pile will
159 be compatible with natural surroundings and that the site will

160 be stabilized and revegetated according to the provisions of
161 this article;

162 (12) Design, locate, construct, operate, maintain, enlarge,
163 modify and remove or abandon, in accordance with standards
164 and criteria developed pursuant to subsection (f) of this
165 section, all existing and new coal mine waste piles consisting
166 of mine wastes, tailings, coal processing wastes or other liquid
167 and solid wastes, and used either temporarily or permanently
168 as dams or embankments;

169 (13) Refrain from surface mining within five hundred feet
170 of any active and abandoned underground mines in order to
171 prevent breakthroughs and to protect health or safety of
172 miners: *Provided*, That the commissioner shall permit an
173 operator to mine near, through or partially through an
174 abandoned underground mine or closer to an active under-
175 ground mine if: (A) The nature, timing and sequencing of the
176 approximate coincidence of specific surface-mine activities
177 with specific underground mine activities are coordinated
178 jointly by the operators involved and approved by the
179 commissioner and (B) the operations will result in improved
180 resource recovery, abatement of water pollution or elimination
181 of hazards to the health and safety of the public: *Provided*,
182 That any breakthrough which does occur shall be sealed;

183 (14) Ensure that all debris, acid-forming materials, toxic
184 materials or materials constituting a fire hazard are treated or
185 buried and compacted, or otherwise disposed of in a manner
186 designed to prevent contamination of ground or surface
187 waters, and that contingency plans are developed to prevent
188 sustained combustion: *Provided*, That the operator shall
189 remove or bury all metal, lumber, equipment and other debris
190 resulting from the operation before grading release;

191 (15) Ensure that explosives are used only in accordance with
192 existing state and federal law and the regulations promulgated
193 by the commissioner, which shall include provisions to: (A)
194 Provide adequate advance written notice to local governments
195 and residents who might be affected by the use of the
196 explosives by publication of the planned blasting schedule in
197 a newspaper of general circulation in the locality and by
198 mailing a copy of the proposed blasting schedule to every
199 resident living within one-half mile of the proposed permit area

200 excluding drainage structures, haulroads and access roads
201 unless there will be blasting on or near such structures or
202 roads: *Provided*, That this notice shall suffice as daily notice
203 to residents or occupants of the areas; (B) maintain for a
204 period of at least three years and make available for public
205 inspection, upon written request, a log detailing the location
206 of the blasts, the pattern and depth of the drill holes, the
207 amount of explosives used per hole and the order and length
208 of delay in the blasts; (C) limit the type of explosives and
209 detonating equipment, the size, the timing and frequency of
210 blasts based upon the physical conditions of the site so as to
211 prevent (i) injury to persons; (ii) damage to public and private
212 property outside the permit area; (iii) adverse impacts on any
213 underground mine; and (iv) change in the course, channel or
214 availability of ground or surface water outside the permit area;
215 (D) require that all blasting operations be conducted by
216 persons certified by the director of the division of mines and
217 minerals; and (E) provide that upon written request of a
218 resident or owner of a man-made dwelling or structure within
219 one-half mile of any portion of the area identified in
220 subparagraph (A) of this subdivision, the applicant or
221 permittee shall conduct a preblasting survey or other
222 appropriate investigation of the structures and submit the
223 results to the commissioner and a copy to the resident or
224 owner making the request. The area of the survey shall be
225 determined by the commissioner in accordance with regula-
226 tions promulgated by him;

227 (16) Ensure that all reclamation efforts proceed in an
228 environmentally sound manner and as contemporaneously as
229 practicable with the surface-mining operations. Time limits
230 shall be established by the commissioner requiring backfilling,
231 grading and planting to be kept current: *Provided*, That where
232 surface-mining operations and underground mining operations
233 are proposed on the same area, which operations must be
234 conducted under separate permits, the commissioner may
235 grant a variance from the requirement that reclamation efforts
236 proceed as contemporaneously as practicable to permit
237 underground mining operations prior to reclamation:

238 (A) If the commissioner finds in writing that:

239 (i) The applicant has presented, as part of the permit
240 application, specific, feasible plans for the proposed under-

- 241 ground mining operations;
- 242 (ii) The proposed underground mining operations are
243 necessary or desirable to assure maximum practical recovery
244 of the mineral resource and will avoid multiple disturbance of
245 the surface;
- 246 (iii) The applicant has satisfactorily demonstrated that the
247 plan for the underground mining operations conforms to
248 requirements for underground mining in the jurisdiction and
249 that permits necessary for the underground mining operations
250 have been issued by the appropriate authority;
- 251 (iv) The areas proposed for the variance have been shown
252 by the applicant to be necessary for the implementing of the
253 proposed underground mining operations;
- 254 (v) No substantial adverse environmental damage, either on-
255 site or off-site, will result from the delay in completion of
256 reclamation as required by this article;
- 257 (vi) Provisions for the off-site storage of spoil will comply
258 with subdivision (22), subsection (b), of this section;
- 259 (B) If the commissioner has promulgated specific regula-
260 tions to govern the granting of such variances in accordance
261 with the provisions of this subparagraph and has imposed such
262 additional requirements as he deems necessary;
- 263 (C) If variances granted under the provisions of this
264 subsection are to be reviewed by the commissioner not more
265 than three years from the date of issuance of the permit; and
- 266 (D) If liability under the bond filed by the applicant with
267 the commissioner pursuant to subsection (b), section eleven of
268 this article shall be for the duration of the underground mining
269 operations and until the requirements of subsection (g), section
270 eleven and section twenty-three of this article have been fully
271 complied with.
- 272 (17) Ensure that the construction, maintenance and
273 postmining conditions of access and haulroads into and across
274 the site of operations will control or prevent erosion and
275 siltation, pollution of water, damage to fish or wildlife or their
276 habitat, or public or private property: *Provided*, That access
277 roads constructed for and used to provide infrequent service
278 to surface facilities, such as ventilators or monitoring devices,

279 shall be exempt from specific construction criteria provided
280 adequate stabilization to control erosion is achieved through
281 alternative measures;

282 (18) Refrain from the construction of roads or other access
283 ways up a stream bed or drainage channel or in proximity to
284 the channel so as to significantly alter the normal flow of
285 water;

286 (19) Establish on the regraded areas, and all other lands
287 affected, a diverse, effective and permanent vegetative cover
288 of the same seasonal variety native to the area of land to be
289 affected or of a fruit, grape or berry producing variety suitable
290 for human consumption and capable of self-regeneration and
291 plant succession at least equal in extent of cover to the natural
292 vegetation of the area, except that introduced species may be
293 used in the revegetation process where desirable or when
294 necessary to achieve the approved postmining land use plan;

295 (20) Assume the responsibility for successful revegetation, as
296 required by subdivision (19) of this subsection, for a period
297 of not less than five growing seasons, as defined by the
298 commissioner, after the last year of augmented seeding,
299 fertilizing, irrigation or other work in order to assure
300 compliance with subdivision (19) of this subsection: *Provided,*
301 That when the commissioner issues a written finding approving
302 a long-term agricultural postmining land use as a part of the
303 mining and reclamation plan, the commissioner may grant
304 exception to the provisions of subdivision (19) of this
305 subsection: *Provided, however,* That when the commissioner
306 approves an agricultural postmining land use, the applicable
307 five growing seasons of responsibility for revegetation shall
308 commence at the date of initial planting for such agricultural
309 postmining land use;

310 (21) Protect off-site areas from slides or damage occurring
311 during surface-mining operations and not deposit spoil
312 material or locate any part of the operations or waste
313 accumulations outside the permit area: *Provided,* That spoil
314 material may be placed outside the permit area, if approved
315 by the commissioner, after a finding that environmental
316 benefits will result from such;

317 (22) Place all excess spoil material resulting from surface
318 mining activities in such a manner that: (A) Spoil is

319 transported and placed in a controlled manner in position for
320 concurrent compaction and in a way as to assure mass stability
321 and to prevent mass movement; (B) the areas of disposal are
322 within the bonded permit areas and all organic matter shall
323 be removed immediately prior to spoil placements; (C)
324 appropriate surface and internal drainage system or diversion
325 ditches are used to prevent spoil erosion and movement; (D)
326 the disposal area does not contain springs, natural water
327 courses or wet weather seeps, unless lateral drains are
328 constructed from the wet areas to the main underdrains in a
329 manner that filtration of the water into the spoil pile will be
330 prevented; (E) if placed on a slope, the spoil is placed upon
331 the most moderate slope among those upon which, in the
332 judgment of the commissioner, the spoil could be placed in
333 compliance with all the requirements of this article, and shall
334 be placed, where possible, upon, or above, a natural terrace,
335 bench or berm, if placement provides additional stability and
336 prevents mass movement; (F) where the toe of the spoil rests
337 on a downslope, a rock toe buttress, of sufficient size to
338 prevent mass movement, is constructed; (G) the final
339 configuration is compatible with the natural drainage pattern
340 and surroundings and suitable for intended uses; (H) design
341 of the spoil disposal area is certified by a qualified registered
342 professional engineer in conformance with professional
343 standards; and (I) all other provisions of this article are met:
344 *Provided*, That where the excess spoil material consists of at
345 least eighty percent, by volume, sandstone, limestone or other
346 rocks that do not slake in water, the commissioner may
347 approve alternate methods for disposal of excess spoil
348 material, including fill placement by dumping in a single lift,
349 on a site specific basis: *Provided, however*, That the services
350 of a qualified registered professional engineer experienced in
351 the design and construction of earth and rockfill embankment
352 are utilized: *Provided, further*, That such approval shall not
353 be unreasonably withheld if the site is suitable;

354 (23) Meet such other criteria as are necessary to achieve
355 reclamation in accordance with the purposes of this article,
356 taking into consideration the physical, climatological and other
357 characteristics of the site;

358 (24) To the extent possible, using the best technology
359 currently available, minimize disturbances and adverse impacts

360 of the operation on fish, wildlife and related environmental
361 values, and achieve enhancement of these resources where
362 practicable; and

363 (25) Retain a natural barrier to inhibit slides and erosion
364 on permit areas where outcrop barriers are required: *Provided,*
365 That constructed barriers may be allowed where (A) natural
366 barriers do not provide adequate stability, (B) natural barriers
367 would result in potential future water quality deterioration,
368 and (C) natural barriers would conflict with the goal of
369 maximum utilization of the mineral resource: *Provided,*
370 *however,* That at a minimum, the constructed barrier must be
371 of sufficient width and height to provide adequate stability and
372 the stability factor must equal or exceed that of the natural
373 outcrop barrier: *Provided further,* That where water quality
374 is paramount, the constructed barrier must be composed of
375 impervious material with controlled discharge points.

376 (c) (1) The commissioner may prescribe procedures pursu-
377 ant to which he may permit surface-mining operations for the
378 purposes set forth in subdivision (3) of this subsection.

379 (2) Where an applicant meets the requirements of subdivi-
380 sions (3) and (4) of this subsection, a permit without regard
381 to the requirement to restore to approximate original contour
382 set forth in subsection (b) or (d) of this section may be granted
383 for the surface mining of coal where the mining operation will
384 remove an entire coal seam or seams running through the
385 upper fraction of a mountain, ridge or hill, except as provided
386 in subparagraph (A), subdivision (4) of this subsection, by
387 removing all of the overburden and creating a level plateau
388 or a gently rolling contour with no highwalls remaining, and
389 capable of supporting postmining uses in accordance with the
390 requirements of this subsection.

391 (3) In cases where an industrial, commercial, woodland,
392 agricultural, residential or public use is proposed for the
393 postmining use of the affected land, the commissioner may
394 grant a permit for a surface-mining operation of the nature
395 described in subdivision (2) of this subsection where: (A) The
396 proposed postmining land use is deemed to constitute an equal
397 or better use of the affected land, as compared with premining
398 use; (B) the applicant presents specific plans for the proposed
399 postmining land use and appropriate assurances that the use

400 will be: (i) Compatible with adjacent land uses; (ii) practicable
401 with respect to achieving the proposed use; (iii) supported by
402 commitments from public agencies where appropriate; (iv)
403 practicable with respect to private financial capability for
404 completion of the proposed use; (v) planned pursuant to a
405 schedule attached to the reclamation plan so as to integrate
406 the mining operation and reclamation with the postmining
407 land use; and (vi) designed by a person approved by the
408 commissioner in conformance with standards established to
409 assure the stability, drainage and configuration necessary for
410 the intended use of the site; (C) the proposed use would be
411 compatible with adjacent land uses, and existing state and
412 local land use plans and programs; (D) the commissioner
413 provides the county commission of the county in which the
414 land is located and any state or federal agency which the
415 commissioner, in his discretion, determines to have an interest
416 in the proposed use, an opportunity of not more than sixty
417 days to review and comment on the proposed use; and (E) all
418 other requirements of this article will be met.

419 (4) In granting any permit pursuant to this subsection, the
420 commissioner shall require that: (A) A natural barrier be
421 retained to inhibit slides and erosion on permit areas where
422 outcrop barriers are required: *Provided*, That constructed
423 barriers may be allowed where (i) natural barriers do not
424 provide adequate stability, (ii) natural barriers would result in
425 potential future water quality deterioration, and (iii) natural
426 barriers would conflict with the goal of maximum utilization
427 of the mineral resource: *Provided, however*, That, at a
428 minimum, the constructed barrier must be sufficient width and
429 height to provide adequate stability and the stability factor
430 must equal or exceed that of the natural outcrop barrier:
431 *Provided further*, That where water quality is paramount, the
432 constructed barrier must be composed of impervious material
433 with controlled discharge points; (B) the reclaimed area is
434 stable; (C) the resulting plateau or rolling contour drains
435 inward from the outslopes except at specific points; (D) no
436 damage will be done to natural watercourses; (E) spoil will be
437 placed on the mountaintop bench as is necessary to achieve
438 the planned postmining land use: *Provided*, That all excess
439 spoil material not retained on the mountaintop shall be placed
440 in accordance with the provisions of subdivision (22),
441 subsection (b) of this section; and (F) ensure stability of the

442 spoil retained on the mountaintop and meet the other
443 requirements of this article.

444 (5) All permits granted under the provisions of this
445 subsection shall be reviewed not more than three years from
446 the date of issuance of the permit; unless the applicant
447 affirmatively demonstrates that the proposed development is
448 proceeding in accordance with the terms of the approved
449 schedule and reclamation plan.

450 (d) In addition to those general performance standards
451 required by this section, when surface mining occurs on slopes
452 of twenty degrees or greater, or on such lesser slopes as may
453 be defined by regulation after consideration of soil and
454 climate, no debris, abandoned or disabled equipment, spoil
455 material or waste mineral matter will be placed on the natural
456 downslope below the initial bench or mining cut: *Provided,*
457 That soil or spoil material from the initial cut of earth in a
458 new surface-mining operation may be placed on a limited
459 specified area of the downslope below the initial cut if the
460 permittee can establish to the satisfaction of the commissioner
461 that the soil or spoil will not slide and that the other
462 requirements of this section can still be met.

463 (e) The commissioner may permit variances from the
464 requirements of this section: *Provided,* That the watershed
465 control of the area is improved: *Provided, however,* That
466 complete backfilling with spoil material shall be required to
467 completely cover the highwall, which material will maintain
468 stability following mining and reclamation.

469 (f) The commissioner shall promulgate regulations for the
470 design, location, construction, maintenance, operation,
471 enlargement, modification, removal and abandonment of new
472 and existing coal mine waste piles. In addition to engineering
473 and other technical specifications, the standards and criteria
474 developed pursuant to this subsection must include provisions
475 for review and approval of plans and specifications prior to
476 construction, enlargement, modification, removal or abandon-
477 ment; performance of periodic inspections during construction;
478 issuance of certificates of approval upon completion of
479 construction; performance of periodic safety inspections; and
480 issuance of notices and orders for required remedial or
481 maintenance work or affirmative action: *Provided,* That

482 whenever the commissioner finds that any coal processing
483 waste pile constitutes an imminent danger to human life, he
484 may, in addition to all other remedies and without the
485 necessity of obtaining the permission of any person prior or
486 present who operated or operates a pile or the landowners
487 involved, enter upon the premises where any such coal
488 processing waste pile exists and may take or order to be taken
489 such remedial action as may be necessary or expedient to
490 secure the coal processing waste pile and to abate the
491 conditions which cause the danger to human life: *Provided,*
492 *however,* That the cost reasonably incurred in any remedial
493 action taken by the commissioner under this subsection may
494 be paid for initially by funds appropriated to the department
495 of energy for these purposes, and the sums so expended shall
496 be recovered from any responsible operator or landowner,
497 individually or jointly, by suit initiated by the attorney general
498 at the request of the commissioner. For purposes of this
499 subsection "operates" or "operated" means to enter upon a
500 coal processing waste pile, or part thereof, for the purpose of
501 disposing, depositing, dumping coal processing wastes thereon
502 or removing coal processing waste therefrom, or to employ a
503 coal processing waste pile for retarding the flow of or for the
504 impoundment of water.

§22A-3-13. Pilot program for the growing of grapes on reclaimed areas.

1 In furtherance of the purposes set forth in subdivision
2 twenty, section twelve of this article, the commissioner is
3 hereby authorized and directed to establish and maintain a
4 pilot program to determine the best procedures for propagat-
5 ing the growth of grapevines and bushes on reclaimed surface-
6 mined areas. Such program shall investigate and implement
7 selections of the best variety of grapes for reclamation
8 purposes based upon environmental considerations and soil
9 quality, the most desirable methods of planting and tending
10 grapes and any other related matters deemed desirable by the
11 commissioner. The cost of such program shall be paid from
12 funds regularly appropriated to the division or department.

§22A-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

1 (a) The commissioner shall promulgate separate regulations
2 directed toward the surface effects of underground coal mining
3 operations, embodying the requirements in subsection (b) of
4 this section: *Provided*, That in adopting such regulations, the
5 commissioner shall consider the distinct difference between
6 surface coal mines and underground coal mines in West
7 Virginia. Such regulations may not conflict with or supersede
8 any provision of the federal or state coal mine health and
9 safety laws or any regulation issued pursuant thereto.

10 (b) Each permit issued by the commissioner pursuant to this
11 article and relating to underground coal mining shall require
12 the operation as minimum to:

13 (1) Adopt measures consistent with known technology in
14 order to prevent subsidence causing material damage to the
15 extent technologically and economically feasible, maximize
16 mine stability and maintain the value and reasonably
17 foreseeable use of overlying surface lands, except in those
18 instances where the mining technology used requires planned
19 subsidence in a predictable and controlled manner: *Provided*,
20 That this subsection does not prohibit the standard method
21 of room and pillar mining;

22 (2) Seal all portals, entryways, drifts, shafts or other
23 openings that connect the earth's surface to the underground
24 mine workings when no longer needed for the conduct of the
25 mining operations in accordance with the requirements of all
26 applicable federal and state law and regulations promulgated
27 pursuant thereto;

28 (3) Fill or seal exploratory holes no longer necessary for
29 mining and maximize to the extent technologically and
30 economically feasible, if environmentally acceptable, return of
31 mine and processing waste, tailings and any other waste
32 incident to the mining operation to the mine workings or
33 excavations;

34 (4) With respect to surface disposal of mine wastes, tailings,
35 coal processing wastes and other wastes in areas other than
36 the mine workings or excavations, stabilize all waste piles
37 created by the operator from current operations through
38 construction in compacted layers, including the use of
39 incombustible and impervious materials, if necessary, and
40 assure that any leachate therefrom will not degrade surface or

41 ground waters below water quality standards established
42 pursuant to applicable federal and state law and that the final
43 contour of the waste accumulation will be compatible with
44 natural surroundings and that the site is stabilized and
45 revegetated according to the provisions of this section;

46 (5) Design, locate, construct, operate, maintain, enlarge,
47 modify and remove or abandon, in accordance with the
48 standards and criteria developed pursuant to subsection (f),
49 section twelve of this article, all existing and new coal mine
50 waste piles consisting of mine wastes, tailings, coal processing
51 wastes and solid wastes and used either temporarily or
52 permanently as dams or embankments;

53 (6) Establish on regraded areas and all other disturbed areas
54 a diverse and permanent vegetative cover capable of self-
55 regeneration and plan succession and at least equal in extent
56 of cover to the natural vegetation of the area within the time
57 period prescribed in subdivision (20), subsection (b), section
58 twelve of this article;

59 (7) Protect off-site areas from damages which may result
60 from such mining operations;

61 (8) Eliminate fire hazards and otherwise eliminate condi-
62 tions which constitute a hazard to health and safety of the
63 public;

64 (9) Minimize the disturbance of the prevailing hydrologic
65 balance at the mine site and in associated off-site areas and
66 to the quantity and the quality of water in surface and ground
67 water systems both during and after mining operations and
68 during reclamation by: (A) Avoiding acid or other toxic mine
69 drainage by such measures as, but not limited to: (i) Preventing
70 or removing water from contact with toxic producing deposits;
71 (ii) treating drainage to reduce toxic content which adversely
72 affects downstream water before being released to water
73 courses; and (iii) casing, sealing or otherwise managing
74 boreholes, shafts and wells to keep acid or other toxic drainage
75 from entering ground and surface waters; and (B) conducting
76 mining operations so as to prevent, to the extent possible using
77 the best technology currently available, additional contribu-
78 tions of suspended solids to stream flow or runoff outside the
79 permit area, but in no event shall the contributions be in excess
80 of requirements set by applicable state or federal law, and

81 avoiding channel deepening or enlargement in operations
82 requiring the discharge of water from mines: *Provided*, That
83 in recognition of the distinct differences between surface and
84 underground mining the monitoring of water from under-
85 ground coal mine workings shall be in accordance with the
86 provisions of the Clean Water Act of 1977;

87 (10) With respect to other surface impacts of underground
88 mining not specified in this subsection, including the
89 construction of new roads or the improvement or use of
90 existing roads to gain access to the site of such activities and
91 for haulage, repair areas, storage areas, processing areas,
92 shipping areas, and other areas upon which are sited
93 structures, facilities or other property or materials on the
94 surface, resulting from or incident to such activities, operate
95 in accordance with the standards established under section
96 twelve of this article for such effects which result from surface-
97 mining operations: *Provided*, That the commissioner shall
98 make such modifications in the requirements imposed by this
99 subdivision as are necessary to accommodate the distinct
100 difference between surface and underground mining in West
101 Virginia;

102 (11) To the extent possible using the best technology
103 currently available, minimize disturbances and adverse impacts
104 of the operation on fish, aquatic life, wildlife and related
105 environmental values, and achieve enhancement of such
106 resources where practicable; and

107 (12) Unless otherwise permitted by the commissioner and in
108 consideration of the relevant safety and environmental factors,
109 locate openings for all new drift mines working in acid
110 producing or iron producing coal seams in a manner as to
111 prevent a gravity discharge of water from the mine.

112 (c) In order to protect the stability of the land, the
113 commissioner shall suspend underground mining under
114 urbanized areas, cities, towns and communities and adjacent
115 to industrial or commercial buildings, major impoundments or
116 permanent streams if he finds imminent danger to inhabitants
117 of the urbanized areas, cities, towns or communities.

118 (d) The provisions of this article relating to permits, bonds,
119 insurance, inspections, reclamation and enforcement, public
120 review and administrative and judicial review shall also be

121 applicable to surface operations and surface impacts incident
122 to an underground mine with such modifications by regulation
123 to the permit application requirements, permit approval or
124 denial procedures and bond requirements as are necessary to
125 accommodate the distinct difference between surface mines
126 and underground mines in West Virginia.

§22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs, progress maps.

1 (a) The commissioner shall cause to be made such inspec-
2 tions of surface-mining operations as are necessary to
3 effectively enforce the requirements of this article and for such
4 purposes the commissioner or his authorized representative
5 shall without advance notice and upon presentation of
6 appropriate credentials: (A) Have the right of entry to, upon
7 or through surface-mining operations or any premises in which
8 any records required to be maintained under subdivision (I),
9 subsection (b) of this section are located; and (B) at reasonable
10 times and without delay, have access to and copy any records
11 and inspect any monitoring equipment or method of operation
12 required under this article.

13 (b) For the purpose of enforcement under this article, in the
14 administration and enforcement of any permit under this
15 article, or for determining whether any person is in violation
16 of any requirement of this article:

17 (1) The commissioner shall at a minimum require any
18 operator to: (A) Establish and maintain appropriate records;
19 (B) make monthly reports to the department; (C) install, use
20 and maintain any necessary monitoring equipment or methods
21 consistent with subdivision (I), subsection (a), section ten of
22 this article; (D) evaluate results in accordance with such
23 methods, at such locations, intervals and in such manner as
24 the commissioner shall prescribe; and (E) provide such other
25 information relative to surface-mining operations as the
26 commissioner deems reasonable and necessary;

27 (2) For those surface-mining operations which remove or
28 disturb strata that serve as aquifers which significantly ensure
29 the hydrologic balance of water use either on or off the mining
30 site, the commissioner shall require that: (A) Monitoring sites
31 be established to record the quantity and quality of surface
32 drainage above and below the mine site as well as in the

33 potential zone of influence; (B) monitoring sites be established
34 to record level, amount and samples of ground water and
35 aquifers potentially affected by the surface mining and also
36 below the lower most mineral seam to be mined; (C) records
37 or well logs and boreholed date be maintained; and (D)
38 monitoring sites be established to record precipitation. The
39 monitoring data collection and analysis required by this
40 section shall be conducted according to standards and
41 procedures set forth by the commissioner in order to assure
42 their reliability and validity.

43 (c) All surface-mining operations shall be inspected at least
44 once every thirty days. Such inspections shall be made on an
45 irregular basis without prior notice to the operator or his
46 agents or employees, except for necessary on-site meetings with
47 the operator. The inspections shall include the filing of
48 inspection reports adequate to enforce the requirements, terms
49 and purposes of this article.

50 (d) Each permittee shall maintain at the entrances to the
51 surface-mining operations a clearly visible monument which
52 sets forth the name, business address and telephone number
53 of the permittee and the permit number of the surface-mining
54 operations.

55 (e) Copies of any records, reports, inspection materials or
56 information obtained under this article by the commissioner
57 shall be made immediately available to the public at central
58 and sufficient locations in the county, multi-county or state
59 area of mining so that they are conveniently available to
60 residents in the areas of mining unless specifically exempted
61 by this article.

62 (f) Within thirty days after service of a copy of an order
63 of the commissioner upon an operator by registered or
64 certified mail, the operator shall furnish to the commissioner
65 five copies of a progress map prepared by or under the
66 supervision of a person approved by the commissioner
67 showing the disturbed area to the date of such map. Such
68 progress map shall contain information identical to that
69 required for both the proposed and final maps required by this
70 article, and shall show in detail completed reclamation work
71 as required by the commissioner. Such progress map shall
72 include a geologic survey sketch showing the location of the

73 operation, shall be properly referenced to a permanent
74 landmark, and shall be within such reasonable degree of
75 accuracy as may be prescribed by the commissioner. If no land
76 has been disturbed by operations during the preceding year,
77 the operator shall notify the commissioner of that fact.

78 (g) Whenever on the basis of available information,
79 including reliable information from any person, the commis-
80 sioner has cause to believe that any person is in violation of
81 this article, any permit condition or any regulation promul-
82 gated under this article, the commissioner shall immediately
83 order state inspection of the surface-mining operation at which
84 the alleged violation is occurring unless the information is
85 available as a result of a prior state inspection. The
86 commissioner shall notify any person who supplied such
87 reliable information when the state inspection will be carried
88 out. Such person may accompany the inspector during the
89 inspection: *Provided*, That except for deliberate and willful
90 acts, the permittee, his authorized agent or employees, and the
91 inspector whom such person is accompanying, shall not be
92 held civilly liable for any injury to such person during the
93 inspection trip. Any such person accompanying an inspector
94 on an inspection shall be responsible for supplying any safety
95 equipment required for his use.

**§22A-3-16. Cessation of operation by order of inspector; informal
conference; imposition of affirmative obligations;
appeal.**

1 (a) Notwithstanding any other provisions of this article, a
2 surface-mining reclamation inspector shall have the authority
3 to issue a cessation order for any portion of a surface-mining
4 operation when an inspector determines that any condition or
5 practice exists, or that any permittee is in violation of any
6 requirements of this article or any permit condition required
7 by this article, which condition, practice or violation also
8 creates an imminent danger to the health or safety of the
9 public, or is causing or can reasonably be expected to cause
10 significant, imminent environmental harm to land, air or water
11 resources. The cessation order shall take effect immediately.
12 Unless waived in writing, an informal conference shall be held
13 at or near the site relevant to the violation set forth in the
14 cessation order within twenty-four hours after the order
15 becomes effective or such order shall expire. The conference

16 shall be held before a surface-mining reclamation supervisor
17 who shall, immediately upon conclusion of said hearing,
18 determine when and if the operation or portion thereof may
19 resume. Any operator who believes he is aggrieved by the
20 decision of the surface-mining reclamation supervisor may
21 immediately appeal to the commissioner, setting forth reasons
22 why the operation should not be halted. The commissioner
23 forthwith shall determine when the operation or portion
24 thereof may be resumed.

25 (b) The cessation order shall remain in effect until the
26 commissioner determines that the condition, practice or
27 violation has been abated, or until modified, vacated or
28 released by the commissioner. Where the commissioner finds
29 that the order cessation of any portion of a surface coal mining
30 operation will not completely abate the imminent danger to
31 health or safety of the public or the significant imminent
32 environmental harm to land, air or water resources, the
33 commissioner shall, in addition to the cessation order, impose
34 affirmative obligations on the operator requiring him to take
35 whatever steps the commissioner deems necessary to abate the
36 imminent danger or the significant environmental harm.

37 (c) Any cessation order issued pursuant to this section or
38 any other provision of this article may be released by any
39 inspector. An inspector shall be readily available to terminate
40 a cessation order upon abatement of the violation.

§22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

1 (a) If any of the requirements of this article, rules and
2 regulations promulgated pursuant thereto or permit conditions
3 have not been complied with, the commissioner may cause a
4 notice of violation to be served upon the operator or his duly
5 authorized agent. A copy of the notice shall be handed to the
6 operator or his duly authorized agent in person or served by
7 certified mail addressed to the operator at the permanent
8 address shown on the application for a permit. The notice shall
9 specify in what respects the operator has failed to comply with
10 this article, rules and regulations or permit conditions and
11 shall specify a reasonable time for abatement of the violation

12 not to exceed fifteen days. If the operator has not abated the
13 violation within the time specified in the notice, or any
14 reasonable extension thereof, not to exceed seventy-five days,
15 the commissioner shall order the cessation of the operation or
16 the portion thereof causing the violation, unless the operator
17 affirmatively demonstrates that compliance is unattainable due
18 to conditions totally beyond the control of the operator. If a
19 violation is not abated within the time specified or any
20 extension thereof, or any cessation order is issued, a
21 mandatory civil penalty of not less than seven hundred fifty
22 dollars per day per violation shall be assessed: *Provided*, That
23 if a cessation order is released or expires within twenty-four
24 hours after issuance no mandatory civil penalty shall be
25 assessed. A cessation order shall remain in effect until the
26 commissioner determines that the violation has been abated
27 or until modified, vacated or terminated by the commissioner
28 or by a court. In any cessation order issued under this
29 subsection the commissioner shall determine the steps
30 necessary to abate the violation in the most expeditious
31 manner possible and shall include the necessary measures in
32 the order.

33 (b) If the commissioner determines that a pattern of
34 violations of any requirement of this article or any permit
35 condition exists or has existed, as a result of the operator's
36 lack of reasonable care and diligence, or that the violations
37 are willfully caused by the operator, the commissioner shall
38 immediately issue an order directing the operator to show
39 cause why the permit should not be suspended or revoked and
40 giving the operator thirty days in which to request a public
41 hearing. If a hearing is requested, the commissioner shall
42 inform all interested parties of the time and place of the
43 hearing. Any hearing under this section shall be recorded and
44 subject to the provisions of chapter twenty-nine-a of this code.
45 Within sixty days following the public hearing, the commis-
46 sioner shall issue and furnish to the permittee and all other
47 parties to the hearing a written decision, and the reasons
48 therefor, concerning suspension or revocation of the permit.
49 Upon the operator's failure to show cause why the permit
50 should not be suspended or revoked, the commissioner shall
51 immediately revoke the operator's permit, forfeit the operator's
52 bond or other security posted pursuant to section eleven of
53 this article, and give notice to the attorney general, who shall

54 collect the forfeiture without delay: *Provided*, That the entire
55 proceeds of such forfeiture shall be deposited with the
56 treasurer of the state of West Virginia to the credit of the
57 special reclamation fund. All forfeitures collected prior to the
58 effective date of this article shall be deposited in the special
59 reclamation fund and shall be expended back upon the areas
60 for which the bond was posted: *Provided, however*, That any
61 excess therefrom shall remain in the special reclamation fund.

62 (c) Any person engaged in surface-mining operations who
63 violates any permit condition or who violates any other
64 provision of this article or rules and regulations promulgated
65 pursuant thereto may also be assessed a civil penalty. The
66 penalty shall not exceed five thousand dollars. Each day of
67 continuing violation may be deemed a separate violation for
68 purposes of penalty assessments. In determining the amount
69 of the penalty, consideration shall be given to the operator's
70 history of previous violations at the particular surface-mining
71 operation, the seriousness of the violation, including any
72 irreparable harm to the environment and any hazard to the
73 health or safety of the public, whether the operator was
74 negligent, and the demonstrated good faith of the operator
75 charged in attempting to achieve rapid compliance after
76 notification of the violation.

77 (d) (1) Upon the issuance of a notice or order pursuant to
78 this section, the assessment officer shall, within thirty days, set
79 a proposed penalty assessment and notify the operator in
80 writing of such proposed penalty assessment. The proposed
81 penalty assessment must be paid in full within thirty days of
82 receipt or, if the operator wishes to contest either the amount
83 of the penalty or the fact of violation, an informal conference
84 with the assessment officer may be requested within fifteen
85 days or a formal hearing before the reclamation board of
86 review may be requested within thirty days. The notice of
87 proposed penalty assessment shall advise the operator of the
88 right to an informal conference and a formal hearing pursuant
89 to this section. When an informal conference is requested, the
90 operator shall have fifteen days from receipt of the assessment
91 officer's decision to request a formal hearing before the board.
92 (A) When an informal conference is held, the assessment
93 officer shall have authority to affirm, modify or vacate the
94 notice, order or proposed penalty assessment. (B) When a

95 formal hearing is requested, the amount of the proposed
96 penalty assessment shall be forwarded to the commissioner for
97 placement in an escrow account. Formal hearings shall be of
98 record and subject to the provisions of article five, chapter
99 twenty-nine-a of this code. Following the hearing the board
100 shall affirm, modify or vacate the notice, order or proposed
101 penalty assessment and, when appropriate, incorporate an
102 assessment order requiring that the assessment be paid.

103 (2) Civil penalties owed under this section may be recovered
104 by the commissioner in the circuit court of Kanawha County.
105 Civil penalties collected under this article shall be deposited
106 with the treasurer of the state of West Virginia to the credit
107 of the special reclamation fund established in section eleven
108 of this article. If, through the administrative or judicial review
109 of the proposed penalty it is determined that no violation
110 occurred or that the amount of the penalty should be reduced,
111 the commissioner shall within thirty days remit the appropriate
112 amount to the person, with interest at the rate of six percent
113 or at the prevailing United States department of the treasury
114 rate, whichever is greater. Failure to forward the money to the
115 commissioner within thirty days shall result in a waiver of all
116 legal rights to contest the violation or the amount of the
117 penalty.

118 (3) Any person having an interest which is or may be
119 adversely affected by any order of the commissioner or the
120 board may file an appeal only in accordance with the
121 provisions of article four, chapter twenty-two of this code,
122 within thirty days after receipt of the order.

123 (4) The filing of an appeal provided for in this section shall
124 not stay execution of the order appealed from. Pending
125 completion of the investigation and hearing required by this
126 section, the applicant may file with the commissioner a written
127 request that the commissioner grant temporary relief from any
128 notice or order issued under section sixteen or seventeen of
129 this article, together with a detailed statement giving reasons
130 for granting such relief. The commissioner shall issue an order
131 or decision granting or denying such relief expeditiously:
132 *Provided*, That where the applicant requests relief from an
133 order for cessation of surface-mining and reclamation
134 operations, the decision on the request shall be issued within
135 forty-eight hours of its receipt. The commissioner may grant

136 such relief, under such conditions as he may prescribe if:

137 (A) All parties to the proceedings have been notified and
138 given an opportunity to be heard on a request for temporary
139 relief;

140 (B) The person requesting the relief shows that there is a
141 substantial likelihood that he will prevail on the merits in the
142 final determination of the proceedings;

143 (C) The relief will not adversely affect the public health or
144 safety or cause significant imminent environmental harm to
145 land, air or water resources; and

146 (D) The relief sought is not the issuance of a permit where
147 a permit has been denied, in whole or in part, by the
148 commissioner.

149 (e) Any person who willfully and knowingly violates a
150 condition of a permit issued pursuant to this article or
151 regulations promulgated pursuant thereto, or fails or refuses
152 to comply with any order issued under said article and
153 regulations or any order incorporated in a final decision issued
154 by the commissioner, is guilty of a misdemeanor, and, upon
155 conviction thereof, shall be fined not less than one hundred
156 dollars nor more than ten thousand dollars, or imprisoned in
157 the county jail not more than one year, or both fined and
158 imprisoned.

159 (f) Whenever a corporate operator violates a condition of
160 a permit issued pursuant to this article, regulations promul-
161 gated pursuant thereto, or any order incorporated in a final
162 decision issued by the commissioner, any director, officer or
163 agent of the corporation who willfully and knowingly
164 authorized, ordered or carried out the failure or refusal, shall
165 be subject to the same civil penalties, fines and imprisonment
166 that may be imposed upon a person under subsections (c) and
167 (e) of this section.

168 (g) Any person who knowingly makes any false statement,
169 representation or certification, or knowingly fails to make any
170 statement, representation or certification in any application,
171 petition, record, report, plan or other document filed or
172 required to be maintained pursuant to this article or
173 regulations promulgated pursuant thereto, is guilty of a
174 misdemeanor, and, upon conviction thereof, shall be fined not

175 less than one hundred dollars nor more than ten thousand
176 dollars, or imprisoned in the county jail not more than one
177 year, or both fined and imprisoned.

178 (h) Whenever any person: (A) Violates or fails or refuses
179 to comply with any order or decision issued by the commis-
180 sioner under this article; or (B) interferes with, hinders or
181 delays the commissioner in carrying out the provisions of this
182 article; or (C) refuses to admit the commissioner to the mine;
183 or (D) refuses to permit inspection of the mine by the
184 commissioner; or (E) refuses to furnish any reasonable
185 information or report requested by the commissioner in
186 furtherance of the provisions of this article; or (F) refuses to
187 permit access to, and copying of, such records as the
188 commissioner determines necessary in carrying out the
189 provisions of this article; or (G) violates any other provisions
190 of this article, the regulations promulgated pursuant thereto,
191 or the terms and conditions of any permit, the commissioner,
192 the attorney general or the prosecuting attorney of the county
193 in which the major portion of the permit area is located may
194 institute a civil action for relief, including a permanent or
195 temporary injunction, restraining order or any other appro-
196 priate order, in the circuit court of Kanawha County or any
197 court of competent jurisdiction to compel compliance with and
198 enjoin such violations, failures or refusals. The court or the
199 judge thereof may issue a preliminary injunction in any case
200 pending a decision on the merits of any application filed
201 without requiring the filing of a bond or other equivalent
202 security.

203 (i) Any person who shall, except as permitted by law,
204 willfully resist, prevent, impede or interfere with the commis-
205 sioner or any of his agents in the performance of duties
206 pursuant to this article is guilty of a misdemeanor, and, upon
207 conviction thereof, shall be punished by a fine of not more
208 than five thousand dollars or by imprisonment for not more
209 than one year, or both.

§22A-3-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a surface-mining application or
2 significant revision or renewal thereof, including public
3 notification and an opportunity for a public hearing, the
4 commissioner shall grant, require revision of, or deny the

5 application for a permit within sixty days and notify the
6 applicant in writing of his decision.

7 (b) No permit or significant revision of a permit may be
8 approved unless the applicant affirmatively demonstrates and
9 the commissioner finds in writing on the basis of the
10 information set forth in the application or from information
11 otherwise available which shall be documented in the approval
12 and made available to the applicant that:

13 (1) The permit application is accurate and complete and
14 that all the requirements of this article and regulations
15 thereunder have been complied with;

16 (2) The applicant has demonstrated that reclamation as
17 required by this article can be accomplished under the
18 reclamation plan contained in the permit application;

19 (3) The assessment of the probable cumulative impact of all
20 anticipated mining in the area on the hydrologic balance, as
21 specified in section nine of this article, has been made by the
22 commissioner and the proposed operation has been designed
23 to prevent material damage to the hydrologic balance outside
24 the permit area;

25 (4) The area proposed to be mined is not included within
26 an area designated unsuitable for surface mining pursuant to
27 section twenty-two of this article or is not within an area under
28 administrative study by the commissioner for such designation;
29 and

30 (5) In cases where the private mineral estate has been
31 severed from the private surface estate, the applicant has
32 submitted: (A) The written consent of the surface owner to
33 the extraction of coal by surface mining; or (B) a conveyance
34 that expressly grants or reserves the right to extract the coal
35 by surface mining; or (C) if the conveyance does not expressly
36 grant the right to extract coal by surface mining, the surface-
37 subsurface legal relationship shall be determined in accordance
38 with applicable law: *Provided*, That nothing in this article shall
39 be construed to authorize the commissioner to adjudicate
40 property rights disputes.

41 (c) Where information available to the department indicates
42 that any surface-mining operation located in the state of West
43 Virginia, owned or controlled by the applicant, is currently in

44 violaton of this article or other environmental laws or
45 regulations, the permit shall not be issued until the applicant
46 submits proof that such violation has been corrected or is in
47 the process of being corrected to the satisfaction of the
48 commissioner or the department or agency which has
49 jurisdiction over the violation, and no permit may be issued
50 to any applicant after a finding by the commissioner, after an
51 opportunity for hearing, that the applicant or the operator
52 specified in the application controls or has controlled mining
53 operations with a demonstrated pattern of willful violations of
54 this article of such nature and duration with such irreparable
55 damage to the environment as to indicate an intent not to
56 comply with the provisions of this article: *Provided*, That if
57 the commissioner finds that the applicant is or has been
58 affiliated with, or managed or controlled by, or is or has been
59 under the common control of, other than as an employee, a
60 person who has had a surface-mining permit revoked or bond
61 or other security forfeited for failure to reclaim lands as
62 required by the laws of this state, he shall not issue a permit
63 to the applicant: *Provided, however*, That subject to the
64 discretion of the commissioner and based upon a petition for
65 reinstatement, permits may be issued to any applicant if, after
66 the revocation or forfeiture, the operator whose permit has
67 been revoked or bond forfeited shall have paid into the special
68 reclamation fund any additional sum of money determined by
69 the commissioner to be adequate to reclaim the disturbed area,
70 and the commissioner is satisfied that the petitioner will
71 comply with this article.

72 (d) (1) In addition to finding the application in compliance
73 with subsection (b) of this section, if the area proposed to be
74 mined contains prime farmland, the commissioner may,
75 pursuant to regulations promulgated hereunder, grant a permit
76 to mine on prime farmland if the operator affirmatively
77 demonstrates that he has the technological capability to restore
78 such mined area, within a reasonable time, to equivalent or
79 higher levels of yield as nonmined prime farmland in the
80 surrounding area under equivalent levels of management, and
81 can meet the soil reconstruction standards in subdivision
82 seven, subsection (b), section twelve of this article. Except for
83 compliance with subsection (b) of this section, the require-
84 ments of subdivision (1) of this subsection shall apply to all
85 permits issued after the third day of August, one thousand nine

86 hundred seventy-seven.

87 (2) Nothing in this subsection shall apply to any permit
88 issued prior to the third day of August, one thousand nine
89 hundred seventy-seven, or to any revisions or renewals thereof,
90 or to any existing surface-mining operations for which a
91 permit was issued prior to said date.

92 (e) If the commissioner finds that the overburden on any
93 part of the area of land described in the application for a
94 permit is such that experience in the state with a similar type
95 of operation upon land with similar overburden shows that
96 one or more of the following conditions cannot feasibly be
97 prevented: (1) Substantial deposition of sediment in stream
98 beds, (2) landslides, or (3) acid-water pollution, the commis-
99 sioner may delete such part of the land described in the
100 application upon which such overburden exists.

**§22A-3-19. Permit revision and renewal requirements; requirements
for transfer; assignment and sale of permit rights;
and operator reassignment.**

1 (a) (1) Any valid permit issued pursuant to this article
2 shall carry with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries of the
4 existing permit. The holders of the permit may apply for
5 renewal and the renewal shall be issued: *Provided*, That on
6 application for renewal, the burden shall be on the opponents
7 of renewal, unless it is established that and written findings
8 by the commissioner are made that: (A) The terms and
9 conditions of the existing permit are not being satisfactorily
10 met: *Provided*, That if the permittee is required to modify
11 operations pursuant to mining or reclamation requirements
12 which become applicable after the original date of permit
13 issuance, the permittee shall be provided an opportunity to
14 submit a schedule allowing a reasonable period to comply with
15 such revised requirements; (B) the present surface-mining
16 operation is not in compliance with the applicable environmen-
17 tal protection standards of this article; (C) the renewal
18 requested substantially jeopardizes the operator's continuing
19 responsibility on existing permit areas; (D) the operator has
20 not provided evidence that the performance bond in effect for
21 said operation will continue in effect for renewal requested as
22 required pursuant to section eleven of this article; or (E) any

23 additional revised or updated information as required pursuant
24 to rules and regulations promulgated by the commissioner has
25 not been provided.

26 (2) If an application for renewal of a valid permit includes
27 a proposal to extend the surface-mining operation beyond the
28 boundaries authorized in the existing permit, except incidental
29 boundary revisions, the applicant shall apply for a new permit.
30 Incidental boundary revisions shall include, but not be limited
31 to, additional areas of disturbance ancillary to permitted
32 surface effects of underground mining operations, provided
33 that the operator has submitted (A) adequate bond, (B) a map
34 showing the disturbed area and facilities, and (C) a reclama-
35 tion plan.

36 (3) Any permit renewal shall be for a term not to exceed
37 the period of time for which the original permit was issued.
38 Application for permit renewal shall be made at least one
39 hundred twenty days prior to the expiration of the valid
40 permit.

41 (4) Any permit renewal application shall be on forms
42 prescribed by the commissioner and shall contain such
43 information as the commissioner requires pursuant to rule or
44 regulation.

45 (b) (1) During the term of the permit, the permittee may
46 submit to the commissioner an application for a revision of
47 the permit, together with a revised reclamation plan.

48 (2) An application for a significant revision of a permit shall
49 be subject to all requirements of this article and regulations
50 promulgated pursuant thereto.

51 (3) Any extension to an area already covered by the permit,
52 except incidental boundary revisions, shall be made by
53 application for another permit.

54 (c) The commissioner shall review outstanding permits of a
55 five-year term before the end of the third year of the permit.
56 Other permits shall be reviewed within the time established by
57 regulations. The commissioner may require reasonable revision
58 or modification of the permit following review: *Provided*, That
59 such revision or modification shall be based upon written
60 findings and shall be preceded by notice to the permittee and
61 opportunity for hearing.

62 (d) No transfer, assignment or sale of the rights granted
63 under any permit issued pursuant to this article shall be made
64 without the prior written approval of the commissioner.

**§22A-3-20. Public notice; written objections; public hearings;
informal conferences.**

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an existing
3 permit pursuant to the provisions of this article, the applicant
4 shall submit to the department a copy of the required
5 advertisement. At the time of submission, the applicant shall
6 place the advertisement in a local newspaper of general
7 circulation in the county of the proposed surface-mining
8 operation at least once a week for four consecutive weeks. The
9 commissioner shall notify various appropriate federal and state
10 agencies as well as local governmental bodies, planning
11 agencies and sewage and water treatment authorities or water
12 companies in the locality in which the proposed surface-mining
13 operation will take place, notifying them of the operator's
14 intention to mine on a particularly described tract of land and
15 indicating the application number and where a copy of the
16 proposed mining and reclamation plan may be inspected.
17 These local bodies, agencies, authorities or companies may
18 submit written comments within a reasonable period estab-
19 lished by the commissioner on the mining application with
20 respect to the effect of the proposed operation on the
21 environment which is within their area of responsibility. Such
22 comments shall be immediately transmitted by the commis-
23 sioner to the applicant and to the appropriate office of the
24 department. The commissioner shall provide the name and
25 address of each applicant to the commissioner of labor who
26 shall within fifteen days from receipt notify the commissioner
27 as to the applicant's compliance, if necessary, with section
28 fourteen, article five, chapter twenty-one of this code.

29 (b) Any person having an interest which is or may be
30 adversely affected, or the officer or head of any federal, state
31 or local governmental agency, shall have the right to file
32 written objections to the proposed initial or revised permit
33 application for a surface-mining operation with the commis-
34 sioner within thirty days after the last publication of the
35 advertisement required in subsection (a) of this section. Such
36 objections shall be immediately transmitted to the applicant

37 by the commissioner and shall be made available to the public.
38 If written objections are filed and an informal conference
39 requested within thirty days of the last publication of the
40 above notice, the commissioner shall then hold a conference
41 in the locality of the proposed mining within three weeks after
42 the close of the public comment period. Those requesting the
43 conference shall be notified and the date, time and location
44 of the informal conference shall also be advertised by the
45 commissioner in a newspaper of general circulation in the
46 locality at least two weeks prior to the scheduled conference
47 date. The commissioner may arrange with the applicant, upon
48 request by any party to the conference proceeding, access to
49 the proposed mining area for the purpose of gathering
50 information relevant to the proceeding. An electronic or
51 stenographic record shall be made of the conference proceed-
52 ing unless waived by all parties. Such record shall be
53 maintained and shall be accessible to the parties at their
54 respective expense until final release of the applicant's
55 performance bond or other security posted in lieu thereof. The
56 commissioner's authorized agent will preside over the
57 conference. In the event all parties requesting the informal
58 conference stipulate agreement prior to the conference and
59 withdraw their request, a conference need not be held.

**§22A-3-21. Decision of commissioner on permit application;
hearing thereon.**

1 (a) If an informal conference has been held the commis-
2 sioner shall issue and furnish the applicant for a permit and
3 persons who were parties to the informal conference with the
4 written finding granting or denying the permit in whole or in
5 part and stating the reasons therefor within thirty days of the
6 informal conference, notwithstanding the requirements of
7 subsection (a), section eighteen of this article.

8 (b) If the application is approved, the permit shall be issued.
9 If the application is disapproved, specific reasons therefor must
10 be set forth in the notification. Within thirty days after the
11 applicant is notified of the commissioner's decision, the
12 applicant or any person with an interest which is or may be
13 adversely affected may request a hearing before the reclama-
14 tion board of review as provided in article four, chapter
15 twenty-two of this code to review the commissioner's decision.

§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain area; exceptions; taxation of minerals underlying land designated unsuitable.

1 (a) The commissioner shall establish a planning process to
2 enable objective decisions based upon competent and
3 scientifically sound data and information as to which, if any,
4 land areas of this state are unsuitable for all or certain types
5 of surface-mining operations pursuant to the standards set
6 forth in subdivisions (1) and (2) of this subsection: *Provided,*
7 That such designation shall not prevent prospecting pursuant
8 to section seven of this article on any area so designated:

9 (1) Upon petition pursuant to subsection (b) of this section,
10 the commissioner shall designate an area as unsuitable for all
11 or certain types of surface-mining operations, if it determines
12 that reclamation pursuant to the requirements of this article
13 is not technologically and economically feasible.

14 (2) Upon petition pursuant to subsection (b) of this section,
15 a surface area may be designated unsuitable for certain types
16 of surface-mining operations, if the operations: (A) Conflict
17 with existing state or local land use plans or programs; (B)
18 affect fragile or historic lands in which the operations could
19 result in significant damage to important historic, cultural,
20 scientific and esthetic values and natural systems; (C) affect
21 renewable resource lands, including significant aquifers and
22 aquifer recharge areas, in which the operations could result in
23 a substantial loss or reduction of long-range productivity of
24 water supply, food or fiber products; or (D) affect natural
25 hazard lands in which the operations could substantially
26 endanger life and property. Such lands to include lands subject
27 to frequent flooding and areas of unstable geology.

28 (3) The commissioner shall develop a process which
29 includes: (A) The review of surface-mining lands; (B) a data
30 base and an inventory system which will permit proper
31 evaluation of the capacity of different land areas of the state
32 to support and permit reclamation of surface-mining opera-
33 tions; (C) a method for implementing land use planning
34 decisions concerning surface-mining operations; and (D)
35 proper notice and opportunities for public participation,
36 including a public hearing prior to making any designation or

37 redesignation pursuant to this section.

38 (4) Determinations of the unsuitability of land for surface
39 mining, as provided for in this section, shall be integrated as
40 closely as possible with present and future land use planning
41 and regulation processes at federal, state and local levels.

42 (5) The requirements of this section shall not apply to lands
43 on which surface-mining operations were being conducted on
44 the third day of August, one thousand nine hundred seventy-
45 seven, or under a permit issued pursuant to this article, or
46 where substantial legal and financial commitments in the
47 operations were in existence prior to the fourth day of
48 January, one thousand nine hundred seventy-seven.

49 (b) The commissioner, or any person having an interest
50 which is or may be adversely affected, shall have the right to
51 petition the commissioner to have an area designated as
52 unsuitable for surface-mining operations or to have such a
53 designation terminated. The petition shall contain allegations
54 of fact with supporting evidence which would tend to establish
55 the allegations. After receipt of the petition, the commissioner
56 shall immediately begin an administrative study of the area
57 specified in the petition. Within ten months after receipt of
58 the petition, the commissioner shall hold a public hearing in
59 the locality of the affected area after appropriate notice and
60 publication of the date, time and location of the hearing. After
61 the commissioner or any person having an interest which is
62 or may be adversely affected has filed a petition and before
63 the hearing required by this subsection, any person may
64 intervene by filing allegations of fact with supporting evidence
65 which would tend to establish the allegations. Within sixty
66 days after the hearing, the commissioner shall issue and furnish
67 to the petitioner and any other party to the hearing, a written
68 decision regarding the petition and the reasons therefor. In the
69 event that all the petitioners stipulate agreement prior to the
70 requested hearing and withdraw their request, the hearing need
71 not be held.

72 (c) Prior to designating any land areas as unsuitable for
73 surface-mining operations, the commissioner shall prepare a
74 detailed statement on: (1) The potential coal resources of the
75 area; (2) the demand for the coal resources; and (3) the impact
76 of the designation on the environment, the economy and the

77 supply of coal.

78 (d) After the third day of August, one thousand nine
79 hundred seventy-seven, and subject to valid existing rights, no
80 surface mining operations, except those which existed on that
81 date, shall be permitted:

82 (1) On any lands in this state within the boundaries of units
83 of the national park system, the national wildlife refuge
84 systems, the national system of trails, the national wilderness
85 preservation system, the wild and scenic rivers system,
86 including study rivers designated under section five-a of the
87 Wild and Scenic Rivers Act, and national recreation areas
88 designated by act of Congress;

89 (2) Which will adversely affect any publicly owned park or
90 places included in the national register of historic sites, or
91 national register of natural landmarks unless approved jointly
92 by the commissioner and the federal, state or local agency with
93 jurisdiction over the park, the historic site or natural
94 landmark;

95 (3) Within one hundred feet of the outside right-of-way line
96 on any public road, except where mine access roads or haulage
97 roads join such right-of-way line, and except that the
98 commissioner may permit the roads to be relocated or the area
99 affected to lie within one hundred feet of the road if, after
100 public notice and an opportunity for a public hearing in the
101 locality, the commissioner makes a written finding that the
102 interests of the public and the landowners affected thereby will
103 be protected;

104 (4) Within three hundred feet from any occupied dwelling,
105 unless waived by the owner thereof, or within three hundred
106 feet of any public building, school, church, community or
107 institutional building, public park, or within one hundred feet
108 of a cemetery; or

109 (5) On any federal lands within the boundaries of any
110 national forest: *Provided*, That surface coal mining operations
111 may be permitted on the lands if the secretary of the interior
112 finds that there are no significant recreational, timber,
113 economic or other values which may be incompatible with the
114 surface-mining operations: *Provided, however*, That the
115 surface operations and impacts are incident to an underground

116 coal mine.

117 (e) Notwithstanding any other provision of this code, the
118 coal underlying any lands designated unsuitable for surface-
119 mining operations under any provisions of this article or
120 underlying any land upon which mining is prohibited by any
121 provisions of this article shall be assessed for taxation purposes
122 according to their value and the Legislature hereby finds that
123 the coal has no value for the duration of the designation or
124 prohibition unless suitable for underground mining not in
125 violation of this article: *Provided*, That the owner of the coal
126 shall forthwith notify the proper assessing authorities if the
127 designation or prohibition is removed so that the coal may be
128 reassessed.

**§22A-3-23. Release of performance bond or deposits; application;
notice; duties of commissioner; public hearings; final
maps on grade release.**

1 (a) The permittee may file a request with the commissioner
2 for the release of a performance bond or deposit. The
3 permittee shall publish an advertisement regarding such
4 request for release in the same manner as is required of
5 advertisements for permit applications. A copy of such
6 advertisements shall be submitted to the commissioner as part
7 of any bond release application and shall contain a notification
8 of the precise location of the land affected, the number of
9 acres, the permit and the date approved, the amount of the
10 bond filed and the portion sought to be released, the type and
11 appropriate dates of reclamation work performed and a
12 description of the results achieved as they relate to the
13 permittee's approved reclamation plan. In addition, as part of
14 any bond release application, the permittee shall submit copies
15 of letters which he has sent to adjoining property owners, local
16 government bodies, planning agencies, sewage and water
17 treatment authorities or water companies in the locality in
18 which the surface-mining operation is located, notifying them
19 of the permittee's intention to seek release from the bond. Any
20 request for grade release shall also be accompanied by final
21 maps.

22 (b) Upon receipt of the application for bond release, the
23 commissioner, within thirty days, taking into consideration
24 existing weather conditions, shall conduct an inspection and

25 evaluation of the reclamation work involved. Such evaluation
26 shall consider, among other things, the degree of difficulty to
27 complete any remaining reclamation, whether pollution of
28 surface and subsurface water is occurring, the probability of
29 continuance or future occurrence of such pollution and the
30 estimated cost of abating such pollution. The commissioner
31 shall notify the permittee in writing of his decision to release
32 or not to release all or part of the performance bond or deposit
33 within sixty days from the date of the initial publication of
34 the advertisement if no public hearing is requested. If a public
35 hearing is held, the commissioner's decision shall be issued
36 within thirty days thereafter.

37 (c) If the commissioner is satisfied that reclamation covered
38 by the bond or deposit or portion thereof has been accomp-
39 lished as required by this article, he may release said bond or
40 deposit, in whole or in part, according to the following
41 schedule:

42 (1) When the operator completes the backfilling, regrading
43 and drainage control of a bonded area in accordance with his
44 approved reclamation plan, the release of sixty percent of the
45 bond or collateral for the applicable bonded area: *Provided*,
46 That a minimum bond of ten thousand dollars shall be
47 retained after grade release;

48 (2) Two years after the last augmented seeding, fertilizing,
49 irrigation or other work to ensure compliance with subdivision
50 (19), subsection (b), section twelve of this article, the release
51 of an additional twenty-five percent of the bond or collateral
52 for the applicable bonded area: *Provided*, That a minimum
53 bond of ten thousand dollars shall be retained after the release
54 provided for in this subdivision; and

55 (3) When the operator has completed successfully all surface
56 mining and reclamation activities, the release of the remaining
57 portion of the bond, but not before the expiration of the
58 period specified in subdivision (20), subsection (b), section
59 twelve of this article: *Provided*, That the revegetation has been
60 established on the regraded mined lands in accordance with
61 the approved reclamation plan: *Provided, however*, That such
62 a release may be made where the quality of the untreated post-
63 mining water discharged is better than or equal to the
64 premining water quality discharged from the mining site.

65 No part of the bond or deposit may be released under this
66 subsection so long as the lands to which the release would be
67 applicable are contributing additional suspended solids to
68 streamflow or runoff outside the permit area in excess of the
69 requirements set by section twelve or thirteen of this article,
70 or until soil productivity for prime farmlands has returned to
71 equivalent levels of yield as nonmined land of the same soil
72 type in the surrounding area under equivalent management
73 practices as determined from the soil survey performed
74 pursuant to section nine of this article. Where a sediment dam
75 is to be retained as a permanent impoundment pursuant to
76 section twelve of this article, or where a road or minor
77 deviation is to be retained for sound future maintenance of
78 the operation, the portion of the bond may be released under
79 this subsection so long as provisions for sound future
80 maintenance by the operator or the landowner have been made
81 with the commissioner.

82 (d) If the commissioner disapproves the application for
83 release of the bond or portion thereof, the commissioner shall
84 notify the permittee, in writing, stating the reasons for
85 disapproval and recommending corrective actions necessary to
86 secure said release and notifying the operator of his right to
87 a hearing.

88 (e) When any application for total or partial bond release
89 is filed with the commissioner, he shall notify the municipality
90 in which a surface-mining operation is located by registered
91 or certified mail at least thirty days prior to the release of all
92 or a portion of the bond.

93 (f) Any person with a valid legal interest which is or may
94 be adversely affected by release of the bond or the responsible
95 officer or head of any federal, state or local governmental
96 agency which has jurisdiction by law or special expertise with
97 respect to any environmental, social or economic impact
98 involved in the operation, or is authorized to develop and
99 enforce environmental standards with respect to such
100 operations, has the right to file written objections to the
101 proposed bond release and request a hearing with the
102 commissioner within thirty days after the last publication of
103 the permittee's advertisement. If written objections are filed
104 and a hearing requested, the commissioner shall inform all of
105 the interested parties of the time and place of the hearing and

106 shall hold a public hearing in the locality of the surface-mining
107 operation proposed for bond release within three weeks after
108 the close of the public comment period. The date, time and
109 location of such public hearing shall also be advertised by the
110 commissioner in a newspaper of general circulation in the same
111 locality.

112 (g) Without prejudice to the rights of the objectors, the
113 applicant, or the responsibilities of the commissioner pursuant
114 to this section, the commissioner may hold an informal
115 conference to resolve any written objections and satisfy the
116 hearing requirements of this section thereby.

117 (h) For the purpose of such hearing, the commissioner has
118 the authority and is hereby empowered to administer oaths,
119 subpoena witnesses and written or printed materials, compel
120 the attendance of witnesses, or production of materials, and
121 take evidence including, but not limited to, inspections of the
122 land affected and other surface-mining operations carried on
123 by the applicant in the general vicinity. A verbatim record of
124 each public hearing required by this section shall be made and
125 a transcript made available on the motion of any party or by
126 order of the commissioner at the cost of the person requesting
127 the transcript.

§22A-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article shall be construed as affecting in
2 any way the rights of any person to enforce or protect, under
3 applicable law, his interest in water resources affected by a
4 surface-mining operation.

5 (b) Any operator shall replace the water supply of an owner
6 of interest in real property who obtains all or part of his supply
7 of water for domestic, agricultural, industrial or other
8 legitimate use from an underground or surface source where
9 such supply has been affected by contamination, diminution
10 or interruption proximately caused by such surface-mining
11 operation, unless waived by said owner.

§22A-3-25. Citizen suits; order of court; damages.

1 (a) Except as provided in subsection (b) of this section, any
2 person having an interest which is or may be adversely affected
3 may commence a civil action in the circuit court of the county
4 to which the surface-mining operation is located on his own

5 behalf to compel compliance with this article:

6 (1) Against the state of West Virginia or any other
7 governmental instrumentality or agency thereof, to the extent
8 permitted by the West Virginia constitution and by law, which
9 is alleged to be in violation of the provisions of this article
10 or any rule, regulation, order or permit issued pursuant
11 thereto, or against any other person who is alleged to be in
12 violation of any rule, regulation, order or permit issued
13 pursuant to this article; or

14 (2) Against the commissioner, department, division,
15 reclamation board of review or appropriate department
16 employees, to the extent permitted by the West Virginia
17 constitution and by law, where there is alleged a failure of the
18 above to perform any act or duty under this article which is
19 not discretionary.

20 (b) No action may be commenced:

21 (1) Under subdivision (1), subsection (a) of this section: (A)
22 prior to sixty days after the plaintiff has given notice in writing
23 of the violation to the commissioner or to any alleged violator,
24 or (B) if the commissioner has commenced and is diligently
25 prosecuting a civil action in a circuit court to require
26 compliance with the provisions of this article or any rule or
27 regulation, order or permit issued pursuant to this article; or

28 (2) Under subdivision (2), subsection (a) of this section prior
29 to sixty days after the plaintiff has given notice in writing of
30 such action to the commissioner, except that such action may
31 be brought immediately after such notification in the case
32 where the violation or order complained of constitutes an
33 imminent threat to the health or safety of the plaintiff or
34 would immediately affect a legal interest of the plaintiff.

35 (c) Any action respecting a violation of this article or the
36 regulations thereunder may be brought in any appropriate
37 circuit court. In such action under this section, the commis-
38 sioner, if not a party, may intervene as a matter of right.

39 (d) The court in issuing any final order in any action
40 brought pursuant to subsection (a) of this section may award
41 costs of litigation, including reasonable attorney and expert
42 witness fees, to any party whenever the court determines such
43 award is appropriate. The court may, if a temporary

44 restraining order or preliminary injunction is sought, require
45 the filing of a bond or equivalent security.

46 (e) Nothing in this section shall restrict any right which any
47 person or class of persons may have under any statute or
48 common law to seek enforcement of any of the provisions of
49 this article and the regulations thereunder or to seek any other
50 relief.

51 (f) Any person or property who is injured in his person
52 through the violation by any operator of any rule, regulation,
53 order or permit issued pursuant to this article may bring an
54 action for damages, including reasonable attorney and expert
55 witness fees, in any court of competent jurisdiction. Nothing
56 in this subsection shall affect the rights established by or limits
57 imposed under state worker's compensation laws.

58 (g) This section shall apply to violations of this article and
59 the regulations promulgated thereto, or orders or permits
60 issued pursuant to said article insofar as said violations,
61 regulations, orders and permits relate to surface-mining
62 operations.

§22A-3-26. Surface-mining operations not subject to article.

1 The provisions of this article do not apply to any of the
2 following activities:

3 (a) The extraction of coal by a landowner for his own
4 noncommercial use from land owned or leased by him.

5 (b) The extraction of coal by a landowner engaged in
6 construction, which construction does not require the
7 disturbance of more than one acre of privately owned land:
8 *Provided*, That prior to the extraction of coal by such
9 landowner, he shall affirmatively demonstrate that such
10 construction will occur within a reasonable time after surface
11 disturbance.

12 (c) Notwithstanding any other provision of this article, a
13 person or operator shall not be subject to the reclamation
14 requirements of this article when engaged in the removal of
15 borrow and fill material for grading in federal and state
16 highway or other construction projects: *Provided*, That the
17 provisions of the construction contract require the furnishing
18 of a suitable bond which provides for reclamation, wherever

19 practicable, of the area affected by such recovery activity.

20 (d) The extraction of coal for commercial purposes where
21 the surface mining operation affects two acres or less:
22 *Provided*, That the entity conducting or planning to conduct
23 said operation complies with the provisions of section ten-a
24 of this article.

§22A-3-27. Leasing of lands owned by state for surface mining of coal.

1 No land or interest in land owned by the state may be
2 leased, and no present lease may be renewed by the state, nor
3 any agency of the state, for the purpose of conducting surface-
4 mining operations thereon unless said lease or renewal shall
5 have been first authorized by an act of the Legislature:
6 *Provided*, That the provisions of this section shall not apply
7 to underground mining on such land.

§22A-3-28. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.

1 (a) Except where exempted by section twenty-six of this
2 article, it shall hereafter be unlawful for any person to engage
3 in surface mining as defined in this article as an incident to
4 the development of land for commercial, residential, industrial
5 or civic use without having first obtained from the commis-
6 sioner a permit therefor as provided in section eight of this
7 article, unless a special permit therefor shall have been first
8 obtained from the commissioner as provided in this section.

9 Application for a special permit to engage in surface mining
10 as an incident to the development of land for commercial,
11 residential, industrial or civic use shall be made in writing on
12 forms prescribed by the commissioner and shall be signed and
13 verified by the applicant. The application shall be accompanied
14 by:

15 (1) A site preparation plan, prepared and certified by or
16 under the supervision of a person approved by the commis-
17 sioner, showing the tract of land which the applicant proposes
18 to develop for commercial, residential, industrial or civic use;
19 the probable boundaries and areas of the coal deposit to be
20 mined and removed from said tract of land incident to the

21 proposed commercial, residential, industrial or civic use
22 thereof; and such other information as prescribed by the
23 commissioner;

24 (2) A development plan for the proposed commercial,
25 residential, industrial or civic use of said land;

26 (3) The name of owner of the surface of the land to be
27 developed;

28 (4) The name of owner of the coal to be mined incident to
29 the development of the land;

30 (5) A reasonable estimate of the number of acres of coal
31 that would be mined as a result of the proposed development
32 of said land: *Provided*, That in no event may such number
33 of acres to be mined, excluding roadways, exceed five acres;
34 and

35 (6) Such other information as the commissioner may require
36 to satisfy and assure the commissioner that the surface mining
37 under special permit is incidental or secondary to the proposed
38 commercial, residential, industrial or civic use of said land.

39 (b) There shall be attached to the application for the special
40 permit a certificate of insurance certifying that the applicant
41 has in force a public liability insurance policy issued by an
42 insurance company authorized to do business in this state
43 affording personal injury protection in accordance with
44 subsection (d), section nine of this article.

45 The application for the special permit shall also be
46 accompanied by a bond, or cash or collateral securities or
47 certificates of the same type, in the form as prescribed by the
48 commissioner and in the minimum amount of two thousand
49 dollars per acre, for a maximum disturbance of five acres.

50 The bond shall be payable to the state of West Virginia and
51 conditioned that the applicant shall complete the site
52 preparation for the proposed commercial, residential,
53 industrial or civic use of said land. At the conclusion of the
54 site preparation, in accordance with the site preparation plan
55 submitted with the application, the bond conditions shall be
56 satisfied and the bond and any cash, securities or certificates
57 furnished with said bond may be released and returned to the
58 applicant. The filing fee for the special permit shall be five

59 hundred dollars. The special permit shall be valid until work
60 permitted is completed.

61 (c) The purpose of this section is to vest jurisdiction in the
62 commissioner, where the surface mining is incidental or
63 secondary to the preparation of land for commercial,
64 residential, industrial or civic use and where, as an incident
65 to such preparation of land, minerals must be removed,
66 including, but not limited to, the building and construction of
67 railroads, shopping malls, factory and industrial sites,
68 residential and building sites, and recreational areas. Anyone
69 who has been issued a special permit shall not be issued an
70 additional special permit on the same or adjacent tract of land
71 unless satisfactory evidence has been submitted to the
72 commissioner that such permit is necessary to subsequent
73 development or construction. As long as the operator complies
74 with the purpose and provisions of this section, the other
75 sections of this article shall not be applicable to the operator
76 holding a special permit: *Provided*, That the commissioner
77 shall promulgate regulations establishing applicable perfor-
78 mance standards for operations permitted under this section.

79 (d) The commissioner may, in the exercise of his sound
80 discretion, when not in conflict with the purposes and findings
81 of this article and to bring about a more desirable land use
82 or to protect the public and the environment, issue a special
83 permit solely for the reprocessing of existing abandoned coal
84 processing waste piles. The commissioner shall promulgate
85 specific regulations for such operations: *Provided*, That a bond
86 and a reclamation plan shall be required for such operations.

**§22A-3-29. Existing permits and performance bond conversion;
exemption from design criteria.**

1 (a) All surface disturbance reclamation bonds submitted
2 pursuant to the requirements of chapter twenty-two of this
3 code by the department of mines for operations which
4 continue to operate eight months after the approval of the
5 state program shall be released upon notification by the
6 commissioner that the disturbed areas have been bonded in
7 accordance with the provisions of this article: *Provided*, That
8 for those operations permitted after the first day of July, one
9 thousand nine hundred seventy-six, and which do not continue
10 operation eight months after the approval of the state

11 program, the commissioner upon reclamation of the site in
12 accordance with the underground opening approval reclama-
13 tion plan, shall release such bonds: *Provided, however,* That
14 forfeiture proceedings shall begin upon failure of the operator
15 to reclaim within a reasonable time the disturbed area
16 pursuant to a plan approved after the first day of July, one
17 thousand nine hundred seventy-six.

18 (b) With regard to existing structures and facilities, persons
19 need not comply with design criteria if such structures and
20 facilities meet the environmental performance standards of this
21 article.

§22A-3-30. Experimental practices.

1 In order to encourage advances in surface mining and
2 reclamation practices or to allow postmining land use for
3 industrial, commercial, residential, agricultural or public use,
4 including recreational facilities, the commissioner may
5 authorize departures, in individual cases and on an experimen-
6 tal basis, from the environmental protection performance
7 standards promulgated under this article. Such departures may
8 be authorized if the experimental practices are potentially
9 more or at least as environmentally protective during and after
10 surface-mining operations as those required by promulgated
11 standards; the surface-mining operations approved for
12 particular land use or other purposes are not larger or more
13 numerous than necessary to determine the effectiveness and
14 economic feasibility of the experimental practices; and the
15 experimental practices do not reduce the protection afforded
16 health or safety of the public below that provided by
17 promulgated standards.

§22A-3-31. Certification and training of blasters.

1 The director of the division of mines and minerals shall be
2 responsible for the training, examination and certification of
3 persons engaging in or directly responsible for blasting or use
4 of explosives in surface-mining operations.

§22A-3-32. Surface miner certification required.

1 After the first day of July, one thousand nine hundred
2 seventy-six, certification shall be required of all surface miners
3 in accordance with the provisions of articles nine and ten,
4 chapter twenty-two of this code and the regulations promul-

5 gated thereunder.

§22A-3-33. Certification of surface-mine foremen.

1 (a) In every surface mine where five or more persons are
2 employed in a period of twenty-four hours, the operator shall
3 employ at least one person certified in accordance with the
4 provisions of article nine, chapter twenty-two of this code as
5 a mine foreman. Each applicant for certification as a mine
6 foreman shall, at the time he is issued a certificate of
7 competency: (1) Be a resident or employed in a mine in this
8 state; (2) have had at least three years' experience in surface
9 mining, which shall include at least eighteen months'
10 experience on or at a working section of a surface mine, or
11 be a graduate of the school of mines at West Virginia
12 University or of another accredited mining engineering school
13 and have had at least two years' practical experience in a
14 surface mine, which shall include at least eighteen months'
15 experience on or at a working section of a surface mine; and
16 (3) have demonstrated his knowledge of mine safety, first aid,
17 safety appliances, emergency procedures relative to all
18 equipment, state and federal mining laws and regulations and
19 other subjects, by completing such training, education and
20 examinations as may be required of him under article nine,
21 chapter twenty-two of this code.

22 (b) In surface mines in which the operations are so extensive
23 that the duties devolving upon the mine foreman cannot be
24 discharged by one person, one or more assistant mine foreman
25 may be designated. Such persons shall act under the
26 instruction of the mine foreman who shall be responsible for
27 their conduct in the discharge of their duties. Each assistant
28 so designated shall be certified under the provisions of article
29 nine, chapter twenty-two of this code. Each applicant for
30 certification as assistant mine foreman shall, at the time he is
31 issued a certificate of competency, possess all of the
32 qualifications required of a mine foreman: *Provided*, That he
33 shall, at the time he is certified, be required to have at least
34 two years' experience in surface mining, which shall include
35 eighteen months on or at a working section of a surface mine
36 or be a graduate of the school of mines at West Virginia
37 University or of another accredited mining engineering school
38 and have had twelve months' practical experience in a surface
39 mine, all of which shall have been on or at a working section.

40 (c) The director of the division of mines and minerals shall
41 promulgate such rules and regulations as may be necessary to
42 carry out the provisions of this section.

§22A-3-34. Monthly report by operator.

1 The operator of every surface mine shall, on or before the
2 end of each calendar month, file with the director of the
3 division of mines and minerals a report covering the preceding
4 calendar month on forms furnished by said director. Such
5 reports shall state the number of accidents which have
6 occurred, the number of persons employed, the days worked
7 and the actual tonnage of raw coal mined.

§22A-3-35. Applicability and enforcement of laws safeguarding life and property; regulations; authority of division of mines and minerals regarding enforcing safety laws.

1 All provisions of the mining laws of this state intended to
2 safeguard life and property shall extend to all surface mining
3 operations insofar as such laws are applicable thereto. The
4 commissioner shall promulgate reasonable regulations in
5 accordance with the provisions of chapter twenty-nine-a of this
6 code to protect the safety of those employed in and around
7 surface mines. The enforcement of all laws and regulations
8 relating to the safety of those employed in and around surface
9 mines is hereby vested in the division of mines and minerals
10 and shall be enforced according to the provisions of chapter
11 twenty-two-a of this code.

§22A-3-36. Conflicting provisions.

1 In the event of any inconsistency or conflict between any
2 provision of this article and any provision of this chapter, the
3 provisions of this article shall control.

§22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.

1 (a) No employee of the division of mines and minerals
2 engaged in the enforcement or administration of this article
3 or employee of the reclamation board of review performing
4 any function or duty under this article shall have a direct or
5 indirect financial interest in any surface-mining operation.
6 Whoever knowingly violates the provisions of this subsection
7 is guilty of a misdemeanor, and, upon conviction thereof, shall

8 be fined not more than two thousand five hundred dollars, or
9 imprisoned in the county jail not more than one year, or both
10 fined and imprisoned. The commissioner shall establish
11 methods by which the provisions of this subsection will be
12 monitored and enforced, including appropriate provisions for
13 the filing and the review of statements and supplements thereto
14 concerning any financial interest which may be affected by this
15 subsection.

16 (b) No person shall discharge or in any other way
17 discriminate against, or cause to be fired or discriminated
18 against, any employee or any authorized representative of
19 employees by reason of the fact that the employee or
20 representative has filed, instituted, or caused to be filed or
21 instituted, any proceeding under this article, or has testified
22 or is about to testify in any proceeding resulting from the
23 administration or enforcement of the provisions of this article.

24 (c) Any employee or a representative of employees who has
25 reason to believe that he has been fired or otherwise
26 discriminated against by any person in violation of subsection
27 (b) of this section may, within thirty days after the alleged
28 violation occurs, petition to the reclamation board of review
29 for a review of the firing or discrimination. The employee or
30 representative shall be known as the petitioner and shall serve
31 a copy of the petition upon the person or operator who will
32 be the respondent. The participants shall be given ten days'
33 written notice of the hearing before the board and the hearing
34 shall be held within thirty days of the filing of the petition.
35 The board shall have the same powers and shall hear the
36 petition in the same manner as provided in subsections (e) and
37 (f), section two, article four, chapter twenty-two of this code.

38 (d) If the board finds that the alleged violation did occur,
39 it shall issue an order incorporating therein findings of fact
40 and conclusions requiring the participant committing the violation
41 violation to take such affirmative action to abate the violation
42 by appropriate action, including, but not limited to, the hiring
43 or reinstatement of the employee or representative to his
44 former position with compensation. If the board finds no
45 violation, it shall issue a finding to that effect. Orders issued
46 by the board under this section shall be subject to judicial
47 review in the same manner as other orders of the board issued
48 under this article.

49 (e) Whenever an order is issued under this section to abate
50 any violation, at the request of the petitioner a sum equal to
51 the aggregate costs and expenses, including attorneys' fees to
52 have been reasonably incurred by the petitioner for, or in
53 connection with, the institution and prosecution of the
54 proceedings, shall be assessed against the person committing
55 the violation.

§22A-3-38. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall
3 not affect other provisions or applications of this article, and
4 to this end the provisions of this article are declared to be
5 severable: *Provided*, That in promulgating rules pursuant to
6 the provisions of this article, the commissioner shall note
7 relevant administrative and judicial decisions from both state
8 and federal systems and action by the United States Congress
9 or the United States department of the interior.

**§22A-3-39. Validity of regulations promulgated under section 502(c)
of the Surface Mining Control and Reclamation Act
of 1977.**

1 (a) All rules and regulations promulgated under section
2 502(c) of the federal Surface Mining Control and Reclamation
3 Act of 1977 (Public Law 95-87), pursuant to the provisions
4 of chapter sixty-three, acts of the Legislature, regular session,
5 one thousand nine hundred seventy-eight, and chapter seventy-
6 one, acts of the Legislature, regular session, one thousand nine
7 hundred seventy-nine, shall remain in full force and effect until
8 the expiration of eight months after approval of the West
9 Virginia state program under section 503 of Public Law 95-
10 87 upon proclamation of the governor that the approval has
11 been granted: *Provided*, That those persons conducting
12 operations under a permit or underground opening approval
13 issued in accordance with said section 502(c), and in
14 compliance therewith, shall be subject to said regulations until
15 the administrative decision pertaining to the granting or
16 denying of a permit under this article has been made by the
17 commissioner.

18 (b) Permits granted under this article shall be subject to rules
19 and regulations promulgated hereunder.

§22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

1 (a) Notwithstanding any provisions of this chapter to the
2 contrary, all powers, duties and responsibilities of the chief of
3 the division of water resources under article five-a, chapter
4 twenty of this code with respect to all coal mines, preparation
5 plants and all refuse and waste therefrom subject to said article
6 five-a, chapter twenty of this code are hereby transferred to
7 the commissioner. The commissioner shall have sole authority
8 to issue, amend, transfer, renew or revoke all permits required
9 under article five-a, chapter twenty-two of this code with
10 respect to all coal mines, preparation plants and all refuse and
11 waste therefrom subject to said article five-a. The procedures
12 for issuance, amendment, transferral, renewal and revocation
13 of such permits shall be governed by regulations promulgated
14 pursuant to subsection (b). The commissioner shall consolidate
15 the various permit programs under article five-a, chapter
16 twenty of this code and article three of this chapter applicable
17 to all coal mines, preparation plants and all refuse and waste
18 therefrom. All provisions of article five-a, chapter twenty of
19 this code heretofore applicable to coal mines, preparation
20 plants and all refuse and waste therefrom shall be continued
21 under this section.

22 (b) Notwithstanding any provisions of this chapter to the
23 contrary, the commissioner shall have sole authority to
24 promulgate rules and regulations necessary or proper to
25 implement the provisions of article five-a, chapter twenty of
26 this code with respect to all coal mines, preparation plants and
27 all refuse and waste therefrom, except that the water resources
28 board shall have the sole authority pursuant to section three-
29 a, article five-a, chapter twenty of this code to promulgate
30 rules and regulations setting standards of water quality
31 applicable to the waters of the state. To the extent feasible,
32 the commissioner shall promulgate rules and regulations
33 consolidating the various regulatory programs under this
34 chapter applicable to all coal mines, preparation plants and
35 all refuse and waste therefrom. The promulgation of such rules
36 and regulations shall be governed by the provisions of this
37 article.

38 (c) Notwithstanding any provisions of this chapter to the
39 contrary, the commissioner shall have the sole authority to
40 enforce and shall enforce the rules and regulations promul-
41 gated under this article by the commissioner and the rules and
42 regulations of the water resources board setting water quality
43 standards for the waters of the state as they apply to all coal
44 mines, preparation plants and all refuse and waste therefrom.
45 Rules and regulations adopted by the commissioner, pursuant
46 to the requirements of article five-a, chapter twenty of this
47 code shall be enforceable by the commissioner under the
48 provisions of sections seventeen and nineteen, article five-a,
49 chapter twenty of this code, as though the regulations were
50 promulgated by the water resources board: *Provided*, That the
51 commissioner's authority to enforce such rules and regulations
52 under article five-a, chapter twenty of this code shall not
53 preclude the commissioner or any person from invoking the
54 remedies otherwise provided by article three of this chapter
55 and shall not preclude the commissioner from enforcing the
56 provisions of this article.

57 (d) Notwithstanding any provisions of this chapter to the
58 contrary, any permit of the commissioner issued pursuant to
59 subsection (a) of this section, or any order issued under article
60 five-a, chapter twenty of this code, or for the purpose of
61 implementing the "National Pollutant Discharge Elimination
62 System" established under the federal Clean Water Act, shall
63 be appealable only to the state water resources board and such
64 appeal shall be governed by the provisions of section fifteen,
65 article five-a, chapter twenty of this code.

66 (e) This section shall become effective upon a proclamation
67 by the governor stating that final approval of the partial
68 transfer of the National Pollutant Discharge Elimination
69 System established under the federal Clean Water Act
70 contemplated by this section has been given by the Admin-
71 istrator of the United States Environmental Protection
72 Agency.

ARTICLE 4. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

§22A-4-1. Jurisdiction vested in department of energy; legislative purpose;
apportionment of responsibility.

§22A-4-2. Definitions.

§22A-4-3. Department of energy; duties and functions.

- §22A-4-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
- §22A-4-5. Duties of surface-mining reclamation inspectors.
- §22A-4-6. Permit required; application; issuance and renewal; fees and use of proceeds.
- §22A-4-7. Preplans.
- §22A-4-8. Installation of drainage system.
- §22A-4-9. Alternative plans; time.
- §22A-4-10. Limitations; mandamus.
- §22A-4-11. Blasting restriction; formula; filing preplan; penalties; notice.
- §22A-4-12. Time in which reclamation shall be done.
- §22A-4-13. Obligations of the operator.
- §22A-4-14. Cessation of operation by inspector.
- §22A-4-15. Completion of planting; inspection and evaluation.
- §22A-4-16. Performance bonds.
- §22A-4-17. Exception as to highway construction projects for reclamation requirements.
- §22A-4-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.
- §22A-4-19. Monthly report by operator.
- §22A-4-20. Rules and regulations.
- §22A-4-21. Noncompliance.
- §22A-4-22. Adjudications, findings, etc., to be by written order; contents; notice.
- §22A-4-23. Appeals to board; hearing; record; findings and orders of board.
- §22A-4-24. Appeal from order of board.
- §22A-4-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.
- §22A-4-26. Validity and construction of existing surface-mining permits.
- §22A-4-27. Certification of surface miners.
- §22A-4-28. Certification of surface mine foremen.

§22A-4-1. Jurisdiction vested in department of energy; legislative purpose; apportionment of responsibility.

1 Except as otherwise provided in section eighteen of this
2 article, the department of energy is hereby vested with
3 jurisdiction over all aspects of surface mining and with
4 jurisdiction and control over land, water and soil aspects
5 pertaining to surface-mining operations, and the restoration
6 and reclamation of lands surface mined and areas affected
7 thereby.

8 The Legislature finds that, although surface mining provides
9 much needed employment and has produced good safety
10 records, unregulated surface mining causes soil erosion, pyritic
11 shales and materials landslides, noxious materials, stream
12 pollution and accumulation of stagnant water, increases the
13 likelihood of floods and slides, destroys the value of some
14 lands for agricultural purposes and some lands for recreational

15 purposes, destroys aesthetic values, counteracts efforts for the
16 conservation of soil, water and other natural resources, and
17 destroys or impairs the health, safety, welfare and property
18 rights of the citizens of West Virginia, where proper mining
19 and reclamation is not practiced.

20 The Legislature also finds that there are wide variations
21 regarding location and terrain conditions surrounding and
22 arising out of the surface mining primarily in topographical
23 and geological conditions, and by reason thereof, it is
24 necessary to provide the most effective, beneficial and
25 equitable solution to the problems involved.

26 The Legislature further finds that authority should be vested
27 in the commissioner of the department of energy to administer
28 and enforce the provisions of this article.

29 The commissioner of the department of energy and the
30 director of the division of mines and minerals shall cooperate
31 with respect to departmental programs and records so as to
32 effect an orderly and harmonious administration of the
33 provisions of this article. The commissioner of energy may
34 avail himself of any services which may be provided by other
35 state agencies in this state and other states or by agencies of
36 the federal government, and may reasonably compensate them
37 for such services. He may also receive any federal funds, state
38 funds or any other funds for the reclamation of land affected
39 by surface mining.

40 No public officer or employee in the department of energy,
41 the division of mines and minerals, or the office of attorney
42 general, having any responsibility or duty either directly or of
43 a supervisory nature with respect to the administration or
44 enforcement of this article shall (1) engage in surface mining
45 as a sole proprietor or as a partner or (2) be an officer,
46 director, stockholder, owner or part owner of any corporation
47 or other business entity engaged in surface mining or (3) be
48 employed as an attorney, agent or in any other capacity by
49 any person, partnership, firm, association, trust or corporation
50 engaged in surface mining. Any violation of this paragraph by
51 any such public officer or employee shall constitute grounds
52 for his removal from office or dismissal from his employment,
53 as the case may be.

§22A-4-2. Definitions.

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

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner
5 that will cause the analyzed pH level of the treated water to
6 be 6.0 - 9.0 and analyzed content of iron of the treated water
7 to be seven milligrams per liter or less, or approved treatment
8 which will not lower the water quality standards established
9 for the river, stream or drainway into which such water is
10 released.

11 (b) "Breakthrough" means the release of water which has
12 been trapped or impounded underground, or the release of air
13 into any underground cavity, pocket or area.

14 (c) "Commissioner" means the commissioner of the
15 department of energy or his authorized agents.

16 (d) "Disturbed land" or "land disturbed" shall mean (1) the
17 area from which the overburden has been removed in surface-
18 mining operation, (2) the area covered by the spoil, and (3)
19 any areas used in surface-mining operations which by virtue
20 of their use are susceptible to excessive erosion including all
21 lands disturbed by the construction or improvement of
22 haulageways, roads or trails.

23 (e) "Minerals" means clay, flagstone, gravel, limestone,
24 manganese, sand, sandstone, shale, iron ore and any other
25 metal or metallurgical ore: *Provided*, That the term "minerals"
26 does not include coal.

27 (f) "Mulch" means any natural or plant residue, organic or
28 inorganic material, applied to the surface of the earth to retain
29 moisture and curtail or limit soil erosion.

30 (g) "Operator" means any individual, partnership, firm,
31 association, trust or corporation who or which is granted or
32 should obtain a permit to engage in any activity covered by
33 this article.

34 (h) "Permit area" means the area of land indicated on the
35 approved map submitted by the operator with the reclamation
36 plan as specified in section seven of this article showing the
37 exact location of end strip markers, permit markers and
38 monuments.

39 (i) "Person" means any individual, partnership, firm,
40 association, trust or corporation.

41 (j) "Surface mine" means all areas surface mined or being
42 surface mined, as well as adjacent areas ancillary to the
43 operation, together with preparation and processing plants,
44 storage areas and haulageways, roads or trails.

45 (k) "Surface mining" means all activity for the recovery of
46 minerals, and all plants and equipment used in processing said
47 minerals: *Provided*, That the bonding and reclamation
48 provisions of this article shall not apply to surface mining of
49 limestone, sandstone and sand: *Provided, however*, That the
50 surface mining of limestone, sandstone and sand shall be
51 subject to separate rules and regulations to be promulgated by
52 the commissioner.

53 (l) "Surface of a regraded bench" means the top portion or
54 part of any regraded area.

§22A-4-3. Department of energy; duties and functions.

1 Except as otherwise provided in this article, the commis-
2 sioner shall administer all of the laws of this state relating to
3 surface mining and shall exercise all of the powers and perform
4 all of the duties by law vested in and imposed upon him in
5 relation to said operations. The jurisdiction, supervision and
6 enforcement authority granted the commissioner in this article
7 shall be in addition to the jurisdiction, supervision and
8 enforcement authority granted in this chapter.

**§22A-4-4. Surface-mining reclamation supervisors and inspectors;
appointment and qualifications; salary.**

1 The commissioner shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed to carry
3 out the purposes of this article and appoint them as such. All
4 such appointees shall be eligible civil service employees, but
5 no person shall be qualified for such appointment until he has
6 served in a probationary status for a period of one year to
7 the satisfaction of the commissioner of energy: *Provided*, That
8 the provisions of this section shall not affect the status of
9 persons employed on the effective date of this article as
10 reclamation inspectors under the former provisions of chapter
11 twenty, if such persons are qualified civil service employees.

12 Every surface-mining reclamation supervisor or inspector
13 shall be paid not less than sixteen thousand dollars per year.

§22A-4-5. Duties of surface-mining reclamation inspectors.

1 The surface-mining reclamation inspectors shall make all
2 necessary surveys and inspections of surface-mining opera-
3 tions, shall administer and enforce all surface-mining laws,
4 rules and regulations, and shall perform such other duties and
5 services as may be prescribed by the commissioner. Such
6 inspectors shall give particular attention to all conditions of
7 each permit to ensure complete compliance therewith. The
8 commissioner shall cause inspections to be made of each active
9 surface-mining operation in this state by a surface-mining
10 reclamation inspector at least once every fifteen days. Said
11 inspector shall note and describe violations of this article and
12 immediately report such violations to the commissioner in
13 writing, furnishing at the same time a copy of such report to
14 the operator concerned.

**§22A-4-6. Permit required; applications; issuance and renewals; fees
and use of proceeds.**

1 It shall hereafter be unlawful for any person to engage in
2 surface mining without having first obtained from the
3 department of energy a permit therefor as provided in this
4 section. Application for a surface-mining permit shall be made
5 in writing on forms prescribed by the commissioner of energy,
6 and shall be signed and verified by the applicant. The
7 application, in addition to such other information as may be
8 reasonably required by the commissioner, shall contain the
9 following information: (1) The common name and geologic
10 title, where applicable, of the mineral or minerals to be
11 extracted; (2) maps and plans as provided in section seven
12 hereof; (3) the owner or owners of the surface of the land to
13 be mined; (4) the owner or owners of the mineral to be mined;
14 (5) the source of the operator's legal right to enter and conduct
15 operations on the land to be covered by the permit; (6) a
16 reasonable estimate of the number of acres of land that will
17 be disturbed by mining on the area to be covered by the
18 permit; (7) the permanent and temporary post-office addresses
19 of the applicant and of the owners of the surface and the
20 mineral; (8) whether any surface-mining permits are now held
21 and the numbers thereof; (9) the names and post-office

22 addresses of every officer, partner, director (or person
23 performing a similar function), of the applicant, together with
24 all persons, if any, owning of record or beneficially (alone or
25 with associates), if known, ten percent or more of any class
26 of stock of the applicant: *Provided*, That if such list be so large
27 as to cause undue inconvenience, the commissioner may waive
28 the requirements that such list be made a part of such
29 application, except the names and current addresses of every
30 officer, partner, director and applicant must accompany such
31 application; (10) if known, whether applicant, any subsidiary
32 or affiliate or any person controlled by or under common
33 control with applicant, or any person required to be identified
34 by item (9) above, has ever had a surface-mining permit issued
35 under the laws of this state revoked or has ever had a surface-
36 mining bond, or security deposited in lieu of bond, forfeited;
37 and (11) names and addresses of the reputed owner or owners
38 of all surface area within five hundred feet of any part of
39 proposed disturbed land, which such owners shall be notified
40 by registered or certified mail of such application and such
41 owners shall be given ten days within which to file written
42 objections thereto, if any, with the commissioner. There shall
43 be attached to the application a true copy of an original policy
44 of insurance issued by an insurance company authorized to do
45 business in this state covering all surface-mining operations of
46 the applicant in this state and affording personal injury
47 protection in an amount not less than one hundred thousand
48 dollars and property damage, including blasting damage
49 protection in an amount of not less than three hundred
50 thousand dollars.

51 The commissioner shall upon receipt of the application for
52 a permit cause to be published, as a Class III legal advertise-
53 ment in accordance with the provisions of article three, chapter
54 fifty-nine of this code, a notice of the application for the
55 permit. Such notice shall contain in abbreviated form the
56 information required by this section, together with the
57 commissioner's statement that written protests to such
58 application will be received by him until a specified date, which
59 date shall be at least thirty days after the first publication of
60 the notice.

61 The publication area of the notices required by this section
62 shall be the county or counties in which the proposed permit

63 area is located. The cost of all publications required by this
64 section shall be borne by the applicant.

65 Upon the filing of an application in proper form, accom-
66 panied by the fees and bond required by this article and said
67 true copy of the policy of insurance, and after consideration
68 of the merits of the application and written protests, if any,
69 the commissioner may issue the permit applied for if the
70 applicant has complied with all of the provisions of this article.
71 If the commissioner finds that the applicant is or has been
72 affiliated with or managed or controlled by, or is or has been
73 under the common control of, other than as an employee, a
74 person who or which has had a surface-mining permit revoked
75 or bond or other security forfeited for failure to reclaim lands
76 as required by the laws of this state, he shall not issue a permit
77 to the applicant: *Provided*, That no surface-mining permit
78 shall be refused because of any past revocation of a permit
79 and forfeiture of a bond or other security if such revocation
80 and forfeiture occurred before the first day of July, one
81 thousand nine hundred seventy-one, and if, after such
82 revocation and forfeiture, the operator whose permit has been
83 revoked and bond forfeited shall have paid into the surface-
84 mining reclamation fund the full amount of the bond so
85 forfeited, and any additional sum of money determined by the
86 commissioner to be adequate to reclaim the land covered by
87 such forfeited bond: *Provided, however*, That in no event shall
88 such additional sum be less than sixty dollars per acre.

89 The permit shall be valid for one year from its date of issue.
90 Upon verified application, containing such information as the
91 commissioner may reasonably require, accompanied by such
92 fees and bond as are required by this article, and a true copy
93 of the policy of insurance as aforesaid, the commissioner shall
94 from year to year renew the permit, if the operation is in
95 compliance with the provisions of this article.

96 The registration fee for all permits for surface mining, shall
97 be five hundred dollars. The annual renewal fee for permits
98 for surface mining shall be one hundred dollars payable on
99 the anniversary date of said permit upon renewal.

100 The permit of any operator who fails to pay any fees
101 provided for in this article shall be revoked.

102 All registration and renewal fees for surface mining shall be

103 collected by the commissioner and shall be deposited with the
104 treasurer of the state of West Virginia to the credit of the
105 operating permit fees fund and shall be used, upon requisition
106 of the commissioner, for the administration of this article.

§22A-4-7. Preplans.

1 Under the provisions of this article, and rules and
2 regulations adopted by the commissioner, the operator shall
3 prepare a complete reclamation and mining plan for the area
4 of land to be disturbed. Said reclamation and mining plan
5 shall include a proposed method of operation, prepared by a
6 registered professional engineer or a person approved by the
7 director, for grading, backfilling, soil preparation, mining and
8 planting and such other proposals as may be necessary to
9 develop the complete reclamation and mining plan contem-
10 plated by this article. In developing this complete reclamation
11 and mining plan all reasonable measures shall be taken to
12 eliminate damages to members of the public, their real and
13 personal property, public roads, streams and all other public
14 property from soil erosion, rolling stones and overburden,
15 water pollution and hazards dangerous to life and property.
16 The plan shall be submitted to the commissioner and the
17 commissioner shall notify the applicant by certified mail within
18 thirty days after receipt of the plan and complete application
19 if it is or is not acceptable. If the plan is not acceptable, the
20 commissioner shall set forth the reasons why the plan is not
21 acceptable, and he may propose modifications, delete areas or
22 reject the entire plan. Should the applicant disagree with the
23 decision of the commissioner, he may, by written notice,
24 request a hearing before the commissioner. The commissioner
25 shall hold such hearing within thirty days after receipt of this
26 notice. When a hearing is held by the commissioner, he shall
27 notify the applicant of his decision by certified mail within
28 twenty days after the hearing. Any person aggrieved by a final
29 order of the commissioner made after the hearing or without
30 a hearing may appeal to the reclamation board of review.

31 The application for a permit shall be accompanied by copies
32 of an enlarged United States geological survey topographic
33 map meeting the requirements of the subdivisions below.
34 Aerial photographs of the area shall be acceptable if the plan
35 for reclamation can be shown to the satisfaction of the
36 commissioner. The maps shall:

- 37 (a) Be prepared and certified by or under the supervision
38 of a registered professional civil engineer, or a registered
39 professional mining engineer, or a registered land surveyor,
40 who shall submit to the commissioner a certificate of
41 registration as a qualified engineer or land surveyor;
- 42 (b) Identify the area to correspond with application;
- 43 (c) Show probable limits of adjacent deep-mining opera-
44 tions, probable limits of adjacent inactive or mined-out deep-
45 mined areas and the boundaries of surface properties and
46 names of surface and mineral owners of the surface area within
47 five hundred feet of any part of the proposed disturbed area;
- 48 (d) Be of such scale as may be prescribed by the
49 commissioner;
- 50 (e) Show the names and locations of all streams, creeks or
51 other bodies of public water, roads, buildings, cemeteries,
52 active, abandoned or plugged oil and gas wells, and utility lines
53 on the area of land to be disturbed and within five hundred
54 feet of such area;
- 55 (f) Show by appropriate markings the boundaries of the
56 area of land to be disturbed, the crop line of the seam to be
57 mined, if any, and the total number of acres involved in the
58 area of land to be disturbed;
- 59 (g) Show the date on which the map was prepared, the
60 north point and the quadrangle sketch and exact location of
61 the operation;
- 62 (h) Show the drainage plan on and away from the area of
63 land to be disturbed. Such plan shall indicate the directional
64 flow of water, constructed drainways, natural waterways used
65 for drainage, and the streams or tributaries receiving or to
66 receive this discharge. Upon receipt of such drainage plan, the
67 commissioner may furnish to the chief of the division of water
68 resources of the department of natural resources a copy of all
69 information required by this subdivision, as well as the names
70 and locations of all streams, creeks or other bodies of public
71 water within five hundred feet of the area to be disturbed;
- 72 (i) Show the presence of any acid-producing materials which
73 when present in the overburden, may cause spoil with a pH
74 factor below 3.5, preventing effective revegetation. The

75 presence of such materials, wherever occurring in significant
76 quantity, shall be indicated on the map, filed with the
77 application for permit. The operator shall also indicate the
78 manner in which acid-bearing spoil will be suitably prepared
79 for revegetation and stabilization, whether by application of
80 mulch or suitable soil material to the surface or by some other
81 type of treatment, subject to approval of the commissioner.

82 The operator shall also indicate the manner in which all
83 permanent overburden disposal sites will be stabilized.

84 The certification of the maps shall read as follows: "I, the
85 undersigned, hereby certify that this map is correct, and shows
86 to the best of my knowledge and belief all the information
87 required by the surface-mining laws of this state." The
88 certification shall be signed and notarized. The commissioner
89 may reject any map as incomplete if its accuracy is not so
90 attested.

91 In addition to the information and maps required above,
92 each application for a permit shall be accompanied by a
93 detailed reclamation plan as required by this article.

94 A monument as prescribed by the department of energy
95 shall be placed in an approved location near the operation.
96 If the operations under a single permit are not geographically
97 continuous, the operator shall locate additional monuments
98 and submit additional maps before mining other areas.

99 Upon an order of the commissioner, the operator shall,
100 within thirty days after service of a copy of said order upon
101 said operator by certified United States mail, furnish to the
102 department of energy four copies of a progress map prepared
103 by or under the supervision of a registered professional civil
104 engineer or registered professional mining engineer, or by a
105 registered land surveyor, showing the area disturbed by
106 operations to the date of such map. Such progress map shall
107 contain information identical to that required for both the
108 proposed and final maps, required by this article, and shall
109 show in detail completed reclamation work, as required by the
110 commissioner. Such progress map shall include a geologic
111 survey sketch showing the location of the operation, shall be
112 properly referenced to a permanent landmark, and shall be
113 within such reasonable degree of accuracy as may be
114 prescribed by the commissioner. If no land has been disturbed

115 by operations during the preceding year, the operator shall
116 notify the commissioner of this fact. A final map shall be
117 submitted within sixty days after completion of mining
118 operations. Failure to submit maps or aerial photographs or
119 notices at specified times shall cause the permit in question
120 to be suspended.

§22A-4-8. Installation of drainage system.

1 Prior to the beginning of surface-mining operations, the
2 operator shall complete and shall thereafter maintain a
3 drainage system including any necessary settling ponds in
4 accordance with the rules and regulations as established by the
5 commissioner.

§22A-4-9. Alternative plans; time.

1 An operator may propose alternative plans not calling for
2 backfilling where a water impoundment is desired, if such
3 restoration will be consistent with the purpose of this article.
4 Such plans shall be submitted to the commissioner, and if such
5 plans are approved by the commissioner and complied with
6 within such time limits as may be determined by him as being
7 reasonable for carrying out such plans, the backfilling
8 requirements of this article may be modified.

9 By regulations of the commissioner, time limits shall be
10 established requiring backfilling, grading and planting to be
11 kept current. All backfilling and grading shall be completed
12 before equipment necessary for such backfilling and grading
13 is moved from the operation.

14 If the operator or other person desires to conduct deep
15 mining upon the premises or use a deep-mine opening for
16 haulageways or other lawful purposes, the operator may
17 designate locations to be used for such purposes at which
18 places it will not be necessary to backfill as herein provided
19 for until such deep mining or other use is completed, during
20 which time the bond on file for that portion of that operation
21 shall not be released. Such locations shall be described and
22 designated on the map required by the provisions of section
23 seven of this article.

24 Where applicable, suitable soil material shall be used to
25 cover the surface of the regraded and backfilled area of
26 operation in an amount sufficient to support vegetation.

27 When the backfilling and grading have been completed and
28 approved by the commissioner, the commissioner shall release
29 that portion of the bond which was filed and designated to
30 cover the backfilling and grading requirements of this article,
31 the remaining portion of the bond in an amount equal to two
32 hundred fifty dollars per acre, but not less than a total amount
33 of five thousand dollars being retained by the treasurer until
34 such time as the planting and revegetation is done according
35 to law and is approved by the commissioner, at which time
36 the commissioner shall release the remainder of the bond.

37 All fill and cut slopes shall be seeded during the first
38 planting or seeding season after the construction of a
39 haulageway to the area. Upon abandonment of any haulage-
40 way, the haulageway shall be seeded and every effort made
41 to prevent its erosion by means of culverts, waterbars or other
42 devices required by the commissioner. In proper season, all fill
43 and cut slopes of the operation and haulageways shall be
44 seeded and planted in a manner as prescribed by the
45 commissioner, as soil tests indicate soil suitability and in
46 accordance with accepted agricultural and reforestation
47 practices.

48 In any such area where surface mining is being conducted,
49 mulch shall be required on all disturbed areas where the
50 remaining slope exceeds twenty degrees from horizontal as
51 shown on the preplan map filed with the commissioner as
52 required by the provisions of section seven of this article.

53 After the operation has been backfilled, graded and
54 approved by the commissioner, the operator shall prepare or
55 cause to be prepared a final planting plan-for the planting of
56 trees, shrubs, vines, grasses or legumes upon the area of the
57 land affected in order to provide a suitable vegetative cover.
58 The seed or plant mixtures, quantities, method of planting,
59 type and amount of lime, fertilizer, mulch, and any other
60 measures necessary to provide a suitable vegetative cover shall
61 be defined by the rules and regulations of the commissioner.

62 The planting called for by the final planting plan shall be
63 carried out in a manner so as to establish a satisfactory cover
64 of trees, shrubs, grasses, legumes or vines upon the disturbed
65 area covered by the planting plan within a reasonable period
66 of time. Such planting shall be done by the operator or such

67 operator may contract in writing with the soil conservation
68 district for the district in which the operation covered by such
69 permit is located or with a private contractor approved by the
70 commissioner to have such planting done by such district or
71 private contractor. The commissioner shall not release the
72 operator's bond until all haulageways, roads and trails within
73 the permit area have been abandoned according to the
74 provisions of this article and the rules and regulations
75 promulgated thereunder or such operator or any other person
76 has secured a permit to deep mine such area as required by
77 chapter twenty-two-a of this code.

78 The purpose of this section is to require restoration of land
79 disturbed by surface mining to a desirable purpose and use.
80 The commissioner may, in the exercise of his sound discretion
81 when not in conflict with such purpose, modify such
82 requirements to bring about a more desirable land use,
83 including, but not limited to, industrial sites, sanitary landfills,
84 recreational areas, building sites: *Provided*, That the person or
85 agency making such modifications will execute contracts, post
86 bond or otherwise ensure full compliance with the provisions
87 of this section in the event such modified program is not
88 carried to completion within a reasonable length of time.

§22A-4-10. Limitations; mandamus.

1 The Legislature finds that there are certain areas in the state
2 of West Virginia which are impossible to reclaim either by
3 natural growth or by technological activity and that if surface
4 mining is conducted in these certain areas such operations may
5 naturally cause stream pollution, landslides, the accumulation
6 of stagnant water, flooding, the destruction of land for
7 agricultural purposes, the destruction of aesthetic values, the
8 destruction of recreational areas and future use of the area and
9 surrounding areas, thereby destroying or impairing the health
10 and property rights of others, and in general creating hazards
11 dangerous to life and property so as to constitute an imminent
12 and inordinate peril to the welfare of the state, and that such
13 areas shall not be mined by the surface-mining process.

14 Therefore, authority is hereby vested in the commissioner
15 to delete certain areas from all surface-mining operations.

16 No application for a permit shall be approved by the
17 commissioner if there is found on the basis of the information

18 set forth in the application or from information available to
19 the commissioner and made available to the applicant that the
20 requirements of this article or rules and regulations hereafter
21 adopted will not be observed or that there is not probable
22 cause to believe that the proposed method of operation,
23 backfilling, grading or reclamation of the affected area can be
24 carried out consistent with the purpose of this article.

25 If the commissioner finds that the overburden on any part
26 of the area of land described in the application for a permit
27 is such that experience in the state of West Virginia with a
28 similar type of operation upon land with similar overburden
29 shows that one or more of the following conditions cannot
30 feasibly be prevented: (1) Substantial deposition of sediment
31 in stream beds, (2) landslides or (3) acid-water pollution, the
32 commissioner may delete such part of the land described in
33 the application upon which such overburden exists.

34 If the commissioner finds that the operation will constitute
35 a hazard to a dwelling house, public building, school, church,
36 cemetery, commercial or institutional building, public road,
37 stream, lake or other public property, then he shall delete such
38 areas from the permit application before it can be approved.

39 The commissioner shall not give approval to surface mine
40 any area which is within one hundred feet of any public road,
41 stream, lake or other public property, and shall not approve
42 the application for a permit where the surface-mining
43 operation will adversely affect a state, national or interstate
44 park unless adequate screening and other measures approved
45 by the commission are to be utilized and the permit application
46 so provides: *Provided*, That the one-hundred-foot restriction
47 aforesaid shall not include ways used for ingress and egress
48 to and from the minerals as herein defined and the transpor-
49 tation of the removed minerals, nor shall it apply to the
50 dredging and removal of minerals from the streams or
51 watercourses of this state.

52 Whenever the commissioner finds that ongoing surface-
53 mining operations are causing or are likely to cause any of
54 the conditions set forth in the first paragraph of this section,
55 he may order immediate cessation of such operations and he
56 shall take such other action or make such changes in the
57 permit as he may deem necessary to avoid said described

58 conditons.

59 The failure of the commissioner to discharge the mandatory
60 duty imposed on him by this section shall be subject to a writ
61 of mandamus, in any court of competent jurisdiction by any
62 private citizen affected thereby.

**§22A-4-11. Blasting restriction; formula; filing preplan; penalties;
notice.**

1 Where blasting of overburden or mineral is necessary, such
2 blasting shall be done in accordance with established principles
3 for preventing vibration damage to residences, buildings and
4 communities. Such blasting shall be considered in compliance
5 with provisions of this article if the following measures are
6 followed:

7 (1) The weight in pounds of explosive charge detonated at
8 any one time shall conform with the following scaled distance
9 formula: $W = (D/50)$ (to the second power). Where W equals
10 weight in pounds of explosives detonated at any one instant
11 time, then D equals distance in feet from nearest point of blast
12 to nearest residence, building or structure, other than
13 operation facilities of the mine: *Provided*, That explosive
14 charges shall be considered to be detonated at one time if their
15 detonation occurs within eight milliseconds or less of each
16 other.

17 (2) Where blast sizes would exceed the limits under
18 subdivision (1) of this section, blasts shall be detonated by the
19 use of delay detonators (either electric or nonelectric) to
20 provide detonation times separated by nine milliseconds or
21 more for each section of the blast complying with the scaled
22 distance of the formula.

23 (3) A plan of each operation's methods for compliance with
24 this section (blast delay design) for typical blasts which shall
25 be adhered to in all blasting at each operation, shall be
26 submitted to the department of energy with the application for
27 a permit. It shall be accepted if it meets the scaled distance
28 formula established in subdivision (1) of this section.

29 (4) Records of each blast shall be kept in a log to be
30 maintained for at least three years, which will show for each
31 blast other than secondary (boulder-breaking) blasts the
32 following information:

- 33 (a) Date and time of blast,
34 (b) Number of holes,
35 (c) Typical explosive weight per delay period,
36 (d) Total explosives in blast at any one time,
37 (e) Number of delays used,
38 (f) Weather conditions, and
39 (g) Signature of operator employee in charge of the blast.
- 40 (5) Where inspection by the department of energy estab-
41 lishes that the scaled distance formula and the approved
42 preplan are not being adhered to, the following penalties shall
43 be imposed:
- 44 (a) For the first offense in any one permit year under this
45 section, the permit holder shall be assessed not less than five
46 hundred dollars nor more than one thousand dollars;
- 47 (b) For the second offense in any one permit year under this
48 section, the permit holder shall be assessed not less than one
49 thousand dollars nor more than five thousand dollars;
- 50 (c) For the third offense in any one permit year under this
51 section or for the failure to pay any assessment hereinabove
52 set forth within a reasonable time established by the
53 commissioner, the permit shall be revoked.
- 54 All such assessments as set forth in this section shall be
55 assessed by the commissioner, collected by him and deposited
56 with the treasurer of the state of West Virginia, to the credit
57 of the operating permit fees fund.
- 58 The commissioner shall promulgate rules and regulations
59 which shall provide for a warning of impending blasting to
60 the owners, residents or other persons who may be present on
61 property adjacent to the blasting area.

§22A-4-12. Time in which reclamation shall be done.

- 1 It shall be the duty of an operator to commence the
2 reclamation of the area of land disturbed by his operation after
3 the beginning of surface mining of that area in accordance with
4 plans previously approved by the commissioner and to
5 complete such reclamation within twelve months after the

6 permit has expired, except that such grading, backfilling and
7 water-management practices as are approved in the plans shall
8 be kept current with the operations as defined by rules and
9 regulations of the commission and no permit or supplement
10 to a permit shall be issued or renewed, if in the discretion of
11 the commissioner, these practices are not current.

§22A-4-13. Obligations of the operator.

1 In addition to the method of operation, grading, backfilling
2 and reclamation requirements of this article and rules and
3 regulations adopted pursuant thereto, the operator shall be
4 required to perform the following:

5 (1) Cover the face of the coal and the disturbed area with
6 material suitable to support vegetative cover and of such
7 thickness as may be prescribed by the commissioner, or with
8 a permanent water impoundment.

9 (2) Bury under adequate fill, all materials determined by the
10 commissioner to be acid-producing materials, toxic material or
11 materials constituting a fire hazard.

12 (3) Seal off any breakthrough of acid water caused by the
13 operator: *Provided*, That any breakthrough caused by the
14 operator during the course of his operations shall be sealed
15 immediately and reported immediately to the commissioner. If
16 the breakthrough is one that allows air to enter a mine, the
17 seal shall either prevent any air from entering the mine by way
18 of the breakthrough, or prevent any air from entering the
19 breakthrough while allowing the water to flow from the
20 breakthrough. If the breakthrough is one that allows acid
21 water to escape, the seal shall prevent the acid water from
22 flowing. Seals shall be constructed of stone, brick, block, earth
23 or similar impervious materials which are acid resistant. Any
24 cement or concrete employed in the construction of these seals
25 shall also be of an acid resistant, impervious type.

26 (4) Impound, drain or treat all runoff water so as to reduce
27 soil erosion, damage to agricultural lands and pollution of
28 streams and other waters.

29 In the case of storm water accumulations or any break-
30 through of water, adequate treatment shall be undertaken by
31 the operator so as to prevent pollution occurring from the
32 release of such water into the natural drainway or stream.

33 Treatment may include check-dams, settling ponds and
34 chemical or physical treatment. In the case of a breakthrough
35 of water, where it is possible, the water released shall be
36 impounded immediately. All water so impounded shall receive
37 adequate treatment by the operator before it is released into
38 the natural drainway or stream.

39 Storm water or water which escapes, including that which
40 escapes after construction of the seals, and is polluted as
41 defined in this code, or as defined in the rules and regulations
42 promulgated under this code, shall be subject to the
43 requirements of article five-a, chapter twenty of this code.

44 (5) Remove or bury all metal, lumber, equipment and other
45 refuse resulting from the operation. No operator shall throw,
46 dump or pile; or permit the throwing, dumping, piling or
47 otherwise placing of any overburden, stones, rocks, coal,
48 mineral, earth, soil, dirt, debris, trees, wood, logs or other
49 materials or substances of any kind or nature beyond or
50 outside the area of land which is under permit and for which
51 bond has been posted; nor shall any operator place any of the
52 foregoing listed materials in such a way that normal erosion
53 or slides brought about by natural physical causes will permit
54 the same to go beyond or outside the area of land which is
55 under permit and for which bond has been posted.

56 The operator shall show on the map, filed with the
57 application for a permit, the percent of slope of original
58 surface within each two-hundred-foot interval along the
59 contour of the operation, the first measurement to be taken
60 at the starting point of the operation. The flagged field
61 measurement shall be made from the estimated crop line or
62 proposed mineral seam down slope to the estimated toe of the
63 outer spoil. All reasonable measures shall be taken so as not
64 to overload the fill bench during the first cut. No overburden
65 material in excess of the first cut shall be placed over the fill
66 bench. With the exception of haulageways and auger-mining
67 operations, trees and brush shall be removed from the upper
68 one half of all fill sections prior to excavation, and no trees
69 or brush removed from the cut section shall be placed therein
70 or thereon.

71 No fill bench shall be produced on slopes of more than
72 sixty-five percent, except for construction of haulageways, and

73 such haulageways shall not exceed thirty-five feet in width,
74 with very scattered forty-five-foot passing areas permitted.

75 Lateral drainage ditches connecting to natural or con-
76 structed waterways shall be constructed to control water runoff
77 and prevent erosion whenever required by the commissioner.
78 There shall be no depressions that will accumulate water
79 except those the commissioner may specify and approve. The
80 depth and width of natural drainage ditches and any other
81 diversion ditches may vary depending on the length and degree
82 of slope.

83 With the exception of limestone, sandstone and sand,
84 complete backfilling shall be required, not to exceed the
85 approximate original contour of the land. Such backfilling
86 shall eliminate highwalls and spoil peaks. Whenever directed
87 by the commissioner, the operator shall construct, in the final
88 grading, such diversion ditches or terraces as will control the
89 water runoff. Additional restoration work may be required by
90 the commissioner, according to rules and regulations adopted
91 by the commissioner.

§22A-4-14. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article, a
2 surface-mining reclamation inspector shall have the authority
3 to order the immediate cessation of any operation where (1)
4 any of the requirements of this article or the rules and
5 regulations promulgated pursuant thereto or the orders of the
6 commissioner have not been complied with or (2) the public
7 welfare or safety calls for the immediate cessation of the
8 operation. Such cessation of operation shall continue until
9 corrective steps have been started by the operator to the
10 satisfaction of the surface-mining reclamation inspector. Any
11 operator who believes he is aggrieved by the actions of the
12 surface-mining reclamation inspector may immediately appeal
13 to the commissioner, setting forth reasons why the operation
14 should not be halted. The commissioner shall determine
15 immediately when and if the operation may continue.

§22A-4-15. Completion of planting; inspection and evaluation.

1 When the planting of an area has been completed, the
2 operator shall file or cause to be filed a planting report with
3 the commissioner on a form to be prescribed and furnished

4 by the commissioner, providing the following information: (1)
5 Identification of the operation; (2) the type of planting or
6 seeding, including mixtures and amounts; (3) the date of
7 planting or seeding; (4) the area of land planted; and (5) such
8 other relevant information as the commissioner may require.
9 All planting reports shall be certified by the operator, or by
10 the party with whom the operator contracted for such
11 planting, as aforesaid.

§22A-4-16. Performance bonds.

1 Each operator who shall make application for a permit
2 under section six of this article shall, at the time such permit
3 is requested, furnish bond, on a form to be prescribed and
4 furnished by the commissioner, payable to the state of West
5 Virginia and conditioned that the operator shall faithfully
6 perform all of the requirements of this article. The amount of
7 the bond shall be not less than six hundred dollars for each
8 acre or fraction thereof of the land to be disturbed: *Provided,*
9 That the commissioner shall have the discretion to determine
10 the amount per acre of the bond that shall be required before
11 a permit is issued, such amount to be based upon the estimated
12 reclamation costs per acre, not to exceed a maximum of one
13 thousand dollars per acre or fraction thereof. The minimum
14 amount of bond furnished shall be ten thousand dollars. Such
15 bond shall be executed by the operator and a corporate surety
16 licensed to do business in the state of West Virginia: *Provided,*
17 *however,* That in lieu of corporate surety, the operator may
18 elect to deposit with the commissioner cash, or collateral
19 securities or certificates as follows: Bonds of the United States
20 or its possessions, of the federal land banks, or of the home
21 owners' loan corporation; full faith and credit general
22 obligation bonds of the state of West Virginia, or other states,
23 and of any county, district or municipality of the state of West
24 Virginia or other states; or certificates of deposit in a bank
25 in this state, which certificates shall be in favor of the
26 commissioner. The cash deposit or market value of such
27 securities or certificates shall be equal to or greater than the
28 sum of the bond. The commissioner shall, upon receipt of any
29 such deposit of cash, securities or certificates, immediately
30 place the same with the treasurer of the state of West Virginia
31 whose duty it shall be to receive and hold the same in the name
32 of the state in trust for the purpose for which such deposit

33 is made. The operator making the deposit shall be entitled
34 from time to time to receive from the state treasurer, upon
35 the written order of the commissioner, the whole or any
36 portion of any cash, securities or certificates so deposited, upon
37 depositing with him in lieu thereof, cash of other securities or
38 certificates of the classes herein specified having value equal
39 to or greater than the sum of the bond.

40 It shall be unlawful for the owner or owners of surface rights
41 or the owner or owners of mineral rights to interfere with the
42 operator in the discharge of his obligation to the state for the
43 reclamation of lands disturbed by him. If the owner or owners
44 of the surface rights or the owner or owners of the mineral
45 rights desire another operator or other operators to conduct
46 mining operations on lands disturbed by the operator
47 furnishing bond hereunder, it shall be the duty of said owner
48 or owners to require the other operator or operators to secure
49 the necessary mining permit and furnish suitable bond as
50 herein provided. The commissioner may then release an
51 equivalent amount of the bond of the operator originally
52 furnishing bond on the disturbed area.

53 The commissioner shall not release that portion of any bond
54 filed by any operator which is designated to assure faithful
55 performance of, and compliance with, the backfilling and
56 regrading requirements of the reclamation plan until all acid-
57 bearing or acid-producing spoil within the permit area has
58 received adequate treatment as specified in section nine of this
59 article.

§22A-4-17. Exception as to highway construction projects for reclamation requirements.

1 Any provision of this article to the contrary notwithstand-
2 ing, a person or operator shall not be subject to any duty or
3 requirement whatever with respect to reclamation requirements
4 when engaged in the removal of borrow and fill material for
5 grading in federal and state highway construction projects:
6 *Provided*, That the provisions of the highway construction
7 contract require the furnishing of a suitable bond which
8 provides for reclamation wherever practicable of the area
9 affected by such recovery activity.

§22A-4-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.

1 All provisions of the mining laws of this state intended to
2 safeguard life and property shall extend to all surface-mining
3 operations insofar as such laws are applicable thereto. The
4 commissioner of the department of energy shall promulgate
5 reasonable rules and regulations, in accordance with the
6 provisions of chapter twenty-nine-a of this code, to protect the
7 safety of those employed in and around surface mines. The
8 enforcement of all laws, and rules and regulations relating to
9 the safety of those employed in and around surface mines is
10 hereby vested in the division of mines and minerals and shall
11 be enforced according to the provisions of chapter twenty-two-
12 a of this code.

§22A-4-19. Monthly report by operator.

1 The operator of every surface mine shall, on or before the
2 end of each calendar month, file with the director of the
3 division of mines and minerals a report covering the preceding
4 calendar month on forms furnished by the director. Such
5 reports shall state the number of accidents which have
6 occurred, the number of persons employed, the days worked
7 and the actual tonnage mined.

§22A-4-20. Rules and regulations.

1 The commissioner shall promulgate rules and regulations, in
2 accordance with the provisions of chapter twenty-nine-a of
3 said code, for the effective administration of this article.

§22A-4-21. Noncompliance.

1 If any of the requirements of this article or rules and
2 regulations promulgated pursuant thereto or the orders of the
3 commissioner have not been complied with within the time
4 limits set by the commissioner or by this article, the
5 commissioner shall cause a notice of noncompliance to be
6 served upon the operator, which notice shall order the
7 operation to cease, or where found necessary, the commis-
8 sioner shall order the suspension of a permit. A copy of such
9 notice or order shall be handed to the operator in person or
10 served by certified mail addressed to the operator at the
11 permanent address shown on the application for a permit. The
12 notice of noncompliance or order of suspension shall specify
13 in what respects the operator has failed to comply with this
14 article or the rules and regulations of the commission or orders

15 of the commissioner. If the operator has not reached an
16 agreement with the commissioner or has not complied with the
17 requirements set forth in the notice of noncompliance or order
18 of suspension within the time limits set therein, the permit may
19 be revoked by order of the commissioner and the performance
20 bond shall then be forfeited. If an agreement satisfactory to
21 the commissioner has not been reached within thirty days after
22 suspension of any permit, any and all suspended permits shall
23 then be declared revoked and the performance bonds with
24 respect thereto forfeited.

25 When any bond is forfeited pursuant to the provisions of
26 this article, the commissioner shall give notice to the attorney
27 general who shall collect the forfeiture without delay.

**§22A-4-22. Adjudications, findings, etc., to be by written order;
contents; notice.**

1 Every adjudication, determination or finding by the
2 commissioner affecting the rights, duties or privileges of any
3 person subject to this article shall be made by written order
4 and shall contain a written finding by the commissioner of the
5 facts upon which the adjudication, determination or finding
6 is based. Notice of the making of such order shall be given
7 to the person whose rights, duties or privileges are affected
8 thereby by mailing a true copy thereof to such person by
9 certified mail.

**§22A-4-23. Appeals to board; hearing; record; findings and orders
of board.**

1 Any person claiming to be aggrieved or adversely affected
2 by any rule and regulation or order of the commissioner or
3 his failure to enter an order may appeal to the reclamation
4 board of review for an order vacating or modifying such rule
5 and regulation or order, or for such order as the commissioner
6 should have entered.

7 The person so appealing to the board shall be known as the
8 appellant and the commissioner shall be known as the
9 appellee. The appellant and the appellee shall be deemed to
10 be parties to the appeal.

11 Such appeal shall be in writing and shall set forth the rule
12 and regulation, order or omission complained of and the
13 grounds upon which the appeal is based. Where the appellant

14 claims to be aggrieved or adversely affected by an order, such
15 appeal shall be filed with the board within thirty days after
16 the date upon which the appellant received notice by certified
17 mail of the making of the order complained of. Where the
18 appellant claims to be aggrieved or adversely affected by any
19 rule and regulation or omission, such appeal may be filed with
20 the board at any time. A notice of the filing of such appeal
21 shall be filed with the commissioner within three days after
22 the appeal is filed with the board.

23 Within seven days after receipt of such notice of appeal, the
24 commissioner shall prepare and certify to the board a complete
25 record of the proceedings before him, including all documents
26 and correspondence relating to the matter. The expense of
27 preparing the record shall be taxed as a part of the costs of
28 the appeal.

29 Upon the filing of such appeal, the board shall fix the time
30 and place at which the hearing on the appeal will be held,
31 which hearing shall be held within twenty days after the notice
32 of appeal is filed, and shall give the appellant and the
33 commissioner at least ten days' written notice thereof by
34 certified mail. The board may postpone or continue any
35 hearing upon its own motion or upon application of the
36 appellant or of the commissioner.

37 The filing of an appeal provided for in this section shall not
38 stay execution of the order appealed from.

39 The board shall hear the appeal de novo, and any party to
40 the appeal may submit evidence.

41 For the purpose of conducting a hearing on an appeal, the
42 board may require the attendance of witnesses and the
43 production of books, records and papers, and it may, and at
44 the request of any party it shall, issue subpoenas for witnesses
45 or subpoenas duces tecum to compel the production of any
46 books, records or papers, directed to the sheriff of the county
47 where such witnesses, books, records or papers are found,
48 which subpoenas and subpoenas duces tecum shall be served
49 and returned in the same manner as subpoenas and subpoenas
50 duces tecum in civil litigation are served and returned. The fees
51 and allowances for mileage of sheriffs and witnesses shall be
52 the same as those permitted in civil litigation in trial courts.
53 Such fees and mileage expenses incurred at the request of the

54 appellant shall be paid in advance by the appellant, and the
55 remainder of such fees and expenses shall be paid out of funds
56 appropriated for the expenses of the department.

57 In case of disobedience or neglect of any subpoena or
58 subpoena duces tecum served on any person, or the refusal
59 of any witness to testify to any matter regarding which he may
60 be lawfully interrogated, the circuit court of the county in
61 which such disobedience, neglect or refusal occurs, or any
62 judge thereof in vacation, on application of the board or any
63 member thereof, shall compel obedience by attachment
64 proceedings for contempt as in the case of disobedience of the
65 requirements of a subpoena or subpoena duces tecum issued
66 from such court or a refusal to testify therein. Witnesses at
67 such hearing shall testify under oath, and any member of the
68 board may administer oaths or affirmations to persons who
69 so testify.

70 At the request of any party to the appeal, a stenographic
71 record of the testimony and other evidence submitted shall be
72 taken by an official court shorthand reporter at the expense
73 of the party making the request therefor. Such record shall
74 include all of the testimony and other evidence and the rulings
75 on the admissibility of evidence, but any party may at the time
76 object to the admission of any evidence and except to the
77 rulings of the board thereon, and if the board refuses to admit
78 evidence the party offering same may make a proffer thereof,
79 and such proffer shall be made a part of the record of such
80 hearing.

81 If upon completion of the hearing the board finds that the
82 rule and regulation or order appealed from was lawful and
83 reasonable, it shall make a written order affirming the rule and
84 regulation or order appealed from; if the board finds that such
85 rule and regulation or order was unreasonable or unlawful, it
86 shall make a written order vacating or modifying the rule and
87 regulation or order appealed from; and if the board finds that
88 the commissioner has unreasonably or unlawfully failed to
89 enter an order, it shall enter such order as it finds the
90 commissioner would have made. Every order made by the
91 board shall contain a written finding by the board of facts
92 upon which the order is based. Notice of the making of such
93 order shall be given forthwith to each party to the appeal by
94 mailing a certified copy thereof to each such party by certified

95 mail.

96 The order of the board shall be final unless vacated upon
97 judicial review thereof.

§22A-4-24. Appeal from order of board.

1 Any party adversely affected by an order of the reclamation
2 board of review, other than an order affirming, modifying or
3 vacating a rule and regulation of the commissioner, may
4 obtain judicial review thereof by appealing therefrom either to
5 the circuit court of Kanawha County or the circuit court of
6 the county in which the surface-mining operation to which the
7 order relates is or was conducted or is or was proposed to
8 be conducted. Any party adversely affected by an order of the
9 reclamation board of review, which order affirms, modifies or
10 vacates a rule and regulation of the commissioner, may obtain
11 judicial review thereof by appealing therefrom either to the
12 circuit court of Kanawha County or the circuit court of the
13 county in which the surface-mining operation to which the rule
14 and regulation in question relates is or was conducted or is
15 or was proposed to be conducted. Any party desiring to so
16 appeal shall file with the board a notice of appeal designating
17 the order appealed from and stating whether the appeal is
18 taken on questions of law, questions of fact or questions of
19 law and fact. A copy of such notice shall also be filed by the
20 appellant with the court and shall be mailed or otherwise
21 delivered to the appellee. Such notice and copies thereof shall
22 be filed and mailed or otherwise delivered within thirty days
23 after the date upon which the appellant received notice from
24 the board by certified mail of the making of the order appealed
25 from. No appeal bond shall be required to make an appeal
26 on questions of law, questions of fact or questions of law and
27 fact effective.

28 The filing of a notice of appeal shall not automatically
29 operate as a suspension of the order of the board. If it appears
30 to the court that an unjust hardship to the appellant will result
31 from the execution of the board's order pending determination
32 of the appeal, the court may grant a suspension of such order
33 and fix its terms.

34 Within fifteen days after receipt of the notice of appeal, the
35 board shall prepare and file in the court the complete record
36 of the proceedings out of which the appeal arises, including

37 a transcript of the testimony and other evidence which was
38 submitted before the board. The expense of preparing and
39 transcribing such record shall be taxed as a part of the costs
40 of the appeal. The appellant shall provide security for costs
41 satisfactory to the court. Upon demand by a party, the board
42 shall furnish, at the cost of the party requesting the same, a
43 copy of such record. In the event such complete record is not
44 filed in the court within the time provided for in this section,
45 either party may apply to the court to have the case docketed,
46 and the court shall order such record filed.

47 Appeals taken on questions of law, fact or both, shall be
48 heard upon assignment of error filed in the case or set out
49 in the briefs of the appellant. Errors not argued by brief may
50 be disregarded, but the court may consider and decide errors
51 which are not assigned or argued.

52 The hearing before the court shall be upon the record made
53 before the reclamation board of review. The court may set
54 aside any order of the reclamation board of review which is
55 clearly erroneous in view of the reliable, probative and
56 substantial evidence on the whole record, or which is
57 determined by the court to involve a clearly unwarranted
58 exercise of discretion. The judgment of the court shall be final
59 unless reversed, vacated or modified on appeal to the supreme
60 court of appeals of West Virginia, and jurisdiction is hereby
61 conferred upon such court to hear and entertain such appeals
62 upon application made therefor in the manner and within the
63 time provided for civil appeals generally.

**§22A-4-25. Offenses; penalties; prosecutions; treble damages;
injunctive relief.**

1 (a) Any person who shall conduct any surface-mining
2 operation, or any part thereof, without a permit or without
3 having furnished the required bond, or who shall carry on such
4 operation or be a party thereto on land not covered by a
5 permit, or who shall falsely represent any material fact in an
6 application for a permit or in an application for the renewal
7 of a permit, or who willfully violates any provision of this
8 article, shall be guilty of a misdemeanor, and, upon conviction
9 thereof, shall be punished by a fine of not less than one
10 hundred nor more than one thousand dollars or by imprison-
11 ment not exceeding six months, or by both. Any person who

12 deliberately violates any provision of this article or conducts
13 surface-mining operations without a permit shall be guilty of
14 a misdemeanor, and, upon conviction thereof, shall be
15 punished by a fine of not less than one thousand nor more
16 than ten thousand dollars or by imprisonment not exceeding
17 six months, or by both. Each day of violation constitutes a
18 separate offense. It shall be the duty of the commissioner to
19 institute prosecutions for violations of the provisions hereof.
20 Any person convicted under the provisions of this section
21 shall, in addition to any fine imposed, pay to the commissioner
22 for deposit in the surface-mining reclamation fund an amount
23 sufficient to reclaim the area with respect to which such
24 conviction relates. The commissioner shall institute any suit or
25 other legal action necessary for the effective administration of
26 the provisions of this article.

27 (b) In addition to and notwithstanding any other penalties
28 provided by law, any operator who directly causes damage to
29 the property of others as a result of surface mining shall be
30 liable to them, in an amount not in excess of three times the
31 provable amount of such damage, if and only if such damage
32 occurs before or within one year after such operator has
33 completed all reclamation work with respect to the land on
34 which such surface mining was carried out and all bonds of
35 such operator with respect to such reclamation work are
36 released. Such damages shall be recoverable in an action at
37 law in any court of competent jurisdiction. The commissioner
38 shall require, in addition to any other bonds and insurance
39 required by other provisions of this article, that any person
40 engaged in the business of surface mining shall file with the
41 commissioner a certificate of insurance, or other security in
42 an amount of not less than ten thousand dollars, to cover
43 possible damage to property for which a recovery may be
44 sought under the provisions of this subsection.

45 (c) Upon application by the commissioner the attorney
46 general, or the prosecuting attorney of the county in which
47 the major portion of the permit area is located, any court of
48 competent jurisdiction may by injunction compel compliance
49 with and enjoin violations of the provisions of this article. The
50 court or the judge thereof in vacation may issue a preliminary
51 injunction in any case pending a decision on the merits of any
52 application filed.

53 An application for an injunction under the provisions of this
54 section may be filed and injunctive relief granted notwithstanding
55 that all of the administrative remedies provided for in this
56 article have not been pursued or invoked against the person
57 or persons against whom such relief is sought and notwithstanding
58 that the person or persons against whom such relief
59 is sought have not been prosecuted or convicted under the
60 provisions of this article.

61 The judgment of the circuit court upon any application filed
62 under the provisions of this article shall be final unless
63 reversed, vacated or modified on appeal to the supreme court
64 of appeals. Any such appeal shall be sought in the manner
65 provided by law for appeals from circuit courts in other civil
66 cases, except that the petition seeking such review must be filed
67 with said supreme court of appeals within thirty days from the
68 date of entry of the judgment of the circuit court.

§22A-4-26. Validity and construction of existing surface-mining permits.

1 Any valid surface-mining permit existing on the effective
2 date of this article shall remain in full force and effect until
3 such permit expires under its terms or is otherwise terminated
4 under the provisions of this article. The provisions of this
5 section shall not be construed to require the regrading or
6 replanting of any area on which such work was satisfactorily
7 performed prior to the effective date of this article.

§22A-4-27. Certification of surface miners.

1 After the first day of July, one thousand nine hundred
2 seventy-six, certification shall be required of all surface miners
3 in accordance with the provisions of articles nine and ten,
4 chapter twenty-two of this code.

§22A-4-28. Certification of surface mine foremen.

1 (a) In every surface mine where five or more persons are
2 employed in a period of twenty-four hours, the operator shall
3 employ at least one person certified in accordance with the
4 provisions of article ten, chapter twenty-two of this code as
5 a mine foreman. Each applicant for certification as a mine
6 foreman shall, at the time he is issued a certificate of
7 competency: (1) Be a resident or employed in a mine in this
8 state; (2) have had at least three years' experience in surface

9 mining, which shall include at least eighteen months'
10 experience on or at a working section of a surface mine or
11 be a graduate of the school of mines at West Virginia
12 University or of another accredited mining engineering school
13 and have had at least two years' practical experience in a
14 surface mine, which shall include at least eighteen months'
15 experience on or at a working section of a surface mine; and
16 (3) have demonstrated his knowledge of mine safety, first aid,
17 safety appliances, emergency procedures relative to all
18 equipment, state and federal mining laws and regulations and
19 other subjects by completing such training, education and
20 examinations as may be required of him under said article ten.

21 (b) In surface mines in which the operations are so extensive
22 that the duties devolving upon the mine foreman cannot be
23 discharged by one person, one or more assistant mine foremen
24 may be designated. Such persons shall act under the
25 instruction of the mine foreman who shall be responsible for
26 their conduct in the discharge of their duties. Each assistant
27 so designated shall be certified under the provisions of article
28 ten, chapter twenty-two of this code. Each applicant for
29 certification as assistant mine foreman shall, at the time he is
30 issued a certificate of competency, possess all of the
31 qualifications required of a mine foreman: *Provided*, That he
32 shall, at the time he is certified, be required to have at least
33 two years' experience in surface mining, which shall include
34 eighteen months on or at a working section of a surface mine
35 or be a graduate of the school of mines at West Virginia
36 University or of another accredited mining engineering school
37 and have had twelve months' practical experience in a surface
38 mine, all of which shall have been on or at a working section.

39 (c) The commissioner shall promulgate such rules and
40 regulations as may be necessary to carry out the provisions
41 of this section.

ARTICLE 5. UNDERGROUND CLAY MINE.

§22A-5-1. Definition.

§22A-5-2. Clay mine foreman; when to be employed; qualifications; assistants.

§22A-5-3. Regulations for protection of health and safety of employees.

§22A-5-1. Definition.

1 In this article the term "mine" includes the shafts, slopes,
2 drifts or inclines connected with excavations penetrating clay

3 seams or strata, which excavations are ventilated by one
4 general air current or division thereof, and the surface
5 structures or equipment connected therewith which contribute
6 directly or indirectly to the underground mining of clay.

§22A-5-2. Clay mine foreman; when to be employed; qualifications; assistants.

1 In every underground clay mine where five or more persons
2 are employed in a period of twenty-four hours, the operator
3 shall employ a mine foreman who shall be a competent and
4 practical person holding a certificate of competence for said
5 position issued to him by the division of mines and minerals
6 after an examination by such division. In order to receive a
7 certificate of competence qualifying a foreman in an under-
8 ground clay mine, the applicant shall take an examination
9 prescribed by the director of the division of mines and
10 minerals, be a citizen of this state, of good moral character
11 and temperate habits, having had at least three years'
12 experience in the underground working of clay mines.

§22A-5-3. Regulations for protection of health and safety of employees.

1 The commissioner may from time to time promulgate
2 reasonable rules and regulations for the protection of the
3 health and safety of the persons working in or about
4 underground clay mines, to the extent the same are not more
5 onerous or restrictive than the laws of this state intended to
6 safeguard the life and health of persons working in under-
7 ground coal mines contained in article two of this chapter.

ARTICLE 6. OPEN—PIT MINES, CEMENT MANUFACTURING PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES.

§22A-6-1. Definitions.

§22A-6-2. Applicability of mining laws.

§22A-6-3. Rules and regulations.

§22A-6-4. Monthly report by operator.

§22A-6-5. Inspectors.

§22A-6-6. Penalties.

§22A-6-1. Definitions.

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

3 (a) "Open-pit mine" means an excavation worked from the

4 surface and open to daylight.

5 (b) "Underground mine" means subterranean workings for
6 the purpose of obtaining a desired material or materials.

7 (c) "Sand" means waterworn sandstone fragments trans-
8 ported and deposited by water.

9 (d) "Gravel" means an occurrence of waterworn pebbles.

10 (e) "Sandstone" means a compacted or cemented sediment
11 composed chiefly of quartz grains.

12 (f) "Limestone" means a sedimentary rock composed mostly
13 of calcium carbonate.

14 (g) "Clay" means a natural material of mostly small
15 fragments of hydrous aluminum silicates and possessing plastic
16 properties.

17 (h) "Shale" means a laminated sedimentary rock composed
18 chiefly of small particles of a clay grade.

19 (i) "Iron ore" means a mineral or minerals, and gangue
20 when treated will yield iron at a profit.

21 (j) "Manganese ore" means a metalliferous mineral when
22 treated will yield manganese at a profit.

§22A-6-2. Applicability of mining laws.

1 All provisions of the mining laws of this state intended for
2 the protection of the health and safety of persons employed
3 within or at any coal mine and for the protection of any coal
4 mining property shall extend to all open-pit mines and any
5 property used in connection therewith for the mining of
6 underground limestone and sandstone mines, insofar as such
7 laws are applicable thereto.

§22A-6-3. Rules and regulations.

1 The commissioner of the department of energy shall
2 promulgate reasonable rules and regulations, in accordance
3 with and confined to the provisions of chapter twenty-nine-
4 a of this code, for the effective administration of this article.

§22A-6-4. Monthly report by operator.

1 The operator of such mine shall, on or before the end of
2 each calendar month, file with the director of the division of
3 mines and minerals a report covering the preceding calendar
4 month on forms furnished by the director. Such reports shall

- 5 state the number of accidents which have occurred, the number
- 6 of persons employed, the days worked and the actual tonnage
- 7 mined.

§22A-6-5. Inspectors.

1 The director of the division of mines and minerals shall
2 divide the state into not more than two mining districts and
3 assign one inspector to each district. Such inspector shall be
4 a citizen of West Virginia, in good health, or good character
5 and reputation, temperate in habits, having a minimum of five
6 years of practical experience in such mining operations and
7 at the time of his appointment is not more than fifty-five years
8 of age. To qualify for appointment as such an inspector, an
9 eligible applicant shall submit to a written and oral examina-
10 tion by the mine inspectors' examining board and furnish such
11 evidence of good health, character and other facts establishing
12 eligibility as the board may require. If the board finds after
13 investigation and examination that an applicant: (1) Is eligible
14 for appointment and (2) has passed all written and oral
15 examinations, with a grade of at least ninety percent, the board
16 shall add such applicant's name and grade to the register of
17 qualified eligible candidates and certify its action to the
18 director of the division of mines and minerals. No candidate's
19 name shall remain in the register for more than three years
20 without requalifying.

21 Such inspector shall have the same tenure accorded a mine
22 inspector, as provided in subsection (d), section eight, article
23 one-a of this chapter and shall be paid not less than fifteen
24 thousand dollars per year. Such inspector shall also receive
25 reimbursement for traveling expenses at the rate of not less
26 than fifteen cents for each mile actually traveled in the
27 discharge of their duties in a privately owned vehicle. Such
28 inspector shall also be reimbursed for any expense incurred
29 in maintaining an office in his or her home, which office is
30 used in the discharge of official duties: *Provided*, That such
31 reimbursement shall not exceed two hundred forty dollars per
32 annum.

§22A-6-6. Penalties.

1 Any person who fails or refuses to discharge any provision
2 of this article, rule and regulation promulgated or order issued
3 pursuant to the provisions of this article, shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be punished

- 5 by a fine of not less than one hundred nor more than one
 6 thousand dollars or by imprisonment not exceeding six
 7 months, or by both.

CHAPTER 22B. OIL AND GAS.

Article

1. Division of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.
2. Oil and Gas Production Damage Compensation.
3. Transportation of Oils.
4. Underground Gas Storage Reservoirs.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

- §22B-1-1. Definitions.
- §22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.
- §22B-1-3. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.
- §22B-1-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.
- §22B-1-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.
- §22B-1-6. Permit required for well work; permit fee; application; soil erosion control plan.
- §22B-1-7. Water pollution control permits; powers and duties of the director; penalties.
- §22B-1-8. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.
- §22B-1-9. Notice to property owners.
- §22B-1-10. Procedure for filing comments; certification of notice.
- §22B-1-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.
- §22B-1-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.
- §22B-1-13. Notice to coal operators, owners or lessees and director of division of mines and minerals of intention to fracture certain other wells; contents of such notice; bond; permit required.
- §22B-1-14. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and division of mines and minerals chief of water resources; issuance of permits; performance bonds or security in lieu thereof.
- §22B-1-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing, stimulating; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

- §22B-1-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.
- §22B-1-17. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits.
- §22B-1-18. Protective devices—When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.
- §22B-1-19. Same—Continuance during life of well; dry or abandoned wells.
- §22B-1-20. Same—When well is drilled through horizon of coal bed from which coal has been removed.
- §22B-1-21. Same—Installation of fresh water casings.
- §22B-1-22. Well log to be filed; contents; authority to promulgate regulations.
- §22B-1-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.
- §22B-1-24. Methods of plugging well.
- §22B-1-25. Introducing liquid pressure into producing strata to recover oil contained therein.
- §22B-1-26. Performance bonds; corporate surety or other security.
- §22B-1-27. Cause of action for damages caused by explosions.
- §22B-1-28. Supervision by director over drilling and reclamation operations; compliants; hearings; appeals.
- §22B-1-29. Special reclamation fund; fees.
- §22B-1-30. Reclamation requirements.
- §22B-1-31. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.
- §22B-1-32. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.
- §22B-1-33. Restraining waste.
- §22B-1-34. Offenses; penalties.
- §22B-1-35. Civil action for contamination or deprivation of fresh water source or supply; presumption.
- §22B-1-36. Declaration of oil and gas notice by owners and lessees of coal seams.
- §22B-1-37. Rules, regulations, orders and permits remain in effect.
- §22B-1-38. Application of article; exclusions.
- §22B-1-39. Injunctive relief.
- §22B-1-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.
- §22B-1-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

§22B-1-1. Definitions.

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

3 (a) "Casing" means a string or strings of pipe commonly
4 placed in wells drilled for natural gas or petroleum or both;

5 (b) "Cement" means hydraulic cement properly mixed with
6 water;

7 (c) "Chairman" means the chairman of the West Virginia
8 shallow gas well review board as provided for in section four,
9 article seven, chapter twenty-two of this code;

10 (d) "Chief" means chief of the division of water resources
11 of the department of natural resources;

12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that
14 proposes to or does operate a coal mine;

15 (f) "Coal seam" and "workable coal bed" are interchange-
16 able terms and mean any seam of coal twenty inches or more
17 in thickness, unless a seam of less thickness is being
18 commercially worked, or can in the judgment of the
19 department foreseeably be commercially worked and will
20 require protection if wells are drilled through it;

21 (g) "Commissioner" means commissioner of the department
22 of energy;

23 (h) "Deep well" means any well drilled and completed in a
24 formation at or below the top of the uppermost member of
25 the "Onondaga Group" or at a depth of or greater than six
26 thousand feet, whichever is shallower;

27 (i) "Division" means, for purposes of this article and articles
28 three and four of this chapter, the division of oil and gas of
29 the department of energy;

30 (j) "Director" means, for the purposes of this article and
31 articles two, three and four of this chapter, the director of the
32 division of oil and gas of the department of energy;

33 (k) "Expanding cement" means any cement approved by the
34 division of oil and gas which expands during the hardening
35 process, including, but not limited to, regular oil field cements
36 with the proper additives;

37 (l) "Facility" means any facility utilized in the oil and gas
38 industry in this state and specifically named or referred to in
39 this article or in article three or four of this chapter, other
40 than a well or well site;

41 (m) "Gas" means all natural gas and all other fluid
42 hydrocarbons not defined as oil in subdivision (n) of this
43 section;

44 (n) "Oil" means natural crude oil or petroleum and other
45 hydrocarbons, regardless of gravity, which are produced at the

46 well in liquid form by ordinary production methods and which
47 are not the result of condensation of gas after it leaves the
48 underground reservoirs;

49 (o) "Owner" when used with reference to any well, shall
50 include any person or persons, firm, partnership, partnership
51 association or corporation that owns, manages, operates,
52 controls or possesses such well as principal, or as lessee or
53 contractor, employee or agent of such principal;

54 (p) "Owner" when used with reference to any coal seam,
55 shall include any person or persons who own, lease or operate
56 such coal seam;

57 (q) "Person" means any natural person, corporation, firm,
58 partnership, partnership association, venture, receiver, trustee,
59 executor, administrator, guardian, fiduciary or other represen-
60 tative of any kind, and includes any government or any
61 political subdivision or any agency thereof;

62 (r) "Plat" means a map, drawing or print showing the
63 location of a well or wells as herein defined;

64 (s) "Review board" means the West Virginia shallow gas
65 well review board as provided for in section four, article seven,
66 chapter twenty-two of the code;

67 (t) "Safe mining through of a well" means the mining of
68 coal in a workable coal bed up to a well which penetrates such
69 workable coal bed and through such well so that the casing
70 or plug in the well bore where the well penetrates the workable
71 coal bed is severed;

72 (u) "Shallow well" means any gas well drilled and completed
73 in a formation above the top of the uppermost member of the
74 "Onondaga Group" or at a depth less than six thousand feet,
75 whichever is shallower;

76 (v) "Stimulate" means any action taken by a well operator
77 to increase the inherent productivity of an oil or gas well,
78 including, but not limited to, fracturing, shooting or acidizing,
79 but excluding cleaning out, bailing or workover operations;

80 (w) "Waste" means (i) physical waste, as the term is
81 generally understood in the oil and gas industry; (ii) the
82 locating, drilling, equipping, operating or producing of any oil
83 or gas well in a manner that causes, or tends to cause a
84 substantial reduction in the quantity of oil or gas ultimately

85 recoverable from a pool under prudent and proper operations,
86 or that causes or tends to cause a substantial or unnecessary
87 or excessive surface loss of oil or gas; or (iii) the drilling of
88 more deep wells than are reasonably required to recover
89 efficiently and economically the maximum amount of oil and
90 gas from a pool; (iv) substantially inefficient, excessive or
91 improper use, or the substantially unnecessary dissipation of,
92 reservoir energy, it being understood that nothing in this
93 chapter shall be construed to authorize any agency of the state
94 to impose mandatory spacing of shallow wells except for the
95 provisions of section eight, article eight, chapter twenty-two
96 of this code and the provisions of article seven, chapter twenty-
97 two of this code; (v) inefficient storing of oil or gas: *Provided,*
98 That storage in accordance with a certificate of public
99 convenience issued by the federal energy regulatory commis-
100 sion shall be conclusively presumed to be efficient and (vi)
101 other underground or surface waste in the production or
102 storage of oil, gas, or condensate, however caused;

103 (x) "Well" means any shaft or hole sunk, drilled, bored or
104 dug into the earth or into underground strata for the
105 extraction or injection or placement of any liquid or gas, or
106 any shaft or hole sunk or used in conjunction with such
107 extraction or injection or placement. The term "well" does not
108 include any shaft or hole sunk, drilled, bored or dug into the
109 earth for the sole purpose of core drilling or pumping or
110 extracting therefrom potable, fresh or usable water for
111 household, domestic, industrial, agricultural or public use;

112 (y) "Well work" means the drilling, re-drilling, deepening,
113 stimulating, pressuring by injection of any fluid, converting
114 from one type of well to another, combining or physically
115 changing to allow the migration of fluid from one formation
116 to another or plugging or replugging of any well;

117 (z) "Well operator" or "operator" means any person or
118 persons, firm, partnership, partnership association or corpo-
119 ration that proposes to or does locate, drill, operate or
120 abandon any well as herein defined;

121 (aa) "Pollutant" shall have the same meaning as provided
122 in subsection (x), section two, article five-a, chapter twenty of
123 this code; and

124 (bb) "Waters of this state" shall have the same meaning as
125 the term "waters" as provided in subsection (e), section two,

126 article five-a, chapter twenty of this code.

§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

1 (a) The director of the division of oil and gas shall have
2 as his duty the supervision of the execution and enforcement
3 of matters related to oil and gas set out in this article and
4 in articles three and four of this chapter, subject to review and
5 approval of the commissioner.

6 (b) The director of the division of oil and gas is authorized
7 to enact rules and regulations necessary to effectuate the
8 above-stated purposes, subject to review and approval by the
9 commissioner.

10 (c) The director shall have full charge of the oil and gas
11 matters set out in this article and in articles three and four
12 of this chapter, subject always to the direct supervision and
13 control of the commissioner of the department of energy. In
14 addition to all other powers and duties conferred upon him,
15 the director shall have the power and duty to:

16 (1) Supervise and direct the activities of the division of oil
17 and gas and see that the purposes set forth in subsections (a)
18 and (b) of this section are carried out;

19 (2) Employ a supervising oil and gas inspector and oil and
20 gas inspectors upon approval by the commissioner;

21 (3) Supervise and direct such oil and gas inspectors and
22 supervising inspector in the performance of their duties;

23 (4) Suspend for good cause any oil and gas inspector or
24 supervising inspector without compensation for a period not
25 exceeding thirty days in any calendar year;

26 (5) Prepare report forms to be used by oil and gas
27 inspectors or the supervising inspector in making their
28 findings, orders and notices, upon inspections made in
29 accordance with this chapter;

30 (6) Employ a hearing officer and such clerks, stenographers
31 and other employees, as may be necessary to carry out his
32 duties and the purposes of the division of oil and gas and fix
33 their compensation;

34 (7) Hear and determine applications made by owners, well
35 operators and coal operators for the annulment or revision of
36 orders made by oil and gas inspectors or the supervising

37 inspector, and to make inspections, in accordance with the
38 provisions of this article and articles three and four of this
39 chapter;

40 (8) Cause a properly indexed permanent and public record
41 to be kept of all inspections made by himself or by oil and
42 gas inspectors or the supervising inspector;

43 (9) Make annually a full and complete written report to the
44 commissioner as he may from time to time request, so that
45 the commissioner can complete the preparation of the
46 commissioner's annual report to the governor of the state;

47 (10) Conduct such research and studies as the commissioner
48 shall deem necessary to aid in protecting the health and safety
49 of persons employed within or at potential or existing oil or
50 gas production fields within this state, to improve drilling and
51 production methods and to provide for the more efficient
52 protection and preservation of oil and gas-bearing rock strata
53 and property used in connection therewith;

54 (11) Perform any and all acts necessary to carry out and
55 implement the state requirements established by 92 Statutes at
56 Large 3352, et seq., the "Natural Gas Policy Act of 1978,"
57 which are to be performed by a designated state jurisdictional
58 agency regarding determinations that wells within the state
59 qualify for a maximum lawful price under certain categories
60 of natural gas as set forth by the provisions of the said
61 "Natural Gas Policy Act of 1978";

62 (12) Collect a filing and processing fee of forty dollars for
63 each well, for which a determination of qualification to receive
64 a maximum lawful price under the provisions of the "Natural
65 Gas Policy Act of 1978" is sought from the director; all
66 revenues from such fees to be placed in the general revenue
67 fund of the state;

68 (13) Collect a permit fee of two hundred fifty dollars for
69 each permit application filed after the tenth day of June, one
70 thousand nine hundred eighty-three: *Provided*, That no permit
71 application fee shall be required when an application is
72 submitted solely for plugging or replugging of a well. All
73 application fees required hereunder shall be in addition to any
74 other fees required by the provisions of this article;

75 (14) Perform all other duties which are expressly imposed
76 upon him by the provisions of this chapter, as well as duties

77 assigned to him by the commissioner;

78 (15) Perform all duties as the permit issuing authority for
79 the state in all matters pertaining to the exploration,
80 development, production, storage and recovery of this state's
81 oil and gas in accordance with section thirteen, article one,
82 chapter twenty-two of this code;

83 (16) Adopt rules and regulations in accordance with section
84 thirteen, article one, chapter twenty-two of this code with
85 respect to the issuance, denial, retention, suspension or
86 revocation of permits, authorizations and requirements of this
87 chapter, which rules and regulations shall assure that the
88 regulations, permits and authorizations issued by the director
89 are adequate to satisfy the purposes of this chapter and chapter
90 twenty-two of this code particularly with respect to the
91 consolidation of the various state and federal programs which
92 place permitting requirements on the exploration, develop-
93 ment, production, storage and recovery of this state's oil and
94 gas: *Provided*, That notwithstanding any provisions of this
95 chapter or chapter twenty-two of this code to the contrary,
96 the water resources board shall have the sole authority
97 pursuant to section three-a, article five-a of chapter twenty to
98 promulgate rules and regulations setting standards of water
99 quality applicable to waters of the state;

100 (17) Perform such acts as may be necessary or appropriate
101 to secure to this state the benefits of federal legislation
102 establishing programs relating to the exploration, develop-
103 ment, production, storage and recovery of this state's oil and
104 gas, which programs are assumable by the state.

105 (d) The director shall have authority to visit and inspect any
106 well or well site and any other oil or gas facility in this state
107 and may call for the assistance of any oil and gas inspector
108 or inspectors or supervising inspector whenever such assistance
109 is necessary in the inspection of any such well or well site or
110 any other oil or gas facility. Similarly, all oil and gas inspectors
111 and the supervising inspector shall have authority to visit and
112 inspect any well or well site and any other oil or gas facility
113 in this state. Any well operator, coal operator operating coal
114 seams beneath the tract of land, or the coal seam owner or
115 lessee, if any, if said owner or lessee is not yet operating said
116 coal seams beneath said tract of land may request the director
117 to have an immediate inspection made. The operator or owner

118 of every well or well site or any other oil or gas facility shall
119 cooperate with the director, all oil and gas inspectors and the
120 supervising inspector in making inspections or obtaining
121 information.

122 (e) Oil and gas inspectors shall devote their full time and
123 undivided attention to the performance of their duties, and
124 they shall be responsible for the inspection of all wells or well
125 sites or other oil or gas facilities in their respective districts
126 as often as may be required in the performance of their duties.

127 (f) All records of the division shall be open to the public.

**§22B-1-3. Findings and orders of inspectors concerning violations;
determination of reasonable time for abatement;
extensions of time for abatement; special inspections;
notice of findings and orders.**

1 (a) If an oil and gas inspector, upon making an inspection
2 of a well or well site or any other oil or gas facility, finds that
3 any provision of this article is being violated, he shall also find
4 whether or not an imminent danger to persons exists, or
5 whether or not there exists an imminent danger that a fresh
6 water source or supply will be contaminated or lost. If he finds
7 that such imminent danger exists, he shall forthwith make an
8 order requiring the operator of such well or well site or other
9 oil or gas facility to cease further operations until such
10 imminent danger has been abated. If he finds that no such
11 imminent danger exists, he shall determine what would be a
12 reasonable period of time within which such violation should
13 be totally abated. Such findings shall contain reference to the
14 provisions of this article which he finds are being violated, and
15 a detailed description of the conditions which cause and
16 constitute such violation.

17 (b) The period of time so found by such oil and gas
18 inspector to be a reasonable period of time shall not exceed
19 seven days. Such period may be extended by such inspector,
20 or by any other oil and gas inspector duly authorized by the
21 director, from time to time, for good cause, but not to exceed
22 a total of thirty days, upon the making of a special inspection
23 to ascertain whether or not such violation has been totally
24 abated: *Provided*, That such thirty-day period may be
25 extended beyond thirty days by such inspectors where
26 abatement is shown to be incapable of accomplishment
27 because of circumstances or conditions beyond the control of

28 the well operator. The director shall cause a special inspection
29 to be made: (A) Whenever an operator of a well or well site
30 or any other oil or gas facility, prior to the expiration of any
31 such period of time, requests him to cause a special inspection
32 to be made at such well or well site or any other oil or gas
33 facility; and (B) Upon expiration of such period of time as
34 originally fixed or as extended, unless the director is satisfied
35 that the violation has been abated. Upon making such special
36 inspection, such oil and gas inspector shall determine whether
37 or not such violation has been totally abated. If he determines
38 that such violation has not been totally abated, he shall
39 determine whether or not such period of time as originally
40 fixed, or as so fixed and extended, should be extended. If he
41 determines that such period of time should be extended, he
42 shall determine what a reasonable extension would be. If he
43 determines that such violation has not been totally abated, and
44 if such period of time as originally fixed, or as so fixed and
45 extended, has then expired, and if he also determines that such
46 period of time should not be further extended, he shall
47 thereupon make an order requiring the operator of such well
48 or well site or other oil or gas facility to cease further
49 operations of such well, well site or facility, as the case may
50 be. Such findings and order shall contain reference to the
51 specific provisions of this article which are being violated.

52 (c) Notice of each finding and order made under this section
53 shall promptly be given to the operator of the well or well
54 site or other oil or gas facility to which it pertains by the
55 person making such finding or order.

56 (d) No order shall be issued under the authority of this
57 section which is not expressly authorized herein.

§22B-1-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

1 (a) Any well operator, complaining coal operator, owner or
2 lessee, if any, aggrieved by findings or an order made by an
3 oil or gas inspector pursuant to section three of this article,
4 may within fifteen days apply to the director for annulment
5 or revision of such order. Upon receipt of such application the
6 director shall make a special inspection of the well, well site
7 or other oil and gas facility affected by such order, or cause
8 two duly authorized oil and gas inspectors, other than the oil
9 and gas inspector who made such order or the supervising

10 inspector and one duly authorized oil and gas inspector other
11 than the oil and gas inspector who made such order, to make
12 such inspection of such well, or well site or other oil or gas
13 facility and to report thereon to them. Upon making such
14 special inspection himself, or upon receiving the report of such
15 special inspection, as the case may be, the director shall make
16 an order which shall include his findings and shall annul, revise
17 or affirm the order of the oil and gas inspector.

18 (b) The director shall cause notice of each finding and order
19 made under this section to be given promptly to the operator
20 of the well, well site or other oil or gas facility to which such
21 findings and order pertain, and the complainant under section
22 three if any.

23 (c) At any time while an order made pursuant to section
24 three of this article is in effect, the operator of the well, well
25 site or other oil or gas facility affected by such order may
26 apply to the director for annulment or revision of such order.
27 The director shall thereupon proceed to act upon such
28 application in the manner provided in this section.

29 (d) In view of the urgent need for prompt decision of
30 matters submitted to the director under this article, all actions
31 which he, or oil and gas inspectors, or the supervising
32 inspector, is required to take under this article, shall be taken
33 as rapidly as practicable, consistent with adequate consider-
34 ation of the issues involved.

**§22B-1-5. Requirements for findings, orders and notices; posting of
findings and orders; judicial review of final orders of
director.**

1 (a) All findings and orders made pursuant to section three
2 or four of this article, and all notices required to be given of
3 the making of such findings and orders, shall be in writing.
4 All such findings and orders shall be signed by the person
5 making them, and all such notices shall be signed by the
6 person charged with the duty of giving the notice. All such
7 notices shall contain a copy of the findings and orders referred
8 to therein.

9 (b) Notice of any finding or order required by section three
10 or four of this article to be given to an operator shall be given
11 by causing such notice, addressed to the operator of the well,
12 well site or other oil and/or gas facility to which such finding

13 or order pertains, to be delivered to such operator by causing
14 a copy thereof to be sent by registered mail to the permanent
15 address of such operator as filed with the division and by
16 causing a copy thereof to be posted upon the drilling rig or
17 other equipment at the well, well site or other oil and/or gas
18 facility, as the case may be. The requirement of this article
19 that a notice shall be "addressed to the operator of the well,
20 well site or other oil and/or gas facility to which such finding
21 or order pertains," shall not require that the name of the
22 operator for whom it is intended shall be specifically set out
23 in such address. Addressing such notice to "Operator of
24,," specifying the well, well site or other oil and/or gas
25 facility sufficiently to identify it, shall satisfy such requirement.

26 (c) Any well operator, complaining coal operator, owner or
27 lessee, if any, adversely affected by a final order issued by the
28 director under section four of this article shall be entitled to
29 judicial review thereof. All of the pertinent provisions of
30 section four, article five, chapter twenty-nine-a of this code
31 shall apply to and govern such judicial review with like effect
32 as if the provisions of said section four were set forth in
33 extenso in this section.

34 (d) The judgment of the circuit court shall be final unless
35 reversed, vacated or modified on appeal to the supreme court
36 of appeals in accordance with the provisions of section one,
37 article six, chapter twenty-nine-a of this code.

38 (e) Legal counsel and services for the director in all appeal
39 proceedings in any circuit court and the supreme court of
40 appeals shall be provided by the attorney general or his
41 assistants and in any circuit court by the prosecuting attorney
42 of the county as well, all without additional compensation. The
43 director, with written approval of the attorney general, may
44 employ special counsel to represent the director at any such
45 appeal proceedings.

**§22B-1-6. Permit required for well work; permit fee; application;
soil erosion control plan.**

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any
3 disturbance of land, without first securing from the director
4 a well work permit. An application may propose and a permit
5 may approve two or more activities defined as well work.

6 (b) The application for a well work permit shall be
7 accompanied by applicable bond as prescribed section twelve,
8 fourteen or twenty-three of this article, and the applicable plat
9 required by section twelve or fourteen of this article.

10 (c) Every permit application filed under this section shall be
11 verified and shall contain the following:

12 (1) The names and addresses of (i) the well operator, (ii)
13 the agent required to be designated under subsection (e) of this
14 section, and (iii) every person whom the applicant must notify
15 under any section of this article together with a certification
16 and evidence that a copy of the application and all other
17 required documentation has been delivered to all such persons;

18 (2) The name and address of every coal operator operating
19 coal seams under the tract of land on which the well is or may
20 be located, and the coal seam owner of record and lessee of
21 record required to be given notice by section twelve, if any,
22 if said owner or lessee is not yet operating said coal seams;

23 (3) The number of the well or such other identification as
24 the director may require;

25 (4) The type of well;

26 (5) The well work for which a permit is requested;

27 (6) The approximate depth to which the well is to be drilled
28 or deepened, or the actual depth if the well has been drilled;

29 (7) Any permit application fee required by law;

30 (8) If the proposed well work will require casing or tubing
31 to be set, the entire casing program for the well, including the
32 size of each string of pipe, the starting point and depth to
33 which each string is to be set, and the extent to which each
34 such string is to be cemented;

35 (9) If the proposed well work is to convert an oil well or
36 a combination well or to drill a new well for the purpose of
37 introducing pressure for the recovery of oil as provided in
38 section twenty-five of this article, specifications in accordance
39 with the data requirements of section fourteen of this article;

40 (10) If the proposed well work is to plug or replug the well,
41 (i) specifications in accordance with the data requirements of
42 section twenty-three of this article, (ii) a copy of all logs in
43 the operator's possession as the director may require, and (iii)
44 a work order showing in detail the proposed manner of

45 plugging or unplugging the well, in order that a representative
46 of the director and any interested persons may be present when
47 the work is done. In the event of an application to drill, redrill
48 or deepen a well, if the well work is unsuccessful so that the
49 well must be plugged and abandoned, and if the well is one
50 on which the well work has been continuously progressing
51 pursuant to a permit, the operator may proceed to plug the
52 well as soon as he has obtained the verbal permission of the
53 director or his designated representative to plug and abandon
54 the well, except that the operator shall make reasonable effort
55 to notify as soon as practicable the surface owner and the coal
56 owner, if any, of the land at the well location, and shall also
57 timely file the plugging affidavit required by section twenty-
58 three of this article;

59 (11) If the proposed well work is to stimulate an oil or gas
60 well, specifications in accordance with the data requirements
61 of section thirteen of this article;

62 (12) The erosion and sediment control plan required under
63 subsection (d) of this section for applications for permits to
64 drill; and

65 (13) Any other relevant information which the director may
66 require by rule.

67 (d) An erosion and sediment control plan shall accompany
68 each application for a well work permit except for a well work
69 permit to plug or replug any well. Such plan shall contain
70 methods of stabilization and drainage, including a map of the
71 project area indicating the amount of acreage disturbed. The
72 erosion and sediment control plan shall meet the minimum
73 requirements of the West Virginia erosion and sediment
74 control manual as adopted and from time to time amended
75 by the division of oil and gas, in consultation with the several
76 soil conservation districts pursuant to the control program
77 established in this state through section 208 of the federal
78 Water Pollution Control Act Amendments of 1972 [33 U.S.C.
79 1288]. The erosion and sediment control plan shall become
80 part of the terms and conditions of a well work permit, except
81 for a well work permit to plug or replug any well, which is
82 issued and the provisions of the plan shall be carried out where
83 applicable in the operation. The erosion and sediment control
84 plan shall set out the proposed method of reclamation which
85 shall comply with the requirements of section thirty of this

86 article.

87 For the purpose of ascertaining whether or not issuance of
88 any permit for well work will cause or contribute to a pollution
89 problem, the director shall consult with the director of the
90 department of natural resources.

91 (e) The well operator named in such application shall
92 designate the name and address of an agent for such operator
93 who shall be the attorney-in-fact for the operator and who
94 shall be a resident of the state of West Virginia upon whom
95 notices, orders or other communications issued pursuant to
96 this article or article five-a, chapter twenty, may be served, and
97 upon whom process may be served. Every well operator
98 required to designate an agent under this section shall within
99 five days after the termination of such designation notify the
100 division of such termination and designate a new agent.

101 (f) The well owner or operator shall install the permit
102 number as issued by the director in a legible and permanent
103 manner to the well upon completion of any permitted work.
104 The dimensions, specifications and manner of installation shall
105 be in accordance with the rules of the director.

106 (g) The director may waive the requirements of this section
107 and sections nine, ten and eleven of this article in any
108 emergency situation, if he deems such action necessary. In such
109 case the director may issue an emergency permit which would
110 be effective for not more than thirty days, but which would
111 be subject to reissuance by the director.

112 (h) The director shall deny the issuance of a permit if he
113 determines that the applicant has committed a substantial
114 violation of a previously issued permit, including the erosion
115 and sediment control plan, or a substantial violation of one
116 or more of the rules promulgated hereunder, and has failed
117 to abate or seek review of the violation within the time
118 prescribed by the director pursuant to the provisions of
119 sections three and four of this article and the rules promul-
120 gated hereunder, which time may not be unreasonable:
121 *Provided*, That in the event that the director does find that
122 a substantial violation has occurred and that the operator has
123 failed to abate or seek review of the violation in the time
124 prescribed, he may suspend the permit on which said violation
125 exists, after which suspension the operator shall forthwith
126 cease all well work being conducted under the permit:

127 *Provided, however,* That the director may reinstate the permit
128 without further notice, at which time the well work may be
129 continued. The director shall make written findings of any
130 such determination made by him and may enforce the same
131 in the circuit courts of this state and the operator may appeal
132 such suspension pursuant to the provisions of section forty of
133 this article. The director shall make a written finding of any
134 such determination.

135 (i) Any person who violates any provision of this section
136 shall be guilty of a misdemeanor, and, upon conviction
137 thereof, shall be fined not more than five thousand dollars,
138 or be imprisoned in the county jail not more than twelve
139 months, or both fined and imprisoned.

**§22B-1-7. Water pollution control permits; powers and duties of the
director; penalties.**

1 (a) In addition to a permit for well work, the director, after
2 public notice and an opportunity for public hearings, may
3 either issue a separate permit, general permit or a permit
4 consolidated with the well work permit for the discharge or
5 disposition of any pollutant or combination of pollutants into
6 waters of this state upon condition that such discharge or
7 disposition meets or will meet all applicable state and federal
8 water quality standards and effluent limitations and all other
9 requirements of the director.

10 (b) It shall be unlawful for any person conducting activities
11 which are subject to the requirements of this article, unless he
12 holds a water pollution control permit therefor from the
13 director, which is in full force and effect to:

14 (1) Allow pollutants or the effluent therefrom, produced by
15 or emanating from any point source, to flow into the waters
16 of this state;

17 (2) Make, cause or permit to be made any outlet, or
18 substantially enlarge or add to the load of any existing outlet,
19 for the discharge of pollutants or the effluent therefrom, into
20 the waters of this state;

21 (3) Acquire, construct, install, modify or operate a disposal
22 system or part thereof for the direct or indirect discharge or
23 deposit of treated or untreated pollutants or the effluent
24 therefrom, into the waters of this state, or any extension to
25 or addition to such disposal system;

26 (4) Increase in volume or concentration any pollutants in
27 excess of the discharges or disposition specified or permitted
28 under any existing permit;

29 (5) Extend, modify or add to any point source, the
30 operation of which would cause an increase in the volume or
31 concentration of any pollutants discharging or flowing into the
32 waters of the state;

33 (6) Operate any disposal well for the injection or reinjection
34 underground of any pollutant, including, but not limited to,
35 liquids or gasses, or convert any well into such a disposal well
36 or plug or abandon any such disposal well.

37 (c) Notwithstanding any provision of this chapter to the
38 contrary, the director shall have the same powers and duties
39 relating to inspection and enforcement as those granted to the
40 chief of water resources, his authorized agent or any
41 authorized employee as the case may be under article five-a,
42 chapter twenty of this code in connection with the issuance
43 of any water pollution control permit or any person required
44 to have such permit.

45 (d) Any person who violates any provision of this section,
46 any order issued under this section or any permit issued
47 pursuant to this section or any rule or regulation of the
48 director relating to water pollution or who willfully or
49 negligently violates any provision of this section or any permit
50 issued pursuant to this section or any rule or regulation or
51 order of the director relating to water pollution or who fails
52 or refuses to apply for and obtain a permit or who intention-
53 ally misrepresents any material fact in an application, record,
54 report, plan or other document files or required to be
55 maintained under this section shall be subject to the same
56 penalties for such violations as are provided for in sections
57 seventeen and nineteen, article five-a, chapter twenty of this
58 code: *Provided*, That the provisions of section twenty, article
59 five-a, chapter twenty of this code relating to exceptions to
60 criminal liability shall also apply.

61 All applications for injunction filed pursuant to section
62 seventeen, article five-a, chapter twenty of the code shall take
63 priority on the docket of the circuit court in which pending,
64 and shall take precedence over all other civil cases.

65 (e) Notwithstanding any provisions of this chapter or

66 chapter twenty-two of this code to the contrary, any water
67 pollution permit of the director of the division of oil and gas
68 issued pursuant to this section or any order issued in
69 connection with it or for the purpose of implementing the
70 "national pollutant discharge elimination system" established
71 under the Clean Water Act or the requirements of this section,
72 shall be appealable only to the state water resources board and
73 such appeal shall be governed by the provisions of section
74 fifteen, article five-a, chapter twenty of this code.

75 (f) If any loss of game-fish or aquatic life results from a
76 person's or persons' failure or refusal to discharge any duty
77 imposed upon him by this section, the West Virginia
78 department of natural resources shall have a cause of action
79 on behalf of the state of West Virginia to recover from such
80 person or persons causing such a loss a sum equal to the cost
81 of replacing such game-fish or aquatic life. Any moneys so
82 collected by the director of the department of natural resources
83 shall be deposited in a special revenue fund entitled "natural
84 resources game-fish and aquatic life fund" and shall be
85 expended as hereinafter provided. The fund shall be expended
86 to stock waters of this state with game-fish and aquatic life.
87 Where feasible, the director of the department of natural
88 resources shall use any sum collected in accordance with the
89 provisions of this section to stock waters in the area in which
90 the loss resulting in the collection of such sum occurred. Any
91 balance of such sum shall remain in the fund and be expended
92 to stock state-owned and operated fishing lakes and ponds,
93 wherever located in this state, with game-fish and aquatic life.
94 The commissioner shall assist the director of the department
95 of natural resources by providing witnesses, records, reports
96 or other evidence relating to such cause of action.

**§22B-1-8. Permits not to be issued on flat well royalty leases;
legislative findings and declarations; permit
requirements.**

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas underlying
3 this state is subject to development pursuant to leases or other
4 continuing contractual agreements wherein the owners of such
5 oil and gas are paid upon a royalty or rental basis known in
6 the industry as the annual flat well royalty basis, in which the
7 royalty is based solely on the existence of a producing well,

8 and thus is not inherently related to the volume of the oil and
9 gas produced or marketed;

10 (2) That continued exploitation of the natural resources of
11 this state in exchange for such wholly inadequate compensa-
12 tion is unfair, oppressive, works an unjust hardship on the
13 owners of the oil and gas in place, and unreasonably deprives
14 the economy of the state of West Virginia of the just benefit
15 of the natural wealth of this state;

16 (3) That a great portion, if not all, of such leases or other
17 continuing contracts based upon or calling for an annual flat
18 well royalty, have been in existence for a great many years
19 and were entered into at a time when the techniques by which
20 oil and gas are currently extracted, produced or marketed,
21 were not known or contemplated by the parties, nor was it
22 contemplated by the parties that oil and gas would be
23 recovered or extracted or produced or marketed from the
24 depths and horizons currently being developed by the well
25 operators;

26 (4) That while being fully cognizant that the provisions of
27 section 10, article I of the United States constitution and of
28 section 4, article III of the constitution of West Virginia,
29 proscribe the enactment of any law impairing the obligation
30 of a contract, the Legislature further finds that it is a valid
31 exercise of the police powers of this state and in the interest
32 of the state of West Virginia and in furtherance of the welfare
33 of its citizens, to discourage as far as constitutionally possible
34 the production and marketing of oil and gas located in this
35 state under the type of leases or other continuing contacts
36 described above.

37 (b) In the light of the foregoing findings, the Legislature
38 hereby declares that it is the policy of this state, to the extent
39 possible, to prevent the extraction, production or marketing
40 of oil or gas under a lease or leases or other continuing
41 contract or contracts providing a flat well royalty or any
42 similar provisions for compensation to the owner of the oil
43 and gas in place, which is not inherently related to the volume
44 of oil or gas produced or marketed, and toward these ends,
45 the Legislature further declares that it is the obligation of this
46 state to prohibit the issuance of any permit required by it for
47 the development of oil or gas where the right to develop,
48 extract, produce or market the same is based upon such leases

49 or other continuing contractual agreements.

50 (c) In addition to any requirements contained in this article
51 with respect to the issuance of any permit required for the
52 drilling, redrilling, deepening, fracturing, stimulating, pressur-
53 ing, converting, combining or physically changing to allow the
54 migration of fluid from one formation to another, no such
55 permit shall be hereafter issued unless the lease or leases or
56 other continuing contract or contracts by which the right to
57 extract, produce or market the oil or gas is filed with the
58 application for such permit. In lieu of filing the lease or leases
59 or other continuing contract or contracts, the applicant for a
60 permit described herein may file the following:

61 (1) A brief description of the tract of land including the
62 district and county wherein the tract is located;

63 (2) The identification of all parties to all leases or other
64 continuing contractual agreements by which the right to
65 extract, produce or market the oil or gas is claimed;

66 (3) The book and page number wherein each such lease or
67 contract by which the right to extract, produce or market the
68 oil or gas is recorded; and

69 (4) A brief description of the royalty provisions of each such
70 lease or contract.

71 (d) Unless the provisions of subsection (e) are met, no such
72 permit shall be hereafter issued for the drilling of a new oil
73 or gas well, or for the redrilling, deepening, fracturing,
74 stimulating, pressuring, converting, combining or physically
75 changing to allow the migration of fluid from one formation
76 to another, of an existing oil or gas production well, where
77 or if the right to extract, produce or market the oil or gas
78 is based upon a lease or leases or other continuing contract
79 or contracts providing for flat well royalty or any similar
80 provision for compensation to the owner of the oil or gas in
81 place which is not inherently related to the volume of oil and
82 gas so extracted, produced and marketed.

83 (e) To avoid the permit prohibition of subsection (d), the
84 applicant may file with such application an affidavit which
85 certifies that the affiant is authorized by the owner of the
86 working interest in the well to state that it shall tender to the
87 owner of the oil or gas in place not less than one eighth of
88 the total amount paid to or received by or allowed to the

89 owner of the working interest at the wellhead for the oil or
90 gas so extracted, produced or marketed before deducting the
91 amount to be paid to or set aside for the owner of the oil
92 or gas in place, on all such oil or gas to be extracted, produced
93 or marketed from the well. If such affidavit be filed with such
94 application, then such application for permit shall be treated
95 as if such lease or leases or other continuing contract or
96 contracts comply with the provisions of this section.

97 (f) The owner of the oil or gas in place shall have a cause
98 of action to enforce his rights established by this section.

99 (g) The provisions of this section shall not affect or apply
100 to any lease or leases or other continuing contract or contracts
101 for the underground storage of gas or any well utilized in
102 connection therewith or otherwise subject to the provisions of
103 article four of this chapter.

104 (h) The director shall enforce this requirement irrespective
105 of whether such lease or other continuing contract was
106 executed before or after the effective date of this chapter.

107 (i) The provisions of this section shall not adversely affect
108 any rights to free gas.

§22B-1-9. Notice to property owners.

1 (a) No later than the filing date of the application, the
2 applicant for a permit for any well work shall deliver by
3 personal service or by certified mail, return receipt requested,
4 copies of the application, well plat and erosion and sediment
5 control plan required by section six of this article to each of
6 the following persons:

7 (1) The owners of record of the surface of the tract on which
8 the well is, or is to be located; and

9 (2) The owners of record of the surface tract or tracts
10 overlying the oil and gas leasehold being developed by
11 proposed well work, if such surface tract is to be utilized for
12 roads or other land disturbance as described in the erosion and
13 sediment control plan submitted pursuant to section six of this
14 article.

15 (b) If more than three tenants in common or other co-
16 owners of interests described in subsection (a) of this section
17 hold interests in such lands, the applicant may serve the
18 documents required upon the person described in the records

19 of the sheriff required to be maintained pursuant to section
20 eight, article one, chapter eleven-a of this code, or publish in
21 the county in which the well is located or to be located a Class
22 II legal advertisement as described in section two, article three,
23 chapter fifty-nine of this code, containing such notice and
24 information as the director shall prescribe by rule and
25 regulation, with the first publication date being at least ten
26 days prior to the filing of the permit application: *Provided*,
27 That all owners occupying the tracts where the well work is,
28 or is proposed to be located at the filing date of the permit
29 application shall receive actual service of the documents
30 required by subsection (a) of this section.

31 (c) Materials served upon persons described in subsections
32 (a) and (b) of this section shall contain a statement of the
33 methods and time limits for filing comments, who may file
34 comments and the name and address of the director for the
35 purpose of filing comments and obtaining additional informa-
36 tion and a statement that such persons may request, at the
37 time of submitting comments, notice of the permit decision
38 and a list of persons qualified to test water as provided in this
39 section.

40 (d) Any person entitled to submit comments shall also be
41 entitled to receive a copy of the permit as issued or a copy
42 of the order denying the permit if such person requests the
43 receipt thereof as a part of the comments concerning said
44 permit application.

45 (e) Persons entitled to notice may contact the district office
46 of the division to ascertain the names and location of water
47 testing laboratories in the area capable and qualified to test
48 water supplies in accordance with standard accepted methods.
49 In compiling such list of names the division shall consult with
50 the state and local health departments.

§22B-1-10. Procedure for filing comments; certification of notice.

1 (a) All persons described in subsections (a) and (b), section
2 nine of this article may file comments with the director as to
3 the location or construction of the applicant's proposed well
4 work within fifteen days after the application is filed with the
5 director.

6 (b) Prior to the issuance of any permit for well work, the
7 applicant shall certify to the director that the requirements of

8 section nine of this article have been completed by the
9 applicant. Such certification may be by affidavit of personal
10 service or the return receipt card, or other postal receipt for
11 certified mailing.

**§22B-1-11. Review of application; issuance of permit in the absence
of objections; copy of permits to county assessor.**

1 The director shall review each application for a well work
2 permit and shall determine whether or not a permit shall be
3 issued.

4 No permit shall be issued less than fifteen days after the
5 filing date of the application for any well work except plugging
6 or replugging; and no permit for plugging or replugging shall
7 be issued less than five days after the filing date of the
8 application except a permit for plugging or replugging a dry
9 hole: *Provided*, That if the applicant certifies that all persons
10 entitled to notice of the application under the provisions of
11 this article have been served in person or by certified mail,
12 return receipt requested, with a copy of the well work
13 application, including the erosion and sediment control plan,
14 if required, and the plat required by section six of this article,
15 and further files written statements of no objection by all such
16 persons, the director may issue the well work permit at any
17 time.

18 The director may cause such inspections to be made of the
19 proposed well work location as to assure adequate review of
20 the application. The permit shall not be issued, or shall be
21 conditioned including conditions with respect to the location
22 of the well and access roads prior to issuance if the director
23 determines that:

24 (1) The proposed well work will constitute a hazard to the
25 safety of persons; or

26 (2) The plan for soil erosion and sediment control is not
27 adequate or effective; or

28 (3) Damage would occur to publicly owned lands or
29 resources; or

30 (4) The proposed well work fails to protect fresh water
31 sources or supplies.

32 The director shall promptly review all comments filed. If
33 after review of the application and all comments received, the

34 application for a well work permit is approved, and no timely
35 objection or comment has been filed with the director or made
36 by the director under the provisions of section fifteen, sixteen
37 or seventeen of this article, the permit shall be issued, with
38 conditions, if any. Nothing in this section shall be construed
39 to supersede the provisions of sections six, twelve, thirteen,
40 fourteen, fifteen, sixteen and seventeen of this article.

41 The director shall mail a copy of the permit as issued or
42 a copy of the order denying a permit to any person who
43 submitted comments to the director concerning said permit
44 and requested such copy.

45 Upon the issuance of any permit pursuant to the provisions
46 of this article, the director shall transmit a copy of such permit
47 to the office of the assessor for the county in which the well
48 is located.

**§22B-1-12. Plats prerequisite to drilling or fracturing wells;
preparation and contents; notice and information
furnished to coal operators, owners or lessees;
issuance of permits; performance bonds or securities
in lieu thereof; bond forfeiture.**

1 (a) Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator shall
3 have a plat prepared by a licensed land surveyor or registered
4 engineer showing the district and county in which the tract of
5 land is located, the name and acreage of the same, the names
6 of the owners of adjacent tracts, the proposed or actual
7 location of the well determined by survey, the courses and
8 distances of such location from two permanent points or
9 landmarks on said tract and the number to be given the well
10 and the date of drilling completion of a well when it is
11 proposed that such well be fractured and shall forward by
12 registered or certified mail a copy of the plat to the director.
13 In the event the tract of land on which the said well proposed
14 to be drilled or fractured is located is known to be underlaid
15 with one or more coal seams, copies of the plat shall be
16 forwarded by registered or certified mail to each and every coal
17 operator operating said coal seams beneath said tract of land,
18 who has mapped the same and filed his maps with the division
19 of mines and minerals in accordance with chapter twenty-two-
20 a of this code, and the coal seam owner of record and lessee
21 of record, if any, if said owner or lessee has recorded the

22 declaration provided in section thirty-six of this article, and
23 if said owner or lessee is not yet operating said coal seams
24 beneath said tract of land. With each of such plats there shall
25 be enclosed a notice (form for which shall be furnished on
26 request by the director) addressed to the director and to each
27 such coal operator, owner and lessee, if any, at their respective
28 addresses, informing them that such plat and notice are being
29 mailed to them respectively by registered or certified mail,
30 pursuant to the requirements of this article.

31 (b) If no objections are made, or are found by the director,
32 to such proposed location or proposed fracturing within fifteen
33 days from receipt of such plat and notice by the director, the
34 same shall be filed and become a permanent record of such
35 location or fracturing subject to inspection at any time by any
36 interested person, and the director may forthwith issue to the
37 well operator a permit reciting the filing of such plat, that no
38 objections have been made by the coal operators, owners and
39 lessees, if any, or found thereto by the director, and
40 authorizing the well operator to drill at such location, or to
41 fracture the well. Unless the director has objections to such
42 proposed location or proposed fracturing or stimulating, such
43 permit may be issued prior to the expiration of such fifteen-
44 day period upon the obtaining by the well operator of the
45 consent in writing of the coal operator or operators, owners
46 and lessees, if any, to whom copies of the plat and notice shall
47 have been mailed as herein required, and upon presentation
48 of such written consent to the director. The notice above
49 provided for may be given to the coal operator by delivering
50 or mailing it by registered or certified mail as above to any
51 agent or superintendent in actual charge of mines.

52 (c) A permit to drill, or to fracture or stimulate an oil or
53 gas well shall not be issued unless the application therefor is
54 accompanied by a bond as provided in section twenty-six of
55 this article.

**§22B-1-13. Notice to coal operators, owners or lessees and director
of division of mines and minerals of intention to
fracture certain other wells; contents of such notice;
bond; permit required.**

1 Before fracturing any well the well operator shall, by
2 registered or certified mail, forward a notice of intention to
3 fracture such well to the director and to each and every coal

4 operator operating coal seams beneath said tract of land, who
5 has mapped the same and filed his maps with the division of
6 mines and minerals in accordance with chapter twenty-two-a
7 of this code, and the coal seam owner and lessee, if any, if
8 said owner of record or lessee of record has recorded the
9 declaration provided in section thirty-six of this article, and
10 if said owner or lessee is not yet operating said coal seams
11 beneath said tract of land.

12 The notice shall be addressed to the director and to each
13 such coal operator at their respective addresses, shall contain
14 the number of the drilling permit for such well and such other
15 information as may be required by the director to enable that
16 division and the coal operators to locate and identify such well
17 and shall inform them that such notice is being mailed to them,
18 respectively, by registered or certified mail, pursuant to the
19 requirements of this article. (The form for such notice of
20 intention shall be furnished on request by the director.)

21 If no objections are made, or are found by the director to
22 such proposed fracturing within fifteen days from receipt of
23 such notice by the director, the same shall be filed and become
24 a permanent record of such fracturing, subject to inspection
25 at any time by any interested person, and the director shall
26 forthwith issue to the well operator a permit reciting the filing
27 of such notice, that no objections have been made by the coal
28 operators, or found thereto by the director, and authorizing
29 the well operator to fracture such well. Unless the director has
30 objections to such proposed fracturing, such permit shall be
31 issued prior to the expiration of such fifteen-day period upon
32 the obtaining by the well operator of the consent in writing
33 of the coal operator or operators, owners or lessees, if any,
34 to whom notice of intention to fracture shall have been mailed
35 as herein required, and upon presentation of such written
36 consent to the director. The notice above provided for may
37 be given to the coal operator by delivering or mailing it by
38 registered or certified mail as above to any agent or
39 superintendent in actual charge of mines.

§22B-1-14. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and division of mines and minerals chief of water resources; issuance of permits; performance bonds or security in lieu thereof.

1 (a) Before drilling a well for the introduction of liquids for
2 the purposes provided for in section twenty-five of this article
3 or for the introduction of liquids for the disposal of pollutants
4 or the effluent therefrom on any tract of land, or before
5 converting an existing well for such purposes, the well operator
6 shall have a plat prepared by a registered engineer or licensed
7 land surveyor showing the district and county in which the
8 tract of land is located, the name and acreage of the same,
9 the names of the owners of all adjacent tracts, the proposed
10 or actual location of the well or wells determined by a survey,
11 the courses and distances of such location from two permanent
12 points of land marked on said tract and the number to be
13 given to the well, and shall forward by registered or certified
14 mail the original and one copy of the plat to the division of
15 oil and gas. In addition, the well operator shall provide the
16 following information on the plat or by way of attachment
17 thereto to the director of the division of oil and gas in the
18 manner and form prescribed by the director's rules and
19 regulations: (1) The location of all wells, abandoned or
20 otherwise located within the area to be affected; (2) where
21 available, the casing records of all such wells; (3) where
22 available, the drilling log of all such wells; (4) the maximum
23 pressure to be introduced; (5) the geological formation into
24 which such liquid or pressure is to be introduced; (6) a general
25 description of the liquids to be introduced; (7) the location of
26 all water-bearing horizons above and below the geological
27 formation into which such pressure, liquid or waste is to be
28 introduced; and (8) such other information as the director by
29 rule and regulation may require.

30 (b) In the event the tract of land on which said well
31 proposed to be drilled or converted for the purposes provided
32 for in this section is located is known to be underlaid with
33 coal seams, copies of the plat and all information required by
34 this section shall be forwarded by the operator by registered
35 or certified mail to each and every coal operator operating coal
36 seams beneath said tract of land, who has mapped the same
37 and filed his maps with the division of mines and minerals in
38 accordance with chapter twenty-two-a of this code, and the
39 coal seam owner of record and lessee of record, if any, if said
40 owner or lessee has recorded the declaration provided in
41 section thirty-six of this article, and if said owner or lessee is

42 not yet operating said seams beneath said tract of land. With
43 each of such plats, there shall be enclosed a notice (form for
44 which shall be furnished on request by the director) addressed
45 to the director and to each such coal operator, owner or lessee,
46 if any, at their respective addresses, informing them that such
47 plat and notice are being mailed to them, respectively, by
48 registered or certified mail, pursuant to the requirements of
49 this section.

50 (c) If no objections are made by any such coal operator,
51 owner or lessee, or the chief of the division of water resources
52 of the department of natural resources or are found by the
53 director of the division of oil and gas to such proposed drilling
54 or converting of the well or wells for the purposes provided
55 for in this section within thirty days from the receipt of such
56 plat and notice by the director, the same shall be filed and
57 become a permanent record of such location or well, subject
58 to inspection at any time by any interested person, and the
59 director may after public notice and opportunity to comment,
60 issue such permit authorizing the well operator to drill at such
61 location or convert such existing well or wells for the purposes
62 provided for in this section. The notice above provided for
63 may be given to the coal operator by delivering or mailing it
64 by registered or certified mail as above to any agent or
65 superintendent in actual charge of the mines.

66 (d) A permit to drill a well or wells or convert an existing
67 well or wells for the purposes provided for in this section shall
68 not be issued until all of the bonding provisions required by
69 the provisions of section twelve of this article have been fully
70 complied with and all such bonding provisions shall apply to
71 all wells drilled or converted for the purposes provided for in
72 this section as if such wells had been drilled for the purposes
73 provided for in section twelve of this article, except that such
74 bonds shall be conditioned upon full compliance with all laws,
75 rules and regulations relating to the drilling of a well or the
76 converting of an existing well for the purposes provided for
77 in said section twenty-five, or introducing of liquids for the
78 disposal of pollutants including the redrilling, deepening,
79 casing, plugging or abandonment of all such wells.

§22B-1-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

1 (a) When a proposed deep well drilling site or oil well
2 drilling site or any site is above a seam or seams of coal, then
3 the coal operator operating said coal seams beneath the tract
4 of land, or the coal seam owner or lessee, if any, if said owner
5 or lessee is not yet operating said coal seams, may within
6 fifteen days from the receipt by the director of the plat and
7 notice required by section twelve of this article, or within
8 fifteen days from the receipt by the director of notice required
9 by section thirteen of this article, file objections in writing
10 (forms for which will be furnished by the director on request)
11 to such proposed drilling or fracturing with the director,
12 setting out therein as definitely as is reasonably possible the
13 ground or grounds on which such objections are based.

14 If any objection is filed, or if any objection is made by the
15 director, the director shall notify the well operator of the
16 character of the objections and by whom made and fix a time
17 and place, not less than fifteen days from the end of said
18 fifteen-day period, at which such objections will be considered
19 of which time and place the well operator and all objecting
20 coal operators, owners or lessees, if any, shall be given at least
21 ten days' written notice by the director, by registered or
22 certified mail, and summoned to appear. At the time and place
23 so fixed the well operator and the objecting coal operators,
24 owners or lessees, if any, or such of them as are present or
25 represented, shall proceed to consider the objections. In the
26 case of proposed drilling, such parties present or represented
27 may agree upon either the location as made or so moved as
28 to satisfy all objections and meet the approval of the director,
29 and any change in the original location so agreed upon and
30 approved by the director shall be indicated on said plat on
31 file with the director, and the distance and direction of the
32 new location from the original location shall be shown, and
33 as so altered, the plat shall be filed and become a permanent
34 record, and in the case of proposed fracturing, such parties
35 present or represented may agree upon conditions under which
36 the well is to be fractured which will protect life and property
37 and which will satisfy all objections and meet the approval of
38 the director, at which time the plat and notice required by
39 section twelve or the notice required by section thirteen, as the
40 case may be, shall be filed and become a permanent record.

41 Whereupon the director shall forthwith issue to the well
42 operator a drilling or fracturing permit, as the case may be,
43 reciting the filing of the plat and notice required by said
44 section twelve, or the notice required by said section thirteen,
45 as the case may be, that at a hearing duly held a location as
46 shown on the plat or the conditions under which the fracturing
47 is to take place for the protection of life and property were
48 agreed upon and approved, and that the well operator is
49 authorized to drill at such location or to fracture at the site
50 shown on such plat, or to fracture the well identified in the
51 notice required by section thirteen, as the case may be.

52 (b) In the event the well operator and the objecting coal
53 operators, owners or lessees, if any, or such as are present or
54 represented at such hearing are unable to agree upon a drilling
55 location, or upon a drilling location that meets the approval
56 of the director, then the director shall proceed to hear the
57 evidence and testimony in accordance with sections one and
58 two, article five, chapter twenty-nine-a of this code, except
59 where such provisions are inconsistent with the article. The
60 director shall take into consideration in arriving at his
61 decision:

62 (1) Whether the drilling location is above or in close
63 proximity to any mine opening or shaft, entry, travelway,
64 airway, haulageway, drainageway or passageway, or to any
65 proposed extension thereof in any operated or abandoned or
66 operating coal mine or coal mines already surveyed and
67 platted, but not yet being operated;

68 (2) Whether the proposed drilling can reasonably be done
69 through an existing or planned pillar of coal, or in close
70 proximity to an existing well or such pillar of coal, taking into
71 consideration the surface topography;

72 (3) Whether a well can be drilled safely, taking into
73 consideration the dangers from creeps, squeezes or other
74 disturbances due to the extraction of coal; and

75 (4) The extent to which the proposed drilling location
76 unreasonably interferes with the safe recovery of coal, oil and
77 gas.

78 At the close of the hearing or within ten days thereafter the
79 director shall issue an order stating:

80 (1) That he refuses to issue a permit;

81 (2) That he will issue a permit for the proposed drilling
82 location;

83 (3) That he will issue a permit for a drilling location
84 different from that requested by the well operator.

85 The order shall state with particularity the reasons for the
86 director's order and shall be mailed by registered or certified
87 mail to the parties present or represented at such hearing. If
88 the director has ruled that he will issue a permit, he shall issue
89 a permit effective ten days after he has mailed such order,
90 except that for good cause shown, the director may stay the
91 issuance of a permit for a period not to exceed thirty days.

92 If a permit is issued, the director shall indicate the new
93 drilling location on the plat on file and shall number and keep
94 an index of and docket each plat and notice mailed to him
95 as provided in section twelve of this article, and each notice
96 mailed to him as provided in section thirteen of this article,
97 entering in such docket the name of the well operator, and
98 the names and addresses of all persons notified, the dates of
99 hearings and all actions taken by the director. The director
100 shall also prepare a record of the proceedings, which record
101 shall include all applications, plats and other documents filed
102 with the director, all notices given and proof of service thereof,
103 all orders issued, all permits issued and a transcript of the
104 hearing. The record prepared by the director shall be open to
105 inspection by the public.

106 (c) In the event the well operator and the objecting coal
107 operators, owners or lessees, if any, or such as are present or
108 represented at such hearing, are unable to agree upon the
109 conditions under which the well is to be fractured as to protect
110 life and property, or upon conditions of fracturing that meet
111 with the approval of the director, then the director shall
112 proceed to hear the evidence and testimony in accordance with
113 sections one and two, article five, chapter twenty-nine-a of this
114 code, except where such provisions are inconsistent with this
115 article.

116 The director shall take into consideration upon his decision
117 whether the well can be fractured safely, taking into
118 consideration the dangers from creeps, squeezes or other

119 disturbances.

120 At the close of the hearing, or within ten days thereafter,
121 the director shall issue an order stating the conditions under
122 which the well is to be fractured, provided the well can be
123 fractured safely, taking into consideration the dangers from
124 creeps, squeezes or other disturbances. If such fracturing
125 cannot be done safely, the director shall issue an order stating
126 with particularity the reasons for refusing to issue a permit.

127 The order shall state with particularity the reasons for the
128 director's order and shall be mailed by registered or certified
129 mail to the parties present or represented at such hearing. If
130 the director has ruled that he will issue a permit, he shall issue
131 a permit effective ten days after it has mailed such order,
132 except that for good cause shown, the director may stay the
133 issuance of a permit for a period not to exceed thirty days.

134 If a permit is issued, the director shall indicate the well to
135 be fractured on the plat on file and shall number and keep
136 an index of and docket each plat and notice mailed to him
137 as provided in section twelve of this article, and each notice
138 mailed to him as provided in section thirteen of this article,
139 entering in such docket the name of the well operator, the
140 names and addresses of all persons notified, the dates of
141 hearings and all actions taken by the director. The director
142 shall also prepare a record of the proceedings, which record
143 shall include all applications, plats and other documents filed
144 with the director, all notices given and proof of service thereof,
145 all orders issued, all permits issued and a transcript of the
146 hearing. The record prepared by the director shall be open to
147 inspection by the public.

**§22B-1-16. Objections to proposed drilling or converting for
introducing liquids or waste into wells; notices and
hearings; agreed location or conditions; indication of
changes on plats, etc.; issuance of permits; docket of
proceeding.**

1 (a) When a well is proposed to be drilled or converted for
2 the purposes provided for in section fourteen of this article,
3 and is above a seam or seams of coal, then the coal operator
4 operating said coal seams beneath the tract of land, or the coal
5 seam owner or lessee, if any, if said owner or lessee is not
6 yet operating said coal seams, may within fifteen days from

7 the receipt by the director of the plat and notice required by
8 section twelve of this article, file objections in writing (forms
9 for which will be furnished by the director on request) to such
10 proposed drilling or conversion.

11 (b) In any case wherein a well proposed to be drilled or
12 converted for the purposes provided for in section fourteen of
13 this article shall, in the opinion of the chief of the division
14 of water resources of the department of natural resources,
15 affect detrimentally the reasonable standards of purity and
16 quality of the waters of the state, such chief shall, within the
17 time period established by the director for the receipt of public
18 comment on such proposed drilling or conversion, file with the
19 director his objections in writing to such proposed drilling or
20 conversion, setting out therein as definitely as is reasonably
21 possible the ground or grounds upon which such objections
22 are based and indicating the conditions, consistent with the
23 provisions of this article and the rules or regulations
24 promulgated thereunder, as may be necessary for the
25 protection of the reasonable standards of the purity and
26 quality of such waters under which such proposed drilling or
27 conversion may be completed to overcome such objections, if
28 any.

29 (c) If any objection or objections are so filed, or are made
30 by the director, the director shall notify the well operator of
31 the character of the objections and by whom made and fix
32 a time and place, not less than thirty days from the end of
33 said thirty-day period, at which such objections will be
34 considered, of which time and place the well operator and all
35 objecting coal operators, the owners or lessees, if any, or such
36 chief, shall be given at least ten days' written notice by the
37 director by registered or certified mail, and summoned to
38 appear. At the time and place so fixed the well operator and
39 the objecting coal operators, owners or lessees, if any, or such
40 of them as are present or represented, or such chief, shall
41 proceed to consider the objections. In the case of proposed
42 drilling or converting of a well for the purposes provided for
43 in section fourteen of this article, such parties present or
44 represented may agree upon either the location as made or so
45 moved as to satisfy all objections and meet the approval of
46 the director, and any change in the original location so agreed
47 upon and approved by the director shall be indicated on said

48 plat on file with the director, and the distance and direction
49 of the new location from the original location shall be shown,
50 and, as so altered, the plat shall be filed and become a
51 permanent record. In the case of proposed conversion, such
52 parties present or represented may agree upon conditions
53 under which the conversion is to take place for the protection
54 of life and property or for protection of reasonable standards
55 of purity and quality of the waters of the state. At which time
56 the plat and notice required by section fourteen shall be filed
57 and become a permanent record. Whereupon the director may
58 issue to the well operator a permit to drill or convert, as the
59 case may be, reciting the filing of the plat and notice required
60 by said section fourteen that at a hearing duly held a location
61 as shown on the plat or the conditions under which the
62 conversion is to take place for the protection of life and
63 property and reasonable standards of purity and quality of the
64 waters of the state where agreed upon and approved, and that
65 the well operator is authorized to drill at such location or to
66 convert at the site shown on such plat, as the case may be.

67 (d) (1) In the case the well operator and the objecting coal
68 operators, owners or lessees, if any, and such chief, or such
69 as are present or represented at such hearing are unable to
70 agree upon a drilling location, or upon a drilling location that
71 meets the approval of the director, then the director shall
72 proceed to hear the evidence and testimony in accordance with
73 sections one and two, article five, chapter twenty-nine-a of this
74 code, except where such provisions are inconsistent with this
75 article. The director shall take into consideration upon his
76 decision:

77 (a) Whether the drilling location is above or in close
78 proximity to any mine opening or shaft, entry, traveling, air
79 haulage, drainage or passageway, or to any proposed extension
80 thereof, in any operated or abandoned or operating coal mine,
81 or coal mine already surveyed and platted, but not yet being
82 operated;

83 (b) Whether the proposed drilling can reasonably be done
84 through an existing or planned pillar of coal, or in close
85 proximity to an existing well or such pillar of coal, taking into
86 consideration the surface topography;

87 (c) Whether a well can be drilled safely, taking into

88 consideration the dangers from creeps, squeezes or other
89 disturbances, due to the extraction of coal;

90 (d) The extent to which the proposed drilling location
91 unreasonably interferes with the safe recovery of coal, oil and
92 gas.

93 (2) At the close of the hearing or within ten days thereafter
94 the director shall issue an order stating:

95 (a) That he refuses to issue a permit;

96 (b) That he will issue a permit for the proposed drilling
97 location;

98 (c) That he will issue a permit for a drilling location
99 different than that requested by the well operator.

100 The order shall state with particularity the reasons for the
101 director's order and shall be mailed by registered or certified
102 mail to the parties present or represented at such hearing. If
103 the director has ruled that he will issue a permit, he shall issue
104 a permit effective ten days after he has mailed such order:
105 Except that for good cause shown, the director may stay the
106 issuance of a permit for a period not to exceed thirty days.

107 (3) If a permit is issued, the director shall indicate the new
108 drilling location on the plat on file with the director and shall
109 number and keep an index of and docket each plat and notice
110 mailed to it as provided in section twelve of this article, and
111 each notice mailed to it as provided in section thirteen of this
112 article, entering in such docket the name of the well operator,
113 and the names and addresses of all persons notified, the dates
114 of hearings and all actions taken by the director, permits issued
115 or refused, the papers filed and a transcript of the hearing.
116 This shall constitute a record of the proceedings before the
117 director and shall be open to inspection of the public.

118 (e) (1) In the case, the well operator and the objecting coal
119 operators, owners or lessees, if any, and such chief, or such
120 as are present or represented at such hearing, are unable to
121 agree upon the conditions under which the well is to be
122 converted as to protect life and property, and the reasonable
123 standards of purity and quality of the waters of the state, or
124 upon conditions of converting that meet with the approval of
125 the director, then the director shall proceed to hear the

126 evidence and testimony in accordance with sections one and
127 two, article five, chapter twenty-nine-a of this code, except
128 where such provisions are inconsistent with this article. The
129 director shall take into consideration upon his decision:

130 (a) Whether the well can be converted safely, taking into
131 consideration the dangers from creeps, squeezes or other
132 disturbances;

133 (b) Whether the well can be converted, taking into
134 consideration the reasonable standards of the purity and
135 quality of the waters of the state.

136 (2) At the close of the hearing, or within ten days thereafter,
137 the director shall issue an order stating the conditions under
138 which the conversion is to take place, providing the well can
139 be converted safely, taking into consideration the dangers from
140 creeps, squeezes or other disturbances and the reasonable
141 standards of purity and quality of the waters of this state. If
142 such converting cannot be done safely, or if the reasonable
143 standards of purity and quality of such waters will be
144 endangered, the director shall issue an order stating with
145 particularity the reasons for refusing to issue a permit.

146 (3) The order shall state with particularity the reasons for
147 the director's order and shall be mailed by registered or
148 certified mail to the parties present or represented at such
149 hearing. If the director has ruled that he will issue a permit,
150 he shall issue a permit effective ten days after the division has
151 mailed such order: Except for good cause shown, the director
152 may stay the issuance of a permit for a period not to exceed
153 thirty days.

154 (4) If a permit is issued, the director shall indicate the well
155 to be converted on the plat on file with the director, and shall
156 number and keep an index of and docket each plat and notice
157 mailed to him as provided in section fourteen of this article,
158 entering in such docket the name of the well operator, and
159 names and addresses of all persons notified, the dates of
160 hearings and all actions taken by the director, permits issued
161 or refused, the papers filed and a transcript of the hearings.
162 This shall constitute a record of the proceedings before the
163 director and shall be open to inspection by the public.

§22B-1-17. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits.

1 When a proposed shallow well drilling site is above a seam
2 or seams of coal, then the owner of any such coal seam may,
3 within fifteen days from the receipt by the director of the plat
4 and notice required by section twelve of this article, file
5 objections in writing (forms for which will be furnished by the
6 director on request) to such proposed drilling with the director,
7 setting out therein as definitely as is reasonably possible the
8 ground or grounds on which such objections are based.

9 If any such objection is filed, or if any objection is made
10 by the director of the division of oil and gas the director shall
11 forthwith mail, by registered or certified mail, to the chairman
12 of the review board a notice that an objection to the proposed
13 drilling or deepening of a shallow well has been filed with or
14 made by the director, and shall enclose in such notice a copy
15 of all objections and of the application and plat filed with the
16 director in accordance with the provisions of section twelve
17 of this article.

18 Thereafter, no further action shall be taken on such
19 application by the director until he receives an order from the
20 review board directing the director to:

21 (a) Refuse a drilling permit; or

22 (b) Issue a drilling permit for the proposed drilling location;
23 or

24 (c) Issue a drilling permit for an alternate drilling location
25 different from that requested by the well operator; or

26 (d) Issue a drilling permit either for the proposed drilling
27 location or for an alternative drilling location different from
28 that requested by the well operator, but not allow the drilling
29 of the well for a period of not more than one year from the
30 date of issuance of such permit.

31 Upon receipt of such board order, the director shall
32 promptly undertake the action directed by the review board,
33 except that he shall not issue a drilling permit unless all other
34 provisions of this article (except section fifteen) pertaining to
35 the application for and approval of a drilling permit have been
36 complied with. All permits issued by the director pursuant to

37 this section shall be effective ten days after issuance unless the
38 review board orders the director to stay the effectiveness of
39 a permit for a period not to exceed thirty days from the date
40 of issuance.

41 If a permit is issued, the director shall indicate the approved
42 drilling location on the plat filed with the director in
43 accordance with the provisions of section twelve of this article
44 and shall number and keep an index of and docket each plat
45 and notice mailed to him as provided in section twelve of this
46 article, and each notice mailed to him as provided in section
47 thirteen of this article, entering in such docket the name of
48 the well operator, and the names and addresses of all persons
49 notified, the dates of conferences, hearings and all other
50 actions taken by the director and the review board. The
51 director shall also prepare a record of the proceedings, which
52 record shall include all applications, plats and other documents
53 filed with the director, all notices given and proof of service
54 thereof, all orders issued, all permits issued and a transcript
55 of the hearing. The record prepared by the director shall be
56 open to inspection by the public.

§22B-1-18. Protective devices—When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.

1 (a) When a well penetrates one or more workable coal beds,
2 the well operator shall run and cement a string of casing in
3 the hole through the workable coal bed or beds in such a
4 manner as will exclude all oil, gas or gas pressure from the
5 coal bed or beds, except such oil, gas or gas pressure as may
6 be found in such coal bed or beds. Such string of casing shall
7 be run to a point at least thirty feet below the lowest workable
8 coal bed which the well penetrates and shall be circulated and
9 cemented from such point to the surface in such a manner as
10 provided for in reasonable rules and regulations promulgated
11 by the director in accordance with the provisions of chapter
12 twenty-nine-a. After any such string of casing has been so run
13 and cemented to the surface, drilling may proceed to the
14 permitted depth.

15 (b) In the event that gas is found beneath a workable coal
16 bed before the hole has been reduced from the size it had at
17 the coal bed, a packer shall be placed below the coal bed, and

18 above the gas horizon, and the gas by this means diverted to
19 the inside of the adjacent string of casing through perforations
20 made in such casing, and through it passed to the surface
21 without contact with the coal bed. Should gas be found
22 between two workable beds of coal, in a hole, of the same
23 diameter from bed to bed, two packers shall be placed, with
24 perforations in the casing between them, permitting the gas to
25 pass to the surface inside the adjacent casing. In either of the
26 cases here specified, the strings of casing shall extend from
27 their seats to the top of the well.

§22B-1-19. Same—Continuance during life of well; dry or abandoned wells.

1 In the event that a well becomes productive of natural gas
2 or petroleum, or is drilled for or converted for the introduction
3 of pressure, whether liquid or gas, or for the introduction of
4 liquid for the purposes provided for in section twenty-five of
5 this article or for the disposal of pollutants or the effluent
6 therefrom, all coal-protecting strings of casing and all water-
7 protecting strings of casing shall remain in place until the well
8 is plugged or abandoned. During the life of the well the
9 annular spaces between the various strings of casing adjacent
10 to workable beds of coal shall be kept open, and the top ends
11 of all such strings shall be provided with casing heads, or such
12 other suitable devices as will permit the free passage of gas
13 and prevent filling of such annular spaces with dirt or debris.

14 Any well which is completed as a dry hole or which is not
15 in use for a period of twelve consecutive months shall be
16 presumed to have been abandoned and shall promptly be
17 plugged by the operator in accordance with the provisions of
18 this article, unless the operator furnishes satisfactory proof to
19 the director that there is a bona fide future use for such well.

§22B-1-20. Same—When well is drilled through horizon of coal bed from which coal has been removed.

1 When a well is drilled through the horizon of a coal bed
2 from which the coal has been removed, the hole shall be drilled
3 at least thirty feet below the coal bed, of a size sufficient to
4 permit the placing of a liner which shall start not less than
5 twenty feet beneath the horizon of the coal bed and extend
6 not less than twenty feet above it. Within this liner, which may
7 be welded to the casing to be used, shall be centrally placed

8 the largest sized casing to be used in the well, and the space
9 between the liner and casing shall be filled with cement as they
10 are lowered into the hole. Cement shall be placed in the
11 bottom of the hole to a depth of twenty feet to form a sealed
12 seat for both liner and casing. Following the setting of the
13 liner, drilling shall proceed in the manner provided above.
14 Should it be found necessary to drill through the horizon of
15 two or more workable coal beds from which the coal has been
16 removed, such liner shall be started not less than twenty feet
17 below the lowest such horizon penetrated and shall extend to
18 a point not less than twenty feet above the highest such
19 horizon.

§22B-1-21. Same—Installation of fresh water casings.

1 When a permit has been issued for the drilling of an oil or
2 gas well or both, each well operator shall run and permanently
3 cement a string of casing in the hole through the fresh water
4 bearing strata in such a manner and to the extent provided
5 for in rules and regulations promulgated by the director in
6 accordance with the provisions of chapter twenty-two and
7 twenty-nine-a of this code.

8 No oil or gas well shall be drilled nearer than two hundred
9 feet from an existing water well or dwelling without first
10 obtaining the written consent of the owner of such water well
11 or dwelling.

§22B-1-22. Well log to be filed; contents; authority to promulgate regulations.

1 Within a reasonable time after the completion of the drilling
2 of a well, the well operator shall file with the director an
3 accurate log. Such log shall contain the character, depth and
4 thickness of geological formations encountered, including fresh
5 water, coal seams, mineral beds, brine, and oil and gas bearing
6 formations and such other information as the director may
7 require to effectuate the purposes of this chapter and chapter
8 twenty-two of this code.

9 The director may promulgate such reasonable rules and
10 regulations in accordance with article three, chapter twenty-
11 nine-a of this code, as he may deem necessary to insure that
12 the character, depth and thickness of geological formations
13 encountered are accurately logged: *Provided*, That the director

14 shall not require logging by the use of an electrical logging
15 device.

**§22B-1-23. Plugging, abandonment and reclamation of well; notice
of intention; bonds; affidavit showing time and
manner.**

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section nineteen of this
3 article shall be plugged and reclaimed in accordance with this
4 section and the other provisions of this article and in
5 accordance with the rules and regulations promulgated by the
6 director.

7 Prior to the commencement of plugging operations and the
8 abandonment of any well, the well operator shall either (a)
9 notify, by registered or certified mail, the director and the coal
10 operator operating coal seams, the coal seam owner of record
11 or lessee of record, if any, to whom notices are required to
12 be given by section twelve of this article, and the coal
13 operators to whom notices are required to be given by section
14 thirteen of this article, of its intention to plug and abandon
15 any such well (using such form of notice as the director may
16 provide), giving the number of the well and its location and
17 fixing the time at which the work of plugging and filling will
18 be commenced, which time shall be not less than five days after
19 the day on which such notice so mailed is received or in due
20 course should be received by the director, in order that a
21 representative or representatives of the director and such coal
22 operator, owner or lessee, if any, may be present at the
23 plugging and filling of the well: *Provided*, That whether such
24 representatives appear or do not appear, the well operator may
25 proceed at the time fixed to plug and fill the well in the manner
26 hereinafter described, or (b) first obtain the written approval
27 of the director and such coal operator, owner or lessee, if any,
28 or (c) in the event the well to be plugged and abandoned is
29 one on which drilling or reworking operations have been
30 continuously progressing pursuant to authorization granted by
31 the director, first obtain the verbal permission of the director
32 or his designated representative to plug and abandon such
33 well, except that the well operator shall, within a reasonable
34 period not to exceed five days after the commencement of such
35 plugging operations, give the written notices required by
36 subdivision (a) above.

37 No well may be plugged or abandoned unless prior to the
38 commencement of plugging operations and the abandonment
39 of any well the director is furnished a bond as provided in
40 section twenty-six of this article.

41 When the plugging, filling and reclamation of a well have
42 been completed, an affidavit, in triplicate, shall be made (on
43 a form to be furnished by the director) by two experienced
44 persons who participated in the work, the director for oil and
45 gas or his designated representative, in which affidavit shall
46 be set forth the time and manner in which the well was plugged
47 and filled and the land reclaimed. One copy of this affidavit
48 shall be retained by the well operator, another (or true copies
49 of same) shall be mailed to the coal operator or operators,
50 if any, and the third to the director.

§22B-1-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any
2 well drilled for natural gas or petroleum, or drilled or
3 converted for the introduction of pressure, whether liquid or
4 gas, or for the introduction of liquid for the purposes provided
5 for in section twenty-five of this article or for the disposal of
6 pollutants or the effluent therefrom the well operator, at the
7 time of such abandonment or cessation, shall fill and plug the
8 well in the following manner:

9 (a) Where the well does not penetrate workable coal beds,
10 it shall either be filled with mud, clay or other nonporous
11 material from the bottom of the well to a point twenty feet
12 above the top of its lowest oil, gas or water-bearing stratum;
13 or a permanent bridge shall be anchored thirty feet below its
14 lowest oil, gas or water-bearing stratum, and from such bridge
15 it shall be filled with mud, clay or other nonporous material
16 to a point twenty feet above such stratum; at this point there
17 shall be placed a plug of cement or other suitable material
18 which will completely seal the hole. Between this sealing plug
19 and a point twenty feet above the next higher oil, gas or water-
20 bearing stratum, the hole shall be filled, in the manner just
21 described; and at such point there shall be placed another plug
22 of cement or other suitable material which will completely seal
23 the hole. In like manner the hole shall be filled and plugged,
24 with reference to each of its oil, gas or water-bearing strata.
25 However, whenever such strata are not widely separated and

26 are free from water, they may be grouped and treated as a
27 single sand, gas or petroleum horizon, and the aforesaid filling
28 and plugging be performed as though there were but one
29 horizon. After the plugging of all oil, gas or water-bearing
30 strata, as aforesaid, a final cement plug shall be placed
31 approximately ten feet below the bottom of the largest casing
32 in the well; from this point to the surface the well shall be
33 filled with mud, clay or other nonporous material. In case any
34 of the oil or gas-bearing strata in a well shall have been shot,
35 thereby creating cavities which cannot readily be filled in the
36 manner above described, the well operator shall follow either
37 of the following methods:

38 (1) Should the stratum which has been shot be the lowest
39 one in the well, there shall be placed, at the nearest suitable
40 point, but not less than twenty feet above the stratum, a plug
41 of cement or other suitable material which will completely seal
42 the hole. In the event, however, that the shooting has been
43 done above one or more oil or gas-bearing strata in the well,
44 plugging in the manner specified shall be done at the nearest
45 suitable point, but not less than twenty feet below and above
46 the stratum shot, or (2), when such cavity shall be in the lowest
47 oil or gas-bearing stratum in the well, a liner shall be placed
48 which shall extend from below the stratum to a suitable point,
49 but not less than twenty feet above the stratum in which
50 shooting has been done. In the event, however, that the
51 shooting has been done above one or more oil or gas-bearing
52 strata in the well, the liner shall be so placed that it will extend
53 not less than twenty feet above, nor less than twenty feet
54 below, the stratum in which shooting has been done.
55 Following the placing of the liner in the manner here specified
56 it shall be compactly filled with cement, mud, clay or other
57 nonporous sealing material.

58 (b) Where the well penetrates one or more workable coal
59 beds and a coal protection string of casing has been circulated
60 and cemented in to the surface, the well shall be filled and
61 securely plugged in the manner provided in subsection (a) of
62 this section, except that expanding cement shall be used
63 instead of regular hydraulic cement, to a point approximately
64 one hundred feet below the bottom of the coal protection
65 string of casing. A one hundred foot plug of expanding cement
66 shall then be placed in the well so that the top of such plug

67 is located at a point just below the coal protection string of
68 casing. After such plug has been securely placed in the well,
69 the coal protection string of casing shall be emptied of liquid
70 from the surface to a point one hundred feet below the lowest
71 workable coal bed or to the bottom of the coal protection
72 string of casing, whichever is shallower. A vent or other device
73 approved by the director shall then be installed on the top of
74 the coal protection string of casing in such a manner that will
75 prevent liquids and solids from entering the well but will
76 permit ready access to the full internal diameter of the coal
77 protection string of casing when required. The coal protection
78 string of casing and the vent or other device approved by the
79 director shall extend, when finally in place, a distance of not
80 less than thirty inches above ground level and shall be
81 permanently marked with the well number assigned by the
82 director.

83 (c) Where the well penetrates one or more workable coal
84 beds and a coal protection string of casing has not been
85 circulated and cemented in to the surface, the well shall be
86 filled and securely plugged in the manner provided in
87 subsection (a) of this section to a point fifty feet below the
88 lowest workable coal bed. Thereafter, a plug of cement shall
89 be placed in the well at a point not less than forty feet below
90 the lowest workable coal bed. After the cement plug has been
91 securely placed in the well, the well shall be filled with cement
92 to a point twenty feet above the lowest workable coal bed.
93 From this point the well shall be filled with mud, clay or other
94 nonporous material to a point forty feet beneath the next
95 overlying workable coal bed, if such there be, and the well
96 shall then be filled with cement from this point to a point
97 twenty feet above such workable coal bed, and similarly, in
98 case there are more overlying workable coal beds. After the
99 filling and plugging of the well to a point above the highest
100 workable coal bed, filling and plugging of the well shall
101 continue in the manner provided in subsection (a) of this
102 section to a point fifty feet below the surface, and a plug of
103 cement shall be installed from the point fifty feet below the
104 surface to the surface with a monument installed therein
105 extending thirty inches above ground level.

106 (d) (1) Where the well penetrates one or more workable coal
107 beds and a coal protection string of casing has not been

108 circulated and cemented in to the surface, a coal operator or
109 coal seam owner may request that the well be plugged in the
110 manner provided in subdivision (3) of this subsection rather
111 than by the method provided in subsection (c) of this section.
112 Such request (forms for which shall be provided by the
113 director) must be filed in writing with the director prior to the
114 scheduled plugging of the well, and must include the number
115 of the well to be plugged and the name and address of the
116 well operator. At the time such request is filed with the
117 director, a copy of such request must also be mailed by
118 registered or certified mail to the well operator named in the
119 request.

120 (2) Upon receipt of such request, the director shall issue an
121 order staying the plugging of the well and shall promptly
122 determine the cost of plugging the well in the manner provided
123 in subdivision (3) of this subsection and the cost of plugging
124 the well in the manner provided in subsection (c) of this
125 section. In making such determination, the director shall take
126 into consideration any agreement previously made between the
127 well operator and the coal operator or coal seam owner
128 making the request. If the director determines that the cost
129 of plugging the well in the manner provided in subsection (c)
130 of this section exceeds the cost of plugging the well in the
131 manner provided in subdivision (3) of this subsection, the
132 director shall grant the request of the coal operator or owner
133 and shall issue an order requiring the well operator to plug
134 the well in the manner provided in subdivision (3) of this
135 subsection. If the director determines that the cost of plugging
136 the well in the manner provided in subsection (c) of this section
137 is less than the cost of plugging the well in the manner
138 provided in subdivision (3) of this subsection, the director shall
139 request payment into escrow of the difference between the
140 determined costs by the coal operator or coal seam owner
141 making the request. Upon receipt of satisfactory notice of such
142 payment, or upon receipt of notice that the well operator has
143 waived such payment, the director shall grant the request of
144 the coal operator or coal seam owner and shall issue an order
145 requiring the well operator to plug the well in the manner
146 provided in subdivision (3) of this subsection. If satisfactory
147 notice of payment into escrow, or notice that the well operator
148 has waived such payment, is not received by the director within
149 fifteen days after the request for payment into escrow, the

150 director shall issue an order permitting the plugging of the well
151 in the manner provided in subsection (c) of this section. Copies
152 of all orders issued by the director shall be sent by registered
153 or certified mail to the coal operator or coal seam owner
154 making the request and to the well operator. When the escrow
155 agent has received certification from the director of the
156 satisfactory completion of the plugging work and the
157 reimbursable extra cost thereof (that is, the difference between
158 the director's determination of plugging cost in the manner
159 provided in subsection (c) of this section and the well
160 operator's actual plugging cost in the manner provided in
161 subdivision (3) of this subsection), he shall pay the reimbur-
162 sable sum to the well operator or his nominee from the
163 payment into escrow to the extent available. The amount by
164 which the payment into escrow exceeds the reimbursable sum
165 plus the escrow agent's fee, if any, shall be repaid to the coal
166 owner. If the amount paid to the well operator or his nominee
167 is less than the actual reimbursable sum, the escrow agent shall
168 inform the coal owner, who shall pay the deficiency to the well
169 operator or his nominee within thirty days. If the coal operator
170 breaches this duty to pay the deficiency, the well operator shall
171 have a right of action and be entitled to recover damages as
172 if for wrongful conversion of personalty, and his reasonable
173 attorney fees.

174 (3) Where a request of a coal operator or coal seam owner
175 filed pursuant to subdivision (1) of this subsection has been
176 granted by the director, the well shall be plugged in the manner
177 provided in subsection (a) of this section, except that
178 expanding cement shall be used instead of regular hydraulic
179 cement, to a point approximately two hundred feet below the
180 lowest workable coal bed. A one hundred foot plug of
181 expanding cement shall then be placed in the well beginning
182 at the point approximately two hundred feet below the lowest
183 workable coal bed and extending to a point approximately one
184 hundred feet below the lowest workable coal bed. A string of
185 casing with an outside diameter no less than four and one-
186 half inches shall then be run into the well to a point
187 approximately one hundred feet below the lowest workable
188 coal bed and such string of casing shall be circulated and
189 cemented in to the surface. The casing shall then be emptied
190 of liquid from a point approximately one hundred feet below
191 the lowest workable coal bed to the surface, and a vent or

192 other device approved by the director shall be installed on the
193 top of the string of casing in such a manner that it will prevent
194 liquids and solids from entering the well but will permit ready
195 access to the full internal diameter of the coal protection string
196 of casing when required. The string of casing and the vent or
197 other device approved by the director shall extend, when
198 finally in place, a distance of no less than thirty inches above
199 ground level and shall be permanently marked with the well
200 number assigned by the director. Notwithstanding the
201 foregoing provisions of this subdivision, if under particular
202 circumstances a different method of plugging is required to
203 obtain the approval of another governmental agency for the
204 safe mining through of said well, the director may approve
205 such different method of plugging if he finds the same to be
206 as safe for mining through and otherwise adequate to prevent
207 gas or other fluid migration from the oil and gas reservoirs
208 as the method above specified.

209 (e) Any person may apply to the director for an order to
210 clean out and replug a previously plugged well in a manner
211 which will permit the safe mining through of such well. Such
212 application shall be filed with the director and shall contain
213 the well number, a general description of the well location, the
214 name and address of the owner of the surface land upon which
215 the well is located, a copy of or record reference to a deed,
216 lease or other document which entitles the applicant to enter
217 upon the surface land, a description of the methods by which
218 the well was previously plugged, and a description of the
219 method by which such applicant proposes to clean out and
220 replug the well. At the time an application is filed with the
221 director, a copy shall be mailed by registered or certified mail
222 to the owner or owners of the land, and the oil and gas lessee
223 of record, if any, of the site land upon which the well is
224 located. If no objection to the replugging of the well is filed
225 by any such landowner or oil and gas lessee within thirty days
226 after the filing of the application, and if the director determines
227 that the method proposed for replugging the well will permit
228 the safe mining through of such well, the director shall grant
229 the application by an order authorizing the replugging of the
230 well. Such order shall specify the method by which the well
231 shall be replugged, and copies thereof shall be mailed by
232 certified or registered mail to the applicant and to the owner
233 or owners of the land, and the oil and gas lessee, if any, of

234 the site upon which such well is located. If any such landowner
235 or oil and gas lessee objects to the replugging of the well, the
236 director shall notify the applicant of such objection. Thereaf-
237 ter, the director shall schedule a hearing to consider the
238 objection, which hearing shall be held after notice by registered
239 or certified mail to the objectors and the applicant. After
240 consideration of the evidence presented at the hearing, the
241 director shall issue an order authorizing the replugging of the
242 well if he determines that replugging of the well will permit
243 the safe mining through of such well. Such order shall specify
244 the manner in which the well shall be replugged and copies
245 thereof shall be sent by registered or certified mail to the
246 applicant and objectors. The director shall issue an order
247 rejecting the application if he determines that the proposed
248 method for replugging the well will not permit the safe mining
249 through of such well.

250 (f) All persons adversely affected by a determination or
251 order of the director issued pursuant to the provisions of this
252 section shall be entitled to judicial review in accordance with
253 the provisions of articles five and six, chapter twenty-nine-a
254 of this code.

§22B-1-25. Introducing liquid pressure into producing strata to recover oil contained therein.

1 The owner or operator of any well or wells which produce
2 oil or gas may allow such well or wells to remain open for
3 the purpose of introducing water or other liquid pressure into
4 and upon the producing strata for the purpose of recovering
5 the oil contained therein, and may drill additional wells for
6 like purposes, provided that the introduction of such water or
7 other liquid pressure shall be controlled as to volume and
8 pressure and shall be through casing or tubing which shall be
9 so anchored and packed that no water-bearing strata or other
10 oil, or gas-bearing sand or producing stratum, above or below
11 the producing strata into and upon which such pressure is
12 introduced, shall be affected thereby, fulfilling requirements as
13 set forth under section fourteen.

§22B-1-26. Performance bonds; corporate surety or other security.

1 (a) No permit shall be issued pursuant to this article unless
2 a bond which is required for a particular activity by this article
3 is or has been furnished as provided in this section.

4 (b) A separate bond may be furnished for a particular oil
5 or gas well, or for a particular well for the introduction of
6 liquids for the purposes provided in section twenty-five of this
7 article. A separate bond shall be furnished for each well drilled
8 or converted for the introduction of liquids for the disposal
9 of pollutants or the effluent therefrom. Every such bond shall
10 be in the sum of ten thousand dollars, payable to the state
11 of West Virginia, conditioned on full compliance with all laws,
12 rules and regulations relating to the drilling, redrilling,
13 deepening, casing and stimulating oil and gas wells (or, if
14 applicable, with all laws, rules and regulations relating to
15 drilling or converting wells for the introduction of liquids for
16 the purposes provided for in section twenty-five of this article
17 or for the introduction of liquids for the disposal of pollutants
18 or the effluent therefrom) and to the plugging, abandonment
19 and reclamation of wells and for furnishing such reports and
20 information as may be required by the director.

21 (c) When an operator makes or has made application for
22 permits to drill or stimulate a number of oil and gas wells or
23 to drill or convert a number of wells for the introduction of
24 liquids for the purposes provided in section twenty-five of this
25 article, the operator may in lieu of furnishing a separate bond
26 furnish a blanket bond in the sum of fifty thousand dollars,
27 payable to the state of West Virginia, and conditioned as
28 aforesaid in subsection (b) of this section.

29 (d) All bonds submitted hereunder shall have a corporate
30 bonding or surety company authorized to do business in this
31 state as surety thereon: *Provided*, That in lieu of corporate
32 surety on a separate or blanket bond, as the case may be, the
33 operator may elect to deposit with the director cash or the
34 following collateral securities or any combination thereof: (1)
35 Bonds of the United States or agency thereof, or those
36 guaranteed by, or for which the credit of the United States
37 or agency therefor is pledged for the payment of the principal
38 and interest thereof; (2) direct general obligation bonds of this
39 state, or any other state, or territory of the United States, or
40 the District of Columbia, unconditionally guaranteed as to the
41 principal and interest by such other state or territory of the
42 United States, or the District of Columbia if such other state,
43 territory, or the District of Columbia has the power to levy
44 taxes for the payment of the principal and interest of such

45 securities, and if at the time of the deposit such other state,
46 territory, or the District of Columbia is not in default in the
47 payment of any part of the principal or interest owing by it
48 upon any part of its funded indebtedness; (3) direct general
49 obligation bonds of any county, district, city, town, village,
50 school district or other political subdivision of this state issued
51 pursuant to law and payable from ad valorem taxes levied on
52 all taxable property located herein, that the total indebtedness
53 after deducting sinking funds and all debts incurred for self-
54 sustaining public works does not exceed five percent of the
55 assessed value of all taxable property therein at the time of
56 the last assessment made before the date of such deposit, and
57 that the issuer has not, within five years prior to the making
58 thereof, been in default for more than ninety days in the
59 payment of any part of the principal or interest on any debt,
60 evidenced by its bonds; (4) revenue bonds issued by this state
61 or any agency of this state when such bonds are payable from
62 revenues or earnings specifically pledged for the payment of
63 principal and interest, and a lawful sinking fund or reserve
64 fund has been established and is being maintained for the
65 payment of such bonds; (5) revenue bonds issued by a
66 municipality in this state for the acquisition, construction,
67 improvement or extension of a waterworks system, or a
68 sewerage system, or a combined waterworks and sewerage
69 system, when such bonds are payable from revenue or earnings
70 specifically pledged for the payment of principal and interest,
71 and a lawful sinking fund or reserve fund has been established
72 and is being maintained for the payment of such bonds; (6)
73 revenue bonds issued by a public service board of a public
74 service district in this state for the acquisition, construction,
75 improvement or extension of any public service properties, or
76 for the reimbursement or payment of the costs and expenses
77 of creating the district, when such bonds are payable from
78 revenue or earnings specifically pledged for the payment of
79 principal and interest, and a lawful sinking fund or reserve
80 fund has been established and is being maintained for the
81 payment of such bonds; (7) revenue bonds issued by a board
82 of trustees of a sanitary district in this state for the corporate
83 purposes of such district, when such bonds are payable from
84 revenue or earnings specifically pledged for the payment of
85 principal and interest, and a lawful sinking fund or reserve
86 fund has been established and is being maintained for the

4 (b) A separate bond may be furnished for a particular oil
5 or gas well, or for a particular well for the introduction of
6 liquids for the purposes provided in section twenty-five of this
7 article. A separate bond shall be furnished for each well drilled
8 or converted for the introduction of liquids for the disposal
9 of pollutants or the effluent therefrom. Every such bond shall
10 be in the sum of ten thousand dollars, payable to the state
11 of West Virginia, conditioned on full compliance with all laws,
12 rules and regulations relating to the drilling, re-drilling,
13 deepening, casing and stimulating oil and gas wells (or, if
14 applicable, with all laws, rules and regulations relating to
15 drilling or converting wells for the introduction of liquids for
16 the purposes provided for in section twenty-five of this article
17 or for the introduction of liquids for the disposal of pollutants
18 or the effluent therefrom) and to the plugging, abandonment
19 and reclamation of wells and for furnishing such reports and
20 information as may be required by the director.

21 (c) When an operator makes or has made application for
22 permits to drill or stimulate a number of oil and gas wells or
23 to drill or convert a number of wells for the introduction of
24 liquids for the purposes provided in section twenty-five of this
25 article, the operator may in lieu of furnishing a separate bond
26 furnish a blanket bond in the sum of fifty thousand dollars,
27 payable to the state of West Virginia, and conditioned as
28 aforesaid in subsection (b) of this section.

29 (d) All bonds submitted hereunder shall have a corporate
30 bonding or surety company authorized to do business in this
31 state as surety thereon: *Provided*, That in lieu of corporate
32 surety on a separate or blanket bond, as the case may be, the
33 operator may elect to deposit with the director cash or the
34 following collateral securities or any combination thereof: (1)
35 Bonds of the United States or agency thereof, or those
36 guaranteed by, or for which the credit of the United States
37 or agency therefor is pledged for the payment of the principal
38 and interest thereof; (2) direct general obligation bonds of this
39 state, or any other state, or territory of the United States, or
40 the District of Columbia, unconditionally guaranteed as to the
41 principal and interest by such other state or territory of the
42 United States, or the District of Columbia if such other state,
43 territory, or the District of Columbia has the power to levy
44 taxes for the payment of the principal and interest of such

45 securities, and if at the time of the deposit such other state,
46 territory, or the District of Columbia is not in default in the
47 payment of any part of the principal or interest owing by it
48 upon any part of its funded indebtedness; (3) direct general
49 obligation bonds of any county, district, city, town, village,
50 school district or other political subdivision of this state issued
51 pursuant to law and payable from ad valorem taxes levied on
52 all taxable property located herein, that the total indebtedness
53 after deducting sinking funds and all debts incurred for self-
54 sustaining public works does not exceed five percent of the
55 assessed value of all taxable property therein at the time of
56 the last assessment made before the date of such deposit, and
57 that the issuer has not, within five years prior to the making
58 thereof, been in default for more than ninety days in the
59 payment of any part of the principal or interest on any debt,
60 evidenced by its bonds; (4) revenue bonds issued by this state
61 or any agency of this state when such bonds are payable from
62 revenues or earnings specifically pledged for the payment of
63 principal and interest, and a lawful sinking fund or reserve
64 fund has been established and is being maintained for the
65 payment of such bonds; (5) revenue bonds issued by a
66 municipality in this state for the acquisition, construction,
67 improvement or extension of a waterworks system, or a
68 sewerage system, or a combined waterworks and sewerage
69 system, when such bonds are payable from revenue or earnings
70 specifically pledged for the payment of principal and interest,
71 and a lawful sinking fund or reserve fund has been established
72 and is being maintained for the payment of such bonds; (6)
73 revenue bonds issued by a public service board of a public
74 service district in this state for the acquisition, construction,
75 improvement or extension of any public service properties, or
76 for the reimbursement or payment of the costs and expenses
77 of creating the district, when such bonds are payable from
78 revenue or earnings specifically pledged for the payment of
79 principal and interest, and a lawful sinking fund or reserve
80 fund has been established and is being maintained for the
81 payment of such bonds; (7) revenue bonds issued by a board
82 of trustees of a sanitary district in this state for the corporate
83 purposes of such district, when such bonds are payable from
84 revenue or earnings specifically pledged for the payment of
85 principal and interest, and a lawful sinking fund or reserve
86 fund has been established and is being maintained for the

87 payment of such bonds; and (8) bonds issued by a federal land
88 bank or home owners' loan corporation. The cash deposit or
89 market value, or both, of the collateral securities shall be equal
90 to or greater than the penalty of the separate or blanket bond,
91 as the case may be. Upon receipt of any such deposit or cash
92 or collateral securities, the director shall immediately deliver
93 the same to the treasurer of the state of West Virginia. The
94 treasurer shall determine whether any such securities satisfy the
95 requirements of this section. If the securities are approved they
96 shall be accepted by the treasurer. If the securities are not
97 approved, they shall be rejected and returned to the operator
98 and no permit shall be issued until a corporate surety bond
99 is filed or cash or proper collateral securities are filed in lieu
100 of such surety. The treasurer shall hold any cash or securities
101 in the name of the state in trust for the purposes for which
102 the deposit was made. The operator shall be entitled to all
103 interest and income earned on the collateral securities filed by
104 such operator so long as the operator is in full compliance with
105 all laws, rules and regulations relating to the drilling, redrilling,
106 deepening, casing and fracturing of oil and gas wells (or, if
107 applicable, with all laws, rules and regulations relating to
108 drilling or converting wells for the introduction of liquids for
109 the purposes provided for in section twenty-five of this article
110 for the introduction of liquids for the disposal of pollutants
111 or the effluent therefrom) and the plugging, abandonment and
112 reclamation of wells and for furnishing such reports and
113 information as may be required by the director. The operator
114 making the deposit shall be entitled from time to time to
115 receive from the treasurer, upon the written order of the
116 director, the whole or any portion of such securities upon
117 depositing with the treasurer in lieu thereof cash equal to or
118 greater than the penalty of the bond, in other approved
119 securities of the classes herein specified having a market value
120 equal to or greater than the penalty of the bond, or a corporate
121 surety bond.

122 (e) When an operator has furnished a separate bond from
123 a corporate bonding or surety company to drill, fracture or
124 stimulate an oil or gas well and the well produces oil or gas
125 or both, its operator may deposit with the director cash from
126 the sale of the oil or gas or both until the total deposited is
127 ten thousand dollars. When the sum of the cash deposited is
128 ten thousand dollars, the separate bond for the well shall be

129 released by the director. Upon receipt of such cash, the
130 director shall immediately deliver the same to the treasurer of
131 the state of West Virginia. The treasurer shall hold such cash
132 in the name of the state in trust for the purpose for which
133 the bond was furnished and the deposit was made. The
134 operator shall be entitled to all interest and income which may
135 be earned on the cash deposited so long as the operator is in
136 full compliance with all laws, rules and regulations relating to
137 the drilling, redrilling, deepening, casing, plugging, abandon-
138 ment and reclamation of the well for which the cash was
139 deposited and so long as he has furnished all reports and
140 information as may be required by the director. If the cash
141 realized from the sale of oil or gas or both from the well is
142 not sufficient for the operator to deposit with the director the
143 sum of ten thousand dollars within one year of the day the
144 well started producing, the corporate or surety company which
145 issued the bond on the well may notify the operator and the
146 director of its intent to terminate its liability under its bond.
147 The operator then shall have thirty days to furnish a new bond
148 from a corporate bonding or surety company or collateral
149 securities, as provided in the next preceding paragraph of this
150 section with the director. If a new bond or collateral securities
151 are furnished by the operator, the liability of the corporate
152 bonding or surety company under the original bond shall
153 terminate as to any acts and operations of the operator
154 occurring after the effective date of the new bond or the date
155 the collateral securities are accepted by the treasurer of the
156 state of West Virginia. If the operator does not furnish a new
157 bond or collateral securities, as provided in the next preceding
158 paragraph of this section, with the director, he shall
159 immediately plug, fill and reclaim the well in accordance with
160 all of the provisions of law, rules and regulations applicable
161 thereto. In such case, the corporate or surety company which
162 issued the original bond shall be liable for any plugging, filling
163 or reclamation not performed in accordance with such laws,
164 rules and regulations.

165 (f) Any separate bond furnished for a particular well prior
166 to the effective date of this chapter shall continue to be valid
167 for all work on the well permitting prior to the effective date
168 of this chapter; but no permit shall hereafter be issued on such
169 a particular well without a bond complying with the provisions
170 of this section. Any blanket bond furnished prior to the

171 effective date of this chapter shall be replaced with a new
172 blanket bond conforming to the requirements of this section,
173 at which time the prior bond shall be discharged by operation
174 of law; and if the director determines that any operator has
175 not furnished a new blanket bond, the director shall notify the
176 operator by certified mail, return receipt requested, of the
177 requirement for a new blanket bond; and failure to submit a
178 new blanket bond within sixty days after receipt of the notice
179 from the director shall work a forfeiture under subsection (h)
180 of this section of the blanket bond furnished prior to the
181 effective date of this chapter.

182 (g) Any such bond shall remain in force until released by
183 the director, and the director shall release the same when it
184 is satisfied the conditions thereof have been fully performed.
185 Upon the release of any such bond, any cash or collateral
186 securities deposited shall be returned by the director to the
187 operator who deposited same.

188 (h) If any of the requirements of this article or rules and
189 regulations promulgated pursuant thereto or the orders of the
190 director have not been complied with within the time limit set
191 by the violation notice as defined in sections three, four and
192 five of this article, the performance bond shall then be
193 forfeited.

194 (i) When any bond is forfeited pursuant to the provisions
195 of this article or rules and regulations promulgated pursuant
196 thereto the director shall give notice to the attorney general
197 who shall collect the forfeiture without delay.

198 (j) All forfeitures shall be deposited in the treasury of the
199 state of West Virginia in the special reclamation fund as
200 defined in section twenty-nine of this article.

§22B-1-27. Cause of action for damages caused by explosions.

1 Any person suffering personal injury or property damage
2 due to any explosion caused by any permittee, shall have a
3 cause of action against such permittee for three years after the
4 explosion regardless of whether the explosion occurred before
5 or after the effective date of this article.

§22B-1-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

1 The director shall exercise supervision over the drilling,
2 casing, plugging, filling and reclamation of all wells and shall
3 have such access to the plans, maps and other records and to
4 the properties of the well operators as may be necessary or
5 proper for this purpose, and, either as the result of its own
6 investigations or pursuant to charges made by any well
7 operator or coal operator, the director may himself enter, or
8 shall permit any aggrieved person to file before him, a formal
9 complaint charging any well operator with not drilling or
10 casing, or not plugging or filling, or reclaiming any well in
11 accordance with the provisions of this article, or to the order
12 of the director. True copies of any such complaints shall be
13 served upon or mailed by registered mail to any person so
14 charged, with notice of the time and place of hearing, of which
15 the operator or operators so charged shall be given at least
16 five days' notice. At the time and place fixed for hearing, full
17 opportunity shall be given any person so charged or
18 complaining to be heard and to offer such evidence as desired,
19 and after a full hearing, at which the director may offer in
20 evidence the results of such investigations as it may have made,
21 the director shall make his findings of fact and enter such
22 order as in his judgment is just and right and necessary to
23 secure the proper administration of this article, and if he deems
24 necessary, restraining the well operator from continuing to
25 drill or case any well or from further plugging, filling or
26 reclaiming the same, except under such conditions as the
27 director may impose in order to ensure a strict compliance
28 with the provisions of this article relating to such matters.

29 Any well operator or coal operator adversely affected by a
30 final decision or order of the director, may appeal in the
31 manner prescribed in section four, article five, chapter twenty-
32 nine-a of this code.

§22B-1-29. Special reclamation fund; fees.

1 In addition to any other fees required by the provisions of
2 this article, every applicant for a permit to drill a well shall,
3 before the permit is issued, pay to the director a special
4 reclamation fee of one hundred dollars for each well to be
5 drilled. Such special reclamation fee shall be paid at the time
6 the application for a drilling permit is filed with the director
7 and the payment of such reclamation fee shall be a condition
8 precedent to the issuance of said permit.

9 There is hereby created within the treasury of the state of
10 West Virginia a special fund to be known as the oil and gas
11 reclamation fund, and the director shall deposit with the state
12 treasurer to the credit of such special fund all special
13 reclamation fees collected. The proceeds of any bond forfeited
14 under the provisions of this article shall inure to the benefit
15 of and shall be deposited in such oil and gas reclamation fund.

16 The oil and gas reclamation fund shall be administered by
17 the director. The director shall cause to be prepared plans for
18 the reclaiming and plugging of abandoned wells which have
19 not been reclaimed or plugged or which have been improperly
20 reclaimed or plugged. The director, as funds become available
21 in the oil and gas reclamation fund, shall reclaim and properly
22 plug wells in accordance with said plans and specifications and
23 in accordance with the provisions of this article relating to the
24 reclaiming and plugging of wells and all rules and regulations
25 promulgated thereunder. Such funds may also be utilized for
26 the purchase of abandoned wells, where such purchase is
27 necessary, and for the reclamation of such abandoned wells,
28 and for any engineering, administrative and research costs as
29 may be necessary to properly effectuate the reclaiming and
30 plugging of all wells, abandoned or otherwise.

31 The director may avail himself of any federal funds provided
32 on a matching basis that may be made available for the
33 purpose of reclaiming or plugging any wells.

34 The director shall make an annual report to the governor
35 and to the Legislature setting forth the number of wells
36 reclaimed or plugged through the use of the oil and gas
37 reclamation fund provided for herein. Such report shall
38 identify each such reclamation and plugging project, state the
39 number of wells reclaimed or plugged thereby, show the
40 county wherein such wells are located and shall make a
41 detailed accounting of all expenditures from the oil and gas
42 reclamation fund.

43 All wells shall be reclaimed or plugged by contract entered
44 into by the director on a competitive bid basis as provided
45 for under the provisions of article three, chapter five-a of this
46 code and the rules and regulations promulgated thereunder.

§22B-1-30. Reclamation requirements.

1 The operator of a well shall reclaim the land surface within
2 the area disturbed in siting, drilling, completing or producing
3 the well in accordance with the following requirements:

4 (a) Within six months after the completion of the drilling
5 process, the operator shall fill all the pits for containing muds,
6 cuttings, salt water and oil that are not needed for production
7 purposes, or are not required or allowed by state or federal
8 law or rule and remove all concrete bases, drilling supplies and
9 drilling equipment. Within such period, the operator shall
10 grade or terrace and plant, seed or sod the area disturbed that
11 is not required in production of the well where necessary to
12 bind the soil and prevent substantial erosion and sedimenta-
13 tion. No pit may be used for the ultimate disposal of salt
14 water. Salt water and oil shall be periodically drained or
15 removed, and properly disposed of, from any pit that is
16 retained so the pit is kept reasonably free of salt water and
17 oil.

18 (b) Within six months after a well that has produced oil or
19 gas is plugged, or after the plugging of a dry hole, the operator
20 shall remove all production and storage structures, supplies
21 and equipment, and any oil, salt water and debris, and fill any
22 remaining excavations. Within such period, the operator shall
23 grade or terrace and plant, seed or sod the area disturbed
24 where necessary to bind the soil and prevent substantial
25 erosion and sedimentation.

26 The director may, upon written application by an operator
27 showing reasonable cause, extend the period within which
28 reclamation shall be completed, but not to exceed a further
29 six-month period.

30 If the director refuses to approve a request for extension,
31 he shall do so by order.

32 (c) It shall be the duty of an operator to commence the
33 reclamation of the area of land disturbed in siting, drilling,
34 completing or producing the well in accordance with soil
35 erosion and sediment control plans approved by the director
36 or his designate.

37 (d) The director shall promulgate rules setting forth
38 requirements for the safe and efficient installation and burying
39 of all production and gathering pipelines where practical and

40 reasonable except that such rules shall not apply to those
41 pipelines regulated by the public service commission.

**§22B-1-31. Preventing waste of gas; plan of operation required for
wasting gas in process of producing oil; rejection
thereof.**

1 Natural gas shall not be permitted to waste or escape from
2 any well or pipeline, when it is reasonably possible to prevent
3 such waste, after the owner or operator of such gas, or well,
4 or pipeline, has had a reasonable length of time to shut in such
5 gas in the well, or make the necessary repairs to such well or
6 pipeline to prevent such waste: *Provided*, That (a) if, in the
7 process of drilling a well for oil or gas, or both, gas is found
8 in such well, and the owner or operator thereof desires to
9 continue to search for oil or gas, or both, by drilling deeper
10 in search of lower oil or gas-bearing strata, or (b) if it becomes
11 necessary to make repairs to any well producing gas,
12 commonly known as "cleaning out," and if in either event it
13 is necessary for the gas in such well to escape therefrom during
14 the process of drilling or making repairs, as the case may be,
15 then the owner or operator of such well shall prosecute such
16 drilling or repairs with reasonable diligence, so that the waste
17 of gas from the well shall not continue longer than reasonably
18 necessary, and if, during the progress of such deeper drilling
19 or repairs, any temporary suspension thereof becomes
20 necessary, the owner or operator of such well shall use all
21 reasonable means to shut in the gas and prevent its waste
22 during such temporary suspension: *Provided, however*, That
23 in all cases where both oil and gas are found and produced
24 from the same oil and gas-bearing stratum, and where it is
25 necessary for the gas therefrom to waste in the process of
26 producing the oil, the owner or operator shall use all
27 reasonable diligence to conserve and save from waste so much
28 of such gas as it is reasonably possible to save, but in no case
29 shall such gas from any well be wasted in the process of
30 producing oil therefrom until the owner or operator of such
31 well shall have filed with the director a plan of operation for
32 said well showing, among other things, the gas-oil production
33 ratio involved in such operation, which plan shall govern the
34 operation of said well unless the director shall, within ten days
35 from the date on which such plan is submitted to the director,
36 make a finding that such plan fails, under all the facts and

37 circumstances, to propose the exercise of all reasonable
38 diligence to conserve and save from waste so much of such
39 gas as it is reasonably possible to save, in which event
40 production of oil at such well by the wasting of gas shall cease
41 and determine until a plan of operation is approved by the
42 director. Successive plans of operation may be filed by the
43 owner or operator of any such well with the director.

§22B-1-32. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.

1 If the owner or operator of any such well shall neglect or
2 refuse to drill, case and equip, or plug and abandon, or shut
3 in and conserve from waste the gas produced therefrom, as
4 required to be done and performed by the preceding sections
5 of this article, for a period of twenty days after a written notice
6 so to do, which notice may be served personally upon the
7 owner or operator, or may be posted in a conspicuous place
8 at or near the well, it shall be lawful for the owner or operator
9 of any adjacent or neighboring lands or the director to enter
10 upon the premises where such well is situated and properly
11 case and equip such well, or, in case the well is to be
12 adandoned, to properly plug and abandon it, or in case the
13 well is wasting gas, to properly shut it in and make such
14 needed repairs to the well to prevent the waste of gas, in the
15 manner required to be done by the preceding sections of this
16 article; and the reasonable cost and expense incurred by an
17 owner or operator or the director in so doing shall be paid
18 by the owner or operator of such well and may be recovered
19 as debts of like amount are by law recoverable.

20 The director may utilize funds and procedures established
21 pursuant to section twenty-nine of this article for the purposes
22 set out in the section. Amounts recovered by the director
23 pursuant to this section shall be deposited in the oil and gas
24 reclamation fund established pursuant to section twenty-nine
25 of this article.

§22B-1-33. Restraining waste.

1 Aside from and in addition to the imposition of any
2 penalties under this article, it shall be the duty of any circuit
3 court in the exercise of its equity jurisdiction to hear and
4 determine any bill or bills in equity which may be filed to
5 restrain the waste of natural gas in violation of this article,

6 and to grant relief by injunction or by other decrees or orders,
7 in accordance with the principles and practice in equity. The
8 plaintiff in such bill shall have sufficient standing to maintain
9 the same if he shall aver and prove that he is interested in
10 the lands situated within the distance of one mile from such
11 well, either as an owner of such land, or of the oil or gas,
12 or both, thereunder, in fee simple, or as an owner of leases
13 thereof or of rights therein for the production of oil and gas
14 or either of them or as the director.

§22B-1-34. Offenses; penalties.

1 (a) Any person or persons, firm, partnership, partnership
2 association or corporation who willfully violates any provision
3 of this article or any rule or order promulgated hereunder shall
4 be subject to a civil penalty not exceeding two thousand five
5 hundred dollars. Each day a violation continues after notice
6 by the division of oil and gas constitutes a separate offense.
7 The penalty shall be recovered by a civil action brought by
8 the division of oil and gas, in the name of the state, before
9 the circuit court of the county in which the subject well or
10 facility is located. All such civil penalties collected shall be
11 credited to the general fund of the state.

12 (b) Any person or persons, firm, partnership, partnership
13 association or corporation willfully violating any of the
14 provisions of this article which prescribe the manner of drilling
15 and casing or plugging and filling any well, or which prescribe
16 the methods of conserving gas from waste shall be guilty of
17 a misdemeanor, and, upon conviction thereof, shall be
18 punished by a fine not exceeding five thousand dollars, or
19 imprisonment in jail for not exceeding twelve months, or both,
20 in the discretion of the court, and prosecutions under this
21 section may be brought in the name of the state of West
22 Virginia in the court exercising criminal jurisdiction in the
23 county in which the violation of such provisions of the article
24 or terms of such order was committed, and at the instance and
25 upon the relation of any citizens of this state.

**§22B-1-35. Civil action for contamination or deprivation of fresh
water source or supply; presumption.**

1 In any action for contamination or deprivation of a fresh
2 water source or supply within one thousand feet of the site
3 of drilling for an oil or gas well, there shall be a rebuttable

4 presumption that such drilling, and such oil or gas well, or
5 either, was the proximate cause of the contamination or
6 deprivation of such fresh water source or supply.

**§22B-1-36. Declaration of oil and gas notice by owners and lessees
of coal seams.**

1 For purposes of notification under this article, any owner
2 or lessee of coal seams shall file a declaration of his interest
3 in such coal seams with the clerk of the county commission
4 in the county where such coal seams are located. Said clerk
5 shall file and index such declaration in accordance with section
6 two, article one, chapter thirty-nine of this code, and shall
7 index the name of the owner or lessee of such coal seams in
8 the grantor index of the record maintained for the indexing
9 of leases.

10 The declaration shall entitle such owner or lessee to the
11 notices provided in sections twelve, thirteen, fourteen and
12 twenty-three of this article: *Provided*, That the declaring owner
13 shall be the record owner of the coal seam, and the declaring
14 lessee shall be the record lessee with his source or sources of
15 title recorded prior to recording such lessee's declaration.

16 The declaration shall be acknowledged by such owner or
17 lessee, and in the case of a lessee, may be a part of the coal
18 lease under which the lessee claims. Such declaration may be
19 in the following language:

20 "DECLARATION OF OIL AND GAS NOTICE"

21 "The undersigned hereby declares:

22 (1) The undersigned is the ('owner' or 'lessee') of one or
23 more coal seams or workable coal beds as those terms are
24 defined in section one, article two, chapter twenty-two-a of the
25 code of West Virginia.

26 (2) The coal seam(s) or workable coal bed(s) owned or
27 leased partly or wholly by the undersigned lie(s) under the
28 surface of lands described as follows:

29 (Here insert a description legally adequate for a deed,
30 whether by metes and bounds or other locational description,
31 or by title references such as a book and page legally sufficient
32 to stand in lieu of a locational description.)

33 (3) The undersigned desires to be given all notices of oil and
34 gas operations provided by sections twelve, thirteen, fourteen
35 and twenty-three, article one, chapter twenty-two-b of the code
36 of West Virginia, addressed as follows:

37 (Here insert the name and mailing address of the under-
38 signed owner or lessee.)

39

40

(Signature)

41 (Here insert an acknowledgement legally adequate for a
42 deed)."

43 The benefits of the foregoing declaration shall be personal
44 to the declaring owner or lessee, and not transferable or
45 assignable in any way.

§22B-1-37. Rules, regulations, orders and permits remain in effect.

1 The rules and regulations promulgated and all orders and
2 permits in effect upon the effective date of this chapter
3 pursuant to the provisions of former article four, chapter
4 twenty-two, of this code, shall remain in full force and effect
5 as if such rules, regulations, orders and permits were adopted
6 by the director established in this chapter but all such rules,
7 regulations, orders and permits shall be subject to review by
8 the director to ensure they are consistent with the purposes
9 and policies set forth in this chapter.

§22B-1-38. Application of article; exclusions.

1 This article shall not apply to or affect any well work
2 permitted prior to the effective date of this chapter under
3 former article four, chapter twenty-two of this code, unless
4 such well is, after completion (whether such completion is
5 prior to or subsequent to the effective date of this chapter)
6 deepened subsequent to the effective date of this chapter
7 through another coal seam to another formation above the top
8 of the uppermost member of the "Onondaga Group" or to a
9 depth of less than six thousand feet, whichever is shallower.

§22B-1-39. Injunctive relief.

1 (a) In addition to other remedies, and aside from various
2 penalties provided by law, whenever it appears to the director
3 that any person is violating or threatening to violate any

4 provision of this article, any order or final decision of the
5 director, or any lawful rule or regulation promulgated
6 hereunder, the director may apply in the name of the state to
7 the circuit court of the county in which the violations or any
8 part thereof has occurred, is occurring or is about to occur,
9 or the judge thereof in vacation, for an injunction against such
10 persons and any other persons who have been, are or are about
11 to be, involved in any practices, acts or admissions so in
12 violation, enjoining such person or persons from any violation
13 or violations. Such application may be made and prosecuted
14 to conclusion, whether or not any violation or violations have
15 resulted or shall result, in prosecution or conviction under the
16 provisions of this article.

17 (b) Upon application by the director, the circuit courts of
18 this state may, by mandatory or prohibitory injunction compel
19 compliance with the provisions of this article, and all orders
20 and final decisions of the director. The court may issue a
21 temporary injunction in any case pending a decision on the
22 merits of any application filed. Any other section of this code
23 to the contrary notwithstanding, the state shall not be required
24 to furnish bond or other undertaking as a prerequisite to
25 obtaining mandatory, prohibitory or temporary injunctive
26 relief under the provisions of this article.

27 (c) The judgment of the circuit court upon application
28 permitted by the provisions of this section, shall be final unless
29 reversed, vacated or modified on appeal to the supreme court
30 of appeals. Any such appeal shall be sought in the manner
31 and within the time provided by law for appeals from circuit
32 courts in other civil actions.

33 (d) The director shall be represented in all such proceedings
34 by the attorney general or his assistants or in such proceedings
35 in the circuit courts by the prosecuting attorney of the several
36 counties as well, all without additional compensation. The
37 director with the written approval of the attorney general, may
38 employ special counsel to represent the director in any such
39 proceedings.

40 (e) If the director shall refuse or fail to apply for an
41 injunction to enjoin a violation or threatened violation of any
42 provision of this article, any order or final decision of the
43 director, or any rules or regulations promulgated hereunder,

44 within ten days after receipt of a written request to do so by
45 any well operator, coal operator, operating coal seams beneath
46 the tract of land, or the coal seam owner or lessee, if any,
47 if said owner or lessee is not yet operating said coal seams
48 beneath said tract of land, adversely affected by such violation
49 or threatened violation, the person making such request may
50 apply in his own behalf for an injunction to enjoin such
51 violation or threatened violation in any court in which the
52 director might have brought suit. The director shall be made
53 party defendant in such application in addition to the person
54 or persons violating or threatening to violate any provisions
55 of this article, any final order or decision of the director, or
56 any rule or regulation promulgated hereunder. The application
57 shall proceed and injunctive relief may be granted in the same
58 manner as if the application had been made by the director:
59 Except that the court may require a bond or other undertaking
60 from the plaintiff.

**§22B-1-40. Appeal from order of issuance or refusal of permit to
drill or fracture; procedure.**

1 Any party to the proceeding under section fifteen of this
2 article or section seven, article seven, chapter twenty-two of
3 this code, adversely affected by the issuance of a drilling permit
4 or to the issuance of a fracturing permit or the refusal of the
5 director to grant a drilling permit or fracturing permit is
6 entitled to judicial review thereof. All of the pertinent
7 provisions of section four, article five, chapter twenty-nine-a
8 of this code shall apply to and govern such judicial review with
9 like effect as if the provisions of said section four were set forth
10 in extenso in this section.

11 The judgment of the circuit court shall be final unless
12 reversed, vacated or modified on appeal to the supreme court
13 of appeals in accordance with the provisions of section one,
14 article six, chapter twenty-nine-a of this code.

**§22B-1-41. Appeal from order of issuance or refusal of permit for
drilling location for introduction of liquids or waste
or from conditions of converting procedure.**

1 Any party to the proceedings under section sixteen of this
2 article adversely affected by the order of issuance of a drilling
3 permit or to the issuance of a fracturing permit or the refusal
4 of the director to grant a drilling permit or fracturing permit

5 is entitled to judicial review thereof. All of the pertinent
6 provisions of section four, article five, chapter twenty-nine-a
7 of this code shall apply to and govern such judicial review with
8 like effect as if the provisions of section four were set forth
9 in extenso in this section.

10 The judgment of the circuit court shall be final unless
11 reversed, vacated or modified on appeal to the supreme court
12 of appeals in accordance with the provisions of section one,
13 article six, chapter twenty-nine-a of this code.

ARTICLE 2. OIL AND GAS PRODUCTION DAMAGE COM- PENSATION.

- §22B-2-1. Legislative findings and purpose.
- §22B-2-2. Definitions.
- §22B-2-3. Compensation of surface owners for drilling operations.
- §22B-2-4. Common law right of action preserved; offsets.
- §22B-2-5. Notification of claim.
- §22B-2-6. Agreement; offer of settlement.
- §22B-2-7. Rejection; legal action; arbitration; fees and costs.
- §22B-2-8. Application of article.
- §22B-2-9. Severability.

§22B-2-1. Legislative findings and purpose.

1 (a) The Legislature finds the following:

2 (1) Exploration for and development of oil and gas reserves
3 in this state must coexist with the use, agricultural or
4 otherwise, of the surface of certain land and that each
5 constitutes a right equal to the other.

6 (2) Modern methods of extraction of oil and gas require the
7 use of substantially more surface area than the methods
8 commonly in use at the time most mineral estates in this state
9 were severed from the fee tract; and, specifically, the drilling
10 of wells by the rotary drilling method was virtually unknown
11 in this state prior to the year one thousand nine hundred sixty,
12 so that no person theretofore severing his oil and gas from
13 his surface land and no person theretofore leasing his oil and
14 gas with the right to explore for and develop the same could
15 reasonably have known nor could it have been reasonably
16 contemplated that rotary drilling operations imposed a greater
17 burden on the surface than the cable tool drilling method
18 heretofore employed in this state; and since the year one
19 thousand nine hundred sixty, the use of rotary drilling

20 methods has spread slowly but steadily in this state, with
21 concomitant public awareness of its impact on surface land;
22 and that the public interest requires that the surface owner be
23 entitled to fair compensation for the loss of the use of his
24 surface area during the rotary drilling operation, but
25 recognizing the right of the oil and gas operator to conduct
26 rotary drilling operations as allowed by law.

27 (3) Prior to the first day of January, one thousand nine
28 hundred sixty, the rotary method of drilling oil or gas wells
29 was virtually unknown to the surface owners of this state nor
30 was such method reasonably contemplated during the
31 negotiations which occasioned the severance of either oil or
32 gas from the surface.

33 (4) The Legislature further finds and creates a rebuttable
34 presumption that even after the thirty-first day of December,
35 one thousand nine hundred fifty-nine, and prior to the ninth
36 day of June, one thousand nine hundred eighty-three, it was
37 unlikely that any surface owner knew or should have known
38 of the rotary method of drilling oil or gas wells, but, that such
39 knowledge was possible and that the rotary method of drilling
40 oil or gas wells could have, in some instances, been reasonably
41 contemplated by the parties during the negotiations of the
42 severance of the oil and gas from the surface. This presump-
43 tion against knowledge of the rotary drilling method may be
44 rebutted by a clear preponderance of the evidence showing that
45 the surface owner or his predecessor of record did in fact know
46 of the rotary drilling method at the time he or his predecessor
47 executed a severance deed or lease of oil and gas and that he
48 fairly contemplated the rotary drilling method, and received
49 compensation for the same.

50 (b) Any surface owner entitled to claim any finding or any
51 presumption which is not rebutted as provided in this section
52 shall be entitled to the compensation and damages of this
53 article.

54 (c) The Legislature declares that the public policy of this
55 state shall be that the compensation and damages provided in
56 this article for surface owners may not be diminished by any
57 provision in a deed, lease or other contract entered into after
58 the ninth day of June, one thousand nine hundred eighty-three.

59 (d) It is the purpose of this article to provide constitution-

60 ally permissible protection and compensation to surface
61 owners of lands on which oil and gas wells are drilled from
62 the burden resulting from drilling operations commenced after
63 the ninth day of June, one thousand nine hundred eighty-three.
64 This article is to be interpreted in the light of the legislative
65 intent expressed herein. This article shall be interpreted to
66 benefit surface owners, regardless of whether the oil and gas
67 mineral estate was separated from the surface estate and
68 regardless of who executed the document which gave the oil
69 and gas developer the right to conduct drilling operations on
70 the land. Section four of this article shall be interpreted to
71 benefit all persons.

§22B-2-2. Definitions.

1 (a) In this article, unless the context or subject matter
2 otherwise requires:

3 (1) "Agricultural production" means the production of any
4 growing grass or crop attached to the surface of the land,
5 whether or not the grass or crop is to be sold commercially,
6 and the production of any farm animals, whether or not the
7 animals are to be sold commercially;

8 (2) "Drilling operations" means the actual drilling or
9 redrilling of an oil or gas well commenced subsequent to the
10 ninth day of June, one thousand nine hundred eighty-three,
11 and the related preparation of the drilling site and access road,
12 which requires entry, upon the surface estate;

13 (3) "Oil and gas developer" means the person who secures
14 the drilling permit required by article one of this chapter;

15 (4) "Person" means any natural person, corporation, firm,
16 partnership, partnership association, venture, receiver, trustee,
17 executor, administrator, guardian, fiduciary or other represen-
18 tative of any kind, and includes any government or any
19 political subdivision or agency thereof;

20 (5) "Surface estate" means an estate in or ownership of the
21 surface of a particular tract of land overlying the oil or gas
22 leasehold being developed; and

23 (6) "Surface owner" means a person who owns an estate in
24 fee in the surface of land, either solely or as a co-owner.

§22B-2-3. Compensation of surface owners for drilling operations.

1 (a) The oil and gas developer shall be obligated to pay the
2 surface owner compensation for:

3 (1) Lost income or expenses incurred as a result of being
4 unable to dedicate land actually occupied by the driller's
5 operation or to which access is prevented by such drilling
6 operation to the uses to which it was dedicated prior to
7 commencement of the activity for which a permit was obtained
8 measured from the date the operator enters upon the land until
9 the date reclamation is completed, (2) the market value of
10 crops destroyed, damaged or prevented from reaching market,
11 (3) any damage to a water supply in use prior to the
12 commencement of the permitted activity, (4) the cost of repair
13 of personal property up to the value of replacement by
14 personal property of like age, wear and quality, and (5) the
15 diminution in value, if any, of the surface lands and other
16 property after completion of the surface disturbance done
17 pursuant to the activity for which the permit was issued
18 determined according to the actual use made thereof by the
19 surface owner immediately prior to the commencement of the
20 permitted activity.

21 The amount of damages may be determined by any formula
22 mutually agreeable between the surface owner and the oil and
23 gas developer.

24 (b) Any reservation or assignment of the compensation
25 provided in this section apart from the surface estate except
26 to a tenant of the surface estate is prohibited.

27 (c) In the case of surface lands owned by more than one
28 person as tenants in common, joint tenants or other co-
29 ownership, any claim for compensation under this article shall
30 be for the benefit of all such co-owners. The resolution of a
31 claim for compensation provided in this article shall operate
32 as a bar to the assertion of additional claims under this section
33 arising out of the same drilling operations.

§22B-2-4. Common law right of action preserved; offsets.

1 (a) Nothing in section three or elsewhere in this article shall
2 be construed to diminish in any way the common law
3 remedies, including damages, of a surface owner or any other
4 person against the oil and gas developer for the unreasonable,
5 negligent, or otherwise wrongful exercise of the contractual

6 right, whether express or implied, to use the surface of the land
7 for the benefit of his mineral interest.

8 (b) An oil and gas developer shall be entitled to offset
9 compensation agreed to be paid or awarded to a surface owner
10 under section three of this article against any damages sought
11 by or awarded to the surface owner through the assertion of
12 common law remedies respecting the surface land actually
13 occupied by the same drilling operation.

14 (c) An oil and gas developer shall be entitled to offset
15 damages agreed to be paid or awarded to a surface owner
16 through the assertion of common-law remedies against
17 compensation sought by or awarded to the surface owner
18 under section three of this article respecting the surface land
19 actually occupied by the same drilling operation.

§22B-2-5. Notification of claim.

1 Any surface owner, to receive compensation under section
2 three of this article, shall notify the oil and gas developer of
3 the damages sustained by the person within two years after
4 the date that the oil and gas developer files notice that he is
5 commencing reclamation under section thirty, article one of
6 this chapter. Such notice shall be given to surface owners by
7 registered or certified mail, return receipt requested, and shall
8 be complete upon mailing. If more than three tenants in
9 common or other co-owners hold interests in such lands, the
10 developer may give such notice to the person described in the
11 records of the sheriff required to be maintained pursuant to
12 section eight, article one, chapter eleven-a of this code or
13 publish in the county in which the well is located or to be
14 located a Class II legal advertisement as described in section
15 two, article three, chapter fifty-nine of this code, containing
16 such notice and information as the director shall prescribe by
17 rule.

§22B-2-6. Agreement; offer of settlement.

1 Unless the parties provide otherwise by written agreement,
2 within sixty days after the oil and gas developer received the
3 notification of claim specified in section five of this article, the
4 oil and gas developer shall either make an offer of settlement
5 to the surface owner seeking compensation, or reject the claim.
6 The surface owner may accept or reject any offer so made.

§22B-2-7. Rejection; legal action; arbitration; fees and costs.

1 (a) Unless the oil and gas developer has paid the surface
2 owner a negotiated settlement of compensation within sixty
3 days after the date the notification of claim was mailed under
4 section five of this article, the surface owner may, within eighty
5 days after the notification mail date, either (i) bring an action
6 for compensation in the circuit court of the county in which
7 the well is located, or (ii) elect instead, by written notice
8 delivered by personal service or by certified mail, return receipt
9 requested, to the designated agent named by the oil and gas
10 developer under the provisions of section six, article one of
11 this chapter, to have his compensation finally determined by
12 binding arbitration pursuant to article ten, chapter fifty-five
13 of this code.

14 Settlement negotiations, offers and counter-offers between
15 the surface owner and the oil and gas developer shall not be
16 admissible as evidence in any arbitration or judicial proceeding
17 authorized under this article, or in any proceeding resulting
18 from the assertion of common-law remedies.

19 (b) The compensation to be awarded to the surface owner
20 shall be determined by a panel of three disinterested
21 arbitrators. The first arbitrator shall be chosen by the surface
22 owner in his notice of election under this section to the oil
23 and gas developer; the second arbitrator shall be chosen by
24 the oil and gas developer within ten days after receipt of the
25 notice of election; and the third arbitrator shall be chosen
26 jointly by the first two arbitrators within twenty days
27 thereafter. If they are unable to agree upon the third arbitrator
28 within twenty days, then the two arbitrators are hereby
29 empowered to and shall forthwith submit the matter to the
30 court under the provisions of section one, article ten, chapter
31 fifty-five of this code, so that, among other things, the third
32 arbitrator can be chosen by the judge of the circuit court of
33 the county wherein the surface estate lies.

34 (c) The following persons shall be deemed interested and
35 not be appointed as arbitrators: Any person who is personally
36 interested in the land on which rotary drilling is being
37 performed or has been performed, or in any interest or right
38 therein, or in the compensation and any damages to be
39 awarded therefor, or who is related by blood or marriage to

40 any person having such personal interest, or who stands in the
41 relation of guardian and ward, master and servant, principal
42 and agent, or partner, real estate broker, or surety to any
43 person having such personal interest, or who has enmity
44 against or bias in favor of any person who has such personal
45 interest or who is the owner of, or interested in, such land
46 or the oil and gas development thereof. No person shall be
47 deemed interested or incompetent to act as arbitrator by
48 reason of his being an inhabitant of the county, district or
49 municipal corporation wherein the land is located, or holding
50 an interest in any other land therein.

51 (d) The panel of arbitrators shall hold hearings and take
52 such testimony and receive such exhibits as shall be necessary
53 to determine the amount of compensation to be paid to the
54 surface owner. However, no award of compensation shall be
55 made to the surface owner unless the panel of arbitrators has
56 first viewed the surface estate in question. A transcript of the
57 evidence may be made but shall not be required.

58 (e) Each party shall pay the compensation of his own
59 arbitrator and one half of the compensation of the third
60 arbitrator, or his own court costs as the case may be.

§22B-2-8. Application of article.

1 The remedies provided by this article shall not preclude any
2 person from seeking other remedies allowed by law.

§22B-2-9. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be unconsti-
3 tutional or invalid, such invalidation shall not affect the
4 validity of the remaining portions of this article, and, to this
5 end, the provisions of this article are hereby declared to be
6 severable.

ARTICLE 3. TRANSPORTATION OF OILS.

§22B-3-1. Scope of article.

§22B-3-2. Duty of pipeline companies to accept and transport oil.

§22B-3-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and
measurement; receipt; deduction for waste.

§22B-3-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.

§22B-3-5. Lien for charges.

§22B-3-6. Accepted orders and certificates for oil—Negotiability.

§22B-3-7. Same—Further provisions.

- §22B-3-8. Dealing in oil without consent of owner.
§22B-3-9. Monthly statements.
§22B-3-10. Statements of amount of oil.
§22B-3-11. Penalty—Wrongful issuance, sale or alteration of receipts, orders, etc.
§22B-3-12. Same—Dealing in oil without consent of owner in interest.
§22B-3-13. Same—Failure to make report and statement.

§22B-3-1. Scope of article.

1 Every person, corporation or company now engaged, or
2 which shall hereafter engage, in the business of transporting
3 or storing petroleum, by means of pipeline or lines or storage
4 by tanks, shall be subject to the provisions of this article and
5 shall conduct such business in conformity herewith: *Provided*,
6 That the provisions of this article shall be subject to all federal
7 laws regulating interstate commerce on the same subject.

§22B-3-2. Duty of pipeline companies to accept and transport oil.

1 Any company heretofore or hereafter organized for the
2 purpose of transporting petroleum or other oils or liquids by
3 means of pipeline or lines shall be required to accept all
4 petroleum offered to it in merchantable order in quantities of
5 not less than two thousand gallons at the wells where the same
6 is produced, making at its own expense all necessary
7 connections with the tanks or receptacles containing such
8 petroleum, and to transport and deliver the same at any
9 delivery station, within or without the state, on the route of
10 its line of pipes, which may be designated by the owners of
11 the petroleum so offered.

§22B-3-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.

1 All petroleum of a gravity of thirty-five degrees Baume or
2 under, at a temperature of sixty degrees Fahrenheit, offered
3 for transportation by means of pipeline or lines, shall, before
4 the same is transported, as provided by section two of this
5 article, be inspected, graded and measured at the expense of
6 the pipeline company, and the company accepting the same
7 for transportation shall give to the owner thereof a receipt
8 stating therein the number of barrels or gallons so received,
9 and the grade, gravity and measurement thereof, and within
10 a reasonable time thereafter, upon demand of the owner or
11 his assigns, shall deliver to him at the point of delivery a like
12 quantity and grade or gravity of petroleum in merchantable

13 condition as specified in such receipt; except that the company
14 may deduct for waste one percent of the amount of petroleum
15 specified in such receipt.

§22B-3-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.

1 All petroleum of a gravity exceeding thirty-five degrees
2 Baume, at a temperature of sixty degrees Fahrenheit, offered
3 for transportation by means of pipeline or lines, shall be
4 inspected and measured at the expense of the company
5 transporting the same, before the same is transported. The
6 company accepting the same for transportation shall give to
7 the owner thereof, or to the person in charge of the well or
8 wells from which such petroleum has been produced and run,
9 a ticket signed by its gauger, stating the number of feet and
10 inches of petroleum which were in the tank or receptacle
11 containing the same before the company began to run the
12 contents from such tank, and the number of feet and inches
13 of petroleum which remained in the tank after such run was
14 completed. All deductions made for water, sediment or the like
15 shall be made at the time such petroleum is measured. Within
16 a reasonable time thereafter the company shall, upon demand,
17 deliver from the petroleum in its custody to the owner thereof,
18 or to his assignee, at such delivery station on the route of its
19 line of pipes as he may elect, a quantity of merchantable
20 petroleum, equal to the quantity of petroleum run from such
21 tank, or receptacle, which shall be ascertained by computation;
22 except that the company transporting such petroleum may
23 deduct for evaporation and waste two percent of the amount
24 of petroleum so run, as shown by such run ticket, and except
25 that in case of loss of any petroleum while in the custody of
26 company caused by fire, lightning, storm or other like
27 unavoidable cause, such loss shall be borne pro rata by all the
28 owners of such petroleum at the time thereof. But the company
29 shall be liable for all petroleum that is lost while in its custody
30 by the bursting of pipes or tanks, or by leakage from pipes
31 or tanks; and it shall also be liable for all petroleum lost from
32 tanks at the wells produced before the same has been received
33 for transportation, if such loss be due to faulty connections
34 made to such tanks; and the company shall be liable for all
35 petroleum lost by the overflow of any tanks with which
36 pipeline connections have been made, if such overflow be due

37 to the negligence of such company, and for all the petroleum
38 lost by the overflow of any tanks with which pipeline
39 connections should have been made under the provisions of
40 this article, but were not so made by reason of negligence or
41 delay on the part of the company.

§22B-3-5. Lien for charges.

1 Any company engaged in transporting or storing petroleum
2 shall have a lien upon such petroleum until all charges for
3 transporting and storing the same are paid.

§22B-3-6. Accepted orders and certificates for oil—Negotiability.

1 Accepted orders and certificates for petroleum, issued by
2 any company engaged in the business of transporting and
3 storing petroleum in this state by means of pipeline or lines
4 and tanks, shall be negotiable, and may be transferred by
5 indorsement either in blank or to the order of another, and
6 any person to whom such accepted orders and certificates shall
7 be so transferred shall be deemed and taken to be the owner
8 of the petroleum therein specified.

§22B-3-7. Same—Further provisions.

1 No receipt, certificate, accepted order or other voucher shall
2 be issued or put in circulation, nor shall any order be accepted
3 or liability incurred for the delivery of any petroleum, crude
4 or refined, unless the amount of such petroleum represented
5 in or by such receipt, certificate, accepted order, or other
6 voucher or liability, shall have been actually received by and
7 shall then be in the tanks and lines, custody and control of
8 the company issuing or putting in circulation such receipt,
9 certificate, accepted order or voucher, or written evidence of
10 liability. No duplicate receipt, certificate, accepted order or
11 other voucher shall be issued or put in circulation, or any
12 liability incurred for any petroleum, crude or refined, while
13 any former liability remains in force, or any former receipt,
14 certificate, accepted order or other voucher shall be outstand-
15 ing and uncanceled, except such original papers shall have
16 been lost, in which case a duplicate, plainly marked "duplicate"
17 upon the face, and dated and numbered as the lost original
18 was dated and numbered, may be issued. No receipt, voucher,
19 accepted order, certificate or written evidence of liability of
20 such company on which petroleum, crude or refined, has been

21 delivered, shall be reissued, used or put in circulation. No
22 petroleum, crude or refined, for which a receipt, voucher,
23 accepted order, certificate or liability incurred, shall have been
24 issued or put in circulation, shall be delivered, except upon
25 the surrender of the receipt, voucher, order or liability
26 representing such petroleum, except upon affidavit of loss of
27 such instrument made by the former holder thereof. No
28 duplicate receipt, certificate, voucher, accepted order or other
29 evidence of liability, shall be made, issued or put in circulation
30 until after notice of the loss of the original, and of the
31 intention to apply for a duplicate thereof, shall have been given
32 by advertisement over the signature of the owner thereof as
33 a Class II legal advertisement in compliance with the
34 provisions of article three, chapter fifty-nine of this code, and
35 the publication area for such publication shall be the county
36 where such duplicate is to be issued. Every receipt, voucher,
37 accepted order, certificate or evidence of liability, when
38 surrendered or the petroleum represented thereby delivered,
39 shall be immediately canceled by stamping and punching the
40 same across the face in large and legible letters with the word
41 "canceled," and giving the date of such cancellation; and it
42 shall then be filed and preserved in the principal office of such
43 company for a period of six years.

§22B-3-8. Dealing in oil without consent of owner.

1 No company, its officers or agents, or any person or persons
2 engaged in the transportation or storage of petroleum, crude
3 or refined, shall sell or encumber, ship, transfer, or in any
4 manner remove or procure, or permit to be sold, encumbered,
5 shipped, transferred, or in any manner removed from the tanks
6 or pipes of such company engaged in the business aforesaid,
7 any petroleum, crude or refined, without the written order of
8 the owner or a majority of the owners in interest thereof.

§22B-3-9. Monthly statements.

1 Every company now or hereafter engaged in the business of
2 transporting by pipelines or storing crude or refined petroleum
3 in this state shall, on or before the tenth day of each month,
4 make or cause to be made and posted in its principal business
5 office in this state, in an accessible and convenient place for
6 the examination thereof by any person desiring such exami-
7 nation, and shall keep so posted continuously until the next

8 succeeding statement is so posted, a statement plainly written
9 or printed, signed by the officer, agent, person or persons
10 having charge of the pipes and tanks of such company, and
11 also by the officer or officers, person or persons, having charge
12 of the books and accounts thereof, which statement shall show
13 in legible and intelligent form the following details of the
14 business: (a) How much petroleum, crude or refined, was in
15 the actual and immediate custody of such company at the
16 beginning and close of the previous month, and where the
17 same was located or held; describing in detail the location and
18 designation of each tank or place of deposit, and the name
19 of its owner; (b) how much petroleum, crude or refined, was
20 received by such company during the previous month; (c) how
21 much petroleum, crude or refined, was delivered by such
22 company during the previous month; (d) for how much
23 petroleum, crude or refined, such company was liable for the
24 delivery or custody of to other corporations, companies or
25 persons at the close of the month; (e) how much of such
26 liability was represented by outstanding receipts or certificates,
27 accepted orders or other vouchers, and how much was
28 represented by credit balances; and (f) that all the provisions
29 of this article have been faithfully observed and obeyed during
30 the previous month. The statement so required to be made
31 shall also be sworn to by such officer, agent, person or persons
32 before some officer authorized by law to administer oaths,
33 which shall be in writing, and shall assert the familiarity and
34 acquaintance of the deponent with the business and condition
35 of such company, and with the facts sworn to, and that the
36 statements made in such report are true.

§22B-3-10. Statements of amount of oil.

1 All amounts in the statements required by this article, when
2 the petroleum is handled in bulk, shall be given in barrels and
3 hundredths of barrels, reckoning forty-two gallons to each
4 barrel, and when such petroleum is handled in barrels or
5 packages, the number of such barrels or packages shall be
6 given, and such statements shall distinguish between crude and
7 refined petroleum, and give the amount of each. Every
8 company engaged in the business aforesaid shall at all times
9 have in their pipes and tanks an amount of merchantable oil
10 equal to the aggregate of outstanding receipts, certificates,
11 accepted orders, vouchers, acknowledgements, evidences of

12 liability, and credit balances, on the books thereof.

§22B-3-11. Penalty—Wrongful issuance, sale or alteration of receipts, orders, etc.

1 Any company, its officers or agents, who shall make or
2 cause to be made, sign or cause to be signed, issue or cause
3 to be issued, put in circulation or cause to be put in
4 circulation, any receipt, accepted order, certificate, voucher or
5 evidence of liability, or shall sell, transfer or alter the same,
6 or cause such sale, transfer or alteration, contrary to the
7 provisions of this article, or shall do or cause to be done any
8 of the acts prohibited by section seven of this article, or omit
9 to do any of the acts by said section directed, shall be guilty
10 of a misdemeanor, and, upon conviction thereof, shall be fined
11 not exceeding one thousand dollars, and, if the offender be
12 a natural person, imprisoned not less than ten days nor
13 exceeding one year.

§22B-3-12. Same—Dealing in oil without consent of owner in interest.

1 Any company, its officers or agents, who shall sell,
2 encumber, transfer or remove, or cause or procure to be sold,
3 transferred or removed from the tanks or pipes of such
4 company, any petroleum, crude or refined, without the written
5 consent of the owner or a majority of the owners in interest
6 thereof, shall be guilty of a misdemeanor, and, upon
7 conviction thereof, shall be fined one thousand dollars and,
8 if the offender be a natural person, imprisoned in the county
9 jail not less than ninety days nor more than one year.

§22B-3-13. Same—Failure to make report and statement.

1 Any company engaged in the business of transporting by
2 pipelines or storing petroleum, crude or refined, and each and
3 every officer or agent of such company, who shall neglect or
4 refuse to make the report and statement required by section
5 nine of this article, within the time and the manner directed
6 by said section, shall forfeit and pay the sum of one thousand
7 dollars, and in addition thereto the sum of five hundred dollars
8 for each day after the tenth day of the month that the report
9 and statement required by said section nine shall remain
10 unposted as therein directed.

ARTICLE 4. UNDERGROUND GAS STORAGE RESERVOIRS.

§22B-4-1. Definitions.

§22B-4-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

§22B-4-3. Filing of maps and data by persons operating coal mines.

§22B-4-4. Notice by persons operating coal mines.

§22B-4-5. Obligations to be performed by persons operating storage reservoirs.

§22B-4-6. Inspection of facilities and records; reliance on maps; burden of proof.

§22B-4-7. Exemptions.

§22B-4-8. Alternative method.

§22B-4-9. Powers and duties of director.

§22B-4-10. Conferences, hearings and appeals.

§22B-4-11. Enforcement.

§22B-4-12. Penalties.

§22B-4-13. Orders remain in effect.

§22B-4-1. Definitions.

1 In this article unless the context otherwise requires:

2 (1) The term "coal mine" means those operations in a coal
3 seam which include the excavated and abandoned portions as
4 well as the places actually being worked; also all underground
5 workings and shafts, slopes, tunnels, and other ways and
6 openings and all such shafts, slopes, tunnels, and other
7 openings in the course of being sunk or driven, together with
8 all roads and facilities connected with them below the surface.

9 (2) The term "operating coal mine" means (a) a coal mine
10 which is producing coal or has been in production of coal at
11 any time during the twelve months immediately preceding the
12 date its status is put in question under this article and any
13 worked out or abandoned coal mine connected underground
14 with or contiguous to such operating coal mine as herein
15 defined and (b) any coal mine to be established or reestab-
16 lished as an operating coal mine in the future pursuant to
17 section four of this article.

18 (3) The term "outside coal boundaries" when used in
19 conjunction with the term "operating coal mine" means the
20 boundaries of the coal acreage assigned to such coal mine and
21 which can be practicably and reasonably expected to be mined
22 through such coal mine.

23 (4) The term "well" means a borehole drilled or proposed
24 to be drilled within the storage reservoir boundary or reservoir
25 protective area for the purpose of or to be used for producing,
26 extracting or injecting any gas, petroleum or other liquid but
27 excluding boreholes drilled to produce potable water to be

28 used as such.

29 (5) The term "gas" means any gaseous substance.

30 (6) The term "storage reservoir" means that portion of any
31 subterranean sand or rock stratum or strata into which gas
32 is or may be injected for the purpose of storage or for the
33 purpose of testing whether said stratum is suitable for storage.

34 (7) The term "bridge" means an obstruction placed in a well
35 at any specified depth.

36 (8) The term "linear foot" means a unit of measurement in
37 a straight line on a horizontal plane.

38 (9) The term "person" means any individual, association,
39 partnership or corporation.

40 (10) The term "reservoir protective area" means all of that
41 area outside of and surrounding the storage reservoir
42 boundary but within two thousand linear feet thereof.

43 (11) The term "retreat mining" means the removal of such
44 coal, pillars, ribs and stumps as remain after the development
45 mining has been completed in that section of a coal mine.

46 (12) The term "pillar" means a solid block of coal
47 surrounded by either active mine workings or a mined out
48 area.

49 (13) The term "inactivate" means to shut off all flow of gas
50 from a well by means of a temporary plug, or other suitable
51 device or by injecting aquagel or other such equally nonporous
52 material into the well.

53 (14) The term "storage operator" means any person as
54 herein defined who proposes to or does operate a storage
55 reservoir, either as owner or lessee.

56 (15) The term "workable coal seam" shall have the same
57 meaning as the term "workable coal bed" as set out in section
58 one, article one of this chapter.

59 (16) The terms "owner," "coal operator," "well operator,"
60 "division," "division of mines and minerals," "plat," "casing,"
61 "oil" and "cement," shall have the meanings set out in section
62 one, article one of this chapter.

§22B-4-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

1 (a) Any person who, on the eighth day of June, one
2 thousand nine hundred fifty-five is injecting gas into or storing
3 gas in a storage reservoir which underlies or is within three
4 thousand linear feet of an operating coal mine which is
5 operating in a coal seam that extends over the storage reservoir
6 or the reservoir protective area shall, within sixty days
7 thereafter, file with the division a copy of a map and certain
8 data in the form and manner provided in this subsection.

9 Any person who, on the eighth day of June, one thousand
10 nine hundred fifty-five, is injecting gas into or storing gas in
11 a storage reservoir which is not at such date under or within
12 three thousand linear feet, but is less than ten thousand linear
13 feet from an operating coal mine which is operating in a coal
14 seam that extends over the storage reservoir or the reservoir
15 protective area, shall file such map and data within such time
16 in excess of sixty days as the director may fix.

17 Any person who, after the eighth day of June, one thousand
18 nine hundred fifty-five, proposes to inject or store gas in a
19 storage reservoir located as above shall file the required map
20 and data with the director not less than six months prior to
21 the starting of actual injection or storage.

22 The map provided for herein shall be prepared by a
23 competent engineer or geologist. It shall show the stratum or
24 strata in which the existing or proposed storage reservoir is
25 or is to be located, the geographic location of the outside
26 boundaries of the said storage reservoir and the reservoir
27 protective area, the location of all known oil or gas wells which
28 have been drilled into or through the storage stratum within
29 the reservoir or within three thousand linear feet thereof,
30 indicating which of these wells have been, or are to be cleaned
31 out and plugged or reconditioned for storage and also
32 indicating the proposed location of all additional wells which
33 are to be drilled within the storage reservoir or within three
34 thousand linear feet thereof.

35 The following information, if available, shall be furnished
36 for all known oil or gas wells which have been drilled into
37 or through the storage stratum within the storage reservoir or
38 within three thousand linear feet thereof; name of the operator,
39 date drilled, total depth, depth of production if the well was

40 productive of oil or gas, the initial rock pressure and volume,
41 the depths at which all coal seams were encountered and a
42 copy of the driller's log or other similar information. At the
43 time of the filing of the aforesaid maps and data such person
44 shall file a detailed statement of what efforts he has made to
45 determine, (1) that the wells shown on said map are accurately
46 located thereon, and (2) that to the best of his knowledge they
47 are all the oil or gas wells which have ever been drilled into
48 or below the storage stratum within the proposed storage
49 reservoir or within the reservoir protective area. This statement
50 shall also include information as to whether or not the initial
51 injection is for testing purposes, the maximum pressures at
52 which injection and storage of gas is contemplated, and a
53 detailed explanation of the methods to be used or which
54 theretofore have been used in drilling, cleaning out, recondi-
55 tioning or plugging wells in the storage reservoir or within the
56 reservoir protective area. The map and data required to be
57 filed hereunder shall be amended or supplemented semiannu-
58 ally in case any material changes have occurred: *Provided,*
59 That the director may require a storage operator to amend or
60 supplement such map or data at more frequent intervals if
61 material changes have occurred justifying such earlier filing.

62 At the time of the filing of the above maps and data, and
63 the filing of amended or supplemental maps or data, the
64 director shall give written notice of said filing to all persons
65 who may be affected under the provisions of this subsection
66 by the storage reservoir described in such maps or data. Such
67 notices shall contain a description of the boundaries of such
68 storage reservoir. When a person operating a coal mine or
69 owning an interest in coal properties which are or may be
70 affected by the storage reservoir, requests in writing a copy
71 of any map or data filed with the director such copy shall be
72 furnished by the storage operator.

73 (b) Any person who, on the eighth day of June, one
74 thousand nine hundred fifty-five, is injecting gas into or storing
75 gas in any other storage reservoir in this state not subject to
76 subsection (a) of this section shall, on or before the first day
77 of July, one thousand nine hundred eighty-three, file with the
78 division a map in the same detail as the map required for a
79 storage reservoir subject to subsection (a) of this section; and,
80 if the initial injection of gas into the storage reservoir by such

81 person or any predecessor occurred after the thirty-first day
82 of December, one thousand nine hundred seventy, data in the
83 same detail as the data required for a storage reservoir shall
84 be filed subject to subsection (a) of this section: *Provided*, That
85 in the case of a storage reservoir the operation of which has
86 been certificated by the federal power commission or the
87 federal energy regulatory commission under section seven of
88 the federal Natural Gas Act, the person may, in lieu of the
89 data, submit copies of the application and all amendments and
90 supplements of record in the federal docket, together with the
91 certificate of public convenience and necessity and any
92 amendments thereto.

93 Any person who, after the eighth day of June, one thousand
94 nine hundred fifty-five, proposes to inject or store gas in any
95 other storage reservoir in this state not subject to subsection
96 (a) of this section shall file with the division a map and data
97 in the same detail as the map and data required for a storage
98 reservoir subject to subsection (a) of this section not less than
99 six months prior to the starting of actual injection or storage:
100 *Provided*, That in the case of a storage reservoir the operation
101 of which will be required to be certificated by the federal
102 energy regulatory commission, the person may, in lieu of the
103 data, submit copies of the application and all amendments and
104 supplementals filed in the federal docket, together with the
105 certificate of public convenience and necessity and any
106 amendments thereto, within twenty days after the same have
107 been filed by such person or issued by the federal energy
108 regulatory commission.

109 At the time of the filing of the above maps and data or
110 documents in lieu of data and filing of amended or supple-
111 mental maps or data or documents in lieu of data, or upon
112 receipt of an application filed with the federal energy
113 regulatory commission for a new storage reservoir, the director
114 shall give notice of said filing by a Class II legal advertisement
115 in accordance with the provisions of article three, chapter fifty-
116 nine of this code, the publication area for which shall be the
117 county or counties in which the storage reservoir is located.
118 Such legal advertisement shall contain a description of the
119 boundaries of such storage reservoir. The storage operator
120 shall pay for the legal advertisements upon receipt of the
121 invoice therefor from the division. When any person owning

122 an interest in land which is or may be affected by the storage
123 reservoir requests in writing a copy of any map or data or
124 documents in lieu of data filed with the division such copy
125 shall be furnished by the storage operator.

126 (c) The director shall also intervene in the federal docket,
127 and participate in the proceedings for the purpose of assuring
128 that the certificate of public convenience and necessity issued
129 by the federal energy regulatory commission does not
130 authorize operations or practices in conflict with the provisions
131 of this article. The director may cooperate with the public
132 service commission if the commission also intervenes. The
133 attorney general is hereby directed to provide legal represen-
134 tation to the director to achieve the purposes of this
135 subsection.

136 (d) For all purposes of this article, the outside boundaries
137 of a storage reservoir shall be defined by the location of those
138 wells around the periphery of the storage reservoir which had
139 no gas production when drilled in said storage stratum:
140 *Provided*, That the boundaries as thus defined shall be
141 originally fixed or subsequently changed where, based upon
142 the number and nature of such wells, upon the geological and
143 production knowledge of the storage stratum, its character,
144 permeability, and distribution, and operating experience, it is
145 determined in a conference or hearing under section ten of this
146 article that modification should be made.

§22B-4-3. Filing of maps and data by persons operating coal mines.

1 (a) Any person owning or operating a coal mine, who has
2 not already done so with respect to the department of mines
3 pursuant to the former provisions of article seven, chapter
4 twenty-two of this code, shall, within thirty days from the
5 effective date of this article, file with the director of the
6 division of mines and minerals a map, prepared by a
7 competent engineer, showing the outside coal boundaries of
8 the said operating coal mine, the existing workings and
9 exhausted areas and the relationship of said boundaries to
10 identifiable surface properties and landmarks. Any person who
11 is storing or contemplating the storage of gas in the vicinity
12 of such operating coal mines shall, upon written request, be
13 furnished a copy of the aforesaid map by the coal operator
14 and such person and the director shall thereafter be informed

15 of any boundary changes at the time such changes occur. The
16 director shall keep a record of such information and shall
17 promptly notify both the coal operator and the storage
18 operator if it is found that the coal mine and the storage
19 reservoir are within ten thousand linear feet of each other.

20 (b) Any person owning or operating any coal mine which,
21 on the tenth day of March, one thousand nine hundred fifty-
22 five, is or which thereafter comes within ten thousand linear
23 feet of a storage reservoir, and where the coal seam being
24 operated extends over the storage reservoir or the reservoir
25 protective area, shall within forty-five days after he has notice
26 from the director of such fact, file with the director, and
27 furnish to the person operating such storage reservoir, a map
28 in the form hereinabove provided and showing in addition, the
29 existing and projected excavations and workings of such
30 operating coal mine for the ensuing eighteen-month period,
31 and also the location of any oil or gas wells of which said
32 coal operator has knowledge. Such person owning or
33 operating said coal mine shall each six months thereafter file
34 with the director and the director of the division of mines and
35 minerals and furnish to the person operating such storage
36 reservoir a revised map showing any additional excavations
37 and workings, together with the projected excavations and
38 workings for the then ensuing eighteen-month period which
39 may be within ten thousand linear feet of said storage
40 reservoir: *Provided*, That the director of mines and minerals
41 may require a coal operator to file such revised map at more
42 frequent intervals if material changes have occurred justifying
43 such earlier filing. Such person owning or operating said coal
44 mine shall also file with the director and furnish the person
45 operating said reservoir prompt notice of any wells which have
46 been cut into, together with all available pertinent information.

§22B-4-4. Notice by persons operating coal mines.

1 (a) Any person owning or operating a coal mine on the
2 eighth day of June, one thousand nine hundred fifty-five, and
3 having knowledge that it overlies or is within two thousand
4 linear feet of a gas storage reservoir, shall within thirty days
5 notify the director and the storage operator of such fact unless
6 such notification has already been provided to the director of
7 mines pursuant to the provisions of former article seven,
8 chapter twenty-two of this code.

9 (b) When any person owning or operating a coal mine
10 hereafter expects that within the ensuing nine-month period
11 such coal mine will be extended to a point which will be within
12 two thousand linear feet of any storage reservoir, he shall
13 notify the director and the storage operator in writing of such
14 fact.

15 (c) Any person hereafter intending to establish or reestablish
16 an operating coal mine which when established or reestab-
17 lished will be over a storage reservoir or within two thousand
18 linear feet of a storage reservoir, or which upon being
19 established or reestablished may within nine months thereafter
20 be expected to be within two thousand linear feet of a storage
21 reservoir, shall notify the director and the storage operator in
22 writing before doing so and such notice shall include the date
23 on which it is intended the operating coal mine will be
24 established or reestablished.

25 Any person who serves such notice of an intention to
26 establish or reestablish an operating coal mine under this
27 subsection, without intending in good faith to establish or
28 reestablish such mine, shall be liable for continuing damages
29 to any storage operator injured by the serving of such
30 improper notice and shall be guilty of a misdemeanor under
31 this article and subject to the same penalties as set forth in
32 section twelve of this article.

§22B-4-5. Obligations to be performed by persons operating storage reservoirs.

1 (a) Any person who, on or after the eighth day of June,
2 one thousand nine hundred fifty-five, is operating a storage
3 reservoir which underlies or is within two thousand linear feet
4 of an operating coal mine which is operating in a coal seam
5 that extends over the storage reservoir or the reservoir
6 protective area, shall:

7 (1) Use every known method which is reasonable under the
8 circumstances for discovering and locating all wells which have
9 or may have been drilled into or through the storage stratum
10 in that acreage which is within the outside coal boundaries of
11 such operating coal mine and which overlies the storage
12 reservoir or the reservoir protective area;

13 (2) Plug or recondition, in the manner provided by sections

14 twenty-three and twenty-four, article one of this chapter and
15 subsection (e) of this section, all known wells (except to the
16 extent otherwise provided in subsections (e), (f), (g) and (h)
17 of this section) drilled into or through the storage stratum and
18 which are located within that portion of the acreage of the
19 operating coal mine overlying the storage reservoir or the
20 reservoir protective area: *Provided*, That where objection is
21 raised as to the use of any well as a storage well, and after
22 a conference or hearing in accordance with section ten of this
23 article it is determined, taking into account all the circumstan-
24 ces and conditions, that such well should not be used as a
25 storage well, such well shall be plugged: *Provided, however*,
26 That if, in the opinion of the storage operator, the well to
27 which such objection has been raised may at some future time
28 be used as a storage well, the storage operator may recondition
29 and inactivate such well instead of plugging it, if such
30 alternative is approved by the director after taking into
31 account all of the circumstances and conditions.

32 The requirements of clause (2) of this subsection shall be
33 deemed to have been fully complied with if, as the operating
34 coal mine is extended, all wells which, from time to time, come
35 within the acreage described in said clause (2) are recondi-
36 tioned or plugged as provided in subsection (e) or (f) of this
37 section and in section twenty-four, article one of this chapter
38 so that by the time the coal mine has reached a point within
39 two thousand linear feet of any such wells, they will have been
40 reconditioned or plugged so as to meet the requirements of
41 said subsection (e) or (f) and of said section twenty-four of
42 article one.

43 (b) Any person operating a storage reservoir referred to in
44 subsection (a) of this section, who has not already done so
45 with respect to the department of mines pursuant to the
46 provisions of former article seven, chapter twenty-two of this
47 code, shall within sixty days after the effective date of this
48 article file with the director and furnish a copy to the person
49 operating the affected operating coal mine, a verified statement
50 setting forth:

51 (1) That the map and any supplemental maps required by
52 subsection (a), section two of this article have been prepared
53 and filed in accordance with section two;

54 (2) A detailed explanation of what the storage operator has
55 done to comply with the requirements of clauses (1) and (2),
56 subsection (a) of this section and the results thereof;

57 (3) Such additional efforts, if any, as the storage operator
58 is making and intends to make to locate all oil and gas wells;
59 and

60 (4) Any additional wells that are to be plugged or
61 reconditioned to meet the requirements of clause (2),
62 subsection (a) of this section.

63 If such statement is not filed by the storage reservoir
64 operator within the time specified herein, the director shall
65 summarily order such operator to file such statement.

66 (c) Within one hundred twenty days after the receipt of any
67 such statement, the director may, and he shall, if so requested
68 by either the storage operator or the coal operator affected,
69 direct that a conference be held in accordance with section ten
70 of this article to determine whether the information as filed
71 indicates that the requirements of section two of this article
72 and of subsection (a) of this section have been fully complied
73 with. At such conference, if any person shall be of the opinion
74 that such requirements have not been fully complied with, the
75 parties shall attempt to agree on what additional things are
76 to be done and the time within which they are to be completed,
77 subject to the approval of the director, to meet the said
78 requirements.

79 If such agreement cannot be reached, the director shall
80 direct that a hearing be held in accordance with section ten
81 of this article. At such hearing the director shall determine
82 whether the requirements of said section two of this article and
83 of subsection (a) of this section have been met and shall issue
84 an order setting forth such determination. If the director shall
85 determine that any of the said requirements have not been met,
86 the order shall specify, in detail, both the extent to which such
87 requirements have not been met, and the things which the
88 storage operator must do to meet such requirements. The
89 order shall grant to the storage operator such time as is
90 reasonably necessary to complete each of the things which he
91 is directed to do. If, in carrying out said order, the storage
92 operator encounters conditions which were not known to exist
93 at the time of the hearing and which materially affect the

94 validity of said order or the ability of the storage operator to
95 comply with the order, the storage operator may apply for a
96 rehearing or modification of said order.

97 (d) Whenever, in compliance with subsection (a) of this
98 section, a storage operator, after the filing of the statement
99 provided for in subsection (b) of this section, plugs or
100 reconditions a well, he shall so notify the director and the coal
101 operator affected in writing, setting forth such facts as will
102 indicate the manner in which the plugging or reconditioning
103 was done. Upon receipt thereof, the coal operator affected or
104 the director may request a conference or hearing in accordance
105 with section ten of this article.

106 (e) In order to meet the requirements of subsection (a) of
107 this section, wells which are to be plugged shall be plugged
108 in the manner specified in section twenty-four, article one of
109 this chapter. When a well located within the storage reservoir
110 or the reservoir protective area has been plugged prior to the
111 tenth day of March, one thousand nine hundred fifty-five, and
112 on the basis of the data, information and other evidence
113 submitted to the director, it is determined that: (1) Such
114 plugging was done in the manner required in section twenty-
115 four, article one of this chapter; and (2) said plugging is still
116 sufficiently effective to meet the requirements of this article,
117 the obligations imposed by subsection (a) of this section as to
118 plugging said well shall be considered fully satisfied.

119 (f) In order to meet the requirements of subsection (a) of
120 this section, wells which are to be reconditioned shall be
121 cleaned out from the surface through the storage horizon and
122 the following casing strings shall be pulled and replaced with
123 new casing, using the same procedure as is applicable to
124 drilling a new well as provided for in sections eighteen,
125 nineteen and twenty, article one of this chapter: (1) The
126 producing casing; (2) the largest diameter casing passing
127 through the lowest workable coal seam unless such casing
128 extends at least twenty-five feet below the bottom of such coal
129 seam and is determined to be in good physical condition:
130 *Provided*, That the storage operator may, instead of replacing
131 the largest diameter casing, replace the next largest casing
132 string if such casing string extends at least twenty-five feet
133 below the lowest workable coal seam; and (3) such other casing
134 strings which are determined not to be in good physical

135 condition. In the case of wells to be used for gas storage, the
136 annular space between each string of casing, and the annular
137 space behind the largest diameter casing to the extent possible,
138 shall be filled to the surface with cement or aquagel or such
139 equally nonporous material as is approved by the director
140 pursuant to section eight of this article. At least fifteen days
141 prior to the time when a well is to be reconditioned the storage
142 operator shall give notice thereof to the coal operator or owner
143 and to the director setting forth in such notice the manner in
144 which it is planned to recondition such well and any pertinent
145 data known to the storage operator which will indicate the
146 then existing condition of such well. In addition the storage
147 operator shall give the coal operator or owner and such
148 representative of the director as the director shall have
149 designated at least seventy-two hours notice of the time when
150 such reconditioning is to begin. The coal operator or owner
151 shall have the right to file, within ten days after the receipt
152 of the first notice required herein, objections to the plan of
153 reconditioning as submitted by the storage operator. If no such
154 objections are filed or if none is raised by the director within
155 such ten-day period, the storage operator may proceed with
156 the reconditioning in accordance with the plan as submitted.
157 If any such objections are filed by the coal operator or owner
158 or are made by the director, the director shall fix a time and
159 place for a conference in accordance with section ten of this
160 article at which conference the well operator and the person
161 who has filed such objections shall endeavor to agree upon
162 a plan of reconditioning which meets the requirements herein
163 and which will satisfy such objections. If no plan is approved
164 at such conference, the director shall direct that a hearing be
165 held in accordance with section ten of this article and, after
166 such hearing, shall by an appropriate order determine whether
167 the plan as submitted meets the requirements set forth herein,
168 or what changes, if any, should be made to meet such
169 requirements. If, in reconditioning a well in accordance with
170 said plan, physical conditions are encountered which justify or
171 necessitate a change in said plan, the storage operator or the
172 coal operator may request that the plan be changed. If the
173 storage operator and the coal operator cannot agree upon such
174 change, the director shall arrange for a conference or hearing
175 in accordance with section ten of this article to determine the
176 matter in the same manner as set forth herein in connection

177 with original objections to said plan. Application may be made
178 to the director in the manner prescribed in section eight of
179 this article for approval of an alternative method of
180 reconditioning a well. When a well located within the storage
181 reservoir or the reservoir protective area has been recondi-
182 tioned prior to the tenth day of March, one thousand nine
183 hundred fifty-five, or was so drilled and equipped previously
184 and on the basis of the data, information and other evidence
185 submitted to the director, it is determined that: (1) Such
186 reconditioning or previous drilling and equipping was done in
187 the manner required in this subsection, or in a manner
188 approved as an alternative method in accordance with section
189 eight of this article and (2) such reconditioning or previous
190 drilling and equipping is still sufficiently effective to meet the
191 requirements of this article, the obligations imposed by
192 subsection (a) as to reconditioning said well shall be considered
193 fully satisfied. Where a well requires emergency repairs this
194 subsection shall not be construed to require the storage
195 operator to give the notices specified herein before making
196 such repairs.

197 (g) When a well located within the reservoir protective area
198 is a producing well in a stratum below the storage stratum the
199 obligations imposed by subsection (a) of this section shall not
200 begin until such well ceases to be a producing well.

201 (h) When a well within a storage reservoir or the reservoir
202 protective area penetrates the storage stratum but does not
203 penetrate the coal seam being mined by an operating coal mine
204 the director may, upon application of the operator of such
205 storage reservoir, exempt such well from the requirements of
206 this section. Either party affected may request a conference
207 and hearing with respect to the exemption of any such well
208 in accordance with section ten of this article.

209 (i) In fulfilling the requirements of clause (2), subsection (a)
210 of this section with respect to a well within the reservoir
211 protective area, the storage operator shall not be required to
212 plug or recondition such well until he has received from the
213 coal operator written notice that the mine workings will within
214 the period stated in such notice, be within two thousand linear
215 feet of such well. Upon the receipt of such notice the storage
216 operator shall use due diligence to complete the plugging or
217 reconditioning of such well in accordance with the require-

218 ments of this section and of section twenty-four, article one
219 of this chapter. If the said mine workings do not, within a
220 period of three years after said well has been plugged, come
221 within two thousand linear feet of said well, the coal operator
222 shall reimburse the storage operator for the cost of said
223 plugging, provided such well is still within the reservoir
224 protective area as of that time.

225 (j) When retreat mining approaches a point where within
226 ninety days it is expected that such retreat work will be at the
227 location of the pillar surrounding an active storage well the
228 coal operator shall give written notice of such approach to the
229 storage operator and by agreement said parties shall determine
230 whether it is necessary or advisable to inactivate effectively
231 said well temporarily. The well shall not be reactivated until
232 a reasonable period has elapsed, such reasonable period to be
233 determined by the said parties. In the event that the said
234 parties cannot agree upon either of the foregoing matters, such
235 question shall be submitted to the director for decision in
236 accordance with section ten of this article. The number of wells
237 required to be temporarily inactivated during the retreat period
238 shall not be such as to materially affect the efficient operation
239 of such storage pool. This provision shall not preclude the
240 temporary inactivation of a particular well where the practical
241 effect of inactivating such well is to render the pool
242 temporarily inoperative.

243 (k) The requirements of subsections (a), (l) and (m) of this
244 section shall not apply to the injection of gas into any stratum
245 when the sole purpose of such injection (such purpose being
246 herein referred to as testing) is to determine whether the said
247 stratum is suitable for storage purposes: *Provided*, That such
248 testing shall be conducted only in compliance with the
249 following requirements:

250 (1) The person testing or proposing to test shall comply with
251 all the provisions and requirements of section two of this
252 article and shall verify the statement required to be filed
253 thereby;

254 (2) If any part of the proposed storage reservoir is under
255 or within two thousand linear feet of an operating coal mine
256 which is operating in a coal seam that extends over the
257 proposed storage reservoir or the reservoir protective area, the

258 storage operator shall give at least six months' written notice
259 to the director and to the coal operator of the fact that
260 injection of gas for testing purposes is proposed;

261 (3) The coal operator affected may at any time file
262 objections with the director in accordance with subsection (d),
263 section nine of this article. If any such objections are filed by
264 the coal operator or if the director shall have any objections,
265 the director shall fix a time and place for a conference in
266 accordance with section ten of this article, not more than ten
267 days from the date of the notice to the storage operator, at
268 which conference the storage operator and the person who has
269 filed such objections shall attempt to agree, subject to the
270 approval of the director, on the questions involved. If such
271 agreement cannot be reached at such conference, the director
272 shall direct that a hearing be held in accordance with section
273 ten of this article. At such hearing the director shall determine
274 and set forth in an appropriate order the conditions and
275 requirements which he shall deem necessary or advisable in
276 order to prevent gas from such storage reservoir from entering
277 any operating coal mine. The storage operator shall comply
278 with such conditions and requirements throughout the period
279 of the testing operations. In determining such conditions and
280 requirements the director shall take into account the extent to
281 which the matters referred to in subsection (a) of this section
282 have been performed. If, in carrying out said order, either the
283 storage operator or the coal operator encounters or discovers
284 conditions which were not known to exist at the time of the
285 hearing and which materially affect said order or the ability
286 of the storage operator to comply with the order, either
287 operator may apply for a rehearing or modification of said
288 order;

289 (4) Where, at any time, a proposed storage reservoir being
290 tested comes under or within two thousand linear feet of an
291 operating coal mine either because of the extension of the
292 storage reservoir being tested or because of the extension or
293 establishment or reestablishment of the operating coal mine,
294 then and at the time of any such event the requirements of
295 this subsection shall become applicable to such testing.

296 (1) Any person who, after the effective date of this article,
297 proposes to establish a storage reservoir under, or within two
298 thousand linear feet of an operating coal mine which is

299 operating in a coal seam that extends over the storage reservoir
300 or the reservoir protective area, shall, prior to establishing such
301 reservoir, in addition to complying with the requirements of
302 section two of this article and subsection (a) of this section,
303 file the verified statement required by subsection (b) of this
304 section and fully comply with such order or orders, if any, as
305 the director may issue in the manner provided for under
306 subsections (b) or (c) of this section before beginning the
307 operation of such storage reservoir. After the person proposing
308 to operate such storage reservoir shall have complied with such
309 requirements and shall have thereafter begun to operate such
310 reservoir, he shall continue to be subject to all of the
311 provisions of this article.

312 (m) When a gas storage reservoir, (1) was in operation on
313 the eighth day of June, one thousand nine hundred fifty-five,
314 and at any time thereafter it is under or within two thousand
315 linear feet of an operating coal mine, or (2) when a gas storage
316 reservoir is put in operation after the eighth day of June, one
317 thousand nine hundred fifty-five, and at any time after such
318 storage operations begin it is under or within two thousand
319 linear feet of an operating coal mine, then and in either such
320 event, the storage operator shall comply with all of the
321 provisions of this section except that the time for filing the
322 verified statement under subsection (b) shall be sixty days after
323 the date stated in the notice filed by the coal operator under
324 subsection (b) or (c), section four of this article as to when
325 the operating coal mine will be at a point within two thousand
326 linear feet of such reservoir: *Provided*, That if the extending
327 of the projected workings or the proposed establishment or
328 reestablishment of the operating coal mine is delayed after the
329 giving of the notice provided in subsections (b) and (c), section
330 four of this article, the coal operator shall give notice of such
331 delay to the director and the director shall, upon the request
332 of the storage operator, extend the time for filing such
333 statement by the additional time which will be required to
334 extend or establish or reestablish such operating coal mine to
335 a point within two thousand linear feet of such reservoir. Such
336 verified statement shall also indicate that the map referred to
337 in subsection (a), section two of this article has been currently
338 amended as of the time of the filing of such statement. The
339 person operating any such storage reservoir shall continue to
340 be subject to all of the provisions of this article.

341 (n) If, in any proceeding under this article, the director shall
342 determine that any operator of a storage reservoir has failed
343 to carry out any lawful order of the director issued under this
344 article, the director shall have authority to require such storage
345 operator to suspend the operation of such reservoir and to
346 withdraw the gas therefrom until such violation is remedied.
347 In such an event the gas shall be withdrawn under the
348 following conditons. The storage operator shall remove the
349 maximum amount of gas which is required by the director to
350 be removed from the storage reservoir that can be withdrawn
351 in accordancē with recognized engineering and operating
352 procedures and shall proceed with due diligence insofar as
353 existing facilities used to remove gas from the reservoir will
354 permit.

355 (o) In addition to initial compliance with the other
356 provisions of this article and any lawful orders issued
357 thereunder, it shall be the duty at all times of the person
358 owning or operating any storage reservoir which is subject to
359 the provisions of this article to keep all wells drilled into or
360 through the storage stratum in such condition and to operate
361 the same in such manner as to prevent the escape of gas into
362 any coal mine therefrom, and to operate and maintain such
363 storage reservoir and its facilities in such manner and at such
364 pressures as will prevent gas from escaping from such reservoir
365 or its facilities into any coal mine: *Provided*, That this duty
366 shall not be construed to include the inability to prevent the
367 escape of gas where such escape results from an act of God
368 or an act of any person not under the control of the storage
369 operator other than in connection with any well which the
370 storage operator has failed to locate and to make known to
371 the director: *Provided, however*, That if any escape of gas into
372 a coal mine does result from an act of God or an act of any
373 person not under the control of the storage operator, the
374 storage operator shall be under the duty of taking such action
375 thereafter as is reasonably necessary to prevent further escape
376 of gas into the coal mine.

**§22B-4-6. Inspection of facilities and records; reliance on maps;
burden of proof.**

1 (a) In determining whether a particular coal mine or
2 operating coal mine is or will be within any distance material
3 under this article from any storage reservoir, the owner or

4 operator of such coal mine and the storage operator may rely
5 on the most recent map of the storage reservoir or coal mine
6 filed by the other with the director.

7 (b) In any proceeding under this article where the accuracy
8 of any map or data filed by any person pursuant to the
9 requirements of this article is in issue, the person filing the
10 same shall at the request of any party to such proceeding be
11 required to disclose the information and method used in
12 compiling such map and data and such information as is
13 available to such person that might affect the current validity
14 of such map or data. If any material question is raised in such
15 proceeding as to the accuracy of such map or data with respect
16 to any particular matter or matters contained therein, the
17 person filing such map or data shall then have the burden of
18 proving the accuracy of the map or data with respect to such
19 matter or matters.

20 (c) The person operating any storage reservoir affected by
21 the terms of this article shall, at all reasonable times, be
22 permitted to inspect the applicable records and facilities of any
23 coal mine overlying such storage reservoir or the reservoir
24 protective area, and the person operating any such coal mine
25 affected by the terms of this article, shall similarly, at all
26 reasonable times, be permitted to inspect the applicable
27 records and facilities of any such storage reservoir underlying
28 any such coal mine. In the event that either such storage
29 operator or coal operator shall refuse to permit any such
30 inspection of records or facilities, the director shall, on his own
31 motion, or on application of the party seeking the inspection
32 after reasonable written notice, and a hearing thereon, if
33 requested by either of the parties affected, make an order
34 providing for such inspection.

§22B-4-7. Exemptions.

1 (a) The provisions of this article shall not apply to strip
2 mines and auger mines operating from the surface.

3 (b) Injection of gas for storage purposes in any workable
4 coal seam, whether or not such seam is being or has been
5 mined, shall be prohibited. Nothing in this article shall be
6 construed to prohibit the original extraction of natural gas,
7 crude oil or coal. No storage operator shall have authority to
8 appropriate any coal or coal measure whether or not being

9 mined, or any interest therein.

§22B-4-8. Alternative method.

1 (a) Whenever provision is made in this article by reference
2 to this section for using an alternative method or material in
3 carrying out any obligation imposed by the article, the person
4 seeking the authority to use such alternative method or
5 material shall file an application with the director describing
6 such proposed alternative method or material in reasonable
7 detail. Notice of filing of any such application shall be given
8 by registered mail to any coal operator or operators affected.
9 Any such coal operator may within ten days following such
10 notice, file objections to such proposed alternative method or
11 material. If no objections are filed within said ten-day period
12 or if none is raised by the director, the director shall forthwith
13 issue a permit approving such proposed alternative method or
14 material.

15 (b) If any such objections are filed by any coal operator or
16 are raised by the director, the director shall direct that a
17 conference be held in accordance with section ten of this article
18 within the ten days following the filing of such objections. At
19 such conference the person seeking approval of the alternative
20 method or material and the person who has filed such
21 objections shall attempt to agree on such alternative method
22 or material or any modification thereof, and if such agreement
23 is reached and approved by the director, the director shall
24 forthwith issue a permit approving the alternative method or
25 material. If no such agreement is reached and approved, the
26 director shall direct that a hearing be held in accordance with
27 section ten of this article: *Provided*, That if the alternative
28 method or material involves a new development in technology
29 or technique the director may, before such a hearing is held,
30 grant such affected parties a period not to exceed ninety days
31 to study and evaluate said proposed alternative method or
32 material. Following such hearing, if the director shall find that
33 such proposed alternative method or material will furnish
34 adequate protection to the workable coal seams, the director
35 shall by order approve such alternative method or material;
36 otherwise the director shall deny the said application.

§22B-4-9. Powers and duties of director.

1 (a) The director may review the maps and data filed under

2 sections two and three hereof for the purpose of determining
3 the accuracy thereof. Where any material question is raised by
4 any interested storage operator or coal operator or owner as
5 to the accuracy of any such map or data, the director shall
6 hold hearings thereon and shall by an appropriate order
7 require the person filing such map or data to correct the same
8 if they are found to be erroneous.

9 (b) It shall be the duty of the director to receive and keep
10 in a safe place for public inspection any map, data, report,
11 well log, notice or other writing required to be filed with it
12 pursuant to the provisions of this article. The director shall
13 keep such indices of all such information as will enable any
14 person using the same to readily locate such information either
15 by the identity of the person who filed the same or by the
16 person or persons affected by such filing or by the geographic
17 location of the subject matter by political subdivision. The
18 director shall also keep a docket for public inspection of all
19 proceedings, in which shall be entered the dates of any notices,
20 the names of all persons notified and their addresses, the dates
21 of hearings, conferences and all orders, decrees, decisions,
22 determinations, rulings or other actions issued or taken by the
23 director and such docket shall constitute the record of each
24 and every proceeding before the director.

25 (c) The director shall have authority to make any inspec-
26 tions and investigations of records and facilities which he shall
27 deem necessary or desirable to perform his functions under this
28 article.

29 (d) Where in any section of this article provision is made
30 for the filing of objections, such objections shall be filed in
31 writing with the director, by the person entitled to file the same
32 or by the director, and shall state as definitely as is reasonably
33 possible the reasons for such objections. The person filing such
34 objections shall send a copy thereof by registered mail to the
35 person or persons affected thereby.

§22B-4-10. Conferences, hearings and appeals.

1 (a) The director or any person having a direct interest in
2 the subject matter of this article may at any time request that
3 a conference be held for the purpose of discussing and
4 endeavoring to resolve by mutual agreement any matter arising
5 under the provisions of this article. Prompt notice of any such

6 conference shall be given by the director to all such interested
7 parties. At such conference a representative of the director
8 shall be in attendance, and the director may make such
9 recommendations as he deems appropriate. Any agreement
10 reached at such conference shall be consistent with the
11 requirements of this article and, if approved by such
12 representative of the director, it shall be reduced to writing
13 and shall be effective unless reviewed and rejected by the
14 director within ten days after the close of the conference. The
15 record of any such agreement approved by the director shall
16 be kept on file by the director with copies furnished to the
17 parties. The conference shall be deemed terminated as of the
18 date any party refuses to confer thereafter. Such a conference
19 shall be held in all cases prior to conducting any hearing under
20 this section.

21 (b) Within ten days after termination of the conference
22 provided for in this section at which no approved agreement
23 has been reached or within ten days after the rejection by the
24 director of any agreement approved at any such conference,
25 any person who has a direct interest in the subject matter of
26 the conference may submit the matter or matters, or any part
27 thereof, considered at the conference, to the director for
28 determination at a public hearing. The hearing procedure shall
29 be formally commenced by the filing of a petition with the
30 director upon forms prescribed by the director or by specifying
31 in writing the essential elements of the petition, including name
32 and address of the petitioner and of all other persons affected
33 thereby, a clear and concise statement of the facts involved,
34 and a specific statement of the relief sought. The hearing shall
35 thereafter be conducted in accordance with the provisions of
36 article five, chapter twenty-nine-a of this code and with such
37 regulations and such provisions as to reasonable notice as the
38 director may prescribe. Consistent with the requirements for
39 reasonable notice all hearings under this article shall be held
40 by the director promptly. All testimony taken at such hearings
41 shall be under oath and shall be reduced to writing by a
42 reporter appointed by the director, and the parties shall be
43 entitled to appear and be heard in person or by attorney. The
44 director may present at such hearing any evidence which is
45 material to the matter under consideration and which has
46 come to the director's attention in any investigation or
47 inspection made pursuant to provisions of this article.

48 (c) After the conclusion of hearings, the director shall make
49 and file his findings and order with his opinion, if any. A copy
50 of such order shall be served by registered mail upon the
51 person against whom it runs, or his attorney of record, and
52 notice thereof shall be given to the other parties to the
53 proceedings, or their attorney of record.

54 (d) The director may, at any time after notice and after
55 opportunity to be heard as provided in this section, rescind
56 or amend any approved agreement or order made by him. Any
57 order rescinding or amending a prior agreement or order shall,
58 when served upon the person affected, and after notice thereof
59 is given to the other parties to the proceedings, have the same
60 effect as is herein provided for original orders; but no such
61 order shall affect the legality or validity of any acts done by
62 such person in accordance with the prior agreement or order
63 before receipt by such person of the notice of such change.

64 (e) The director shall have power, either personally or by
65 any of his authorized representatives, to subpoena witnesses
66 and take testimony, and administer oaths to any witness in
67 any hearing, proceeding or examination instituted before the
68 director or conducted by him with reference to any matter
69 within the jurisdiction of the director. In all hearings or
70 proceedings before the director the evidence of witnesses and
71 the production of documentary evidence may be required at
72 any designated place of hearing; and in case of disobedience
73 to a subpoena or other process the director or any party to
74 the proceedings before the director may invoke the aid of any
75 circuit court in requiring the evidence and testimony of
76 witnesses and the production of such books, records, maps,
77 plats, papers, documents and other writings as he may deem
78 necessary or proper in and pertinent to any hearing,
79 proceeding or investigation held or had by it. Such court, in
80 case of the refusal of any such person to obey the subpoena,
81 shall issue an order requiring such person to appear before the
82 director and produce the required documentary evidence, if so
83 ordered, and give evidence touching the matter in question.
84 Any failure to obey such order of the court may be punished
85 by such court as contempt thereof. A claim that any such
86 testimony or evidence may tend to criminate the person giving
87 the same shall not excuse such witness from testifying, but
88 such witness shall not be prosecuted for any offense concerning

89 which he is compelled hereunder to testify.

90 (f) With the consent of the director, the testimony of any
91 witness may be taken by deposition at the instance of a party
92 to any hearing before the director at any time after hearing
93 has been formally commenced. The director may, of his own
94 motion, order testimony to be taken by deposition at any stage
95 in any hearing, proceeding or investigation pending before it.
96 Such deposition shall be taken in the manner prescribed by
97 the laws of West Virginia for taking depositions in civil cases
98 in courts of record.

99 (g) Whether or not it be so expressly stated, an appeal from
100 any final order, decision or action by the director in
101 administering the provisions of this article may be taken by
102 any aggrieved person within ten days of notice of such order,
103 decision or action, to the circuit court of the county in which
104 the subject matter of such order, decision or action is located,
105 and in all cases of appeals to the circuit court, that court shall
106 certify its decisions to the director. The circuit court to which
107 the appeal is taken shall hear the appeal without a jury on
108 the record certified by the director. In any such appeal the
109 findings of the director shall, if supported by substantial
110 evidence, be conclusive. If the order of the director is not
111 affirmed, the court may set aside or modify it, in whole or
112 in part, or may remand the proceedings to the director for
113 further disposition in accordance with the order of the court.
114 From all final decisions of the circuit court an appeal shall
115 lie to the supreme court of appeals as is now provided by law
116 in cases in equity, by the director as well as by any other party
117 of record before the circuit court.

118 Any party feeling aggrieved by the final order of the circuit
119 court affecting him, may present his petition in writing to the
120 supreme court of appeals, or to a judge thereof in vacation,
121 within twenty days after the entry of such order, praying for
122 the suspension or modification of such final order. The
123 applicant shall deliver a copy of such petition to the director
124 and to all other parties of record before presenting the same
125 to the court or judge. The court or judge shall fix a time for
126 the hearing on the application, but such hearing shall not be
127 held sooner than seven days after its presentation unless by
128 agreement of the parties, and notice of the time and place of
129 such hearing shall be forthwith given to the director and to

130 all other parties of record. If the court or judge, after such
131 hearing, be of opinion that such final order should be
132 suspended or modified, the court or the judge may require
133 bond, upon such conditions and in such penalty, and impose
134 such terms and conditions upon the petitioner as are just and
135 reasonable. For such hearing the entire record before the
136 circuit court, or a certified copy thereof, shall be filed in the
137 supreme court, and that court, upon such papers, shall
138 promptly decide the matter in controversy as may seem to it
139 to be just and right, and may award costs in each case as to
140 it may seem just and equitable.

§22B-4-11. Enforcement.

1 (a) The director or any person having a direct interest in
2 the subject matter of this article may complain in writing
3 setting forth that any person is violating or is about to violate,
4 any provisions of this article, or has done, or is about to do,
5 any act, matter or thing therein prohibited or declared to be
6 unlawful, or has failed, omitted, neglected or refused, or is
7 about to fail, omit, neglect or refuse, to perform any duty
8 enjoined upon him by this article. Upon the filing of a
9 complaint against any person, the director shall cause a copy
10 thereof to be served upon such person by registered mail
11 accompanied by a notice from the director setting such
12 complaint for hearing at a time and place specified in such
13 notice. At least five days' notice of such hearing shall be given
14 to the parties affected and such hearing shall be held in
15 accordance with the provisions of section ten of this article.
16 Following such hearing, the director shall, if he finds that the
17 matter alleged in the complaint is not in violation of this
18 article, dismiss the complaint, but if the director shall find that
19 the complaint is justified, he shall by appropriate order compel
20 compliance with this article.

21 (b) Whenever the director shall be of the opinion that any
22 person is violating, or is about to violate, any provisions of
23 this article, or has done, or is about to do, any act, matter
24 or thing therein prohibited or declared to be unlawful, or has
25 failed, omitted, neglected or refused, or is about to fail, omit,
26 neglect or refuse, to perform any duty enjoined upon him by
27 this article, or has failed, omitted, neglected or refused, or is
28 about to fail, omit, neglect or refuse to obey any lawful
29 requirement or order made by the director, or any final

30 judgment, order or decree made by any court pursuant to this
31 article, then and in every such case the director may institute
32 in the circuit court of the county or counties wherein the
33 operation is situated, injunction, mandamus or other appropriate
34 legal proceedings to restrain such violations of the
35 provisions of this article or of orders of the director to enforce
36 obedience therewith. No injunction bond shall be required to
37 be filed in any such proceeding. Such persons or corporations
38 as the court may deem necessary or proper to be joined as
39 parties in order to make its judgment, order or writ effective
40 may be joined as parties. The final judgment in any such action
41 or proceedings shall either dismiss the action or proceeding or
42 direct that the writ of mandamus or injunction or other order,
43 issue or be made permanent as prayed for in the petition or
44 in such modified or other form as will afford appropriate
45 relief. An appeal may be taken as in other civil actions.

46 (c) In addition to the other remedies herein provided, any
47 storage operator or coal operator affected by the provisions
48 of this article may proceed by injunction or other appropriate
49 remedy to restrain violations or threatened violations of the
50 provisions of this article or of orders of the director or the
51 judgments, orders or decrees of any court or to enforce
52 obedience therewith.

53 (d) Each remedy prescribed in this section shall be deemed
54 concurrent or contemporaneous with any other remedy
55 prescribed herein and the existence or exercise of any one such
56 remedy shall not prevent the exercise of any other such
57 remedy.

§22B-4-12. Penalties.

1 Any person who shall willfully violate any order of the
2 director issued pursuant to the provisions of this article shall
3 be guilty of a misdemeanor, and, on conviction thereof, shall
4 be punished by a fine not exceeding two thousand dollars, or
5 imprisoned in jail for not exceeding twelve months, or both,
6 in the discretion of the court, and prosecutions under this
7 section may be brought in the name of the State of West
8 Virginia in the court exercising criminal jurisdiction in the
9 county in which the violation of such provisions of the article
10 or terms of such order was committed, and at the instance and
11 upon the relation of any citizen of this state.

§22B-4-13. Orders remain in effect.

1 All orders in effect upon the effective date of this article
2 pursuant to the provisions of former article seven, chapter
3 twenty-two of this code, shall remain in full force and effect
4 as if such orders were adopted by the division established in
5 this chapter but all such orders shall be subject to review by
6 the director to ensure they are consistent with the purposes
7 and policies set forth in this chapter.

CHAPTER 78

(S. B. 1—By Mr. Tonkovich, Mr. President)

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

AN ACT to amend and reenact section twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface coal mining and reclamation generally; requiring advertisement and notification of application for surface-mining permit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an
3 existing permit pursuant to the provisions of this article,
4 the applicant shall submit to the department a copy of the
5 required advertisement. At the time of submission, the
6 applicant shall place the advertisement in a local
7 newspaper of general circulation in the county of the
8 proposed surface-mining operation at least once a week for

9 four consecutive weeks. The director shall notify various
10 appropriate federal and state agencies as well as local
11 governmental bodies, planning agencies and sewage and
12 water treatment authorities or water companies in the
13 locality in which the proposed surface-mining operation
14 will take place, notifying them of the operator's intention to
15 mine on a particularly described tract of land and
16 indicating the application number and where a copy of the
17 proposed mining and reclamation plan may be inspected.
18 These local bodies, agencies, authorities or companies may
19 submit written comments within a reasonable period
20 established by the director on the mining application with
21 respect to the effect of the proposed operation on the
22 environment which is within their area of responsibility.
23 Such comments shall be immediately transmitted by the
24 director to the applicant and to the appropriate office of the
25 department. The director shall provide the name and
26 address of each applicant to the commissioner of labor who
27 shall within fifteen days from receipt notify the director as
28 to the applicant's compliance, if necessary, with section
29 fourteen, article five, chapter twenty-one of this code.

30 (b) Any person having an interest which is or may be
31 adversely affected, or the officer or head of any federal,
32 state or local governmental agency, shall have the right to
33 file written objections to the proposed initial or revised
34 permit application for a surface-mining operation with the
35 director within thirty days after the last publication of the
36 advertisement required in subsection (a) of this section.
37 Such objections shall be immediately transmitted to the
38 applicant by the director and shall be made available to the
39 public. If written objections are filed and an informal
40 conference requested within thirty days of the last
41 publication of the above notice, the director shall then hold
42 a conference in the locality of the proposed mining within
43 three weeks after the close of the public comment period.
44 Those requesting the conference shall be notified and the
45 date, time and location of the informal conference shall also
46 be advertised by the director in a newspaper of general
47 circulation in the locality at least two weeks prior to the
48 scheduled conference date. The director may arrange with
49 the applicant, upon request by any party to the conference
50 proceeding, access to the proposed mining area for the

51 purpose of gathering information relevant to the
52 proceeding. An electronic or stenographic record shall be
53 made of the conference proceeding unless waived by all
54 parties. Such record shall be maintained and shall be
55 accessible to the parties at their respective expense until
56 final release of the applicant's performance bond or other
57 security posted in lieu thereof. The director's authorized
58 agent will preside over the conference. In the event all
59 parties requesting the informal conference stipulate
60 agreement prior to the conference and withdraw their
61 request, a conference need not be held.

CHAPTER 79

(H. B. 1136—By Delegate Wiedebusch)

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

AN ACT to amend and reenact section four, article four-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the oil and gas conservation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. OIL AND GAS CONSERVATION.

§22-4A-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

- 1 (a) There is hereby created the "West Virginia Oil and Gas
- 2 Conservation Commission" which shall be composed of five
- 3 members. The director of the department of natural resources
- 4 and the deputy director for oil and gas shall be members of
- 5 the commission ex officio. The remaining three members of

6 the commission shall be appointed by the governor, by and
7 with the advice and consent of the Senate. Of the three
8 members appointed by the governor, one shall be an
9 independent producer and at least one shall be a public
10 member not engaged in full-time employment in an activity
11 under the jurisdiction of the public service commission or the
12 federal power commission. As soon as practical after
13 appointment of the members of the commission, the governor
14 shall call a meeting of the commission to be convened at the
15 state capitol for the purpose of organizing and electing a
16 chairman.

17 (b) The members of the commission appointed by the
18 governor shall be appointed for overlapping terms of six years
19 each, except that the original appointments shall be for terms
20 of two, four and six years, respectively. Each member
21 appointed by the governor shall serve until his successor has
22 been appointed and qualified. Members may be appointed by
23 the governor to serve any number of terms. The members of
24 the commission appointed by the governor, before performing
25 any duty hereunder, shall take and subscribe to the oath
26 required by section five, article four of the Constitution of
27 West Virginia. Vacancies in the membership appointed by the
28 governor shall be filled by appointment by him for the
29 unexpired term of the member whose office shall be vacant
30 and such appointment shall be made by the governor within
31 sixty days of the occurrence of such vacancy. Any member
32 appointed by the governor may be removed by the governor
33 in case of incompetency, neglect of duty, gross immorality or
34 malfeasance in office.

35 (c) The commission shall meet at such times and places as
36 shall be designated by the chairman. The chairman may call
37 a meeting of the commission at any time, and he shall call
38 a meeting of the commission upon the written request of two
39 members or upon the written request of the oil and gas
40 conservation commissioner. Notification of each meeting shall
41 be given in writing to each member by the chairman at least
42 five days in advance of the meeting. Any three members, one
43 of which may be the chairman, shall constitute a quorum for
44 the transaction of any business as herein provided for. A
45 majority of the commission shall be required to determine any
46 issue brought before it.

47 (d) Each member of the commission appointed by the
48 governor shall receive thirty-five dollars per diem not to exceed
49 one hundred days per calendar year while actually engaged in
50 the performance of his duties as a member of the commission.
51 Each member of the commission shall also be reimbursed for
52 all reasonable and necessary expenses actually incurred in the
53 performance of his duties as a member of the commission.

54 (e) The commission shall appoint the oil and gas conserva-
55 tion commissioner, fix his salary within available funds, and
56 advise him regarding his duties and authority under this article
57 and consult with him prior to his reaching any final decisions
58 and entering orders hereunder. However, the commissioner has
59 full and final authority under this article with the commission
60 serving in an advisory capacity to him. The commissioner shall
61 possess a degree from an accredited college or university in
62 petroleum engineering or geology and must be a registered
63 professional engineer with particular knowledge and ex-
64 perience in the oil and gas industry.

65 (f) The oil and gas commissioner is hereby empowered and
66 it shall be his duty to execute and carry out, administer and
67 enforce the provisions of this article in the manner provided
68 herein. Subject to the provisions of section three of this article,
69 the commissioner shall have jurisdiction and authority over all
70 persons and property necessary therefor. The commissioner is
71 authorized to make such investigation of records and facilities
72 as he deems proper. In the event of a conflict between the duty
73 to prevent waste and the duty to protect correlative rights, the
74 commissioner's duty to prevent waste shall be paramount. He
75 shall serve as secretary of the oil and gas conservation
76 commission.

77 (g) Without limiting his general authority, the commissioner
78 shall have specific authority to:

79 (1) Regulate the spacing of deep wells;

80 (2) Make and enforce reasonable rules and regulations and
81 orders reasonably necessary to prevent waste, protect
82 correlative rights, govern the practice and procedure before the
83 commissioner and otherwise administer the provisions of this
84 article;

85 (3) Issue subpoenas for the attendance of witnesses and

86 subpoenas duces tecum for the production of any books,
87 records, maps, charts, diagrams and other pertinent docu-
88 ments, and administer oaths and affirmations to such
89 witnesses, whenever, in the judgement of the commissioner, it
90 is necessary to do so for the effective discharge of his duties
91 under the provisions of this article; and

92 (4) Serve as technical advisor regarding oil and gas to the
93 Legislature, its members and committees, to the deputy
94 director for oil and gas, to the department of natural resources
95 and to any other agency of state government having
96 responsibility related to the oil and gas industry.

97 (h) After having conducted a performance audit through its
98 joint committee on government operations, pursuant to section
99 nine, article ten, chapter four of this code, the Legislature
100 hereby finds and declares that the oil and gas conservation
101 commission should be continued and reestablished. Accord-
102 ingly, notwithstanding the provisions of section four, article
103 ten, chapter four of this code, the oil and gas conservation
104 commission shall continue to exist until the first day of July,
105 one thousand nine hundred ninety-one.

CHAPTER 80

(Com. Sub. for H. B. 1707—By Delegate Jordan and Delegate Garrett)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five of said chapter, all relating to the appointment of a nonresident as executor of an estate; when such executor may be required to give security or bond; the form and amount of such surety; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article.

1. Personal Representatives.
5. General Provisions as to Fiduciaries.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor not to give security on bond.

1 Subject to the provisions of section three, article five of this
2 chapter governing the appointment of a nonresident of this
3 state as an executor, where the will directs that an executor
4 shall not give security, it shall not be required of him, unless
5 at the time the will is admitted to probate or at any time
6 subsequently, on the application of any person interested, or
7 from the knowledge of the court or clerk admitting the will
8 to probate, it is deemed proper that security ought to be given.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 Notwithstanding any other provision of law, no person not
2 a resident of this state nor any nonresident banking institution
3 nor any corporation having its principal office or place of
4 business outside this state may be appointed or act as executor,
5 administrator, curator, guardian or committee, except that a
6 testator who is a nonresident of this state at the time of his
7 death may name, and there may be appointed and act, a
8 nonresident as his executor, and except that for the guardian
9 of an infant who is a nonresident of this state there may be
10 appointed and act the same person who is appointed guardian
11 at the domicile of the infant: *Provided*, That whenever the will
12 of a decedent who was a resident of this state at the time of
13 his death, hereinafter in this section referred to as "resident
14 decedent," designates an individual, who is the husband, wife,
15 father, mother, brother, sister, child, grandchild or sole
16 beneficiary of such resident decedent as executor, then such
17 designated individual may qualify and act as executor
18 notwithstanding the fact that he is a nonresident: *Provided*,
19 *however*, That a nonresident individual or individuals may be
20 appointed as the testamentary guardian of a resident infant if
21 appointed in accordance with the provisions of section one,
22 article twelve of this chapter: *Provided further*, That a
23 nonresident individual may be appointed as administrator of

24 an estate in accordance with the provisions of section four,
25 article one of this chapter and act as such administrator and,
26 notwithstanding any other provision of law as to the form or
27 amount of surety, shall give bond with such surety as may be
28 approved by the clerk if such individual be the husband, wife,
29 father, mother, brother, sister, child, grandchild or the sole
30 beneficiary of a decedent who was a resident of this state at
31 the time of his death, hereinafter in this section also referred
32 to as a "resident decedent," and if such individual may
33 otherwise qualify as such administrator. Nonresident executors
34 and administrators of resident decedents, and nonresident
35 testamentary guardians who are not such relatives named
36 above or sole beneficiary shall give bond with corporate surety
37 thereon, qualified to do business in this state, in such penalty
38 as may be fixed pursuant to the provisions of section seven,
39 article one of this chapter, except that such penalty in the case
40 of a nonresident executor shall not be less than (1) double the
41 value of the personal estate, and (2) double the value of any
42 real property authorized to be sold under the will or the value
43 of any rents and profits from any real property which the will
44 authorizes the nonresident executor to receive, and except that
45 such penalty in the case of a nonresident administrator shall
46 not be less than double the value of the personal estate: *And*
47 *provided further*, That where the will directs that a nonresident
48 executor who is the husband, wife, father, mother, brother,
49 sister, child or grandchild or sole beneficiary of the decedent
50 shall not give security, it may be required of that person only
51 as hereinbefore provided. The personal estate of a resident
52 decedent may not be removed from this state until the
53 inventory or appraisal of the resident decedent's estate has
54 been filed and any new or additional bond required to satisfy
55 the penalty specified above in this section has been furnished.
56 The liability of a nonresident executor or administrator and
57 such surety shall be several and a civil action on any such bond
58 may be instituted and maintained against the surety,
59 notwithstanding any other provision of this code to the
60 contrary, even though no civil action has been instituted
61 against the nonresident executor or administrator.

62 When a nonresident qualifies as an executor, administrator
63 or guardian of an infant pursuant to the provisions of this
64 section, he thereby constitutes the clerk of the county

65 commission wherein the will was admitted to probate or
66 wherein he was appointed as administrator, or such clerk's
67 successor in office, his true and lawful attorney-in-fact upon
68 whom may be served all notices and process in any action or
69 proceeding against him as executor, administrator or guardian
70 or with respect to such estate, and such qualification shall be
71 a signification of the executor's, or administrator's or
72 guardian's agreement that any notice or process, which is
73 served in the manner hereinafter in this section provided, shall
74 be of the same legal force and validity as though the executor,
75 administrator or guardian were personally served with notice
76 and process within this state. Service shall be made by leaving
77 the original and two copies of any notice or process, together
78 with a fee of five dollars, with the clerk of such county
79 commission. Such clerk shall thereupon endorse upon one
80 copy thereof the day and hour of service and shall file such
81 copy in his office and said service shall constitute personal
82 service upon such nonresident executor, administrator or
83 guardian: *Provided*, That the other copy of such notice or
84 process shall be forthwith sent by registered or certified mail,
85 return receipt requested, deliver to addressee only, by said
86 clerk to the nonresident executor, administrator or guardian
87 at the address last furnished by him to said clerk and either
88 (a) such nonresident executor's, administrator's or guardian's
89 return receipt signed by him or (b) the registered or certified
90 mail bearing thereon the stamp of the post-office department
91 showing that delivery therefor was refused by such nonresident
92 executor, administrator or guardian is appended to the original
93 notice or process and filed therewith in the office of the clerk
94 of the county commission from which such notice or process
95 was issued. No notice or process may be served on such clerk
96 of the county commission or accepted by him less than twenty
97 days before the return day thereof. The clerk of such county
98 commission shall keep a record in his office of all such notices
99 and process and the day and hour of service thereof. The
100 provision for service of notice or process herein provided is
101 cumulative and nothing herein contained shall be construed as
102 a bar to service by publication where proper or to the service
103 of notice or process in any other lawful mode or manner. The
104 fee of five dollars shall be deposited in the county treasury.

105 If a nonresident testamentary guardian appointed pursuant

106 to this section fails or refuses to file an accounting required
107 by this chapter while his ward remains a resident of this state,
108 and the failure continues for two months after the due date,
109 he may, upon notice and hearing, be removed or subjected to
110 any other appropriate order by the county commission, and
111 if his failure or refusal to account continues for six months,
112 he shall be removed as testamentary guardian by the county
113 commission.

114 Any nonresident executor, administrator or guardian who
115 removes from this state the personal estate of a resident
116 decedent or of the infant of a resident decedent without
117 complying with the provisions of this section, the provisions
118 of article eleven, chapter forty-four of this code or any other
119 requirement pertaining to fiduciaries generally, shall be guilty
120 of a misdemeanor, and, upon conviction thereof, shall be
121 punished by a fine of not more than one thousand dollars or
122 by confinement in the county jail for not more than one year,
123 or, in the discretion of the court, by both such fine and
124 imprisonment.

CHAPTER 81

(Com. Sub. for H. B. 1070—By Delegate Blatnik)

[Passed April 9, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, five and forty-two, article three-a of said chapter, all relating to the settlement of estates generally; increasing the value of estates exempted from reference to fiduciary commissioners; limiting fees charged by such commissioners and allowing the county commission to approve additional fees in certain cases; election by the county commission to adopt the optional procedure for such settlement; public hearings with respect thereto and notice of such hearings; providing for petition by the voters of the county for such hearings; increasing the maximum amount of probate estate to be supervised by fiduciary supervision without reference to a fiduciary commissioner; and limiting the fee which a fiduciary

supervisor may charge to settle an estate.

Be it enacted by the Legislature of West Virginia:

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

Article.

2. Proof and Allowance of Claims Against Estates of Decedents.

3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Options.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisal by the personal
2 representative to the county clerk, the estate of his decedent
3 shall, by order of the county commission to be then made,
4 be referred to a fiduciary commissioner for proof and
5 determination of debts and claims, establishment of their
6 priority, determination of the amount of the respective shares
7 of the legatees and distributees, and any other matter necessary
8 and proper for the settlement of the estate: *Provided*, That in
9 counties where there are two or more such commissioners, the
10 estates of decedents shall be referred to such commissioners
11 in rotation, in order that, so far as possible, there may be an
12 equal division of the work: *Provided, however*, That if the
13 personal representative shall deliver to the clerk an appraisal-
14 ment of the assets of the estate showing their value to be fifty
15 thousand dollars or less, exclusive of property held by the
16 decedent and another person or other persons as joint tenants
17 with rights of survivorship, the clerk shall record said
18 appraisal and publish a notice as set forth herein: *Provided*
19 *further*, That a fiduciary commissioner may not charge to the
20 estate a fee greater than two hundred dollars for the settlement
21 of an estate, except upon approval of the county commission
22 because of complicating issues or problems attendant to such
23 settlement and amount of time involved in and about their
24 resolution. The personal representative shall, within two
25 months from the date of recordation of the appraisal in
26 such case, make report to the clerk of his receipts, disburse-

27 ments and distribution, and shall make affidavit that all claims
 28 against the estate, for expenses of administration, taxes and
 29 debts of the decedent, have been paid in full; the clerk shall
 30 be entitled to collect and receive a fee of ten dollars for
 31 recording such report and affidavit, and for publication of the
 32 notice hereinafter provided, said fee to be in lieu of any other
 33 fee provided by law for recording a report of settlement of
 34 the accounts of a decedent's personal representative. It shall
 35 be the duty of the clerk, at least once a month, to cause to
 36 be published once a week for two successive weeks in a
 37 newspaper of general circulation within the county of the
 38 administration of the estate, a notice substantially as follows:

39 NOTICE OF FILING OF ESTATE ACCOUNTS

40 I have before me the account of the executor(s) or
 41 administrator(s) of the estates of the following deceased
 42 persons:

43
 44
 45

46 Any person having a claim against the estate of any such
 47 deceased person, or who has any beneficial interest therein,
 48 may appear before me or the county commission at any time
 49 within thirty days after first publication of this notice, and
 50 request reference of said estate to a commissioner or object
 51 to confirmation of said accounting. In the absence of such
 52 request or objection, the accounting may be approved by the
 53 county commission.

54
 55 Clerk of the County Commission
 56 of.....County, W. Va.

57 If no such request or objection be made to the clerk or to
 58 the county commission, the county commission may confirm
 59 the report of the personal representative, and thereupon the
 60 personal representative and his surety shall be discharged; but
 61 if such objection or request be made, the county commission
 62 may confirm the accounting or may refer the estate to one of
 63 its fiduciary commissioners.

64 (b) If upon the return and recordation of the appraisalment,
 65 it shall appear to the clerk that there is only one beneficiary
 66 of the estate and that said beneficiary is competent at law,

67 there shall be no further administration upon the estate, and
 68 no reference to a fiduciary commissioner, unless, for due cause,
 69 the county commission shall order further administration and
 70 a reference to a fiduciary commissioner. The bond of the
 71 personal representative and his surety shall be discharged one
 72 year after the date of qualification of the personal represen-
 73 tative if no claim shall have been filed with the county clerk
 74 and no suit shall have been instituted against the personal
 75 representative. The clerk shall publish a notice once a week
 76 for two successive weeks in a newspaper of general circulation
 77 within the county of administration of the estate, substantially
 78 as follows:

79 **NOTICE OF UNADMINISTERED ESTATE**

80 Notice is hereby given that, there being only one beneficiary
 81 of the estate of the deceased, there will be no administration
 82 of said estate unless within ninety days demand for adminis-
 83 tration be made by a party in interest or an unpaid creditor.

84 Dated this..... day of

85

86 Clerk of the County Commission

87 of.....County, W. Va.

88 The clerk shall charge to the personal representative, and
 89 receive, the reasonable cost of publication of said notice.

90 If no person demands administration and no creditor
 91 appears in response to the notice hereinabove provided,
 92 alienation of the decedent's real estate more than six months
 93 after the date of the notice to a bona fide purchaser for value
 94 without notice of any claim against the estate shall be free of
 95 any lien for taxes or debts of the decedent, notwithstanding
 96 the provisions of section five, article eight, chapter forty-four
 97 of this code.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE
 OF CLAIMS AGAINST ESTATES OF DECEDENTS;
 COUNTY OPTIONS.**

§44-3A-1 Election to make article applicable

§44-3A-5 Reference to fiduciary commissioner; exceptions and limitations.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner;
 disposition of fees.

§44-3A-1. Election to make article applicable.

1 (a) Any county commission which has not heretofore
2 elected to proceed under provisions of this article may do so
3 in accord with this section.

4 (b) Prior to the adoption of the optional procedure
5 provided for under this article, the county commission shall
6 fix a time for public hearing on the issue of adoption of the
7 fiduciary supervisor system as described in this article and
8 cause to be published as a Class II-0 legal advertisement, as
9 provided in section two, article three, chapter fifty-nine of the
10 code, setting forth the reasons for the hearing, its date, place
11 and time. Whenever ten percent or more of the voters of the
12 county participating in the next preceding general election
13 shall so petition the county commission in writing, the
14 commission shall within sixty days of the filing of such petition
15 conduct the public hearing provided by this subsection. The
16 provisions hereof relating to the publication of notice of such
17 hearing shall apply to the hearing held pursuant to such
18 petition. The notice in either case shall also recite that within
19 fifteen days after the public hearing the commission, after
20 consideration of the following factors, will make a final
21 determination whether to proceed under this article:

22 (1) The relatively expeditious and efficient administration
23 and settlement of estates;

24 (2) The relative cost and convenience to the public and to
25 the estates;

26 (3) Whether the fees provided under this article would be
27 insufficient to fund the salary and expenses of a fiduciary
28 supervisor as described in this article;

29 (4) Whether the county commission and the public interest
30 is served by the availability of the unsupervised administration
31 of estates having sole beneficiaries based upon the local needs
32 of the county;

33 (5) The availability of physical facilities necessary for the
34 administration of this article.

35 (c) At the hearing the county commission shall receive both
36 written and oral comment from any citizen upon the
37 desirability of proceeding under the provisions of this article.
38 It may limit the time for oral presentations and permit
39 additional written presentations to be filed up to three days

40 after the hearing.

41 (d) Within sixty days of the public hearing, the commission
42 shall enter an order either adopting or rejecting the provisions
43 of this article.

44 (e) The county commission shall make such orders for the
45 closing of estates opened prior to the effective date of the order
46 adopting the provisions of this article as it may deem expedient
47 which are not inconsistent with the express provisions of this
48 chapter.

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

1 When the personal representative shall deliver to the
2 fiduciary supervisor the appraisal required by section
3 fourteen, article one of this chapter, and is notified as to the
4 completeness thereof, the fiduciary supervisor shall, unless
5 otherwise ordered by the county commission, proceed to
6 receive claims and proceed to supervise settlement of the
7 estate.

8 The county commission shall not remove the estate from
9 supervision by the fiduciary supervisor and no reference to a
10 fiduciary commissioner shall be made if the appraisal,
11 properly completed, shows the total value of all assets included
12 in the estate which are subject to administration (exclusive of
13 real property, unless the will, if any, requires administration
14 thereof) to be one hundred thousand dollars or less: *Provided,*
15 That if a dispute arises as to a matter of law or fact, then
16 the matter may be referred to a fiduciary commissioner for
17 the sole purpose of taking evidence as to making a recommen-
18 dation as to the disputed facts and applicable law in such
19 dispute.

20 The county commission shall not refer any estate to a
21 fiduciary commissioner:

22 (a) If the personal representative is also the sole beneficiary
23 of the estate; nor

24 (b) If the surviving spouse is the sole beneficiary of the
25 estate unless the spouse requests such reference; nor

26 (c) (1) If all the beneficiaries of the estate advise the
27 fiduciary supervisor by verified writing that no dispute is likely

28 to arise with respect to the administration of the estate; and
29 (2) it appears to the county commission or to the fiduciary
30 supervisor thereof that there are ample assets in the estate to
31 satisfy all claims of creditors and others against the estate and
32 that proper distribution thereof will be made, including the
33 payment of all taxes due thereon; and (3) if the personal
34 representative agrees thereto; nor

35 (d) If the county commission or fiduciary supervisor, subject
36 to the approval of the county commission, finds that there are
37 ample assets in the estate to satisfy all claims of creditors and
38 others against the estate and that proper distribution thereof
39 will be made including, but not limited to, the payment of all
40 taxes due thereon and that no disputed question of law or fact
41 has arisen or is likely to arise.

42 The commission shall, before making any reference to a
43 fiduciary commissioner, find by its order that none of the
44 prohibitions contained in this section obtains: *Provided*, That
45 in any case in which a reference would otherwise be prohibited,
46 the commission may refer a matter for the sole purpose of
47 resolving a disputed question of law or fact or may, if the
48 matter can be resolved expeditiously, permit the fiduciary
49 supervisor to conduct the necessary proceedings and to prepare
50 a recommendation on such disputed question.

51 In the event reference is made because of the failure to meet
52 any of the conditions in the preceding paragraph which
53 preclude reference to a fiduciary commissioner, such reference
54 may be made generally or for the sole purpose of determining
55 those matters in dispute. In any event, such reference shall be
56 withdrawn at any time upon the settlement or determination
57 or resolution of the reason or reasons giving rise to such
58 reference or at any other time deemed appropriate by the
59 county commission or by the fiduciary supervisor, subject to
60 the approval of the county commission. If no such reference
61 is made and it is later found that a dispute or other condition
62 has arisen which makes reference to a fiduciary commissioner
63 necessary, then reference to a fiduciary commissioner may be
64 made, either generally or for the settlement, determination or
65 resolution of the dispute or condition and shall, in any event,
66 be later withdrawn at any time required by this section or
67 deemed appropriate by the fiduciary supervisor with the
68 approval of the county commission.

69 In counties where there are two or more such fiduciary
70 commissioners, the estates of decedents shall be referred to
71 such commissioners in rotation in order that, so far as
72 possible, there may be an equal division of the work.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

1 (a) When necessary solely for the purpose of financing the
2 cost of settling estates, the county commission may authorize
3 the fiduciary supervisor to charge and collect at the time of
4 qualification of the fiduciary of a decedent's estate, a fee not
5 to exceed: (A) Twenty-five dollars for all estates in which the
6 probate assets do not exceed three thousand dollars; (B)
7 seventy-five dollars for all estates in which the probate assets
8 are more than three thousand dollars and do not exceed ten
9 thousand dollars; and (C) one hundred twenty-five dollars for
10 all estates in which the probate assets exceed ten thousand
11 dollars. Of the sums collected by the fiduciary supervisor, five
12 dollars shall be forwarded to the state tax commissioner. The
13 moneys so forwarded to the state tax commissioner shall be
14 deposited in the office of the treasurer of the state in the
15 special fund, designated "The Inheritance Tax Administration
16 Fund," to be used to defray, in whole or in part, the costs
17 of administration of taxes imposed by article eleven, chapter
18 eleven of this code in order to facilitate the prompt
19 administration of the provisions imposed by said article. The
20 remaining amounts shall be deposited in the county fiduciary
21 fund as provided in section forty-three of this article. Such fee
22 shall be paid to include all services of the fiduciary supervisor
23 for the settlement of every such decedent's estate which is
24 settled pursuant to the provisions of section nineteen, article
25 three-a of this chapter. All such fees shall also include the cost
26 of publication of the notice required by section four, article
27 three-a of this chapter, and the notice required by section
28 nineteen, article three-a of this chapter, but shall not include
29 the cost of any mailings or of the cost of recording any
30 documents required to be recorded in the office of the clerk
31 of the county commission by the provisions of this chapter.

32 In the event the fiduciary supervisor is required to examine
33 and prepare a statement of deficiencies, including reasons for
34 disapproving any of the documents required to be filed by the
35 personal representative of any decedent's estate, he shall charge

36 and collect from such personal representative a fee of ten
37 dollars.

38 (b) In addition to the fees set forth in subsection (a) of this
39 section, the fiduciary supervisor shall charge a fee to be fixed
40 by the county commission in the manner provided in
41 subsection (c) of this section for conducting hearings, granting
42 continuances of hearings, considering evidence, for drafting
43 recommendations with respect to such hearings and for
44 appearing before the county commission with respect thereto
45 and any other matters of an extraordinary nature not normally
46 included within a summary settlement as contemplated by
47 section nineteen, article three-a of this chapter. Such fee shall
48 be used to defray the costs imposed by or incidental to any
49 extraordinary demands by or conditions imposed by a
50 fiduciary or imposed by the circumstances of the estate.

51 (c) The fiduciary supervisor or fiduciary commissioner shall
52 prepare a voucher for the county commission, which voucher
53 shall be itemized and shall set forth in detail all of the services
54 performed and the amount charged for such service or services.
55 Such voucher shall also indicate in each instance if the service
56 was actually performed by the fiduciary supervisor or fiduciary
57 commissioner or whether such service was performed by an
58 employee or deputy of such supervisor or commissioner. All
59 vouchers shall reflect the services rendered pursuant to the
60 initial fee charged and collected as provided in subsection (a)
61 of this section and, in addition thereto, shall indicate those
62 services for which charges are to be made over and above that
63 amount. In the case of any service for which a fee is not fixed
64 by this section, or the fee fixed is based on time expended,
65 the voucher shall show the actual time personally expended
66 by the supervisor or commissioner, to the nearest tenth of an
67 hour. All such vouchers shall be verified prior to submission
68 to the county commission for approval. Upon approval of any
69 such voucher, the same shall be charged against the estate to
70 which the same applies. In reviewing any fee charged by either
71 the fiduciary supervisor or a fiduciary commissioner the
72 county commission shall consider the following:

- 73 (1) The time and effort expended;
- 74 (2) The difficulty of the questions raised;
- 75 (3) The skill required to perform properly the services

76 rendered;

77 (4) The reasonableness of the fee;

78 (5) Any time limitations imposed by the personal represen-
79 tative, any beneficiary or claimant, or by the attendant
80 circumstances; and

81 (6) Any unusual or extraordinary circumstances or demands
82 or conditions imposed by the personal representative, any
83 beneficiary or claimant or by the attendant circumstances. The
84 county commission may approve any such voucher or may
85 reduce the same, as it deems proper, after considering those
86 matters set forth in this subsection. Any such approval shall
87 be by order of the commission and be entered of record by
88 the clerk of the county commission in the fiduciary record
89 book and the general order books of the commission. In no
90 event shall any fee for any service, whether performed by the
91 fiduciary supervisor or the fiduciary commissioner, be fixed,
92 charged or approved which is based upon or with reference
93 to the monetary value of the estate or of the amount in
94 controversy upon any disputed issue or fact of law.

95 (d) For every estate other than a decedent's estate, there
96 shall be charged by the fiduciary supervisor at the time of
97 qualification, a fee of twenty-five dollars, which fee shall
98 include all services performed by the fiduciary supervisor with
99 respect to such estate from the time of qualification of the
100 personal representative thereof until and including the filing
101 of the first annual settlement. For each additional or
102 subsequent annual or triennial settlement, the fiduciary
103 supervisor shall charge and collect a fee of ten dollars.

104 (e) The county commission or other tribunal in lieu thereof,
105 shall, by order, establish or fix a schedule of suggested fees
106 or rates of compensation for the guidance of the fiduciary
107 supervisor and any fiduciary commissioner in preparing their
108 respective vouchers for fees other than those fees fixed by any
109 provision of this section or of this chapter. A copy of these
110 fees or rates shall be posted in a conspicuous place in the
111 county courthouse.

CHAPTER 82

(H. B. 1486—By Delegate Feinberg)

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

AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to restrictions on the exercise of power for fiduciary's benefit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-13. Restrictions on exercise of power for fiduciary's benefit.

1 (a) A power conferred upon a person in his capacity as
2 fiduciary to make discretionary distributions of principal or
3 income to himself or to make discretionary allocations in his
4 favor of receipts or expenses between income and principal
5 cannot be exercised by him. If the power is conferred on two
6 or more fiduciaries, it may be exercised by the fiduciaries who
7 are not so disqualified. If there is no fiduciary qualified to
8 exercise the power, it may be exercised by a special fiduciary
9 appointed by the circuit court authorized under article
10 fourteen of this chapter, and in accordance with the procedure
11 described therein, to appoint a successor or substitute trustee.
12 Except as provided in subsection (c), this section applies to
13 all trusts now in existence and to all trusts which shall
14 hereafter come into existence.

15 (b) Unless either (i) mandatory, (ii) limited by an ascer-
16 tainable standard relating to the health, education, support or
17 maintenance of the fiduciary or (iii) exercisable by the
18 fiduciary only in conjunction with another person having a
19 substantial interest in the trust which is adverse to the interest
20 of the fiduciary, a power to make distributions of principal
21 or income is a discretionary power for purposes of this section.

- 22 (c) This section does not apply to trusts that come into
23 existence or are amended after the effective date of this section
24 which show a clear intent that this section not apply.

CHAPTER 83

(S. B. 284—By Mr. Tonkovich, Mr. President and Senator Tomblin)

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

AN ACT to amend and reenact section three, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the council of finance and administration; providing for membership composition, including authorized voting designees; providing for meetings; council duties to include oversight of federal funds; and specifying compensation and reimbursement for expenses of appointed, non-ex officio members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-3. Council of finance and administration.

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members shall
5 be the governor or his designee, the attorney general or his
6 designee, the state treasurer or his designee and the state
7 auditor or his designee; such designees being authorized
8 voting ones. From the membership of the Legislature, the
9 President of the Senate shall appoint three senators as
10 members of the council, not more than two of whom shall be
11 members of the same political party, and the Speaker of the
12 House shall appoint three delegates as members of the

13 council, not more than two of whom shall be members of the
14 same political party. Members of the council appointed by
15 the President of the Senate and the Speaker of the House
16 shall serve at the will and pleasure of the officer making
17 their appointment. The commissioner of finance and
18 administration shall serve as chairman of the council.
19 Meetings of the council shall be upon call of the chairman or
20 a majority of the members thereof. It shall be the duty of the
21 chairman to call no less than four meetings in each fiscal
22 year, one in each quarter, or more often as necessary, and all
23 meetings shall be open to the public. All meetings of the
24 council shall be held at the capitol building in a suitable
25 committee room which shall be made available by the
26 Legislature for such purpose: *Provided*, That the second
27 quarterly meeting in each fiscal year shall be held in
28 November and shall be a joint meeting with the joint
29 committee on government and finance of the Legislature
30 called jointly by the President of the Senate, Speaker of the
31 House and commissioner of finance and administration.

32 The council shall serve the department of finance and
33 administration in an advisory capacity for purposes of
34 reviewing the performance of the administrative and fiscal
35 procedures of the state, including the oversight of all
36 federal funds, and shall have the following duties:

37 (1) To advise with the commissioner in respect to matters
38 of budgetary intent and efficiency, including budget bill
39 and budget document detail and format;

40 (2) To advise with the commissioner concerning such
41 studies of government and administration concerning fiscal
42 policy as it may consider appropriate;

43 (3) To advise with the commissioner in the preparation of
44 studies designed to provide long-term capital planning and
45 finance for state institutions and agencies; and

46 (4) To advise with the commissioner in respect to the
47 application for, and receipt and expenditure of, anticipated
48 or unanticipated federal funds.

49 The appointed, non-ex officio members of the council
50 shall be entitled to receive such compensation and
51 reimbursement for expenses in connection with
52 performance of their duties, during interim periods, if not
53 otherwise receiving the same for such identical periods, as
54 is authorized by the applicable sections of article two-a,

55 chapter four of the code in respect to performance of duties
56 either within the state or, if deemed necessary, out-of-state.
57 Such compensation and expenses shall be incurred and paid
58 only after approval by the joint committee on government
59 and finance.

CHAPTER 84

(Com. Sub. for S. B. 680—By Senator Boettner)

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

AN ACT to amend and reenact section fifty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article seven, chapter sixty-one of said code, all relating to allowing the operator of a gun repair shop to be exempt from the statutory prohibition, subject to rules and regulations prescribed by the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

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

Chapter

20. Natural Resources.

61. Crimes and Their Punishment.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-58. Shooting across road or near building or crowd; penalty.

1 It shall be unlawful for any person to shoot or discharge
2 any firearms across or in any public road in this state, at
3 any time, or within four hundred feet of any school-
4 house or church, or within five hundred feet of any

5 dwelling house, or on or near any park or other place
6 where persons gather for purposes of pleasure, and any
7 person violating this section is guilty of a misdemeanor:
8 *Provided*, That any person operating a gun repair shop,
9 licensed to do business in the state of West Virginia and
10 duly licensed under applicable federal statutes, may be
11 exempted from the prohibition established by this section
12 and section twelve, article seven, chapter sixty-one of
13 this code for the purpose of test firing a firearm. The
14 director of the department of natural resources shall
15 prescribe such rules as may be necessary to carry out the
16 purpose of the exemption under this section and section
17 twelve, article seven, chapter sixty-one and shall ensure
18 that any person residing in any dwelling home within
19 five hundred feet of such gun repair shop be given an
20 opportunity to protest the granting of such exemption.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-12. Shooting across road or near building or crowd; penalty.

1 It shall be unlawful for any person to shoot or dis-
2 charge any firearms across or in any public road in this
3 state, at any time, or within four hundred feet of any
4 schoolhouse or church, or within five hundred feet of any
5 dwelling house, or on or near any park or other place
6 where persons gather for purposes of pleasure, and any
7 person violating this section is guilty of a misdemeanor,
8 and, upon conviction thereof, shall be fined not less than
9 ten nor more than one hundred dollars, or, be imprisoned
10 in the county jail not more than one hundred days for
11 each offense: *Provided*: That any person operating a gun
12 repair shop, licensed to do business in the state of West
13 Virginia and duly licensed under applicable federal
14 statutes, may be exempted from the prohibition estab-
15 lished by this section and section fifty-eight, article two,
16 chapter twenty of this code for the purpose of test firing
17 a firearm. The director of the department of natural
18 resources shall prescribe such rules as may be necessary
19 to carry out the purposes of the exemption under this

20 section and section fifty-eight, article two, chapter
21 twenty, and shall ensure that any person residing in any
22 dwelling home within five hundred feet of such gun
23 repair shop be given an opportunity to protest the grant-
24 ing of such exemption.

CHAPTER 85

(Com. Sub. for S. B. 162—By Senators Kaufman and Holliday)

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

AN ACT to amend and reenact section fifty-b, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article seventeen, chapter twenty-seven of said code, all relating to group residential facilities; permitted use; restrictions; health director or commissioner of department of human services to give notice and hold hearings upon objection of request upon application for operation of group residential facility in area limited to single-family residences; board of health regulations; reconsiderations.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 8. Municipal Corporations.
- 27. Mentally Ill Persons.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 24. PLANNING AND ZONING.

§8-24-50b. Permitted use for group residential facility.

- 1 (a) A group residential facility as defined in article

2 seventeen, chapter twenty-seven of this code, shall be a
3 permitted residential use of property for the purposes of
4 zoning and shall be a permitted use in all zones or districts.
5 No county commission, governing board of a municipality
6 or planning commission, shall require a group residential
7 facility, its owner or operator, to obtain a conditional use
8 permit, special use permit, special exception or variance for
9 location of such facility in any zone or district or
10 discriminate in regard to housing in any other regard:
11 *Provided*, That a county commission, governing board of a
12 municipality or planning commission may require a group
13 residential facility, its owner or operator, to obtain a
14 conditional use permit, special use permit, special
15 exception or variance if the home is to be in a zone or district
16 restricted to single-family residences and is to be occupied
17 by more than six individuals who are developmentally
18 disabled and three supervisors, or is to be occupied by the
19 behaviorally disabled within a zoning district or zone
20 restricted solely to single-family residences with no
21 allowance for duplexes, apartments or other multi-family
22 use of a single parcel of property.

23 (b) When an application to operate such a group
24 residential facility in a district or zone limited to single-
25 family residences is submitted to the department of health
26 or the department of human services for the issuance of a
27 license, as required by the provisions of said article
28 seventeen, chapter twenty-seven, upon receipt of said
29 application, the director of the department of health or the
30 commissioner of the department of human services shall
31 give written notice of such application to the county
32 commission, governing board of a municipality or planning
33 commission within whose jurisdiction the proposed facility
34 lies. The county commission, governing board of a
35 municipality or planning commission shall have thirty days
36 in which to file objections or request a hearing with the
37 department of health or the department of human services.
38 Upon the filing of such objections or hearing request, the
39 director of the department of health or the commissioner of
40 the department of human services shall hold a hearing. The
41 state board of health shall promulgate regulations
42 governing the conduct of such hearings and applicable
43 standards pursuant to chapter twenty-nine-a of this code:

44 *Provided*, That the owner or operator of such group
45 residential facility shall, in all cases of such facilities
46 located within zoning districts or zones, submit an
47 application for any required zoning or occupancy permit
48 allowed under provisions of this section to the appropriate
49 zoning permit agency on or before the date of submission of
50 the application to the department of health or the
51 department of human services.

52 (c) The provisions of this section shall not exempt any
53 such residence from the structural requirements of any
54 bona fide historic preservation district.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-2. Permitted use of group residential facilities; restrictions.

1 (a) A group residential facility shall be a permitted
2 residential use of property for the purposes of zoning and
3 shall be a permitted use in all zones or districts. No county
4 commission, governing board of a municipality or planning
5 commission shall require a group residential facility, its
6 owner or operator, to obtain a conditional use permit,
7 special use permit, special exception or variance for
8 location of such facility in any zone or district: *Provided*,
9 That no more than one such facility may be located on the
10 same block face in any municipality, or within twelve
11 hundred feet, measured from front door to front door, in any
12 area not within a municipality: *Provided, however*, That
13 the owner or operator of such group residential facility
14 shall, in all cases of such facilities located within zoning
15 districts or zones, submit an application for any required
16 zoning or occupancy permit allowed under provisions of
17 this section to the appropriate zoning permit agency on or
18 before the date of submission of the application to the
19 department of health or the department of human services.

20 (b) Any resident of the contiguous area of a zoning
21 district limited to single-family or duplex-family
22 residences in which a group residential facility is located,
23 may file a complaint with the director of the department of
24 health or the commissioner of the department of human
25 services, as applicable. If the complaint states specific

26 conduct on the part of an individual placed in that facility
27 or other specific facts regarding such individual which
28 adversely affect public health and safety, upon the receipt
29 of such a complaint the director or commissioner shall
30 cause to be made an investigation of the facts alleged. If the
31 director or commissioner determines that the alleged facts
32 may have a substantial basis, the director or commissioner
33 shall cause a full reconsideration of the decision to place
34 that individual in that group residential facility in light of
35 those facts. The results of the reconsideration shall be given
36 to the complainant in writing with an explanation of the
37 reason for the decision: *Provided*, That this requirement
38 shall not be deemed to authorize the disclosure of
39 information that the director or commissioner would not
40 otherwise disclose without written release by the individual
41 unless a release for this purpose is obtained.

CHAPTER 86

(Com. Sub. for H. B. 1104—By Delegate Love and Delegate Flanigan)

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

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-aa, relating to permitting county commissions to create a hazardous material response program for the purpose of responding to hazardous material incidents; to designate current fire fighters, emergency medical services personnel and persons with expertise with hazardous materials to serve on any team established pursuant to program; to conduct affairs of the team; to receive and expend donated funds; to expend its own funds to acquire equipment and materials for the team; to provide training for the entire team; to enter into agreements with other counties to combine or coordinate teams; to combine, share or coordinate team training; and the purchase or lease and use of equipment or materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

1 In addition to all other powers and duties now conferred
2 by law upon county commissions, county commissions are
3 hereby authorized and empowered to create a hazardous
4 material accident response program. The program may include
5 the establishment of a hazardous materials response team.
6 Such a team shall be comprised of the members of the fire
7 departments recognized and approved by the West Virginia
8 fire commission in the county and designated by the county
9 commission and those emergency medical services personnel
10 certified pursuant to article four-c, chapter sixteen of this code
11 who are acting in their official capacity providing ambulance
12 or emergency medical services within the county as designated
13 by the county. Such a team may also be comprised of members
14 of the community who are recognized as having expertise with
15 hazardous materials and/or hazardous materials incidents. The
16 purpose of the team is to respond to hazardous material
17 incidents. The affairs of the team shall be conducted at the
18 will and pleasure of the county commission. The team shall
19 operate in cooperation with the county office of emergency
20 services and other approved fire departments. The commission
21 is authorized to receive donated funds and to expend those
22 funds and to expend its own funds for the acquisition of
23 equipment and materials for the use of the team and for the
24 provision of training for the members of the team. The county
25 commission is hereby authorized to enter into agreements with
26 other counties to combine or coordinate hazardous material
27 response team training and the purchase or lease and use of
28 equipment or materials.

CHAPTER 87

(Com. Sub. for H. B. 1282—By Delegate Hatfield and Delegate White)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to requesting that certain information about hazardous materials be provided to the department of health, and that a list of hazardous materials be developed along with certain other information; providing for the enforcement of the provisions of said article; and providing penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. REPOSITORY OF INFORMATION ON MEDICAL TREATMENT FOR CERTAIN HAZARDOUS MATERIALS; REQUEST FOR INFORMATION; PENALTIES; ENFORCEMENT.

§16-3A-1. Purpose and legislative findings.

§16-3A-2. Hazardous materials; duties of the director of the department of health; requests for information; penalties; enforcement.

§16-3A-1. Purpose and legislative findings.

1 (a) The purpose of this article is to provide a centralized
2 repository of information on hazardous materials and to
3 identify the chemical elements of such materials, the harmful
4 effects of exposure to such materials and the proper
5 recommended emergency medical treatment for exposure to
6 such hazardous materials.

7 (b) The Legislature finds that there is a lack of adequate
8 information concerning hazardous materials, present in West
9 Virginia, the immediate effects of exposure to such hazardous
10 materials on human beings and the appropriate emergency
11 medical treatment for exposure to hazardous materials. This
12 lack of information increases the medical health risks of
13 persons or communities who are exposed to hazardous

14 materials. The prompt availability of this information would
15 afford increased protection to persons and communities
16 exposed to hazardous materials.

**§16-3A-2. Hazardous materials; duties of the director of the
department of health; requests for information;
penalties; enforcement.**

1 (a) The director of the West Virginia department of health
2 shall within one hundred eighty days of the passage of this
3 article establish a list of hazardous materials, including their
4 treatment and effect, which have been determined to be, or
5 are suspected to be hazardous or toxic to human health. In
6 developing and maintaining this list the director shall give
7 consideration to: (1) The existing list prepared by the
8 commissioner of labor pursuant to section eighteen, article
9 three, chapter twenty-one of this code, (2) any list, publica-
10 tion, regulation, report, guideline or other compilation of the
11 occupational health and safety administration of the United
12 States department of labor, (3) any list, publication, regula-
13 tion, report, guideline or other compilation of the national
14 institute for occupational safety and health, (4) any list,
15 publication, regulation, report, guideline or other compilation
16 of the national fire protection association, (5) any list,
17 publication, regulation, report, guideline or other compilation
18 of the United States environmental protection agency, or (6)
19 any other source considered by the director to be reliable. In
20 determining what hazardous materials to place on the list, the
21 director shall give consideration to: (1) The materials'
22 frequency of use in the state, (2) the frequency of exposure
23 or overexposure of persons in the state to the materials, (3)
24 the seriousness of the effects of such exposure, or (4) such
25 other reason as the director may determine to be sufficient.

26 (b) The director of the department of health shall, within
27 ninety days of the preparation of the list described above,
28 determine the immediate health effects of exposure to and the
29 recommended emergency medical treatment of exposure to
30 such hazardous materials and publish such information in a
31 usable form for medical and emergency personnel. The
32 director shall also arrange that this information shall be
33 immediately available to medical or emergency personnel at
34 any time in the event of an accident. The director may do so
35 by storing this information in the West Virginia poison control

36 center or in such other manner and form as he may determine.
37 The distribution of this information in a medical or other
38 emergency to persons other than the medical or emergency
39 personnel shall be approved by the director of the department
40 of health or his authorized agent who may release such
41 information in his discretion notwithstanding the requirements
42 of the freedom of information act, chapter twenty-nine-b of
43 this code.

44 (c) The director may accept for any of the purposes of this
45 article all donations and grants of money, equipment, supplies,
46 materials and services, conditional or otherwise, from any
47 state, the United States or any other governmental agency, or
48 from any person, firm, association or corporation, and may
49 receive, utilize and dispose of these in accordance with other
50 state laws.

51 (d) The lists referred to in subsections (a) and (b) of this
52 section shall be updated annually.

53 (e) If the director determines that any information on the
54 use, manufacture, transportation or storage of hazardous
55 materials in West Virginia would be of assistance to him, he
56 may request that such information be provided to him by any
57 person, any industry or company, any medical group or
58 person, or any academic institution or person. He may also
59 request from any person information concerning the harmful
60 effects of exposure to such hazardous materials or the best
61 method of medical treatment of such exposures. The
62 information requested of any person, firm or corporation shall
63 be provided to the director within thirty days unless good
64 cause be shown to the satisfaction of the director why such
65 request is unreasonable because of the potential breach of a
66 trade secret.

67 (f) Any person, or corporation, that violates the provisions
68 of this section shall be subject to a civil penalty of not less
69 than one hundred dollars nor more than one thousand dollars
70 for each violation. When the director believes that a violation
71 has occurred he may request the attorney general or the
72 prosecuting attorney of the county where the violation
73 occurred to file a civil action for civil penalties, or for
74 injunctive or other relief, or both penalties and injunctive or
75 other relief.

76 (g) The director shall develop by rule or regulation
77 promulgated pursuant to the provisions of the administrative
78 procedures act, chapter twenty-nine-a of this code, a program
79 to assemble and update the hazardous materials list, the
80 information on the immediate medical effects of exposure to
81 such materials and the appropriate emergency medical
82 treatment of persons exposed: *Provided*, That the list and
83 other information shall not be required to be promulgated
84 pursuant to the administrative procedures act, chapter twenty-
85 nine-a of this code. The program shall also include the most
86 effective method or methods of distributing this information
87 to medical and emergency personnel. This program shall be
88 developed using the budget provided by the Legislature for this
89 program. The director shall implement this program imme-
90 diately and it shall be later reviewed by the Legislature through
91 the approval of rules and regulations as provided for in
92 chapter twenty-nine-a of this code.

CHAPTER 88

(Com. Sub. for S. B. 338—By Senator Boettner and Mr. Tonkovich, Mr. President)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to creating the "Community Right to Know Act"; providing short title; providing legislative findings and declarations; providing definitions; stating duties and responsibilities of the director; procedure for residents to request information on hazardous substances; stating information to be provided by employers; providing for notice of violation; civil penalties and injunctions; providing for the protection of proprietary information; criminal penalties for disclosure; providing for expiration of act upon passage of federal legislation; severability.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-one, to read as follows:

ARTICLE 31. COMMUNITY RIGHT TO KNOW.

- §16-31-1. Short title.
- §16-31-2. Legislative findings and declarations.
- §16-31-3. Definitions.
- §16-31-4. Duties and responsibilities of the director; procedure for residents to request information on hazardous substances.
- §16-31-5. Information to be provided by employers.
- §16-31-6. Notice of violation; civil penalties.
- §16-31-7. Protection of proprietary information; criminal penalties for disclosure.
- §16-31-8. Expiration of act upon passage of federal legislation.
- §16-31-9. Severability.

§16-31-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Community Right to Know Act."

§16-31-2. Legislative findings and declarations.

- 1 The Legislature finds that the health and safety of
- 2 persons living in this state may be improved by providing
- 3 access to information regarding hazardous substances to
- 4 which they may be exposed in their daily lives; that
- 5 individuals have a basic right to the information provided
- 6 under this article, including the risks presented by
- 7 hazardous substances, thereby allowing them to make
- 8 reasoned decisions and to take informed actions with
- 9 regard to their living conditions; that the manufacturing
- 10 industry plays a significant role in the economy of this state
- 11 and the lives of its citizens and that the creation, use and
- 12 storage of hazardous substances, given the limits of current
- 13 technology, is inherent in the operations of this industry;
- 14 and that local fire officials require information about
- 15 hazardous substances stored in their localities in order to
- 16 adequately plan for, and respond to, emergencies.

- 17 The Legislature therefore declares that it is the intent and
- 18 purpose of this article to establish a program for the
- 19 disclosure of information about hazardous substances in
- 20 and near the community, and to provide a procedure

21 whereby residents of this state may obtain access to such
22 information.

§16-31-3. Definitions.

1 (a) "Compressed gas" means:

2 (1) A gas or mixture of gases having, in a container, an
3 absolute pressure exceeding 40 psi at 70°F (21.1°C); or

4 (2) A gas or mixture of gases having, in a container, an
5 absolute pressure exceeding 104 psi at 130°F (54.4°C)
6 regardless of the pressure at 70°F (21.1°C); or

7 (3) A liquid having a vapor pressure exceeding 40 psi at
8 100°F (37.8°C) as determined by ASTM D-323-72.

9 (b) "Director" means the director of the state
10 department of health as described in article one of this
11 chapter.

12 (c) "Employer" means a person engaged in a business in
13 this state having a standard industrial classification, as
14 designated by the standard industrial classification manual
15 prepared by the federal office of management and budget,
16 within major group members twenty through thirty-nine
17 inclusive.

18 (d) "Facility" means the building, structure, equipment
19 and contiguous area used for the conduct of business.

20 (e) "Flammable" means a chemical that falls into one of
21 the following categories:

22 (1) "Aerosol, flammable" means an aerosol that, when
23 tested by the method described in 16 Code of Federal
24 Regulations, Section 1500.45, yields a flame projection
25 exceeding eighteen inches at full valve opening, or a flash-
26 back (a flame extending back to the valve) at any degree of
27 valve opening;

28 (2) "Gas, flammable" means:

29 (i) A gas that, at ambient temperature and pressure,
30 forms a flammable mixture with air at a concentration of
31 thirteen (13) percent by volume or less; or

32 (ii) A gas that, at ambient temperature and pressure,
33 forms a range of flammable mixtures with air wider than
34 twelve (12) percent by volume, regardless of the lower limit;

35 (3) "Liquid, flammable" means any liquid having a
36 flash point below 100°F (37.8°C), except any mixture having
37 components with flash points of 100°F (37.8°C) or higher,

38 the total of which make up ninety-nine percent or more of
39 the total volume of the mixture; and

40 (4) "Solid, flammable" means a solid, other than a
41 blasting agent or explosive as defined in 29 Code of Federal
42 Regulations, Section 1910.109(a), that is liable to cause fire
43 through friction, absorption of moisture, spontaneous
44 chemical change, or retained heat from manufacturing or
45 processing, or which can be ignited readily and when
46 ignited burns so vigorously and persistently as to create a
47 serious hazard. A chemical shall be considered to be a
48 flammable solid if, when tested by the method described in
49 16 Code of Federal Regulations, Section 1500.44, it ignites
50 and burns with a self-sustained flame at a rate greater than
51 one tenth of an inch per second along its major axis.

52 (f) "Flash point" means the minimum temperature at
53 which a liquid gives off a vapor in sufficient concentration
54 to ignite when tested as follows:

55 (1) Tagliabius Closed Tester (See American National
56 Standard Method of Test for Flash Point by Tag Closed
57 Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a
58 viscosity of less than forty-five Saybolt Universal Seconds
59 (SUS) at 100°F (37.8°C), that do not contain suspended
60 solids and do not have a tendency to form a surface film
61 under test; or

62 (2) Pensky-Martens Closed Tester (See American
63 National Standard Method of Test for Flash Point by
64 Pensky-Martens Closed Tester, Z11.7-1979 (ASTM
65 D93-79)) for liquids with a viscosity equal to or greater than
66 forty-five SUS at 100°F (37.8°C), or that contain suspended
67 solids, or that have a tendency to form a surface film under
68 test; or

69 (3) Setaflash Closed Tester (See American National
70 Standard Method of Test for Flash Point by Setaflash
71 Closed Tester (ASTM D 3278-78)): *Provided*, That organic
72 peroxides, which undergo autoaccelerating thermal
73 decomposition, are excluded from any of the flash point
74 determination methods specified above.

75 (g) "Hazardous substance" means any element,
76 chemical compound or mixture of elements and/or
77 compounds which is a physical hazard as defined in this
78 section or a health hazard as defined or listed in (1) the
79 Federal Occupational Safety and Health Administration in

80 29 Code of Federal Regulations Part 1910.1000 through
81 1910.1045, Subpart Z, as in effect January 1, 1985; (2) the
82 American Conference of Governmental Industrial
83 Hygienists (ACGIH) "Threshold Limit Values for Chemical
84 Substances and Physical Agents in the Work
85 Environment", as in effect January 1, 1985; and (3) the
86 National Toxicology Program "Annual Report on
87 Carcinogens" as in effect January 1, 1985.

88 (h) "Hazardous substances fact sheet" means any
89 document containing the information described in subdivi-
90 sion (1) through (8), subsection (a), section five of this
91 article.

92 (i) "Organic peroxide" means an organic compound
93 that contains the bivalent -O-O-structure and which may be
94 considered to be a structural derivative of hydrogen
95 peroxide where one or both of the hydrogen atoms has been
96 replaced by an organic radical.

97 (j) "Oxidizer" means a chemical other than a blasting
98 agent or explosive as defined in 29 Code of Federal
99 Regulations Part 1910.109(a), that initiates or promotes
100 combustion in other materials, thereby causing fire either
101 by itself or through the release of oxygen or other gases.

102 (k) "Person" means an individual, trust, firm, joint
103 stock company, public, private or government corporation,
104 partnership, association, state or federal agency, the United
105 States government, the state of West Virginia or any other
106 state, municipality, county commission or any other
107 political subdivision of a state or any interstate body.

108 (l) "Physical hazard" means a chemical for which there
109 is scientifically valid evidence that it is a combustible
110 liquid, a compressed gas, explosive, flammable, an organic
111 peroxide, an oxidizer, pyrophoric, unstable (reactive) or
112 water reactive.

113 (m) "Proprietary information" means any formula,
114 pattern, device, or compilation of information which is used
115 in an employer's business, and which gives said employer an
116 opportunity to obtain an advantage over competitors who
117 do not know or use it.

118 (n) "Pyrophoric" means a chemical that will ignite
119 spontaneously in air at a temperature of 130°F (54.4°C) or
120 below.

121 (o) "Storage" or "to store" means to hold a hazardous

122 substance for a temporary period, at the end of which the
123 hazardous substance is used on site, transported off site, or
124 treated, stored or disposed of elsewhere.

125 (p) "Unstable (reactive)" means a chemical which in the
126 pure state, or as produced or transported, will vigorously
127 polymerize, decompose, condense, or will become self-
128 reactive under conditions of shocks, pressure or
129 temperature.

130 (q) "Water-reactive" means a chemical that reacts with
131 water to release a gas that is either flammable or presents a
132 health hazard.

**§16-31-4. Duties and responsibilities of the director; procedure
for residents to request information on hazardous
substances.**

1 (a) Within thirty days of the passage of this article, the
2 director shall develop a list of hazardous substances as
3 defined in subsection (g), section three of this article. The
4 director shall provide this list and the definition of a
5 physical hazard to any employer who may request it.

6 (b) The director shall, by the first day of June, one
7 thousand nine hundred eighty-seven, and every two years
8 thereafter, review the most recent editions of the
9 publications referenced in subsection (g), section three of
10 this article to determine whether there have been any
11 additions to or deletions of hazardous substances listed in
12 those publications. Where such additions or deletions have
13 been made, and unless the director is presented with clear
14 and compelling reasons to the contrary, the list of
15 hazardous substances covered by subsection (g), section
16 three of this article shall be revised to reflect the changes
17 made in the referenced publications. Such revisions shall be
18 made in accordance with the administrative procedures act,
19 chapter twenty-nine-a of this code. The director shall make
20 available such revised list and the definition of a physical
21 hazard to any employer who may request it.

22 (c) Any resident of this state may request from the
23 director a copy of any hazardous substance fact sheet and
24 other information submitted by an employer for any
25 facility. The director, subject to the provisions of section six
26 of this article, shall transmit the requested information
27 within ten working days. The director may recover the

28 actual cost of copying the requested information from the
29 person making the request.

§16-31-5. Information to be provided by employers.

1 (a) Any employer who normally stores any hazardous
2 substance in quantities greater than fifty-five gallons or
3 five hundred pounds shall provide to the director, the
4 county sheriff of the county, and to the fire chief of the local
5 fire department most proximate to the facility at which
6 such substance is stored within four months of the effective
7 date of this article and once every two years thereafter
8 during the month of November, the following information:

9 (1) The chemical name or common name used on the
10 material safety data sheet and/or container label;

11 (2) Physical and major chemical characteristics of the
12 hazardous substance (such as vapor pressure, flash point,
13 solubility);

14 (3) The physical hazards of the hazardous chemical,
15 including the potential for fire, explosion and reactivity;

16 (4) The health hazards of a hazardous substance
17 including signs and symptoms of exposure, and any medical
18 conditions which are generally recognized as being
19 activated by exposure to such substance;

20 (5) The primary route(s) of entry (inhalation, physical
21 contact);

22 (6) Any generally applicable precautions for safe
23 handling and use which are known to the employer;

24 (7) Emergency and first-aid procedures and the name
25 and address of the manufacturer of the hazardous
26 substance, if other than the employer, if said manufacturer
27 can provide additional information on the hazardous
28 substance and appropriate emergency procedures, if
29 necessary;

30 (8) Whether the substance is listed in the National
31 Toxicology Program "Annual Report of Carcinogens",
32 referenced in subsection (g), section three of this article;

33 (9) An average quantity of each hazardous substance on
34 inventory at the facility over the last year to be reported by
35 indicating the applicable range from the following: Five
36 hundred pounds to four thousand nine hundred ninety-nine
37 pounds, five thousand pounds to forty-nine thousand nine
38 hundred ninety-nine pounds, fifty thousand pounds to four
39 hundred ninety-nine thousand nine hundred ninety-nine

40 pounds and five hundred thousand pounds and above:
41 *Provided*, That for purposes of this subsection, "average"
42 shall mean the arithmetic mean; and

43 (10) The amount of such substance, if any: (i) Reported as
44 having been managed in the most recent annual hazardous
45 waste report filed with the department of natural resources
46 pursuant to article five-e, chapter twenty of this code; (ii)
47 reported as having been emitted in the most recent air
48 emissions inventory filed with the air pollution control
49 commission pursuant to article twenty, chapter sixteen of
50 this code; and (iii) reported as having been discharged in the
51 most recent discharge monitoring report filed with the
52 department of natural resources pursuant to article five-a,
53 chapter twenty of this code: *Provided*, That the information
54 required in this subdivision is required to be reported to
55 the director only: *Provided, however*, That if a discharge
56 monitoring report is used to provide the information, an
57 employer shall specify the inclusive time period of the
58 report.

59 (b) Where an employer stores a hazardous substance
60 that is manufactured by some person other than the
61 employer and where the information required in subdivision
62 (1) through (8), subsection (a) of this section has not been
63 made available by the manufacturer, the employer shall
64 certify to the director that this information is not available
65 and shall thereafter have an additional sixty days within
66 which to provide such information to the director.

§16-31-6. Notice of violation; civil penalties.

1 (a) An employer who fails to provide the information
2 to the director under subsection (a), section five of this
3 article within the time period provided shall be deemed in
4 violation of this article. Employers not complying within
5 fourteen days following written notification from the
6 director of such violation shall be subject to civil penalties
7 of not more than two thousand five hundred dollars per
8 violation.

9 (b) An employer who fails to provide to the fire chief
10 information as required in subsection (a), section five of
11 this article within the time period provided shall be deemed
12 in violation of this article. Employers not complying within
13 fourteen days following written notification from the

14 director of such violation shall be subject to civil penalties
15 not to exceed five thousand dollars per violation.

16 (c) Any person who willfully, knowingly and
17 deliberately makes any false material statement or
18 representation in any document submitted pursuant to
19 section five of this article shall be subject to a civil penalty
20 of not less than one thousand dollars nor more than five
21 thousand dollars per violation.

22 (d) When the director believes that a violation of the
23 provisions of this article has occurred he may request the
24 attorney general to file an action for civil penalties, or
25 injunctive relief as may be necessary to enforce the
26 provisions of this article. Such action may be brought in the
27 circuit court of Kanawha County or the county where the
28 employer's facility or a major portion thereof is located.

§16-31-7. Protection of proprietary information; criminal penalties for disclosure.

1 (a) In submitting the information required under
2 section five of this article, an employer may withhold the
3 specific chemical identity, including the quantity, the
4 chemical name and other specific identification of a
5 hazardous substance, on the grounds that such information
6 is proprietary information as long as:

7 (1) Other information is submitted pursuant to the
8 request which describes the properties and effects of the
9 hazardous substance; and

10 (2) The employer specifically indicates the type of
11 information that is being withheld as proprietary
12 information.

13 (b) The director may request any or all of the data
14 substantiating the proprietary information claim to
15 determine whether a claim made pursuant to this section is
16 valid. The director shall protect from disclosure any or all
17 information coming into his or her possession when such
18 information is marked by the employer as confidential and
19 shall return all information so marked to the employer at
20 the conclusion of his or her determination.

21 (c) The employer shall have thirty days after
22 notification by the director that a proprietary information
23 claim is not valid to request an administrative hearing on

24 the determination. Any such hearing shall be held in a
25 manner consistent with that provided for hearings in
26 contested cases under article five, chapter twenty-nine-a of
27 this code, with the right to appeal such ruling to the circuit
28 court of Kanawha County. No information relating to the
29 proprietary information claim shall be communicated
30 outside the department of health while the director's ruling
31 is being contested.

32 (d) An employer shall provide to a physician any
33 information for which a proprietary information claim is
34 pending or has been approved pursuant to this section when
35 such information is needed for medical diagnosis or
36 treatment. The employer may require that the physician
37 sign an agreement protecting the confidentiality of
38 information disclosed pursuant to this subsection as soon as
39 circumstances permit.

40 (e) The subject of any proprietary information claim
41 pending or approved shall be treated as confidential
42 information.

43 (f) Any person who knowingly and willingly divulges or
44 discloses any information entitled to protection under this
45 section is guilty of a misdemeanor, and, upon conviction
46 thereof, shall be fined not more than five thousand dollars,
47 or imprisoned for not more than six months, or both fined
48 and imprisoned.

§16-31-8. Expiration of act upon passage of federal legislation.

1 The Legislature recognizes that the United States
2 Congress is considering the adoption of legislation relating
3 to the dissemination of information to the public regarding
4 hazardous substances stored in or near their communities.
5 It is the intention of the Legislature that upon the passage of
6 federal legislation which would assure access by citizens of
7 this state to information substantially similar to that which
8 they could obtain under this article, this article shall be
9 subject to expiration, and therefore have no further effect.
10 It shall be the responsibility of the director, upon the
11 passage of such legislation by the United States Congress,
12 to certify to the legislative rule-making review committee
13 that such federal action has occurred. Such certification
14 shall be subject to all of the procedures set out in chapter

15 twenty-nine-a of this code, relating to the promulgation of a
16 legislative rule.

§16-31-9. Severability.

1 Except where this act is declared to have no effect and be
2 void pursuant to section eight of this article, if any section,
3 part or provision of this article or the application thereof to
4 any person or circumstance is held unconstitutional or
5 invalid, such unconstitutionality or invalidity shall not
6 affect any other section, part or provision of this article or
7 its application, and to this end the provisions of this article
8 are declared severable.

CHAPTER 89

(Com. Sub. for S. B. 649—By Senator Whitacre)

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

AN ACT to amend sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority and jurisdiction of the state board of health in establishing standards regarding hazardous waste; ownership of hazardous waste sites or facilities requiring permit; employee access to records regarding generation and transportation of hazardous waste; authority of chief of division of water resources to issue order requiring elimination of hazard, or risk of hazard, where potential hazard to human health or environment exists; criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-7. Authority and jurisdiction of other state agencies.

§20-5E-8. Permit process; undertaking activities without a permit.

§20-5E-12. Inspections; right of entry; sampling; reports and analyses; subpoenas.

§20-5E-13. Monitoring, analysis and testing.

§20-5E-15. Criminal penalties.

§20-5E-21. Appropriation of funds; hazardous waste management fund created.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation with
2 the director, and avoiding inconsistencies with and
3 avoiding duplication to the maximum extent practicable
4 with rules and regulations required to be promulgated
5 pursuant to this article by the director or any other rule-
6 making authority, and in accordance with the provisions of
7 chapter twenty-nine-a of this code, shall promulgate, as
8 necessary, rules and regulations governing the
9 transportation of hazardous wastes by vehicle upon the
10 roads and highways of this state. Such rules and regulations
11 shall be consistent with applicable rules and regulations
12 issued by the federal department of transportation and
13 consistent with this article: *Provided*, That such rules and
14 regulations shall apply to the interstate transportation of
15 hazardous wastes as well as the intrastate transportation of
16 such waste within the boundaries of this state.

17 In lieu of those enforcement and inspection powers
18 conferred upon the commissioner of highways elsewhere by
19 law with respect to the transportation of hazardous waste,
20 the commissioner of highways has the same enforcement
21 and inspection powers as those granted to the chief, his
22 authorized representative or agent, or any authorized
23 employee or agent of the department of natural resources,
24 as the case may be, under sections eleven, twelve, thirteen,
25 fourteen, fifteen, sixteen and seventeen of this article. The
26 limitations of this subsection shall not affect in any way the
27 powers of the department of highways with respect to
28 weight enforcement.

29 (b) The public service commission, in consultation with
30 the director, and avoiding inconsistencies with and
31 avoiding duplication to the maximum extent practicable
32 with rules and regulations required to be promulgated
33 pursuant to this article by the director or any other rule-
34 making authority, and in accordance with the provisions of
35 chapter twenty-nine-a of this code, shall promulgate, as
36 necessary, rules and regulations governing the

37 transportation of hazardous wastes by railroad in this state.
38 Such rules and regulations shall be consistent with
39 applicable rules and regulations issued by the federal
40 department of transportation and consistent with this
41 article: *Provided*, That such rules and regulations apply to
42 the interstate transportation of hazardous wastes as well as
43 the intrastate transportation of such wastes within the
44 boundaries of this state.

45 In lieu of those enforcement and inspection powers
46 conferred upon the public service commission elsewhere by
47 law with respect to the transportation of hazardous waste,
48 the public service commission has the same enforcement
49 and inspection powers as those granted to the chief, his
50 authorized representative or agent or any authorized
51 employee or agent of the department of natural resources,
52 as the case may be, under sections eleven, twelve, thirteen,
53 fourteen, fifteen, sixteen and seventeen of this article.

54 (c) The rules and regulations required to be
55 promulgated pursuant to subsections (a) and (b) of this
56 section shall apply equally to those persons transporting
57 hazardous wastes generated by others and to those
58 transporting hazardous wastes they have generated
59 themselves or combinations thereof. Such rules and
60 regulations shall establish such standards, applicable to
61 transporters of hazardous waste identified or listed under
62 this article, as may be necessary to protect public health,
63 safety and the environment. Such standards shall include,
64 but need not be limited to, requirements respecting (A)
65 record keeping concerning such hazardous waste
66 transported, and their source and delivery points, (B)
67 transportation of such waste only if properly labeled, (C)
68 compliance with the manifest system referred to in
69 subdivision (3), subsection (a), section six of this article, and
70 (D) transportation of all such hazardous waste only to the
71 hazardous waste treatment, storage or disposal facilities
72 which the shipper designates on the manifest form to be a
73 facility holding a permit issued under: (1) This article or any
74 rule and regulation required by this article to be
75 promulgated; (2) Subtitle C of the federal Solid Waste
76 Disposal Act, as amended; (3) the laws of any other state
77 which has an authorized hazardous waste program
78 pursuant to Section 3006 of the federal Solid Waste

79 Disposal Act, as amended; or (4) Title I of the federal Marine
80 Protection, Research and Sanctuaries Act.

81 (d) The state board of health of the state department of
82 health, in consultation with the director of the department
83 of natural resources, and avoiding inconsistencies with, and
84 avoiding duplication to the maximum extent practicable
85 with rules and regulations required to be promulgated
86 pursuant to this article by the director of the department of
87 natural resources or any other rule-making authority, shall
88 promulgate rules and regulations establishing standards
89 applicable to permitting, licensing and operation of
90 facilities that treat, store or dispose of hazardous wastes
91 with infectious characteristics. Such rules and regulations
92 shall specify the terms, conditions and procedures under
93 which the state director of health or his authorized
94 representative shall issue, modify, suspend, revoke or deny
95 such permits required pursuant to those regulations. Such
96 permits as the board of health regulations may require shall
97 be issued by the state director of health or his authorized
98 representative. All rules and regulations promulgated
99 under this subsection shall be promulgated in accordance
100 with the provisions of chapter twenty-nine-a of this code.
101 Nothing in this subsection shall be construed to diminish or
102 alter the authority of the air pollution control commission
103 or its director under this article or article twenty, chapter
104 sixteen of this code: *Provided*, That such permitting or
105 licensing required by this subsection shall be in addition to
106 those permits required by section eight of this article. Such
107 rules and regulations shall be consistent with this article
108 and shall be promulgated within six months of the effective
109 date of this article.

110 Any person aggrieved or adversely affected by an order of
111 the state director of health pursuant to this article, or the
112 denial or issuance of a permit, or the failure or refusal of
113 said director to act within a reasonable time on an
114 application for a permit or the terms or conditions of a
115 permit granted under the provisions of this article, may
116 appeal to a special hearing examiner appointed to hear
117 contested cases in accordance with the provisions of
118 chapter twenty-nine-a of this code. All procedures for
119 appeal and conduct of hearings shall comply with rules and
120 regulations promulgated by the state board of health.

121 Unless the board of health directs otherwise, the appeal
122 hearing shall be held in the city of Charleston, Kanawha
123 County.

124 In lieu of those enforcement and inspection powers
125 conferred upon the state director of health elsewhere by law
126 with respect to hazardous waste with infectious
127 characteristics, the state director of health shall have the
128 same enforcement and inspection powers as those granted
129 to the chief, his authorized representative or agent or any
130 authorized employee or agent of the department of natural
131 resources, as the case may be, under sections eleven, twelve,
132 thirteen, fourteen, fifteen, sixteen and seventeen of this
133 article.

134 (e) The director shall rely, to the maximum extent
135 practicable, on the department of health for expertise on
136 the adverse effects of toxic hazardous waste on human
137 health.

138 (f) The air pollution control commission, in consultation
139 with the director, and avoiding inconsistencies with and
140 avoiding duplication to the maximum extent practicable
141 with rules and regulations required to be promulgated
142 pursuant to this article by the director or any other rule-
143 making authority, and in accordance with the provisions of
144 article twenty, chapter sixteen and chapter twenty-nine-a
145 of this code, shall promulgate such rules and regulations
146 establishing air pollution performance standards and
147 permit requirements and procedures as may be necessary to
148 comply with the requirements of this article. Such permits
149 shall be in addition to those permits required by section
150 eight of this article. All rules and regulations promulgated
151 pursuant to this subsection shall be consistent with this
152 article.

153 With respect to this article, and any rules or regulations
154 promulgated pursuant thereto, the director of the air
155 pollution control commission has the same enforcement
156 and inspection powers as those of the chief under sections
157 eleven, twelve, thirteen, fourteen, fifteen, sixteen and
158 seventeen of this article: *Provided*, That no action for
159 penalties may be initiated by the director of the air
160 pollution control commission without the approval of that
161 commission. Any person aggrieved or adversely affected by
162 an order of the director of the air pollution control

163 commission made and entered in accordance with the
164 provisions of this article, or by the failure or refusal of said
165 director to act within a reasonable time on an application
166 for a permit or by the issuance or denial of or by the terms
167 and conditions of a permit granted under the provisions of
168 this article, may appeal to the air pollution control
169 commission in accordance with the procedure set forth in
170 section six, article twenty, chapter sixteen of this code, and
171 orders made and entered by said commission shall be
172 subject to judicial review in accordance with the
173 procedures set forth in section seven, article twenty,
174 chapter sixteen of this code, except that as to cases
175 involving an order granting or denying an application for a
176 permit, revoking or suspending a permit or approving or
177 modifying the terms and conditions of a permit or the
178 failure to act within a reasonable time on an application for
179 a permit, the petition for judicial review shall be filed in the
180 circuit court of Kanawha County.

181 (g) The director of the department of natural resources
182 has exclusive responsibility for carrying out any
183 requirement of this article with respect to coal mining
184 wastes or overburden for which a permit is issued under the
185 surface coal mining and reclamation act of 1980, article six
186 of this chapter.

187 (h) To the extent that this article relates to activities
188 with respect to oil and gas wells, liquid injection wells and
189 waste disposal wells now regulated by articles four, four-b
190 and seven, chapter twenty-two of this code, the
191 administrator of the office of oil and gas and the shallow
192 gas-well review board has the jurisdiction with respect to
193 the regulation of such activities and shall promulgate such
194 rules and regulations as may be necessary to comply with
195 the requirements of this article: *Provided*, That nothing in
196 this subsection may be construed to diminish or alter the
197 authority and responsibility of the chief or the water
198 resources board under articles five and five-a, chapter
199 twenty of this code.

200 In lieu of those enforcement and inspection powers
201 conferred upon the administrator of the office of oil and gas
202 and the shallow gas-well review board elsewhere by law,
203 with respect to hazardous wastes, the administrator of the
204 office of oil and gas and the shallow gas-well review board

205 have the same enforcement and inspection powers as those
206 granted to the chief, his authorized representative or agent
207 or any authorized employee or agent of the department of
208 natural resources, as the case may be, under sections eleven,
209 twelve, thirteen, fourteen, fifteen, sixteen and seventeen of
210 this article.

211 (i) The water resources board, in consultation with the
212 director, and avoiding inconsistency with and avoiding
213 duplication to the maximum extent practicable with rules
214 and regulations required to be promulgated pursuant to
215 this article by the director or any other rule-making
216 authority, and in accordance with the provisions of chapter
217 twenty-nine-a of this code, shall, as necessary, promulgate
218 rules and regulations governing discharges into the waters
219 of this state of hazardous waste resulting from the
220 treatment, storage or disposal of hazardous waste as may be
221 required by this article. Such rules and regulations shall be
222 consistent with this article.

223 (j) All rules and regulations promulgated pursuant to
224 this section shall be consistent with rules and regulations
225 promulgated by the federal environmental protection
226 agency pursuant to the federal Solid Waste Disposal Act, as
227 amended.

228 (k) The director shall submit his written comments to
229 the legislative rule-making review committee regarding all
230 rules and regulations promulgated pursuant to this article.

§20-5E-8. Permit process; undertaking activities without a permit.

1 (a) No person may own, construct, modify, operate or
2 close any facility or site for the treatment, storage or
3 disposal of hazardous waste identified or listed under this
4 article, nor shall any person store, treat or dispose of any
5 such hazardous waste without first obtaining a permit from
6 the chief for such facility, site or activity and all other
7 permits as required by law. Such permit shall be issued,
8 after public notice and opportunity for public hearing,
9 upon such reasonable terms and conditions as the chief may
10 direct if the application, together with all supporting
11 information and data and other evidence establishes that
12 the construction, modification, operation or closure, as the
13 case may be, of the hazardous waste facility, site or activity

14 will not violate any provisions of this article or any of the
15 rules and regulations promulgated by the director as
16 required by this article: *Provided*, That in issuing the
17 permits required by this subsection, the chief shall not
18 regulate those aspects of a hazardous waste treatment,
19 storage or disposal facility which are the subject of the
20 permitting or licensing requirements of section seven of this
21 article, and which need not be regulated in order for the
22 chief to perform his duties under this article.

23 (b) The chief shall prescribe a form of application for all
24 permits issued by the chief.

25 (c) The chief may require a plan for the closure of such
26 facility or site to be submitted along with an application for
27 a permit which plan for closure shall comply in all respects
28 with the requirements of this article and any rules and
29 regulations promulgated hereunder. Such plan of closure
30 shall be subject to modification upon application by the
31 permit holder to the chief and approval of such
32 modification by the chief.

33 (d) An environmental analysis shall be submitted with
34 the permit application for all hazardous waste treatment,
35 storage or disposal facilities which are major facilities as
36 that term may be defined by rules and regulations
37 promulgated by the director: *Provided*, That facilities in
38 existence on the nineteenth day of November, one thousand
39 nine hundred eighty, need not comply with this subsection.
40 Such environmental analysis shall contain information of
41 the type, quality and detail that will permit adequate
42 consideration of the environmental, technical and
43 economic factors involved in the establishment and
44 operation of such facilities:

45 (1) The portion of the applicant's environmental
46 analysis dealing with environmental assessments shall
47 contain, but not be limited to:

48 (A) The potential impact of the method and route of
49 transportation of hazardous waste to the site and the
50 potential impact of the establishment and operation of such
51 facilities on air and water quality, existing land use,
52 transportation and natural resources in the area affected by
53 such facilities;

54 (B) A description of the expected effect of such
55 facilities; and

56 (C) Recommendations for minimizing any adverse
57 impact.

58 (2) The portion of the applicant's environmental
59 analysis dealing with technical and economic assessments
60 shall contain, but not be limited to:

61 (A) Detailed descriptions of the proposed site and
62 facility, including site location and boundaries and facility
63 purpose, type, size, capacity and location on the site and
64 estimates of the cost and charges to be made for material
65 accepted, if any;

66 (B) Provisions for managing the site following cessation
67 of operation of the facility; and

68 (C) Qualifications of owner and operation, including a
69 description of the applicant's prior experience in hazardous
70 waste management operations.

71 (e) Any person undertaking, without a permit, any of
72 the activities for which a permit is required under this
73 section or under section seven of this article, or any person
74 violating any term or condition under which a permit has
75 been issued pursuant to this section or pursuant to section
76 seven of this article, shall be subject to the enforcement
77 procedures of this article.

78 (f) Notwithstanding any provision to the contrary in
79 subsections (a) through (e) of this section or section seven of
80 this article, any surface coal mining and reclamation permit
81 covering any coal mining wastes or overburden which has
82 been issued or approved under the surface coal mining and
83 reclamation act of 1980, article six of this chapter, shall be
84 considered to have all necessary permits issued pursuant to
85 this article with respect to the treatment, storage or
86 disposal of such wastes or overburden. Rules and
87 regulations promulgated under this article are not
88 applicable to treatment, storage or disposal of coal mining
89 wastes and overburden which are covered by such a permit.

**§20-5E-12. Inspections; right of entry; sampling; reports and
analyses; subpoenas.**

1 (a) The chief or any authorized representative,
2 employee or agent of the division, upon the presentation of
3 proper credentials and at reasonable times, may enter any
4 building, property, premises, place, vehicle or permitted
5 facility where hazardous wastes are or have been generated,

6 treated, stored, transported or disposed of for the purpose
7 of making an investigation with reasonable promptness to
8 ascertain the compliance by any person with the provisions
9 of this article or the rules and regulations promulgated by
10 the director or permits issued by the chief hereunder.

11 (b) The chief or his authorized representative, employee
12 or agent shall make periodic inspections at every permitted
13 facility as necessary to effectively implement and enforce
14 the requirements of this article or the rules and regulations
15 promulgated by the director or permits issued by the chief
16 hereunder. After an inspection is made, a report shall be
17 prepared and filed with the chief and a copy of such
18 inspection report shall be promptly furnished to the person
19 in charge of such building, property, premises, place,
20 vehicle or facility. Such inspection reports shall be
21 available to the public in accordance with the provisions of
22 article one, chapter twenty-nine-b of this code.

23 (c) Whenever the chief has cause to believe that any
24 person is in violation of any provision of this article, any
25 condition of a permit issued by the chief, any order or any
26 regulation promulgated by the director under this article,
27 he shall immediately order an inspection of the building,
28 property, premises, place, vehicle or permitted facility at
29 which the alleged violation is occurring.

30 (d) The chief or any authorized representative,
31 employee or agent of the division may, upon presentation of
32 proper credentials and at reasonable times, enter any
33 establishment, building, property, premises, vehicle or
34 other place maintained by any person where hazardous
35 wastes are being or have been generated, transported,
36 stored, treated or disposed of to inspect and take samples of
37 wastes, soils, air, surface water and groundwater and
38 samples of any containers or labelings for such wastes. In
39 taking such samples, the division may utilize such sampling
40 methods as it determines to be necessary, including, but not
41 limited to, soil borings and monitoring wells. If the
42 representative, employee or agent obtains any such
43 samples, prior to leaving the premises, he shall give to the
44 owner, operator or agent in charge a receipt describing the
45 sample obtained and, if requested, a portion of each such
46 sample equal in volume or weight to the portion retained.

47 The division shall promptly provide a copy of any analysis
48 made to the owner, operator or agent in charge.

49 (e) Upon presentation of proper credentials and at
50 reasonable times, the chief or any authorized
51 representative, employee or agent of the division shall be
52 given access to all records relating to the generation,
53 transportation, storage, treatment or disposal of hazardous
54 waste in the possession of any person who generates, stores,
55 treats, transports, disposes of, or otherwise handles or has
56 handled such waste, the chief or an authorized
57 representative, employee or agent shall be furnished with
58 copies of all such records or given the records for the
59 purpose of making copies. If the chief, upon inspection,
60 investigation or through other means, observes or learns of
61 a violation or probable violation of this article, he is
62 authorized to issue subpoenas and subpoenas duces tecum
63 and to order the attendance and testimony of witnesses and
64 to compel the production of any books, papers, documents,
65 manifests and other physical evidence pertinent to such
66 investigation or inspection.

§20-5E-13. Monitoring, analysis and testing.

1 (a) If the chief determines, upon receipt of any
2 information, that (1) the presence of any hazardous waste at
3 a facility or site at which hazardous waste is, or has been,
4 stored, treated or disposed of, or (2) the release of any such
5 waste from such facility or site may present a substantial
6 hazard to human health or the environment, he may issue an
7 order requiring the owner or operator of such facility or site
8 to conduct such monitoring, testing, analysis and reporting
9 with respect to such facility or site as the chief deems
10 reasonable to ascertain the nature and extent of such
11 hazard.

12 (b) In the case of any facility or site not in operation at
13 the time a determination is made under subsection (a) of
14 this section with respect to the facility or site, if the chief
15 finds that the owner of such facility or site could not
16 reasonably be expected to have actual knowledge of the
17 presence of hazardous waste at such facility or site and of its
18 potential for release, he may issue an order requiring the
19 most recent previous owner or operator of such facility or
20 site who could reasonably be expected to have such actual

21 knowledge to carry out the actions referred to in subsection
22 (a) of this section.

23 (c) An order under subsection (a) or (b) of this section
24 shall require the person to whom such order is issued to
25 submit to the chief within thirty days from the issuance of
26 such order a proposal for carrying out the required
27 monitoring, testing, analysis and reporting. The chief may,
28 after providing such person with an opportunity to confer
29 with the chief respecting such proposal, require such person
30 to carry out such monitoring, testing, analysis and
31 reporting in accordance with such proposal, and such
32 modifications in such proposal as the chief deems
33 reasonable to ascertain the nature and extent of the hazard.

34 (d) The following duties shall be carried out by the
35 chief:

36 (1) If the chief determines that no owner or operator
37 referred to in subsection (a) or (b) of this section is able to
38 conduct monitoring, testing, analysis or reporting
39 satisfactory to the chief, if the chief deems any such action
40 carried out by an owner or operator to be unsatisfactory or
41 if the chief cannot initially determine that there is an owner
42 or operator referred to in subsection (a) or (b) of this section
43 who is able to conduct such monitoring, testing, analysis or
44 reporting, he may conduct monitoring, testing or analysis
45 (or any combination thereof) which he deems reasonable to
46 ascertain the nature and extent of the hazard associated
47 with the site concerned, or authorize a state or local
48 authority or other person to carry out any such action, and
49 require, by order, the owner or operator referred to in
50 subsection (a) or (b) of this section to reimburse the chief or
51 other authority or person for the costs of such activity.

52 (2) No order may be issued under this subsection
53 requiring reimbursement of the costs of any action carried
54 out by the chief which confirms the results of the order
55 issued under subsection (a) or (b) of this section.

56 (e) If the monitoring, testing, analysis and reporting
57 conducted pursuant to this section indicates that a
58 potential hazard to human health or the environment may
59 or does exist, the chief may issue an appropriate order
60 requiring that the hazard or risk of hazard be eliminated.

61 (f) The chief may commence a civil action against any
62 person who fails or refuses to comply with any order issued

63 under this section. Such action shall be brought in the
64 circuit court in which the defendant is located, resides or is
65 doing business. Such court has jurisdiction to require
66 compliance with such order and to assess a civil penalty of
67 not to exceed five thousand dollars for each day during
68 which such failure or refusal occurs.

§20-5E-15. Criminal penalties.

1 (a) If any person knowingly (1) transports any
2 hazardous waste identified or listed under this article to a
3 facility which does not have a permit required by this
4 article, Section 3005 of the federal Solid Waste Disposal
5 Act, as amended, the laws of any other state which has an
6 authorized hazardous waste program pursuant to Section
7 3006 of the federal Solid Waste Disposal Act, as amended,
8 or Title I of the federal Marine Protection, Research and
9 Sanctuaries Act; (2) treats, stores or disposes of any such
10 hazardous waste either (A) without having obtained a
11 permit required by this article, or by Title I of the Federal
12 Marine Protection, Research and Sanctuaries Act, or by
13 Section 3005 or 3006 of the federal Solid Waste Disposal
14 Act, as amended, or (B) in knowing violation of a material
15 condition or requirement of such permit, he shall be guilty
16 of a felony, and, upon conviction thereof, shall be fined not
17 to exceed fifty thousand dollars for each day of violation or
18 confined in the penitentiary not less than one nor more than
19 two years, or both such fine and imprisonment or, in the
20 discretion of the court, be confined in jail not more than one
21 year in addition to the above fine.

22 (b) If any person knowingly (1) makes any false material
23 statement or representation in any application, label,
24 manifest, record, report, permit or other document filed,
25 maintained or used for purposes of compliance with this
26 article; or (2) generates, stores, treats, transports, disposes
27 of or otherwise handles any hazardous waste identified or
28 listed under this article (whether such activity took place
29 before or takes place after the effective date of this article)
30 and who knowingly destroys, alters or conceals any record
31 required to be maintained under regulations promulgated
32 by the director pursuant to this article, he shall be guilty of a
33 misdemeanor, and, upon conviction thereof, shall be fined
34 not to exceed twenty-five thousand dollars, or sentenced to

35 imprisonment for a period not to exceed one year, or both
36 fined and sentenced to imprisonment for each violation.

37 (c) Any person convicted of a second or subsequent
38 violation of subsections (a) and (b) of this section, shall be
39 guilty of a felony, and, upon such conviction, shall be
40 confined in the penitentiary not less than one nor more than
41 three years, or fined not more than fifty thousand dollars for
42 each day of violation, or both such fine and imprisonment.

43 (d) Any person who knowingly transports, treats, stores
44 or disposes of any hazardous waste identified or listed
45 pursuant to this article in violation of subsection (a) of this
46 section, or having applied for a permit pursuant to sections
47 seven and eight of this article, and knowingly either (1) fails
48 to include in a permit application any material information
49 required pursuant to this article, or rules and regulations
50 promulgated hereunder, or (2) fails to comply with
51 applicable interim status requirements as provided in
52 section ten of this article and who thereby exhibits an
53 unjustified and inexcusable disregard for human life or the
54 safety of others and he thereby places another person in
55 imminent danger of death or serious bodily injury, shall be
56 guilty of a felony, and, upon conviction thereof, shall be
57 fined not more than two hundred fifty thousand dollars or
58 imprisoned not less than one year nor more than four years
59 or both such fine and imprisonment.

60 (e) As used in subsection (d) of this section, the term
61 "serious bodily injury" means:

62 (1) Bodily injury which involves a substantial risk of
63 death;

64 (2) Unconsciousness;

65 (3) Extreme physical pain;

66 (4) Protracted and obvious disfigurement; or

67 (5) Protracted loss or impairment of the function of a
68 bodily member, organ or mental faculty.

**§20-5E-21. Appropriation of funds; hazardous waste
management fund created.**

1 The net proceeds of all fines, penalties and forfeitures
2 collected under this article shall be appropriated as
3 directed by Article XII, Section 5 of the Constitution of
4 West Virginia. For the purposes of this section, the net
5 proceeds of such fines, penalties and forfeitures shall be

6 deemed the proceeds remaining after deducting therefrom
7 those sums appropriated by the Legislature for defraying
8 the cost of administering this article. All permit application
9 fees collected under this article shall be paid into the state
10 treasury into a special fund designated "The Hazardous
11 Waste Management Fund." In making the appropriation for
12 defraying the cost of administering this article, the
13 Legislature shall first take into account the sums included
14 in such special fund prior to deducting such additional
15 sums as may be needed from the fines, penalties and
16 forfeitures collected pursuant to this article.

CHAPTER 90

(Com. Sub. for S. B. 279—By Senators Spears and Palumbo)

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

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-h, relating generally to approving, ratifying and enacting into law the "Appalachian States Low-Level Radioactive Waste Compact" and making the state of West Virginia a party thereto; creating the "Appalachian States Low-Level Radioactive Waste Commission"; providing for the appointment of said commissioners for certain terms by the governor; providing for all necessary and incidental powers of the commission for carrying out the compact; authorizing and directing all officers of this state to do what is necessary or incidental to carry out the compact; giving the director of health primary responsibility; powers to be supplemental and not a limitation upon other powers; authorizing and directing the state and its subdivisions to cooperate with the director of health; authorizing the director of health to promulgate rules and regulations; authorizing the director of health, the attorney general and certain county prosecutors to seek injunctions of violations without bond, lack of remedy at law or exhaustion of administrative remedies; authorizing the director of health to remedy certain conditions arising from violations;

authorizing the director of health and the attorney general to prosecute actions for judgments for the costs of remedial actions; authorizing punitive fines and penalties; providing for actions in circuit court as contested cases pursuant to the administrative procedure act; subpoena power; providing criminal felonies, misdemeanors; imprisonment and fines as penalties for violations of the compact, this article or rules and regulations promulgated pursuant to the compact or this article; this article and the compact to prevail over inconsistent laws of this state; appropriations; and when article effective.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1H. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT.

- §29-1H-1. Appalachian states low-level radioactive waste compact approved.
- §29-1H-2. Appointment of members of commission.
- §29-1H-3. Powers of commission, duties of state officers, departments, etc.
- §29-1H-4. Powers granted herein supplemental to other powers vested in commission.
- §29-1H-5. Cooperation of state agencies, boards, departments, subdivisions, etc.
- §29-1H-6. Rules and regulations.
- §29-1H-7. Enforcement.
- §29-1H-8. Penalties.
- §29-1H-9. Conflicting laws.
- §29-1H-10. Appropriations.
- §29-1H-11. When article effective.

§29-1H-1. Appalachian states low-level radioactive waste compact approved.

1 The following Appalachian States Low-Level
 2 Radioactive Waste Compact, which has been negotiated by
 3 representatives of the Commonwealth of Pennsylvania, and
 4 the states of West Virginia, Delaware and Maryland, is
 5 hereby approved, ratified, adopted, enacted into law, and
 6 entered into by the state of West Virginia as a party state
 7 thereto, namely:

8 APPALACHIAN STATES LOW-LEVEL
9 RADIOACTIVE WASTE COMPACT

10 **Preamble**

11 WHEREAS, The United States Congress, by enacting the
12 Low-Level Radioactive Waste Policy Act (42
13 U.S.C.§§2021b-2021d) has encouraged the use of interstate
14 compacts to provide for the establishment and operation of
15 facilities for regional management of low-level radioactive
16 waste;

17 WHEREAS, Under section 4 (a) (1) (A) of the Low-Level
18 Radioactive Waste Policy Act (42 U.S.C.§2021 (a) (1) (A)),
19 each state is responsible for providing for the capacity for
20 disposal of low-level radioactive waste generated within its
21 borders;

22 WHEREAS, To promote the health, safety and welfare of
23 residents within the Commonwealth of Pennsylvania and
24 the states of West Virginia, Delaware and Maryland, the
25 aforementioned states wish to enter into a compact for the
26 regional management of low-level radioactive waste;

27 Now, therefore, the Commonwealth of Pennsylvania and
28 the states of West Virginia, Delaware and Maryland hereby
29 agree to enter into the Appalachian States Low-Level
30 Radioactive Waste Compact.

31 **Article 1**

32 **Definitions**

33 As used in this compact, unless the context clearly
34 indicates otherwise:

35 (a) "Carrier" means a person who transports low-level
36 waste to a regional facility.

37 (b) "Commission" means the Appalachian States Low-
38 Level Radioactive Waste Commission.

39 (c) "Disposal" means the isolation of low-level waste
40 from the biosphere or other such activity for the disposition
41 of low-level waste that meets applicable federal and state
42 laws and regulations.

43 (d) "Facility" means any real or personal property,
44 within the region, and improvements thereof or thereon,
45 and any and all plants, structures, machinery and
46 equipment, acquired, constructed, operated or maintained
47 for the management or disposal of low-level waste.

48 (e) "Generate" means to produce low-level waste
49 requiring disposal.

50 (f) "Generator" means a person whose activity results in
51 the production of low-level waste requiring disposal.

52 (g) "Host state" means Pennsylvania or other party
53 states so designated by the Commission in accordance with
54 Article 3 of this compact.

55 (h) "Low-level waste" means radioactive waste that:

56 (1) Is neither high-level waste or transuranic waste, nor
57 spent nuclear fuel, nor by-product material as defined in
58 Section 11 (e) (2) of the Atomic Energy Act of 1954 as
59 amended; and

60 (2) Is classified by the federal government as low-level
61 waste, consistent with existing law; but does not include
62 waste generated as a result of atomic energy defense
63 activities of the federal government, as defined in Public
64 Law 96-573, or federal research and development activities.

65 (i) "Management" means the reduction, collection,
66 consolidation, storage, packaging or treatment of low-level
67 waste.

68 (j) "Operator" means a person who operates a regional
69 facility.

70 (k) "Party state" means any state that has become a
71 party in accordance with Article 5 of this compact.

72 (l) "Person" means an individual, corporation,
73 partnership or other legal entity, whether public or private.

74 (m) "Region" means the combined geographical area
75 within the boundaries of the party states.

76 (n) "Regional facility" means a facility within any party
77 state which has been approved by the Commission for the
78 disposal of low-level waste.

79 (o) "Transuranic waste" means low-level waste
80 containing radionuclides with an atomic number greater
81 than 92 which are excluded from shallow-land burial by the
82 federal government.

83 Article 2

84 The Commission

85 (A) Creation and Organization.

86 (1) There is hereby created the Appalachian States
87 Low-Level Radioactive Waste Commission. The
88 Commission is hereby created as a body corporate and
89 politic, with succession for the duration of this compact, as
90 an agency and instrumentality of the governments of the
91 respective signatory parties, but separate and distinct from

92 the respective signatory party states. The Commission shall
93 have central offices located in Pennsylvania.

94 (2) Commission Membership—The Commission shall
95 consist of two voting members from each party state to be
96 appointed according to the laws of each party state, and two
97 additional voting members from each host state to be
98 appointed according to the laws of each host state. The
99 appointing authority of each party state shall notify the
100 Commission in writing of the identities of the members and
101 of any alternates. An alternate may act in the member's
102 absence.

103 (3) Compensation—Members of the Commission and
104 alternates shall serve without compensation from the
105 Commission but may be reimbursed for necessary expenses
106 incurred in and incident to the performance of their duties.

107 (4) Voting Power—Each Commission member is
108 entitled to one vote. The affirmative vote of a majority of all
109 members is necessary for the Commission to take any
110 action. Notwithstanding this provision and unless
111 otherwise provided in this compact, affirmative votes by a
112 majority of a host state's members are necessary for the
113 Commission to take any action related to the regional
114 facility and the disposal and management of low-level
115 waste within that host state.

116 (5) Organization and Procedure.

117 (a) The Commission shall provide for its own
118 organization and procedures, and shall adopt bylaws not
119 inconsistent with this compact and any rules and
120 regulations necessary to implement this compact. It shall
121 meet at least once a year and shall elect a chairman from
122 among its members. In the absence of the chairman, the
123 alternate shall serve.

124 (b) All meetings of the Commission shall be open to the
125 public with reasonable advance notice. The Commission
126 may, by a majority vote, including approval of a majority of
127 each host state's Commission members, hold an Executive
128 Session closed to the public for the purpose of: Considering
129 or discussing legally privileged or proprietary information;
130 to consider dismissal, disciplining of, or hearing complaints
131 or charges brought against an employee or other public
132 agent unless such person requests such public hearing; or to
133 consult with its attorney regarding information or strategy

134 in connection with specific litigation. The reason for the
135 Executive Session must be announced during the open
136 meeting occurring immediately prior to the Executive
137 Session or at the open meeting immediately subsequent to
138 the Executive Session. All action taken in violation of this
139 open meeting provision shall be null and void.

140 (c) Detailed written minutes shall be kept of all
141 meetings of the Commission. All decisions, files, records
142 and data of the Commission shall be open to reasonable
143 public inspection and may be copied upon request and
144 payment of reasonable fees to be established by the
145 Commission, except for information privileged against
146 introduction in judicial proceedings, personnel records,
147 proprietary information as determined by the Commission,
148 and minutes of a properly convened Executive Session.

149 (d) The Commission shall select an appropriate staff,
150 including an executive director, to carry out the duties and
151 functions assigned by the Commission. Notwithstanding
152 any other provision of law the Commission may hire and/or
153 retain its own legal counsel.

154 (e) Any person aggrieved by a final decision of the
155 Commission which adversely affects the legal rights, duties
156 or privileges of such person, may petition a court of
157 competent jurisdiction, within sixty days after the
158 Commission's final decision, to obtain judicial review of
159 said final decisions.

160 (f) Liabilities of the Commission shall not be deemed
161 liabilities of the party states. Members of the Commission
162 shall not be personally liable for actions taken in their
163 official capacity.

164 (B) Powers and Duties.

165 (1) The Commission:

166 (a) Should encourage reduction of the amount of low-
167 level waste generated and low-level waste requiring
168 disposal within the region.

169 (b) Shall do whatever is reasonably necessary to ensure
170 that low-level wastes are safely disposed of within the
171 region except that the Commission shall have no power or
172 authority to license, regulate or otherwise develop a
173 regional facility, such powers and authority being reserved
174 for the host state(s) as permitted under the law.

175 (c) Shall designate as "host states" any party state

176 which generates twenty-five percent or more of
177 Pennsylvania's volume of low-level waste generated based
178 on a comparison of averages over three successive years, as
179 determined by the Commission.

180 (d) Shall ensure that low-level waste packages brought
181 into the regional facility for disposal conform to applicable
182 state and federal regulations. Low-level waste handlers,
183 shippers or generators who persistently violate these
184 regulations will be subject to a fine or other penalty
185 imposed by the Commission, including restricted access to a
186 regional facility. The Commission may impose such fines
187 and/or penalties in addition to any other penalty levied by
188 the party states pursuant to Article 4 (D).

189 (e) May establish such advisory committees as it deems
190 necessary for the purpose of advising the Commission on
191 matters pertaining to the management of low-level waste.

192 (f) May contract to accomplish its duties and effectuate
193 its powers subject to projected available resources. No
194 contract made by the Commission shall bind a party state.

195 (g) Shall prepare contingency plans for management of
196 low-level waste in the event any regional facility should be
197 closed.

198 (h) May examine all records of operators of regional
199 facilities pertaining to operating costs, profits or the
200 assessment or collection of any charge, fee or surcharge, and
201 may make recommendations to the host state(s) which shall
202 review the recommendations in accordance with its (their)
203 own sovereign laws.

204 (i) Shall have the power to sue and be sued subject to
205 Article 2 (A) (5) (e) and may seek to intervene in any
206 administrative or judicial proceeding.

207 (j) May accept any donations, grants, equipment,
208 supplies, materials or services, conditional or otherwise,
209 from any source. The nature, amount and condition, if any,
210 attendant upon any donations, grants or other resources
211 accepted pursuant to this subsection, together with the
212 identity of the donor or grantor, shall be detailed in the
213 annual report of the Commission. Before the Commission
214 may accept any donation, grant, equipment, supplies,
215 materials or services, such gift shall be reviewed by
216 Commission Counsel to study the legality and propriety of
217 such gifts. If the Commission Counsel determines that the

218 receipt of such a gift would be contrary to applicable law or
219 would present a conflict of interest, the Commission shall
220 not accept such gift.

221 (k) Shall assemble and make available to the party
222 states and to the public, information concerning low-level
223 waste management needs, technologies and problems.

224 (l) Shall keep current and annual inventories of all
225 generators by name and quantity generated within the
226 region, based upon information provided by the party
227 states.

228 (m) Shall keep an inventory of all regional disposal
229 facilities, including, but not necessarily restricted to,
230 information on their size, capacity and location, as well as
231 specific wastes capable of being managed, and the
232 projected useful life of each regional facility.

233 (n) Shall make and publish an annual report to the
234 governors of the signatory party states and to the public
235 detailing its programs, operations and finances, including
236 copies of the annual budget and the independent audit
237 required by this compact.

238 (o) Notwithstanding any other provision of this
239 compact to the contrary, may, with the approval of a
240 majority of the Commission members of the host state(s),
241 enter into agreements with nonparty states or other
242 regional boards for the disposal of low-level waste at the
243 regional facility, if so authorized by law(s) of the host
244 state(s), or other disposal facilities located in states that are
245 not parties to this agreement.

246 (C) Budget and Operation.

247 (1) The Commission shall establish a fiscal year which
248 conforms to the fiscal year of the Commonwealth of
249 Pennsylvania.

250 (2) Upon legislative enactment of this compact by two
251 party states and each year until the regional facility
252 becomes available, the Commission shall adopt a current
253 expense budget for its fiscal year. The budget shall include
254 the Commission's estimated expenses for administration.
255 Such expenses shall be allocated to the party states
256 according to the following formula:

257 Each designated initial host state will be allocated costs
258 equal to twice the costs of the other party states, but such
259 costs will not exceed two hundred thousand dollars.

260 Each remaining party state will be allocated a cost of one
261 half the cost of the initial host state, but such costs will not
262 exceed one hundred thousand dollars.

263 The party states will include the amounts allocated above
264 in their respective budgets, subject to such review and
265 approval as may be required by their respective budgetary
266 processes. Such amounts shall be due and payable to the
267 Commission in quarterly installments during the fiscal
268 year:

269 (3) For continued funding of its activities, the
270 Commission shall submit an annual budget request to each
271 party state for funding, based upon the percentage of the
272 region's waste generated in each state in the region, as
273 reported in the latest available annual inventory required
274 under Article 2 (B) (1) (1).

275 (4) The Commission shall prepare and include in the
276 annual report a budget showing anticipated receipts and
277 disbursements for the ensuing year.

278 (5) Annual Independent Audit.

279 (a) As soon as practicable after the closing of the fiscal
280 year, an audit shall be made of the financial accounts of the
281 Commission. The audit shall be made by qualified certified
282 public accountants selected by the Commission, who have
283 no personal direct or indirect interest in the financial
284 affairs of the Commission or any of its officers or employees.
285 The report of audit shall be prepared in accordance with
286 accepted accounting practices and shall be filed with the
287 chairman and such other officers as the Commission shall
288 direct. Copies of the report shall be distributed to each
289 Commission member and shall be made available for public
290 distribution.

291 (b) Each signatory party by its duly authorized officers
292 shall be entitled to examine and audit at any time all of the
293 books, documents, records, files and accounts and all other
294 papers, things or property of the Commission. The
295 representatives of the signatory parties shall have access to
296 all books, documents, records, accounts, reports, files and
297 all other papers, things or property belonging to or in use
298 by the Commission and necessary to facilitate the audit;
299 and, they shall be afforded full facilities for verifying
300 transactions with the balances or securities held by
301 depositaries, fiscal agents and custodians.

302

Article 3

303

Rights, Responsibilities and

304

Obligations of Party States

305 (A) There shall be regional facilities sufficient to
306 dispose of the low-level waste generated within the region.
307 Each regional facility shall be capable of disposing of such
308 low-level waste but in the form(s) required by regulations
309 or license conditions. Specialized facilities for particular
310 types of low-level waste management or disposal may be
311 developed in any party state in accordance with the laws
312 and regulations of such state and applicable federal laws
313 and regulations.

314 (B) Each party state shall have equal access as other
315 party states to regional facilities located within the region
316 and accepting low-level waste: *Provided*, That the host
317 state may close the regional facility located within its
318 borders when necessary for public health and safety.
319 However, a host state shall send notification to the
320 Commission in writing within three days of its action, and
321 shall, within thirty working days, provide in writing the
322 reasons for the closing.

323 (C) Pennsylvania and party states which generated
324 twenty-five percent or more of the volume of low-level
325 waste generated by Pennsylvania based on a comparison of
326 averages over the three years one thousand nine hundred
327 eighty-two through one thousand nine hundred eighty-four
328 are designated as "initial host states" and are required to
329 develop and host low-level waste sites as regional facilities.

330 (D) Party states which generated less than twenty-five
331 percent of the volume of low-level waste generated by
332 Pennsylvania based on a comparison of averages over the
333 years one thousand nine hundred eighty-two through one
334 thousand nine hundred eighty-four shall be exempt from
335 initial host state responsibilities. These states shall
336 continue to be exempt as long as they generate less than the
337 twenty-five percent threshold over successive three-year
338 periods. Once a state generates twenty-five percent or more
339 of the volume generated by Pennsylvania over a successive
340 three-year period, it shall be designated as a "host state" for
341 a thirty-year period by the Commission. Such host state
342 shall be prepared to accept at its regional facility low-level
343 waste at least equal to that generated in the state. With

344 Commission approval, any party state may volunteer to
345 host a low-level waste disposal facility.

346 (E) Pennsylvania and other host states are obligated to
347 develop regional facilities for the duration of this compact.
348 All regional facilities shall be designated for at least a
349 thirty-year useful life. At the end of the facility's life,
350 normal closure and maintenance procedures shall be
351 initiated in accordance with the applicable requirements of
352 the host state and the federal government. Each host state's
353 obligation for operating regional facilities shall remain as
354 long as the state continues to produce over a three-year
355 period twenty-five percent or more of the volume of low-
356 level waste generated by Pennsylvania.

357 (F) Each host state shall:

358 (1) Cause a regional facility to be sited and developed on
359 a timely basis.

360 (2) Ensure by law, consistent with applicable state and
361 federal law, the protection and preservation of public
362 health and safety in the siting, design, development,
363 licensure, or other regulation, operation, closure,
364 decommissioning and long-term care of the regional facility
365 within the state.

366 (3) Ensure that charges for disposal of low-level waste
367 at the regional facility are reasonably sufficient to ensure
368 the safe disposal and perpetual care of the regional facility
369 and that charges are assessed without discrimination as to
370 the party state of origin.

371 (4) Submit an annual report to the Commission on the
372 status of the regional facility which contains projections of
373 the anticipated future capacity.

374 (5) Notify the Commission immediately if any exigency
375 arises requiring the possible temporary or permanent
376 closure of a regional facility within the state at a time
377 earlier than was projected in the state's most recent annual
378 report to the Commission.

379 (G) Each party state:

380 (1) Shall appropriate its portion of the Commission's
381 initial and annual budgets as set out in Article 2 (C) (2) and
382 (3).

383 (2) To the extent authorized by federal law shall develop
384 and enforce procedures requiring low-level waste
385 shipments originating within its borders and destined for a

386 regional facility to conform to volume reduction, packaging
387 and transportation requirements and regulations as well as
388 any other requirements specified by the regional facility.

389 Such procedures shall include, but are not limited to:

390 (i) Periodic inspections of packaging and shipping
391 practices;

392 (ii) Periodic inspections of low-level waste containers
393 while in custody of carriers; and

394 (iii) Appropriate enforcement actions with respect to
395 violations.

396 (3) To the extent authorized by federal law, shall after
397 receiving notification from a host state that a person in a
398 party state has violated volume reduction, packaging,
399 shipping or transportation requirements or regulations,
400 take appropriate action to ensure that violations do not
401 recur. Appropriate action may include, but is not limited to,
402 the requirement that a bond be posted by the violator to pay
403 the cost of repackaging at the regional facility and the
404 requirement that future shipments be inspected.

405 (4) Shall maintain a registry of all generators and
406 quantities generated within the state.

407 (H) In the event of liability arising from the operation of
408 any regional facility and during and after closure of that
409 facility, each party state shall share in that liability in an
410 amount equal to that state's share of the region's low-level
411 waste disposed of at the facility. If such liability arises from
412 negligence, malfeasance or neglect on the part of a host
413 state or any party state, then any other host or party state(s)
414 may make any claim allowable under law for that
415 negligence, malfeasance or neglect. If such liability arises
416 from a particular waste shipment or shipments to, or
417 quantity of waste or condition at, the regional facility, then
418 any host or party state may make any claim allowable under
419 law for such liability.

420 (I) A party state which fails to fulfill its obligations,
421 including timely funding of the Commission may have its
422 privileges under the Compact suspended or its membership
423 in the Compact revoked by the Commission and be subject
424 to any other legal and equitable remedies available to the
425 party states.

426

Article 4

427

Prohibited Acts and Penalties

428 (A) It shall be unlawful for any person to dispose of
429 low-level waste within the region except at a regional
430 facility unless authorized by the Commission.

431 (B) After establishment of the regional facility or
432 facilities, it shall be unlawful for any person to dispose of
433 any low-level waste within the region unless the waste was
434 generated within the region or unless authorized to do so
435 both by the Commission and by law of the host state in
436 which said disposal takes place. For the purposes of this
437 Compact, waste generated within the region excludes
438 radioactive material shipped from outside the party states
439 to a waste management facility within the region. In
440 determining whether to grant such authorization, the
441 factors to be considered by the Commission shall include,
442 but not be limited to, the following:

443 (1) The impact on the health and safety of the citizens of
444 the party states;

445 (2) The impact of importing waste on the available
446 capacity and projected life of the regional facility;

447 (3) The economic impact on the regional facility; and

448 (4) The availability of a regional facility appropriate for
449 the safe disposal of the type of low-level waste involved.

450 (C) Following the establishment of a regional facility,
451 any and all low-level waste generated within the region
452 shall be disposed of at a regional facility, except for specific
453 cases agreed upon by the Commission, with the affirmative
454 votes by a majority of the Commission members of the host
455 state(s) affected by the decision.

456 (D) Generators, shippers and carriers of wastes, and
457 owners and operators of sites shall be liable for their acts,
458 omissions, conduct or relationships in accordance with all
459 laws relating thereto. The party states may impose a fine for
460 any violation in an amount equal to the present and future
461 costs associated with correcting any harm caused by the
462 violation and may assess punitive fines or penalties if it is
463 deemed necessary. In addition, the host state may bar any
464 person who violates host state or federal regulations from
465 using the regional facility until that person demonstrates to
466 the satisfaction of the host state their ability and
467 willingness to comply with the law.

468

Article 5

469

Eligibility, Entry into Effect,

470

Congressional Consent, Withdrawal

471 (A) The states of Pennsylvania, West Virginia, Delaware
472 and Maryland, are initially eligible to become parties to this
473 Compact. Other states may be made eligible by unanimous
474 consent of the party states in accordance with the laws of
475 each party state: *Provided*, That such states be contiguous
476 to Pennsylvania.

477 (B) An eligible state may become a party state by
478 legislative enactment of this compact or by executive order
479 of the governor adopting this compact: *Provided*, That a
480 state becoming a party state by executive order shall cease
481 to be a party state upon adjournment of the first general
482 session of its Legislature convened thereafter, unless the
483 Legislature shall have enacted this Compact before such
484 adjournment.

485 (C) This Compact shall take effect when it has been
486 enacted by the Legislatures of Pennsylvania and one or
487 more eligible states. However, subsections (B) and (C) of
488 Article 4 shall not take effect until Congress has consented
489 to this Compact. Every fifth year after such consent has
490 been given, Congress may withdraw consent.

491 (D) A party state may withdraw from the Compact by
492 repealing the enactment of this Compact, but no such
493 withdrawal shall become effective until two years after
494 enactment of the repealing legislation. If the withdrawing
495 state is a host state, any regional facility in that state shall
496 remain available to receive low-level waste generated
497 within the region until five years after the effective date of
498 the withdrawal.

/

499

Article 6

500

Construction and Severability

501 (A) The provisions of this Compact shall be broadly
502 construed to carry out the purposes of the Compact, but the
503 sovereign powers of a party state shall not unnecessarily be
504 infringed.

505 (B) If any part or application of this Compact is held
506 invalid, the remainder, or its application to other situations
507 or persons, shall not be affected.

§29-1H-2. Appointment of members of Commission.

1 In pursuance of Article 2 of the Compact, the governor of
2 the state of West Virginia, by and with the advice and
3 consent of the Senate, shall appoint two persons as
4 members of the Appalachian States Low-Level Radioactive
5 Waste Commission from the state of West Virginia, each of
6 whom shall be a resident and citizen of the state. The term of
7 the member of the Commission first appointed shall be two
8 years and of the other shall be four years, and their
9 successors shall be appointed by the governor, by and with
10 the advice and consent of the Senate, for terms of four years
11 each. Each member of the Commission shall hold office
12 until his successor has been appointed and qualified.
13 Vacancies occurring in the office of any such member for
14 any reason or cause shall be filled by appointment by the
15 governor, by and with the advice and consent of the Senate,
16 for the unexpired term.

§29-1H-3. Powers of Commission, duties of state officers, departments, etc.

1 There is hereby granted to the Commission and members
2 of the Commission all of the powers provided for in the
3 Compact and all the powers necessary or incidental to the
4 carrying out of the Compact in every particular. All officers
5 of this state are hereby authorized and directed to do all
6 things falling within their respective provinces and
7 jurisdiction necessary to or incidental to the carrying out of
8 the Compact in every particular, it being hereby declared to
9 be the policy of this state to perform and carry out the
10 Compact and to accomplish the purposes thereof. The
11 director of health shall have the primary responsibility
12 therefor.

§29-1H-4. Powers granted herein supplemental to other powers vested in Commission.

1 Any powers herein granted to the Commission shall be
2 regarded as in aid of and supplemental to and in no case a
3 limitation upon any of the powers vested in the Commission
4 by other laws of this state, by the other party states, by
5 Congress or the terms of the Compact.

§29-1H-5. Cooperation of state agencies, boards, departments, subdivisions, etc.

1 The departments, boards, agencies, commissions, officers
2 and employees of the state and its subdivisions are
3 authorized and directed to cooperate with the director of
4 health in the furtherance of any of his activities pursuant to
5 the Appalachian States Low-Level Radioactive Waste
6 Compact and the provisions of this article.

§29-1H-6. Rules and regulations.

1 The director of health is authorized to promulgate and
2 adopt rules and regulations as are necessary and incidental
3 to the carrying out of the Compact and this article. Such
4 authorization shall include, without limitation, rules and
5 regulations necessary and incidental to carrying out
6 subsection two, section (g), article three of the Compact.
7 Such rules and regulations shall be promulgated only in
8 accordance with article three, chapter twenty-nine-a of this
9 code.

§29-1H-7. Enforcement.

1 (a) Following the establishment of a regional facility
2 pursuant to the Appalachian States Low-Level Radioactive
3 Waste Compact, the director of health, the attorney general
4 or the prosecuting attorney of any county in which a
5 violation occurs may seek in the name of the state an
6 injunction against any person in violation of any of the
7 provisions of said Compact, this article or the rules and
8 regulations promulgated pursuant to said Compact or this
9 article. In seeking such an injunction it is not necessary for
10 the state to post bond nor to allege or prove at any stage of
11 the proceeding that irreparable harm will occur if the
12 injunction is not issued or that the remedy of the law is
13 inadequate. An application for injunctive relief under this
14 section may be filed and relief granted notwithstanding the
15 fact that all administrative remedies provided for have not
16 been exhausted or invoked against the person or persons
17 against whom such relief is sought.

18 (b) The director of health is hereby authorized to
19 remedy or to contract to remedy any condition he deems a
20 threat to public health and safety arising from a violation of

21 the Appalachian States Low-Level Radioactive Waste
22 Compact, this article or the rules and regulations
23 promulgated pursuant to the Compact or this article and to
24 proceed pursuant to subsection (c) of this section to recover
25 judgment for the costs thereof.

26 (c) Pursuant to section (d), Article 4 of the Appalachian
27 States Low-Level Radioactive Waste Compact, the director
28 of health and the attorney general are hereby authorized to
29 prosecute actions for judgments pursuant to subsection (b)
30 of this section. The director of health and the attorney
31 general are further authorized to institute actions to assess
32 punitive fines or penalties pursuant to section (d), Article 4
33 of the Compact for violations of the Compact, this article or
34 rules or regulations promulgated pursuant to the Compact
35 or this article. Such actions may be brought at the option of
36 the state in the circuit court of any county in which a
37 violation occurred or may be brought as a contested case
38 pursuant to chapter twenty-nine-a of this code. In any
39 action brought under the provisions of chapter twenty-
40 nine-a of this code, the director of health or the attorney
41 general shall have the power to issue subpoenas and
42 subpoenas duces tecum on behalf of the state or any
43 interested party. The punitive fines and penalties may not
44 exceed the fines provided in section eight of this article and
45 may only be sought in lieu thereof.

§29-1H-8. Penalties.

1 (a) Any person who after the establishment of a regional
2 facility pursuant to the Appalachian States Low-Level
3 Radioactive Waste Compact violates or causes to be
4 violated the provisions of section (a) or section (b), Article 4
5 of the Compact or any of the provisions of or regulations
6 regarding packaging and transportation promulgated
7 pursuant to subsection two, section (g), Article 3 of the
8 Compact is guilty of a felony, and, upon conviction thereof,
9 shall be fined not less than one thousand dollars nor more
10 than twenty-five thousand dollars for each day of violation,
11 or imprisoned in the penitentiary not less than one nor more
12 than five years, or both fined and imprisoned. If the
13 conviction is for a violation committed after a first
14 conviction of such person under this subsection, the person
15 shall be guilty of a felony, and, upon conviction thereof,

16 shall be fined not less than five thousand dollars nor more
17 than fifty thousand dollars for each day of violation, or shall
18 be imprisoned not less than two nor more than ten years, or
19 both fined and imprisoned.

20 (b) Any person who after the establishment of a regional
21 facility pursuant to this Compact violates or causes to be
22 violated the provisions of any rules and regulations
23 regarding volume reduction promulgated pursuant to
24 subsection two, section (g), Article 3 of the Compact is
25 guilty of a misdemeanor, and, upon conviction thereof, shall
26 be fined not less than one hundred dollars nor more than
27 twenty-five hundred dollars for each day of such violation,
28 or imprisoned in the county jail not less than one nor more
29 than five months, or both fined and imprisoned. If the
30 conviction is for a violation committed after a first
31 conviction of such person under this subsection, the person
32 shall be guilty of a felony, and, upon conviction thereof,
33 shall be fined not less than one thousand dollars nor more
34 than twenty-five thousand dollars for each day of such
35 violation, or shall be imprisoned not less than two nor more
36 than ten years, or both fined and imprisoned.

§29-1H-9. Conflicting laws.

1 In the event the provisions of the Appalachian States
2 Low-Level Radioactive Waste Compact, this article or any
3 rules and regulations lawfully promulgated thereunder
4 shall be or become inconsistent with any other provisions of
5 this code, the provisions of the Appalachian States Low-
6 Level Radioactive Waste Compact and this article and the
7 rules and regulations lawfully promulgated thereunder
8 shall prevail to the extent of such inconsistency and the
9 conflicting provisions shall be null and void to the extent of
10 such inconsistency.

§29-1H-10. Appropriations.

1 The Legislature may appropriate such funds as it
2 considers necessary to carry out the provisions of this
3 article.

§29-1H-11. When article effective.

1 This article shall take effect and become operative and
2 the Compact be executed for and on behalf of this state only

3 from and after the approval, ratification and adoption, and
4 entering into thereof by the Commonwealth of
5 Pennsylvania.

CHAPTER 91

(S. B. 713—Originating in the Committee on Health and Human Resources.)

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

AN ACT to amend and reenact section twelve, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state department of health reimbursement to state employees in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-12. Expenditures of state department of health.

1 The state department of health shall have power to
2 expend annually, for the purpose of performing the duties
3 imposed on it, or authorized by law, such sum as may be
4 appropriated by the Legislature for the department of
5 health.

6 The department may provide reimbursement to em-
7 ployees of the department whose eyeglasses, contact
8 lenses, dentures or other personal items are damaged
9 during the course of employment as a result of aggressive
10 behavior by a client in any facility under the manage-
11 ment and control of the department: *Provided*, That such
12 reimbursement shall be limited to a maximum amount of
13 two hundred fifty dollars per claim.

14 The director of health shall audit all bills, which shall
15 be made out in due form and verified by the members of
16 the board of health, directors of divisions, employees or

17 agents rendering services or incurring traveling or other
18 expenses in the performance of the duties of their offices
19 or employments. Such bills, when approved by the audi-
20 tor, shall be paid out of the state treasury.

21 The director of the department of health is authorized
22 to make advance payments to public and nonprofit health
23 services providers when it has been determined by the
24 director of health to be necessary for the initiation or
25 continuation of health services. Such advance payments,
26 being in derogation of the principle of payment only after
27 receipt of goods or services, shall be authorized only after
28 serious consideration by the director of the necessity
29 therefor and shall be for a period no greater than ninety
30 days in advance of rendition of service or receipt of goods
31 and continuation of health services.

CHAPTER 92

(Com. Sub. for S. B. 616—By Senator Loehr)

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

AN ACT to amend and reenact sections two, three, four, five, seven, nine and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend article two-d of said chapter by adding thereto two new sections, designated sections fourteen and fifteen, all relating to certificate of need; increasing the minimum levels for expenditures and major medical equipment subject to review and for health services exempted from review; providing for review of community mental health and retardation facilities and private office practice of licensed health professionals under certain circumstances; authorizing ninety-day agency imposed moratorium on applications involving new medical technology in absence of criteria for review; providing for imposition of conditions of operation for no longer than a three-year period with the issuance of a certificate of need; three-year statute of limitations for state agency to correct violations; previously approved rules and regulations to remain in force.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, nine and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-d be further amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

- §16-2D-2. Definitions.
- §16-2D-3. Certificate of need.
- §16-2D-4. Exemptions from certificate of need program.
- §16-2D-5. Powers and duties of state health planning and development agency.
- §16-2D-7. Procedure for certificate of need reviews.
- §16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.
- §16-2D-13. Injunctive relief; civil penalty.
- §16-2D-14. Statute of limitations.
- §16-2D-15. Previously approved rules and regulations.

§16-2D-2. Definitions.

- 1 As used in this article, unless otherwise indicated by the
2 context:
- 3 (a) "Affected person" means:
 - 4 (1) The applicant;
 - 5 (2) An agency or organization representing consumers;
 - 6 (3) Any individual residing within the geographic area
7 served or to be served by the applicant;
 - 8 (4) Any individual who regularly uses the health care
9 facilities within that geographic area;
 - 10 (5) The health care facilities located in the applicable
11 health service area which provide services similar to the
12 services of the facility under review;
 - 13 (6) The health care facilities which, prior to receipt by
14 the state agency of the proposal being reviewed, have
15 formally indicated an intention to provide similar services
16 in the future;
 - 17 (7) Third party payers who reimburse any health care
18 facilities for services in the applicable health service area;
 - 19 (8) Any agency which establishes rates for the health
20 care facilities located in the applicable health service area;
 - 21 or
 - 22 (9) Organizations representing health care providers.
 - 23 (b) "Ambulatory health care facility" means a facility,

24 which is free-standing and not physically attached to a
25 health care facility and which provides health care to
26 noninstitutionalized and nonhomebound persons on an
27 outpatient basis. This definition does not include the
28 private office practice of any one or more health
29 professionals licensed to practice in this state pursuant to
30 the provisions of chapter thirty of this code: *Provided*, That
31 such exemption from review of private office practice shall
32 not be construed to include such practices where major
33 medical equipment otherwise subject to review under the
34 provisions of this article is acquired, offered or developed.

35 (c) "Ambulatory surgical facility" means a facility
36 which is free-standing and not physically attached to a
37 health care facility and which provides surgical treatment
38 to patients not requiring hospitalization. This definition
39 does not include the private office practice of any one or
40 more health professionals licensed to practice surgery in
41 this state pursuant to the provisions of chapter thirty of this
42 code: *Provided*, That such exemption from review of
43 private office practice shall not be construed to include
44 such practices where major medical equipment otherwise
45 subject to review under the provisions of this article is
46 acquired, offered or developed.

47 (d) "Annual implementation plan" means a plan
48 established, annually reviewed and amended as necessary
49 by a health systems agency in conformance with Section
50 1513(b)(3) of the Public Health Service Act, as amended,
51 Title 42 United States Code Section 3001-2(b)(3), which
52 describes objectives which will achieve the goals of the
53 health systems plan, or, if those goals are amended by the
54 statewide health coordinating council when included in the
55 state health plan, as so amended, and priorities among the
56 objectives.

57 (e) "Applicable health service area" means a health
58 service area, as defined in this section, in which a new
59 institutional health service is proposed to be located.

60 (f) "Applicant" means: (1) The governing body or the
61 person proposing a new institutional health service who is,
62 or will be, the health care facility licensee wherein the new
63 institutional health service is proposed to be located, and (2)
64 in the case of a proposed new institutional health service
65 not to be located in a licensed health care facility, the

66 governing body or the person proposing to provide such
67 new institutional health service. Incorporators or
68 promoters who will not constitute the governing body or
69 persons responsible for the new institutional health service
70 may not be an applicant.

71 (g) "Bed capacity" means the number of beds for which
72 a license is issued to a health care facility, or, if a facility is
73 unlicensed, the number of adult and pediatric beds
74 permanently staffed and maintained for immediate use by
75 inpatients in patient rooms or wards.

76 (h) "Capital expenditure" means an expenditure:

77 (1) Made by or on behalf of a health care facility; and

78 (2) (A) Which (i) under generally accepted accounting
79 principles is not properly chargeable as an expense of
80 operation and maintenance, or (ii) is made to obtain either
81 by lease or comparable arrangement any facility or part
82 thereof or any equipment for a facility or part; and (B)
83 which (i) exceeds the expenditure minimum, or (ii) is a
84 substantial change to the bed capacity of the facility with
85 respect to which the expenditure is made, or (iii) is a
86 substantial change to the services of such facility. For
87 purposes of part (i), subparagraph (B), subdivision (2) of
88 this definition, the cost of any studies, surveys, designs,
89 plans, working drawings, specifications, and other
90 activities, including staff effort and consulting and other
91 services, essential to the acquisition, improvement,
92 expansion, or replacement of any plant or equipment with
93 respect to which an expenditure described in subparagraph
94 (B), subdivision (2) of this definition is made shall be
95 included in determining if such expenditure exceeds the
96 expenditure minimum. Donations of equipment or facilities
97 to a health care facility which if acquired directly by such
98 facility would be subject to review shall be considered
99 capital expenditures, and a transfer of equipment or
100 facilities for less than fair market value shall be considered
101 a capital expenditure for purposes of such subdivisions if a
102 transfer of the equipment or facilities at fair market value
103 would be subject to review. A series of expenditures, each
104 less than the expenditure minimum, which when taken
105 together are in excess of the expenditure minimum, may be
106 determined by the state agency to be a single capital
107 expenditure subject to review. In making its determination,

108 the state agency shall consider: Whether the expenditures
109 are for components of a system which is required to
110 accomplish a single purpose; whether the expenditures are
111 to be made over a two-year period and are directed towards
112 the accomplishment of a single goal within the health care
113 facility's long-range plan; or, whether the expenditures are
114 to be made within a two-year period within a single
115 department such that they will constitute a significant
116 modernization of the department.

117 (i) "Expenditure minimum" means seven hundred
118 fourteen thousand dollars for the twelve-month period
119 beginning the first day of October, one thousand nine
120 hundred eighty-five. For each twelve-month period
121 thereafter, the state agency may, by regulations adopted
122 pursuant to section eight of this article, adjust the
123 expenditure minimum to reflect the impact of inflation.

124 (j) "Health," used as a term, includes physical and
125 mental health.

126 (k) "Health care facility" is defined as including
127 hospitals, skilled nursing facilities, kidney disease
128 treatment centers, including free-standing hemodialysis
129 units, intermediate care facilities, ambulatory health care
130 facilities, ambulatory surgical facilities, home health
131 agencies, rehabilitation facilities, and health maintenance
132 organizations, community mental health and mental
133 retardation facilities; whether under public or private
134 ownership, or as a profit or nonprofit organization and
135 whether or not licensed or required to be licensed in whole
136 or in part by the state. For purposes of this definition,
137 "community mental health and mental retardation facility"
138 means a private facility which provides such
139 comprehensive services and continuity of care as
140 emergency, outpatient, partial hospitalization, inpatient
141 and consultation and education for individuals with mental
142 illness, mental retardation or drug or alcohol addiction.

143 (l) "Health care provider" means a person, partnership,
144 corporation, facility or institution licensed or certified or
145 authorized by law to provide professional health care
146 service in this state to an individual during that individual's
147 medical care, treatment or confinement.

148 (m) "Health maintenance organization" means a public

149 or private organization, organized under the laws of this
150 state, which:

151 (1) Is a qualified health maintenance organization
152 under Section 1310(d) of the Public Health Service Act, as
153 amended, Title 42 United States Code Section 300e-9(d); or

154 (2) (A) Provides or otherwise makes available to
155 enrolled participants health care services, including
156 substantially the following basic health care services:
157 Usual physician services, hospitalization, laboratory, X-
158 ray, emergency and preventive services and out-of-area
159 coverage; and

160 (B) Is compensated except for copayments for the
161 provision of the basic health care services listed in
162 subparagraph (2)(A), subdivision (m) of this definition to
163 enrolled participants on a predetermined periodic rate
164 basis without regard to the date the health care services are
165 provided and which is fixed without regard to the
166 frequency, extent or kind of health service actually provided;
167 and

168 (C) Provides physicians' services primarily (i) directly
169 through physicians who are either employees or partners of
170 such organization, or (ii) through arrangements with
171 individual physicians or one or more groups of physicians
172 organized on a group practice or individual practice basis.

173 (n) "Health service area" means a geographic area
174 designated by the Federal Secretary of Health and Human
175 Services pursuant to Section 1511 of the Public Health
176 Service Act, as amended, Title 42 United States Code
177 Section 3001, with respect to which health systems agencies
178 shall be designated under Section 1515 of such act, as
179 amended, Title 42 United States Code Section 3001-4.

180 (o) "Health services" means clinically related
181 preventive, diagnostic, treatment or rehabilitative services,
182 including alcohol, drug abuse and mental health services.

183 (p) "Home health agency" is an organization primarily
184 engaged in providing directly or through contract
185 arrangements, professional nursing services, home health
186 aide services, and other therapeutic and related services
187 including, but not limited to, physical, speech and
188 occupational therapy and nutritional and medical social
189 services, to persons in their place of residence on a part-
190 time or intermittent basis.

191 (q) "Hospital" means an institution which is primarily
192 engaged in providing to inpatients, by or under the
193 supervision of physicians, diagnostic and therapeutic
194 services for medical diagnosis, treatment, and care of
195 injured, disabled or sick persons, or rehabilitation services
196 for the rehabilitation of injured, disabled or sick persons.
197 This term also includes psychiatric and tuberculosis
198 hospitals.

199 (r) "Intermediate care facility" means an institution
200 which provides, on a regular basis, health-related care and
201 services to individuals who do not require the degree of care
202 and treatment which a hospital or skilled nursing facility is
203 designed to provide, but who, because of their mental or
204 physical condition, require health related care and services
205 above the level of room and board.

206 (s) "Long-range plan" means a document formally
207 adopted by the legally constituted governing body of an
208 existing health care facility or by a person proposing a new
209 institutional health service. Each long-range plan shall
210 consist of the information required by the state agency in
211 regulations adopted pursuant to section eight of this article.

212 (t) "Major medical equipment" means a single unit of
213 medical equipment or a single system of components with
214 related functions which is used for the provision of medical
215 and other health services and which costs in excess of four
216 hundred thousand dollars, except that such term does not
217 include medical equipment acquired by or on behalf of a
218 clinical laboratory to provide clinical laboratory services if
219 the clinical laboratory is independent of a physician's office
220 and a hospital and it has been determined under Title XVIII
221 of the Social Security Act to meet the requirements of
222 paragraphs ten and eleven of Section 1861(s) of such act,
223 Title 42 United States Code Sections 1395x (10) and (11). In
224 determining whether medical equipment costs more than
225 four hundred thousand dollars, the cost of studies, surveys,
226 designs, plans, working drawings, specifications, and other
227 activities essential to the acquisition of such equipment
228 shall be included. If the equipment is acquired for less than
229 fair market value, the term "cost" includes the fair market
230 value.

231 (u) "Medically underserved population" means the
232 population of an urban or rural area designated by the state

233 agency as an area with a shortage of personal health
234 services or a population having a shortage of such services,
235 after taking into account unusual local conditions which
236 are a barrier to accessibility or availability of such services.
237 Such designation shall be in regulations adopted by the
238 state agency pursuant to section eight of this article, and the
239 population so designated may include the state's medically
240 underserved population designated by the Federal
241 Secretary of Health and Human Services under Section
242 330(b)(3) of the Public Health Service Act, as amended,
243 Title 42 United States Code Section 254(b)(3).

244 (v) "New institutional health service" means such
245 service as described in section three of this article.

246 (w) "Offer" when used in connection with health
247 services, means that the health care facility or health
248 maintenance organization holds itself out as capable of
249 providing, or as having the means for the provision of,
250 specified health services.

251 (x) "Person" means an individual, trust, estate,
252 partnership, committee, corporation, association and other
253 organizations such as joint-stock companies and insurance
254 companies, a state or a political subdivision or
255 instrumentality thereof or any legal entity recognized by
256 the state.

257 (y) "Physician" means a doctor of medicine or
258 osteopathy legally authorized to practice medicine and
259 surgery by the state.

260 (z) "Proposed new institutional health service" means
261 such service as described in section three of this article.

262 (aa) "Psychiatric hospital" means an institution which
263 primarily provides to inpatients, by or under the
264 supervision of a physician, specialized services for the
265 diagnosis, treatment and rehabilitation of mentally ill and
266 emotionally disturbed persons.

267 (bb) "Rehabilitation facility" means an inpatient
268 facility which is operated for the primary purpose of
269 assisting in the rehabilitation of disabled persons through
270 an integrated program of medical and other services which
271 are provided under competent professional supervision.

272 (cc) "Review agency" means an agency of the state
273 designated by the governor as the agency for the review of
274 state agency decisions.

275 (dd) "Skilled nursing facility" means an institution or a
276 distinct part of an institution which is primarily engaged in
277 providing to inpatients skilled nursing care and related
278 services for patients who require medical or nursing care, or
279 rehabilitation services for the rehabilitation of injured,
280 disabled or sick persons.

281 (ee) "State agency" means that agency of state
282 government selected by the governor and designated as the
283 state health planning and development agency in an
284 agreement entered into pursuant to Section 1521 of the
285 Public Health Service Act, as amended, Title 42 United
286 States Code Section 300m.

287 (ff) "State health plan" means the document approved
288 by the governor after preparation by the statewide health
289 coordinating council pursuant to Section 1524(c)(2) of the
290 Public Health Service Act, as amended, Title 42 United
291 States Code Section 300m-3(c)(2).

292 (gg) "Statewide health coordinating council" means the
293 body established pursuant to Section 1524 of the Public
294 Health Service Act, as amended, Title 42 United States
295 Code Section 300m-3, to advise the state agency.

296 (hh) "Substantial change to the bed capacity" of a
297 health care facility means a change, with which a capital
298 expenditure is associated, in any two-year period of ten or
299 more beds or more than ten percent, whichever is less, of the
300 bed capacity of such facility that increases or decreases the
301 bed capacity, redistributes beds among various categories,
302 or relocates beds from one physical facility or site to
303 another. A series of changes to the bed capacity of a health
304 care facility in any two-year period, each less than ten beds
305 or ten percent of the bed capacity of such facility, but which
306 when taken together comprise ten or more beds or more
307 than ten percent of the bed capacity of such facility,
308 whichever is less, is a substantial change to the bed
309 capacity.

310 (ii) "Substantial change to the health services" of a
311 health care facility means the addition of a health service
312 which is offered by or on behalf of the health care facility
313 and which was not offered by or on behalf of the facility
314 within the twelve-month period before the month in which
315 the service is first offered, or the termination of a health
316 service which was offered by or on behalf of the facility.

317 (jj) "To develop," when used in connection with health
318 services, means to undertake those activities which, upon
319 their completion, will result in the offer of a new
320 institutional health service or the incurring of a financial
321 obligation, in relation to the offering of such a service.

322 (kk) "Tuberculosis hospital" means an institution
323 which is primarily engaged in providing to inpatients, by or
324 under the supervision of a physician, medical services for
325 the diagnosis and treatment of tuberculosis.

§16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any new
2 institutional health service may not be acquired, offered or
3 developed within this state except upon application for and
4 receipt of a certificate of need as provided by this article.
5 Whenever a new institutional health service for which a
6 certificate of need is required by this article is proposed for
7 a health care facility for which, pursuant to section four of
8 this article, no certificate of need is or was required, a
9 certificate of need shall be issued before the new
10 institutional health service is offered or developed. No
11 person may knowingly charge or bill for any health services
12 associated with any new institutional health service that is
13 knowingly acquired, offered or developed in violation of
14 this article, and any bill made in violation of this sentence is
15 legally unenforceable. For purposes of this article, a
16 proposed "new institutional health service" includes:

17 (a) The construction, development, acquisition or other
18 establishment of a new health care facility or health
19 maintenance organization;

20 (b) The partial or total closure of a health care facility or
21 health maintenance organization with which a capital
22 expenditure is associated;

23 (c) Any obligation for a capital expenditure incurred by
24 or on behalf of a health care facility, except as exempted in
25 section four of this article, or health maintenance
26 organization in excess of the expenditure minimum or any
27 obligation for a capital expenditure incurred by any person
28 to acquire a health care facility. An obligation for a capital
29 expenditure is considered to be incurred by or on behalf of a
30 health care facility:

31 (1) When a contract, enforceable under state law, is

32 entered into by or on behalf of the health care facility for the
33 construction, acquisition, lease or financing of a capital
34 asset;

35 (2) When the governing board of the health care facility
36 takes formal action to commit its own funds for a
37 construction project undertaken by the health care facility
38 as its own contractor; or

39 (3) In the case of donated property, on the date on which
40 the gift is completed under state law;

41 (d) A substantial change to the bed capacity of a health
42 care facility with which a capital expenditure is associated;

43 (e) The addition of health services which are offered by
44 or on behalf of a health care facility or health maintenance
45 organization and which were not offered on a regular basis
46 by or on behalf of such health care facility or health
47 maintenance organization within the twelve-month period
48 prior to the time such services would be offered;

49 (f) The deletion of one or more health services,
50 previously offered on a regular basis by or on behalf of a
51 health care facility or health maintenance organization
52 which deletion is associated with a capital expenditure;

53 (g) A substantial change to the bed capacity or health
54 services offered by or on behalf of a health care facility,
55 whether or not the change is associated with a proposed
56 capital expenditure, if the change is associated with a
57 previous capital expenditure for which a certificate of need
58 was issued and if the change will occur within two years
59 after the date the activity which was associated with the
60 previously approved capital expenditure was undertaken;

61 (h) The acquisition of major medical equipment; and

62 (i) A substantial change in an approved new
63 institutional health service for which a certificate of need is
64 in effect. For purposes of this subdivision "substantial
65 change" shall be defined by the state agency in regulations
66 adopted pursuant to section eight of this article.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (h), section three
2 of this article, nothing in this article or the rules and
3 regulations adopted pursuant to the provisions of this
4 article may be construed to authorize the licensure,
5 supervision, regulation or control in any manner of: (1)

6 Private office practice of any one or more health
7 professionals licensed to practice in this state pursuant to
8 the provisions of chapter thirty of this code: *Provided*, That
9 such exemption from review of private office practice shall
10 not be construed to include such practices where major
11 medical equipment otherwise subject to review under the
12 provisions of this article is acquired, offered or developed;
13 (2) dispensaries and first-aid stations located within
14 business or industrial establishments maintained solely for
15 the use of employees: *Provided, however*, That such facility
16 does not contain inpatient or resident beds for patients or
17 employees who generally remain in the facility for more
18 than twenty-four hours; (3) establishments, such as motels,
19 hotels and boardinghouses, which provide medical, nursing
20 personnel and health related services; and (4) the remedial
21 care or treatment of residents or patients in any home or
22 institution conducted only for those who rely solely upon
23 treatment by prayer or spiritual means in accordance with
24 the creed of tenets of any recognized church or religious
25 denomination.

26 (b) (1) A certificate of need is not required for the
27 offering of an inpatient institutional health service or the
28 acquisition of major medical equipment for the provision of
29 an inpatient institutional health service or the obligation of
30 a capital expenditure for the provisions of an inpatient
31 institutional health service, if with respect to such offering,
32 acquisition or obligation, the state agency has, upon
33 application under subdivision (2), subsection (b) of this
34 section, granted an exemption to:

35 (A) A health maintenance organization or a
36 combination of health maintenance organizations if (i) the
37 organization or combination of organizations has, in the
38 service area of the organization or the service areas of the
39 organizations in the combination, an enrollment of at least
40 fifty thousand individuals, (ii) the facility in which the
41 service will be provided is or will be geographically located
42 so that the service will be reasonably accessible to such
43 enrolled individuals, and (iii) at least seventy-five percent
44 of the patients who can reasonably be expected to receive
45 the institutional health service will be individuals enrolled
46 with such organization or organizations in the
47 combination;

48 (B) A health care facility if (i) the facility primarily
49 provides or will provide inpatient health services, (ii) the
50 facility is or will be controlled, directly or indirectly, by a
51 health maintenance organization or a combination of
52 health maintenance organizations which has, in the service
53 area of the organization or service areas of the
54 organizations in the combination, an enrollment of at least
55 fifty thousand individuals, (iii) the facility is or will be
56 geographically located so that the service will be
57 reasonably accessible to such enrolled individuals, and (iv)
58 at least seventy-five percent of the patients who can
59 reasonably be expected to receive the institutional health
60 service will be individuals enrolled with such organization
61 or organizations in the combination; or

62 (C) A health care facility, or portion thereof, if (i) the
63 facility is or will be leased by a health maintenance
64 organization or combination of health maintenance
65 organizations which has, in the service area of the
66 organization or the service areas of the organizations in the
67 combination, an enrollment of at least fifty thousand
68 individuals and on the date the application is submitted
69 under subdivision (2), subsection (b) of this section, at least
70 fifteen years remain in the term of the lease, (ii) the facility
71 is or will be geographically located so that the service will
72 be reasonably accessible to such enrolled individuals, and
73 (iii) at least seventy-five percent of the patients who can
74 reasonably be expected to receive the new institutional
75 health service will be individuals enrolled with such
76 organization.

77 (2) (A) A health maintenance organization,
78 combination of health maintenance organizations, or other
79 health care facility is not exempt under subdivision (1),
80 subsection (b) of this section, from obtaining a certificate of
81 need unless:

82 (i) It has submitted, at such time and in such form and
83 manner as the state agency shall prescribe, an application
84 for such exemption to the state agency;

85 (ii) The application contains such information
86 respecting the organization, combination or facility and
87 the proposed offering, acquisition or obligation as the state
88 agency may require to determine if the organization or
89 combination meets the requirements of subdivision (1),

90 subsection (b) of this section, or the facility meets or will
91 meet such requirements; and

92 (iii) The state agency approves such application.

93 (B) The state agency shall approve an application
94 submitted under subparagraph (A), subdivision (2),
95 subsection (b) of this section, if it determines that the
96 applicable requirements of subdivision (1), subsection (b) of
97 this section, are met or will be met on the date the proposed
98 activity for which an exemption was requested will be
99 undertaken.

100 (3) A health care facility, or any part thereof, or medical
101 equipment with respect to which an exemption was granted
102 under subdivision (1), subsection (b) of this section, may not
103 be sold or leased and a controlling interest in such facility or
104 equipment or in a lease of such facility or equipment may
105 not be acquired and a health care facility described in
106 subparagraph (C), subdivision (1), subsection (b) of this
107 section, which was granted an exemption under subdivision
108 (1), subsection (b) of this section, may not be used by any
109 person other than the lessee described in subparagraph (C),
110 subdivision (1), subsection (b) of this section, unless:

111 (A) The state agency issues a certificate of need
112 approving the sale, lease, acquisition or use; or

113 (B) The state agency determines, upon application, that
114 the entity to which the facility or equipment is proposed to
115 be sold or leased, which intends to acquire the controlling
116 interest in or to use the facility is:

117 (i) A health maintenance organization or a combination
118 of health maintenance organizations which meets the
119 enrollment requirements of part (i), subparagraph (A),
120 subdivision (1), subsection (b) of this section, and with
121 respect to such facility or equipment, the entity meets the
122 accessibility and patient enrollment requirements of parts
123 (ii) and (iii), subparagraph (A), subdivision (1), subsection
124 (b) of this section; or

125 (ii) A health care facility which meets the inpatient,
126 enrollment and accessibility requirements of parts (i), (ii)
127 and (iii), subparagraph (B), subdivision (1), subsection (b) of
128 this section, and with respect to its patients meets the
129 enrollment requirements of part (iv), subparagraph (B),
130 subdivision (1), subsection (b) of this section.

131 (4) In the case of a health maintenance organization or

132 an ambulatory care facility or health care facility which
133 ambulatory or health care facility is controlled, directly or
134 indirectly, by a health maintenance organization or a
135 combination of health maintenance organizations, the
136 certificate of need requirements apply only to the offering
137 of inpatient institutional health services, the acquisition of
138 major medical equipment, and the obligation of capital
139 expenditures for the offering of inpatient institutional
140 health services and then only to the extent that such
141 offering, acquisition or obligation is not exempt under
142 subdivision (1), subsection (b) of this section.

143 (5) The state agency shall establish the period within
144 which approval or disapproval by the state agency of
145 applications for exemptions under subdivision (1),
146 subsection (b) of this section, shall be made.

147 (c) (1) A health care facility is not required to obtain a
148 certificate of need for the acquisition of major medical
149 equipment to be used solely for research, the addition of
150 health services to be offered solely for research, or the
151 obligation of a capital expenditure to be made solely for
152 research if the health care facility provides the notice
153 required in subdivision (2), subsection (c) of this section,
154 and the state agency does not find, within sixty days after it
155 receives such notice, that the acquisition, offering or
156 obligation will, or will have the effect to:

157 (A) Affect the charges of the facility for the provision of
158 medical or other patient care services other than the
159 services which are included in the research;

160 (B) Result in a substantial change to the bed capacity of
161 the facility; or

162 (C) Result in a substantial change to the health services
163 of the facility.

164 (2) Before a health care facility acquires major medical
165 equipment to be used solely for research, offers a health
166 service solely for research, or obligates a capital
167 expenditure solely for research, such health care facility
168 shall notify in writing the state agency of such facility's
169 intent and the use to be made of such medical equipment,
170 health service or capital expenditure.

171 (3) If major medical equipment is acquired, a health
172 service is offered, or a capital expenditure is obligated and a
173 certificate of need is not required for such acquisition,

174 offering or obligation as provided in subdivision (1),
175 subsection (c) of this section, such equipment or service or
176 equipment or facilities acquired through the obligation of
177 such capital expenditure may not be used in such a manner
178 as to have the effect or to make a change described in
179 subparagraphs (A), (B) and (C), subdivision (1), subsection
180 (c) of this section, unless the state agency issues a certificate
181 of need approving such use.

182 (4) For purposes of this subsection, the term "solely for
183 research" includes patient care provided on an occasional
184 and irregular basis and not as part of a research program.

185 (d) (1) The state agency may adopt regulations
186 pursuant to section eight of this article to specify the
187 circumstances under which a certificate of need may not be
188 required for the obligation of a capital expenditure to
189 acquire, either by purchase or under lease or comparable
190 arrangement, an existing health care facility: *Provided*,
191 That a certificate of need shall be required for the
192 obligation of a capital expenditure to acquire, either by
193 purchase or under lease or comparable arrangement, an
194 existing health care facility if:

195 (A) The notice required by subdivision (2), subsection
196 (d) of this section, is not filed in accordance with that
197 subdivision with respect to such acquisition; or (B) the state
198 agency finds, within thirty days after the date it receives a
199 notice in accordance with subdivision (2), subsection (d) of
200 this section, with respect to such acquisition, that the
201 services or bed capacity of the facility will be changed by
202 reason of said acquisition.

203 (2) Before any person enters into a contractual
204 arrangement to acquire an existing health care facility,
205 such person shall notify the state agency of his or her intent
206 to acquire the facility and of the services to be offered in the
207 facility and its bed capacity. Such notice shall be made in
208 writing and shall be made at least thirty days before
209 contractual arrangements are entered into to acquire the
210 facility with respect to which the notice is given. The notice
211 shall contain all information the state agency requires in
212 accordance with subsections (e) and (s), section seven of this
213 article.

214 (e) The state agency shall adopt regulations, pursuant to
215 section eight of this article, wherein criteria are established

216 to exempt from review the addition of certain health
217 services, not associated with a capital expenditure, that are
218 projected to entail annual operating costs of less than the
219 expenditure minimum for annual operating costs. For
220 purposes of this subsection, "expenditure minimum for
221 annual operating costs" means two hundred ninety-seven
222 thousand five hundred dollars for the twelve-month period
223 beginning the first day of October, one thousand nine
224 hundred eighty-five, and for each twelve-month period
225 thereafter, the state agency may, by regulations adopted
226 pursuant to section eight of this article, adjust the
227 expenditure minimum for annual operating costs to reflect
228 the impact of inflation.

**§16-2D-5. Powers and duties of state health planning and
development agency.**

1 (a) The state agency is hereby empowered to administer
2 the certificate of need program as provided by this article.

3 (b) The state agency shall cooperate with the statewide
4 health coordinating council in developing rules and
5 regulations for the certificate of need program to the extent
6 appropriate for the achievement of efficiency in their
7 reviews and consistency in criteria for such reviews.

8 (c) The state agency may seek advice and assistance of
9 other persons, organizations, and other state agencies in the
10 performance of the state agency's responsibilities under
11 this article.

12 (d) For health services for which competition
13 appropriately allocates supply consistent with the state
14 health plan, the state agency shall, in the performance of its
15 functions under this article, give priority, where
16 appropriate, to advance the purposes of quality assurance,
17 cost effectiveness, and access, to actions which would
18 strengthen the effect of competition on the supply of such
19 services.

20 (e) For health services for which competition does not or
21 will not appropriately allocate supply consistent with the
22 state health plan, the state agency shall, in the exercise of its
23 functions under this article, take actions, where
24 appropriate, to advance the purposes of quality assurance,
25 cost effectiveness, and access and the other purposes of this
26 article, to allocate the supply of such services.

27 (f) The state agency is hereby empowered to order a
28 moratorium upon the processing of an application or
29 applications for the acquisition of major medical
30 equipment filed pursuant to section three of this article and
31 considered by the agency to be new medical technology,
32 when criteria and guidelines for evaluating the need for
33 such new medical technology have not yet been adopted.
34 Such moratoriums shall be declared by a written order
35 which shall detail the circumstances requiring the
36 moratorium. Upon the adoption of criteria for evaluating
37 the need for the new medical technology affected by the
38 moratorium, or ninety days from the declaration of a
39 moratorium, whichever is less, the moratorium shall be
40 declared to be over and affected applications shall be
41 processed pursuant to section six of this article.

§16-2D-7. Procedures for certificate of need reviews.

1 (a) Prior to submission of an application for a certificate
2 of need, the state agency shall require the submission of
3 long-range plans by health care facilities with respect to the
4 development of proposals subject to review under this
5 article. The plans shall be in such form and contain such
6 information as the state agency shall require.

7 (b) An application for a certificate of need shall be
8 submitted to the state agency prior to the offering or
9 development of all new institutional services within this
10 state. Persons proposing new institutional health services
11 shall submit letters of intent not less than fifteen days prior
12 to submitting an application. The letters of intent shall be of
13 such detail as specified by the state agency.

14 (c) The state agency may adopt regulations pursuant to
15 section eight of this article for:

16 (1) Provision for applications to be submitted in
17 accordance with a timetable established by the state
18 agency;

19 (2) Provision for such reviews to be undertaken in a
20 timely fashion; and

21 (3) Except for proposed new institutional health
22 services which meet the requirements for consideration
23 under subsection (g), section nine of this article with regard
24 to the elimination or prevention of certain imminent safety

25 hazards or to comply with certain licensure or accreditation
26 standards, provision for all completed applications
27 pertaining to similar types of services, facilities or
28 equipment to be considered in relation to each other, at
29 least twice a year.

30 (d) An application for a certificate of need shall specify
31 the time the applicant will require to make such service or
32 equipment available or to obligate such expenditure and a
33 timetable for making such service or equipment available
34 or obligating such expenditure.

35 (e) The application shall be in such form and contain
36 such information as the state agency shall establish by rule
37 or regulation, but requests for information shall be limited
38 to only that information which is necessary for the state
39 agency to perform the review.

40 (f) Within fifteen days of receipt of application, the state
41 agency shall determine if the application is complete. The
42 state agency may request additional information from the
43 applicant.

44 (g) The state agency shall provide timely written notice
45 to the applicant and to all affected persons of the beginning
46 of the review, and to any person who has asked the state
47 agency to place the person's name on a mailing list
48 maintained by the state agency. Notification shall include
49 the proposed schedule for review, the period within which a
50 public hearing during the course of the review may be
51 requested by affected persons, which period may not be less
52 than thirty days from the date of the written notification of
53 the beginning of the review required by this section, and the
54 manner in which notification will be provided of the time
55 and place of any public hearing so requested. For the
56 purposes of this subsection, the date of notification is the
57 date on which the notice is sent or the date on which the
58 notice appears in a newspaper of general circulation,
59 whichever is later.

60 (h) Written notification to members of the public and
61 third-party payers may be provided through newspapers of
62 general circulation in the applicable health service area and
63 public information channels; notification to all other
64 affected persons shall be by mail which may be as part of a
65 newsletter.

66 (j) If, after a review has begun, the state agency requires

67 the person subject to the review to submit additional
68 information respecting the subject of the review, such
69 person shall be provided at least fifteen days to submit the
70 information and the state agency shall, at the request of
71 such person, extend the review period by fifteen days. This
72 extension applies to all other applications which have been
73 considered in relation to the application for which
74 additional information is required.

75 (j) The state agency shall adopt schedules for reviews
76 which provide that no review may, to the extent
77 practicable, take longer than ninety days from the date that
78 notification, as described under subsection (g) of this
79 section, is sent to the applicant to the date of the final
80 decision of the state agency, and in the case of expedited
81 applications, may by regulations adopted pursuant to
82 section eight of this article provide for a shortened review
83 period.

84 (k) The state agency shall adopt criteria for determining
85 when it would not be practicable to complete a review
86 within ninety days.

87 (l) The state agency shall provide a public hearing in the
88 course of agency review if requested by any affected person
89 and the state agency may on its own initiate such a public
90 hearing:

91 (1) The state agency shall, prior to such hearing, provide
92 notice of such hearing and shall conduct such hearing in
93 accordance with administrative hearing requirements in
94 article five, chapter twenty-nine-a of this code, and its
95 procedure adopted pursuant to this section.

96 (2) In a hearing any person has the right to be
97 represented by counsel and to present oral or written
98 arguments and evidence relevant to the matter which is the
99 subject of the hearing. Any person affected by the matter
100 which is the subject of the hearing may conduct reasonable
101 questioning of persons who make factual allegations
102 relevant to such matter.

103 (3) The state agency shall maintain a verbatim record of
104 the hearing.

105 (4) After the commencement of a hearing on the
106 applicant's application and before a decision is made with
107 respect to it, there may be no ex parte contacts between (a)
108 the applicant for the certificate of need, any person acting

109 on behalf of the applicant or holder of a certificate of need,
110 or any person opposed to the issuance of a certificate for the
111 applicant and (b) any person in the state agency who
112 exercises any responsibility respecting the application.

113 (5) The state agency may not impose fees for such a
114 public hearing.

115 (m) If a public hearing is not conducted during the
116 review of a new institutional health service, the state
117 agency may, by regulations adopted pursuant to section
118 eight of this article, provide for a file closing date during the
119 review period after which date no other factual information
120 or evidence may be considered in the determination of the
121 application for the certificate of need.

122 A detailed itemization of documents in the state agency
123 file on a proposed new institutional health service shall, on
124 request, be made available by the state agency at any time
125 before the file closing date.

126 (n) The extent of additional information received by the
127 state agency from the applicant for a certificate of need
128 after a review has begun on the applicant's proposed new
129 institutional health service, with respect to the impact on
130 such new institutional health service and additional
131 information which is received by the state agency from the
132 applicant, may be cause for the state agency to determine
133 the application to be a new proposal, subject to a new
134 review cycle.

135 (o) The state agency shall in timely fashion notify, upon
136 request, providers of health services and other persons
137 subject to review under this article of the status of the state
138 agency review of new institutional health services subject
139 to review, findings made in the course of such review, and
140 other appropriate information respecting such review.

141 (p) The state agency shall prepare and publish, at least
142 annually, reports of reviews completed and being
143 conducted, with general statements about the status of each
144 review still in progress and the findings and rationale for
145 each completed review since the publication of the last
146 report.

147 (q) The state agency shall provide for access by the
148 general public to all applications reviewed by the state
149 agency and to all other pertinent written materials essential
150 to agency review.

151 (r) (1) Any person may request in writing a public
152 hearing for purposes of reconsideration of a state agency
153 decision. No fees may be imposed by the state agency for the
154 hearing. For purposes of this section, a request for a public
155 hearing for purposes of reconsideration shall be deemed to
156 have shown good cause if, in a detailed statement, it:

157 (A) Presents significant, relevant information not
158 previously considered by the state agency, and
159 demonstrates that with reasonable diligence the
160 information could not have been presented before the state
161 agency made its decision;

162 (B) Demonstrates that there have been significant
163 changes in factors or circumstances relied upon by the state
164 agency in reaching its decision;

165 (C) Demonstrates that the state agency has materially
166 failed to follow its adopted procedures in reaching its
167 decision; or

168 (D) Provides such other bases for a public hearing as the
169 state agency determines constitutes good cause.

170 (2) To be effective, a request for such a hearing shall be
171 received within thirty days after the date upon which all
172 parties received notice of the state agency decision, and the
173 hearing shall commence within thirty days of receipt of the
174 request.

175 (3) Notification of such public hearing shall be sent,
176 prior to the date of the hearing, to the person requesting the
177 hearing, the person proposing the new institutional health
178 service, and shall be sent to others upon request.

179 (4) The state agency shall hold public reconsideration
180 hearings in accordance with the provisions for
181 administrative hearings contained in:

182 (A) Its adopted procedures;

183 (B) Ex parte contact provisions of subdivision (4),
184 subsection (1) of this section; and

185 (C) The administrative procedures for contested cases
186 contained in article five, chapter twenty-nine-a of this
187 code.

188 (5) The state agency shall make written findings which
189 state the basis for its decision within forty-five days after
190 the conclusion of such hearing.

191 (6) A decision of the state agency following a
192 reconsideration hearing shall be considered a decision of

193 the state agency for purposes of sections nine and ten of this
194 article and for purposes of the notification of the status of
195 review, findings and annual report provisions of
196 subsections (o) and (p) of this section.

197 (s) The state agency may adopt regulations pursuant to
198 section eight of this article for reviews and such regulations
199 may vary according to the purpose for which a particular
200 review is being conducted or the type of health services
201 being reviewed.

202 (t) Notwithstanding other provisions of this article, the
203 state agency shall adopt rules and regulations for
204 determining when there is an application which warrants
205 expedited review. If procedures adopted by the state agency
206 to handle expedited applications do not conform to the
207 provisions of this article, such procedures shall be approved
208 by the federal secretary of health and human services and
209 shall be adopted as regulations pursuant to section eight of
210 this article.

**§16-2D-9. Agency to render final decision; issue certificate of
need; write findings; specify capital expenditure
maximum.**

1 (a) Only the state agency, or the appropriate
2 administrative or judicial review body, may issue, deny or
3 withdraw certificates of need, grant exemptions from
4 certificate of need reviews, or determine that certificate of
5 need reviews are not required.

6 (b) Except as provided in subsection (f) of this section, a
7 certificate of need may only be issued if the proposed new
8 institutional health service is:

9 (1) Found to be needed; and

10 (2) Except in emergency circumstances that pose a
11 threat to public health, consistent with the state health
12 plan: *Provided*, That if a health care facility which is
13 controlled, directly or indirectly, by a health maintenance
14 organization applies for a certificate of need for a proposed
15 new institutional health service, the state agency may not
16 disapprove the application solely because such an
17 institutional health service is not discussed in the state
18 health plan or annual implementation plan.

19 (c) The state agency shall render a final decision on
20 every application for a certificate of need or application for

21 exemption in the form of an approval, a denial, or an
22 approval with conditions. Any decision of the state agency
23 with respect to a certificate of need, or exemption, shall be
24 based solely on:

25 (1) The review of the state agency conducted in
26 accordance with procedures and criteria in this article and
27 in regulations adopted pursuant to section eight of this
28 article; and

29 (2) The record established in administrative
30 proceedings held with respect to the certificate of need or
31 exemption.

32 (d) Approval with conditions does not give the state
33 agency authority to mandate new institutional health
34 services not proposed by the health care facility or health
35 maintenance organization. Issuance of a certificate of need
36 or exemption may not be made subject to any condition
37 unless the condition directly relates to criteria in this article
38 or in rules and regulations adopted pursuant to section
39 eight of this article. Conditions may be imposed upon the
40 operations of the health care facility or health maintenance
41 organization for no longer than a three-year period.
42 Compliance with such conditions may be enforced through
43 the mechanisms detailed in section thirteen of this article.

44 (e) (1) For each proposed new institutional health
45 service it approves, the state agency shall, in addition to the
46 written findings required in subsection (e), section six of
47 this article, make a written finding, which shall take into
48 account the current accessibility of the facility as a whole,
49 on the extent to which the new institutional health service
50 will meet the criteria in subdivisions (4), (14) and (25),
51 subsection (a), section six of this article, regarding the needs
52 of medically underserved population, except in the
53 following cases:

54 (A) Where the proposed new institutional health service
55 is one described in subsection (g) of this section to eliminate
56 or prevent certain imminent safety hazards or to comply
57 with certain licensure or accreditation standards; or

58 (B) Where the new institutional health service is a
59 proposed capital expenditure not directly related to the
60 provision of health services or to beds or major medical
61 equipment; or

62 (C) Where the new institutional health service is

63 proposed by or on behalf of a health care facility which is
64 controlled, directly or indirectly, by a health maintenance
65 organization.

66 (2) If the state agency disapproves a proposed new
67 institutional health service for failure to meet the needs of
68 medically underserved populations, it shall so state in a
69 written finding.

70 (f) (1) Notwithstanding review criteria in subdivision
71 (12), subsection (a), section six of this article, if a health care
72 facility which is controlled, directly or indirectly, by a
73 health maintenance organization applies for a certificate of
74 need, such application shall be approved by the state
75 agency if the state agency finds, in accordance with criteria
76 prescribed by the state agency by regulations adopted
77 pursuant to section eight of this article, that:

78 (A) Approval of such application is required to meet the
79 needs of the members of the health maintenance
80 organization and of the new members which such
81 organization can reasonably be expected to enroll; and

82 (B) The health maintenance organization is unable to
83 provide, through services or facilities which can reasonably
84 be expected to be available to the organization, its
85 institutional health services in a reasonable and cost-
86 effective manner which is consistent with the basic method
87 of operation of the organization and which makes such
88 services available on a long-term basis through physicians
89 and other health professionals associated with it.

90 (2) Except as provided in subdivision (1), subsection (b),
91 section four of this article, a health care facility, or any part
92 thereof, or medical equipment with respect to which a
93 certificate of need was issued under this subsection, may
94 not be sold or leased, and a controlling interest in such
95 facility or equipment or in a lease of such facility or
96 equipment may not be acquired unless the state agency
97 issues a certificate of need approving the sale, acquisition or
98 lease.

99 (g) (1) Notwithstanding review criteria in section six
100 of this article, an application for a certificate of need shall
101 be approved, if the state agency finds that the facility or
102 service with respect to which such capital expenditure is
103 proposed to be made is needed and that the obligation of

104 such capital expenditure is consistent with the state health
105 plan, for a capital expenditure which is required:

106 (A) To eliminate or prevent imminent safety hazards as
107 defined by federal, state or local fire, building or life safety
108 codes or regulations;

109 (B) To comply with state licensure standards; or

110 (C) To comply with accreditation or certification
111 standards, compliance with which is required to receive
112 reimbursements under Title XVIII of the Social Security
113 Act or payments under the state plan for medical assistance
114 approved under Title XIX of such act.

115 (2) An application for a certificate of need approved
116 under this subsection shall be approved only to the extent
117 that the capital expenditure is required to eliminate or
118 prevent the hazards described in subparagraph (A),
119 subdivision (1), subsection (g), or to comply with the
120 standards described in either subparagraph (B) or (C),
121 subdivision (1), subsection (g) of this section.

122 (h) (1) The state agency shall send its decision along
123 with written findings to the person proposing the new
124 institutional health service or exemption and shall make it
125 available to others upon request.

126 (2) In the case of a new institutional health service
127 proposed by a health maintenance organization, the state
128 agency shall send the written findings to the appropriate
129 regional office of the federal department of health and
130 human services at the time they are sent to the applicant.

131 (3) In any decision where the state agency finds that a
132 proposed new institutional health service does not satisfy
133 the criteria in subdivisions (4), (14) and (25), subsection (a),
134 section six of this article, regarding the needs of medically
135 underserved population, it shall so notify in writing the
136 applicant and the appropriate regional office of the federal
137 department of health and human services.

138 (i) In the case of a final decision to approve or approve
139 with conditions a proposal for a new institutional health
140 service, the state agency shall issue a certificate of need to
141 the person proposing the new institutional health service.

142 (j) The state agency shall specify in the certificate the
143 maximum amount of capital expenditures which may be
144 obligated under such certificate. The state agency shall
145 prescribe the method used to determine capital expenditure

146 maximums and shall adopt regulations pursuant to section
147 eight of this article for the review of approved new
148 institutional health services for which the capital
149 expenditure maximum is exceeded or is expected to be
150 exceeded.

151 (k) If the state agency fails to make a decision within the
152 time period specified for the review, the applicant may,
153 within one year following the expiration of such period,
154 bring an action, at the election of the applicant, in either the
155 circuit court of Kanawha County, or with the judge thereof
156 in vacation, or in the circuit court of the county in which the
157 applicant or any one of the applicants resides or does
158 business, or with the judge thereof in vacation to require the
159 state agency to approve or disapprove the application. An
160 application for a proposed new institutional health service
161 or exemption may not be approved or denied by the circuit
162 court solely because the state agency failed to reach a
163 decision.

§16-2D-13. Injunctive relief; civil penalty.

1 (a) In addition to all other remedies, and aside from
2 various penalties provided by law, if any person acquires,
3 offers or develops any new institutional health service for
4 which a certificate of need is required under this article
5 without first having a certificate of need therefor as herein
6 provided, or violates any other provision of this article or
7 any lawful rule or regulation promulgated thereunder,
8 affected persons, as defined in section two of this article,
9 and the state agency shall request that the attorney general
10 maintain a civil action in the circuit court of the county
11 wherein such violation has occurred, or wherein such
12 person may be found, to enjoin, restrain or prevent such
13 violation. No injunction bond shall be required to be filed in
14 any such proceeding.

15 (b) The state agency may assess a civil penalty for
16 violation of this article. Upon the state agency determining
17 that there is probable cause to believe that any person is
18 knowingly offering, developing, or has acquired any new
19 institutional health service subject to certificate of need
20 review without having first obtained a certificate of need
21 therefor or that any person is otherwise in violation of the
22 provisions of this article, or any lawful rule or regulation

23 promulgated thereunder, the state agency shall provide
24 such person with written notice which shall state the nature
25 of the alleged violation and the time and place at which such
26 person shall appear to show good cause why a civil penalty
27 should not be imposed, at which time and place such person
28 shall be afforded an opportunity to cross-examine the state
29 agency's witnesses and afforded an opportunity to present
30 testimony and other evidence in support of his position. The
31 hearing shall be conducted in accordance with the
32 administrative hearing provisions of section four, article
33 five, chapter twenty-nine-a of this code. If, after reviewing
34 the record of such hearing, the state agency director
35 determines that such person is in violation of the certificate
36 of need law, the state agency shall assess a civil penalty of
37 not less than five hundred dollars nor more than twenty-
38 five thousand dollars. In determining the amount of the
39 penalty, the state agency shall consider the degree and
40 extent of harm caused by the violation and the cost of
41 rectifying the damage. Any person assessed shall be notified
42 of the assessment in writing, and the notice shall specify the
43 reasons for the assessment. If the person assessed fails to
44 pay the amount of the assessment to the state agency within
45 thirty days, the attorney general may institute a civil action
46 in the circuit court of the county wherein such violation has
47 occurred, or wherein such person may be found to recover
48 the amount of the assessment. In any such civil action, the
49 scope of the court's review of the state agency's action,
50 which shall include a review of the amount of the
51 assessment, shall be as provided in section four, article five,
52 chapter twenty-nine-a of this code for the judicial review of
53 contested administrative cases.

§16-2D-14. Statute of limitations.

1 The state agency shall have a period of three years in
2 which to take actions as provided in this article to correct
3 violations of the provisions of this article. The three-year
4 period shall begin to run from the date the state agency
5 knows or should have known of the violation. Each new act
6 of a continuing violation shall provide a basis for restarting
7 the calculation of the limitations period.

§16-2D-15. Previously approved rules and regulations.

1 All rules and regulations previously promulgated to

2 implement this article shall continue in force following the
3 amendments to this article; except that, where such
4 previous rules and regulations differ from the requirements
5 of the amendments to this article, then such part of those
6 rules and regulations are hereby abrogated and shall have
7 no further legal effect. The state agency shall commence a
8 review of such rules and regulations and shall promulgate
9 revised rules and regulations.

CHAPTER 93

(Com. Sub. for S. B. 522—By Senator Kaufman)

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

AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend chapter sixteen of said code by adding thereto a new article, designated article three-b, all relating to compulsory immunizations and dissemination of information at birth; pertussis vaccine; definitions; information on adverse reactions to pertussis vaccine to be provided prior to vaccination; recordation of and reporting pertussis vaccination data; data collection; and public hearings.

Be it enacted by the Legislature of West Virginia:

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

Article.

3. Prevention and Control of Communicable and other Infectious Diseases.

3B. Pertussis.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

1 Whenever a resident birth occurs, the state director of

2 health shall promptly provide parents of the newborn
3 child with information on immunizations mandated by
4 this state or required for admission to a public school in
5 this state.

6 All children entering school for the first time in this
7 state shall have been immunized against diphtheria, polio,
8 rubeola, rubella, tetanus and whooping cough. Any
9 person who cannot give satisfactory proof of having been
10 immunized previously or a certificate from a reputable
11 physician showing that an immunization for any or all
12 diphtheria, polio, rubeola, rubella, tetanus and whooping
13 cough is impossible or improper or sufficient reason why
14 any or all immunizations should not be done, shall be
15 immunized for diphtheria, polio, rubeola, rubella, tetanus
16 and whooping cough prior to being admitted in any of
17 the schools of the state. No child or person shall be ad-
18 mitted or received in any of the schools of the state until
19 he or she has been immunized as hereinafter provided,
20 or produces a certificate from a reputable physician show-
21 ing that an immunization for diphtheria, polio, rubeola,
22 rubella, tetanus and whooping cough has been done or is
23 impossible or improper or other sufficient reason why such
24 immunizations have not been done. Any teacher having
25 information concerning any person who attempts to
26 enter school for the first time without having been im-
27 munized against diphtheria, polio, rubeola, rubella,
28 tetanus and whooping cough shall report the names of
29 all such persons to the county health officer. It shall
30 be the duty of the health officer in counties having a
31 full-time health officer to see that such persons are im-
32 munized before entering school.

33 In counties where there is no full-time health officer
34 or district health officer, the county commission or
35 municipal council shall appoint competent physicians to
36 do the immunizations and fix their compensation. County
37 health departments shall furnish the biologicals for this
38 immunization free of charge.

39 Health officers and physicians who shall do this im-
40 munization work shall give to all persons and children a
41 certificate free of charge showing that they have been

42 immunized against diphtheria, polio, rubeola, rubella,
43 tetanus and whooping cough, or he or she may give the
44 certificate to any person or child whom he or she knows
45 to have been immunized against diphtheria, polio, rubeola,
46 rubella, tetanus and whooping cough. If any physician
47 shall give any person a false certificate of immunization
48 against diphtheria, polio, rubeola, rubella, tetanus and
49 whooping cough, he or she shall be guilty of a misde-
50 meanor, and, upon conviction, shall be fined not less
51 than twenty-five nor more than one hundred dollars.

52 Any parent or guardian who refuses to permit his or
53 her child to be immunized against diphtheria, polio,
54 rubeola, rubella, tetanus and whooping cough, who can-
55 not give satisfactory proof that the child or person has
56 been immunized against diphtheria, polio, rubeola,
57 rubella, tetanus and whooping cough previously, or a
58 certificate from a reputable physician showing that an
59 immunization for any or all is impossible or improper, or
60 sufficient reason why any or all immunizations should
61 not be done, shall be guilty of a misdemeanor, and
62 except as herein otherwise provided, shall, upon convic-
63 tion, be punished by a fine of not less than ten nor more
64 than fifty dollars for each offense.

ARTICLE 3B. PERTUSSIS.

§16-3B-1. Definitions.

§16-3B-2. Information supplied to individuals; parents prior to administration of pertussis vaccine.

§16-3B-3. Recordation of pertussis vaccine administration.

§16-3B-4. Data collection on pertussis vaccine administration.

§16-3B-5. Public hearings.

§16-3B-1. Definitions.

1 (a) "Health care provider" means any licensed health
2 care professional, organization or institution, whether
3 public or private, under whose authority pertussis vac-
4 cine is administered.

5 (b) "Major adverse reaction" means any serious ill-
6 ness, disability or impairment of mental, emotional, be-
7 havioral or physical functioning or development, the
8 first manifestation of which appears within four weeks

9 after the date of administration of pertussis vaccine and
10 for which there is reasonable scientific or medical evi-
11 dence that pertussis vaccine causes, or significantly con-
12 tributed to, such effect.

13 (c) "Any other adverse reaction" means any reaction
14 which the department, after consultation with the medi-
15 cal and pharmacy faculties of West Virginia's teaching
16 hospitals, determines by guideline is a basis for not con-
17 tinuing with pertussis vaccine administration.

18 (d) "Pertussis vaccine" means any vaccine that con-
19 tains materials intended to prevent the occurrence of
20 pertussis, whether or not the materials are administered
21 separately or in conjunction with other materials intended
22 to prevent the occurrence of other diseases.

**§16-3B-2. Information supplied to individuals' parents prior to
administration of pertussis vaccine.**

1 (a) Prior to the administration of pertussis vaccine,
2 the health care provider shall provide to the individual's
3 parent or guardian written information satisfying the
4 requirements of this section, and by appropriate inquiries
5 attempt to elicit the information necessary to make the
6 determinations required by this section:

7 (1) The frequency, severity and potential long-term
8 effects of pertussis;

9 (2) Possible adverse reactions to pertussis vaccine
10 which, if they occur, should be brought to the immediate
11 attention of the health care provider;

12 (3) A form listing symptoms to be monitored and con-
13 taining places where information can be recorded to
14 assist in reporting to the health care provider, health
15 officer and the department;

16 (4) Measures parents should take to reduce the risk
17 of, or to respond to, any adverse reaction;

18 (5) Early warning signs or symptoms to which parents
19 should be alert as possible precursors to an adverse re-
20 action;

21 (6) When and to whom parents should report any
22 adverse reaction; and

23 (7) The information required under section four of
24 this article.

§16-3B-3. Recordation of pertussis vaccine administration.

1 (a) At the time of administration of pertussis vaccine
2 to an individual, the health care provider shall record
3 in a permanent record to which the patient or the
4 patient's parent or guardian shall have access on request:

5 (1) The date of each vaccination;

6 (2) The manufacturer and lot number of the vaccine
7 used for each;

8 (3) Any other identifying information on the vaccine
9 used; and

10 (4) The name and title of the health care provider.

11 (b) Within twenty-four hours after an adverse re-
12 action is recognized by any health care provider who has
13 administered pertussis vaccine to an individual and has
14 reason to believe that the individual has had a major
15 adverse reaction to the vaccine, such health care provider
16 shall:

17 (1) Record all relevant information in the individual's
18 permanent medical record; and

19 (2) Report the information including the manufac-
20 turer's name and lot number to the county health officer
21 who shall immediately forward the information to the
22 department. On receipt of the information, the depart-
23 ment shall immediately notify the vaccine manufacturer,
24 and the United States centers for disease control.

§16-3B-4. Data collection on pertussis vaccine administration.

1 (a) By guideline, the department shall establish a
2 system, sufficient for the purposes of subsections (b) and
3 (c) of this section, to collect data from the local health
4 officers, from public and private health care providers
5 and from parents on the incidence of pertussis and major
6 adverse reactions to pertussis vaccine.

7 (b) On the basis of information collected under this
8 subsection and of other information available, the de-

9 partment shall periodically revise and update the in-
10 formation required by and the guidelines adopted under
11 section two of this article.

12 (c) (1) The department shall report to the United
13 States centers for disease control all information col-
14 lected under this section, including that received under
15 section three of this article.

16 (2) The department shall report annually to the Legis-
17 lature on the incidence of pertussis and of adverse re-
18 actions to pertussis vaccine.

§16-3B-5. Public hearings.

1 (a) The department shall adopt guidelines, after notice
2 and public hearing in accordance with the administrative
3 procedures act, chapter twenty-nine-a of this code, setting
4 forth:

5 (1) The circumstances under which pertussis vaccine
6 should not be administered;

7 (2) The circumstances under which administration of
8 the vaccine should be delayed;

9 (3) Any categories of potential recipients who are
10 significantly more vulnerable to major adverse reactions
11 than is the general population; and

12 (4) Procedures to notify all health care providers of
13 the content of the final guidelines and all updates issued
14 thereafter.

15 (b) The administration of pertussis vaccine to an in-
16 dividual may not be required by any provision of law if,
17 in the judgment of the health care provider:

18 (1) The circumstances specified under this section are
19 present; or

20 (2) Taking into account the information specified under
21 this section as well as all other relevant information,
22 the risk to the potential recipient outweighs the benefits
23 both to the potential recipient and to the public in ad-
24 ministering the vaccine.

25 (c) Nothing in this section shall be construed to affect
26 any emergency authority of the director of health under
27 any other provision of law to protect the public health.

CHAPTER 94

(H. B. 1055—By Delegate Blatnik and Delegate Davis)

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

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to the establishment of a central registry of traumatic spinal cord injuries; and requiring the current acute care facility to report spinal cord injuries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-15. Establishment of a central registry of traumatic spinal cord injury; physicians required to report spinal cord injury.

1 (a) The director shall establish and maintain a central
2 registry of persons who sustain spinal cord injury other than
3 through disease, whether or not permanent disability results,
4 in order to facilitate the provisions of appropriate rehabilita-
5 tive services by the division or other state agencies to such
6 persons.

7 (b) The current acute care facility shall report to the director
8 by the most expeditious means within seven days after
9 identification of any person sustaining such an injury. The
10 report shall contain the name and residence of the person and
11 the name of the current acute care facility.

CHAPTER 95

(H. B. 1408—By Delegate Moore)

[Passed March 20, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two

of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal holidays; date of observing Martin Luther King's Birthday.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and observed
2 as legal holidays, viz: The first day of January, commonly
3 called "New Year's Day"; the third Monday of January,
4 commonly called "Martin Luther King's Birthday"; the twelfth
5 day of February, commonly called "Lincoln's Birthday"; the
6 third Monday of February, commonly called "Washington's
7 Birthday"; the last Monday in May, commonly called
8 "Memorial Day"; the twentieth day of June, commonly called
9 "West Virginia Day"; the fourth day of July, commonly called
10 "Independence Day"; the first Monday of September,
11 commonly called "Labor Day"; the second Monday of
12 October, commonly called "Columbus Day"; the eleventh day
13 of November, hereafter referred to as "Veterans Day"; the
14 fourth Thursday of November, commonly called "Thanksgiving
15 Day"; the twenty-fifth day of December, commonly called
16 "Christmas Day"; any national, state or other election day
17 throughout the district or municipality wherein the election is
18 held; and all days which may be appointed or recommended
19 by the governor of this state, or the president of the United
20 States, as days of thanksgiving, or for the general cessation
21 of business; and when any of these days or dates falls on a
22 Sunday, then the succeeding Monday shall be regarded,
23 treated and observed as the legal holiday.

24 When the return day of any summons or other court
25 proceeding or any notice or time fixed for holding any court
26 or doing any official act shall fall on any of these holidays,
27 the next ensuing day which is not a Saturday, Sunday or legal
28 holiday shall be taken as meant and intended: *Provided*, That
29 nothing herein contained shall increase nor diminish the legal

- 30 school holidays provided for in section two, article five,
31 chapter eighteen-a of this code.

CHAPTER 96

(H. B. 2090—By Delegate Davis and Delegate Wells)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to authorizing county commissions and municipalities to impose a local hotel tax in conformity with state law, and as to such, providing for three percent rate of tax; definitions of terms; liability of the consumer for payment of the tax; collection of the tax by the hotel operator as a part of the consideration paid for the use or occupancy of hotel room; commingling of tax with receipts by hotel operator unless otherwise required; taxing authority to have superior lien thereon; hotel not to represent that it will absorb all or any part of tax; occupancy billed to government agencies and employees; collection of tax on credit sales; priority of tax as subordinate in bankruptcy to claims of the United States and this state; personal liability of hotel operator for failure to collect or remit tax; remittance of tax by hotel to taxing authority; returns and payment of tax; record keeping; personal liability of officers; general administration; expenditure of tax receipts; and imposing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. HOTEL OCCUPANCY TAX.

- §7-18-1. Hotel occupancy tax.
§7-18-2. Rate of tax.
§7-18-3. Definitions.
§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel.
§7-18-5. Occupancy billed to government agencies or employees.

- §7-18-6. Collection of tax when sale on credit.
- §7-18-7. Receivership bankruptcy; priority of tax.
- §7-18-8. Failure to collect or remit tax; liability of hotel operator.
- §7-18-9. Total amount collected to be remitted.
- §7-18-10. Tax return and payment.
- §7-18-11. Keeping and preserving of records.
- §7-18-12. Liability of officers.
- §7-18-13. General procedure and administration.
- §7-18-14. Proceeds of tax; application of proceeds.
- §7-18-15. Criminal penalties.

§7-18-1. Hotel occupancy tax.

1 (a) *Authority to impose.* — On and after the first day of
2 July, one thousand nine hundred eighty-five, any county or
3 municipality may impose and collect a privilege tax upon the
4 occupancy of hotel rooms located within its taxing jurisdiction.
5 Such tax shall be imposed and collected as provided in this
6 article.

7 (b) *Municipal tax.* — A municipal hotel tax shall be
8 imposed by ordinance enacted by the governing body of the
9 municipality, in accordance with the provisions of article
10 eleven, chapter eight of this code. Such tax shall be imposed
11 uniformly throughout the municipality; and the tax shall apply
12 to all hotels located within the corporate limits of the
13 municipality, including hotels owned by the state or by any
14 political subdivision of this state.

15 (c) *County tax.* — A county hotel tax shall be imposed by
16 order of the county commission duly entered of record. Such
17 tax shall be imposed uniformly throughout the county:
18 *Provided,* That no county commission may impose its tax on
19 hotels located within the corporate limits of any municipality
20 situated, in whole or in part, within the county: *Provided,*
21 *however,* That the tax collected by a hotel owned by a
22 municipality but located outside the corporate limits of such
23 municipality pursuant to this article shall be remitted to the
24 municipality owning such hotel for expenditure pursuant to
25 the provisions of section fourteen of this article. The tax shall
26 apply to all hotels located outside the corporate limits of a
27 municipality, including hotels owned by the state or any
28 political subdivision of this state.

29 (d) The tax shall be imposed on the consumer and shall be
30 collected by the hotel operator as part of the consideration

31 paid for the occupancy of a hotel room: *Provided*, That the
32 tax shall not be imposed on any consumer occupying a hotel
33 room for thirty or more consecutive days.

§7-18-2. Rate of tax.

1 The rate of tax imposed shall be three percent of the
2 consideration paid for the use or occupancy of a hotel room.
3 Such consideration shall not include the amount of tax
4 imposed on the transaction under article fifteen, chapter eleven
5 of this code, or charges for meals, valet service, room service,
6 telephone service or other charges or consideration not paid
7 for use or occupancy of a hotel room.

§7-18-3. Definitions.

1 For the purposes of this article:

2 (a) "Consideration paid" or "consideration" means the
3 amount received in money, credits, property or other
4 consideration for or in exchange for the right to occupy a hotel
5 room as herein defined.

6 (b) "Consumer" means a person who pays the consideration
7 for the use or occupancy of a hotel room. The term
8 "consumer" shall not be construed to mean the government
9 of the United States of America, its agencies or instrumental-
10 ities, or the government of the state of West Virginia or
11 political subdivisions thereof.

12 (c) "Hotel" means any facility, building or buildings,
13 publicly or privately owned (including a facility located in a
14 state, county or municipal park), in which the public may, for
15 a consideration, obtain sleeping accommodations. The term
16 shall include, but not be limited to, boarding houses, hotels,
17 motels, inns, courts, lodges, cabins and tourist homes. The
18 term "hotel" shall include state, county and city parks offering
19 accommodations as herein set forth. The term "hotel" shall not
20 be construed to mean any hospital, sanitarium, extended care
21 facility, nursing home or university or college housing unit or
22 any facility providing fewer than three hotel rooms, nor any
23 tent, trailer or camper campsites: *Provided*, That where a
24 university or college housing unit provides sleeping accommo-
25 dations for the general nonstudent public for a consideration,
26 the term "hotel" shall, if otherwise applicable, apply to such
27 accommodations for the purposes of this tax.

28 (d) "Hotel operator" means the person who is proprietor of
29 a hotel, whether in the capacity of owner, lessee, mortgagee
30 in possession, licensee, trustee in possession, trustee in
31 bankruptcy, receiver, executor or in any other capacity. Where
32 the hotel operator performs his functions through a managing
33 agent of any type or character other than an employee, the
34 managing agent shall also be deemed a hotel operator for the
35 purposes of this article and shall have the same duties and
36 liabilities as his principal. Compliance with the provisions of
37 this article by either the principal or the managing agent shall,
38 however, be considered to be compliance by both.

39 (e) "Hotel room" means any room or suite of rooms or
40 other facility affording sleeping accommodations to the general
41 public and situated within a hotel. The term "hotel room" shall
42 not be construed to mean a banquet room, meeting room or
43 any other room not primarily used for, or in conjunction with,
44 sleeping accommodations.

45 (f) "Person" means any individual, firm, partnership, joint
46 venture, association, syndicate, social club, fraternal organiza-
47 tion, joint stock company, receiver, corporation, guardian,
48 trust, business trust, trustee, committee, estate, executor,
49 administrator or any other group or combination acting as a
50 unit.

51 (g) "State park" means any state-owned facility which is
52 part of this state's park and recreation system established
53 pursuant to this code. For purposes of this article, any
54 recreational facility otherwise qualifying as a "hotel" and
55 situated within a state park shall be deemed to be solely within
56 the county in which the building or buildings comprising said
57 facility are physically situated, notwithstanding the fact that
58 the state park within which said facility is located may lie
59 within the jurisdiction of more than one county.

60 (h) "Tax," "taxes" or "this tax" means the hotel occupancy
61 tax authorized by this article.

62 (i) "Taxing authority" means a municipality or county
63 levying or imposing the tax authorized by this article.

64 (j) "Taxpayer" means any person liable for the tax
65 authorized by this article.

§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel.

1 (a) The consumer shall pay to the hotel operator the
2 amount of tax imposed by any municipality or county
3 hereunder, which tax shall be added to and shall constitute
4 a part of the consideration paid for the use and occupancy
5 of the hotel room, and which tax shall be collectible as such
6 by the hotel operator who shall account for, and remit to the
7 taxing authority, all taxes paid by consumers. The hotel
8 operator shall separately state the tax authorized by this article
9 on all bills, invoices, accounts, books of account and records
10 relating to consideration paid for occupancy or use of a hotel
11 room. The hotel operator may commingle taxes collected
12 hereunder with the proceeds of the rental of hotel accommo-
13 dations unless the taxing authority shall, by ordinance, order,
14 regulation or otherwise require in writing the hotel operator
15 to segregate such taxes collected from such proceeds. The
16 taxing authority's claim shall be enforceable against, and shall
17 be superior to, all other claims against the moneys so
18 commingled excepting only claims of the state for moneys held
19 by the hotel pursuant to the provisions of article fifteen,
20 chapter eleven of this code. All taxes collected pursuant to the
21 provisions of this article shall be deemed to be held in trust
22 by the hotel until the same shall have been remitted to the
23 taxing authority as hereinafter provided.

24 (b) A hotel or hotel operator shall not represent to the
25 public in any manner, directly or indirectly, that it will absorb
26 all or any part of the tax or that the tax is not to be considered
27 an element in the price to be collected from the consumer.

§7-18-5. Occupancy billed to government agencies or employees.

1 (a) Hotel room occupancy billed directly to the federal
2 government shall be exempt from this tax: *Provided*, That
3 rooms paid for by a federal government employee for which
4 reimbursement is made shall be subject to this tax.

5 (b) Hotel room occupancy billed directly to this state or its
6 political subdivisions shall be exempt from this tax: *Provided*,
7 That rooms paid for by an employee of this state for which
8 reimbursement is made shall be subject to this tax.

§7-18-6. Collection of tax when sale on credit.

1 A hotel operator doing business wholly or partially on a

2 credit basis shall require the consumer to pay the full amount
3 of tax due upon a credit sale at the time such sale is made
4 or within thirty days thereafter.

§7-18-7. Receivership bankruptcy; priority of tax.

1 In the distribution, voluntary or compulsory, in receivership,
2 bankruptcy or otherwise, of the property or estate of any
3 person, all taxes due and unpaid authorized under this article
4 shall be paid from the first money available for distribution
5 in priority to all claims and liens except taxes and debts due
6 to the United States which under federal law are given priority
7 over the debts and liens created by municipal ordinance or
8 order of the county commission for this tax and taxes and
9 debts due to the state of West Virginia. Any person charged
10 with the administration or distribution of any such property
11 or estate who shall violate the provisions of this section shall
12 be personally liable for any taxes accrued and unpaid which
13 are chargeable against the person whose property or estate is
14 in administration or distribution.

§7-18-8. Failure to collect or remit tax; liability of hotel operator.

1 If any hotel operator fails to collect the tax authorized by
2 this article and levied pursuant to municipal ordinance or
3 order of the county commission or shall fail to properly remit
4 such tax to the taxing authority, he shall be personally liable
5 for such amount as he failed to collect or remit: *Provided,*
6 That such hotel operator shall not be held liable for failure
7 to collect such tax if the hotel operator can by good and
8 substantial evidence prove the refusal of the purchaser to pay
9 this tax despite the diligent effort in good faith of the hotel
10 operator to collect the tax.

§7-18-9. Total amount collected to be remitted.

1 No profit shall accrue to any person as a result of the
2 collection of the tax authorized under this article. Notwith-
3 standing that the total amount of such taxes collected by a
4 hotel operator may be in excess of the amount for which a
5 consumer would be liable by the application of the levy of
6 three percent for the occupancy of a hotel room or rooms,
7 the total amount of all taxes collected by any hotel operator
8 shall be remitted to the taxing authority as hereinafter
9 provided.

§7-18-10. Tax return and payment.

1 Unless otherwise provided by ordinance, order, rule or
2 regulation of the taxing authority, the tax authorized by this
3 article, if imposed or levied by any municipality or county,
4 shall be due and payable in monthly installments on or before
5 the fifteenth day of the calendar month next succeeding the
6 month in which the tax accrued: *Provided*, That for credit
7 sales in which the tax authorized by this article is not collected
8 by the hotel operator at the time of such sales, such tax shall
9 not, for purposes of this article, be regarded as having accrued
10 until the date on which it is either received by the hotel
11 operator or upon the expiration of the thirty day payment
12 period set forth in section six of this article, whichever shall
13 first occur. The hotel operator shall, on or before the fifteenth
14 day of each month, prepare and deliver to the taxing authority
15 a return for the preceding month, in the form prescribed by
16 the taxing authority. Such form shall include all information
17 necessary for the computation, collection and subsequent
18 distribution of the tax as the taxing authority may require. A
19 remittance for the amount of the tax due shall accompany each
20 return. Each return shall be signed by the hotel operator or
21 his duly authorized agent.

§7-18-11. Keeping and preserving of records.

1 Each hotel operator shall keep complete and accurate
2 records of taxable sales and of charges, together with a record
3 of the tax collected thereon, and shall keep all invoices and
4 other pertinent documents in such form as the taxing authority
5 may require. Such records and other documents shall be
6 preserved for a period of not less than three years, unless the
7 taxing authority shall consent in writing to their destruction
8 within that period or shall require that they be kept for a
9 longer period.

§7-18-12. Liability of officers.

1 If the taxpayer is an association or corporation, the officers
2 thereof actually participating in the management or operation
3 of the association or corporation shall be personally liable,
4 jointly and severally, for any default on the part of the
5 association or corporation; and payment of tax, fines,
6 additions to tax or penalties which may be imposed by state
7 law, municipal ordinance, order of the county commission or

8 other authority may be enforced against such officers as
9 against the association or corporation which they represent.

§7-18-13. General procedure and administration.

1 (a) The taxing authority shall promulgate, by ordinance,
2 order, rule or regulation, administrative procedures for the
3 assessment, collection and refund of the tax authorized by this
4 article. In the case of a county, the sheriff of that county shall
5 be the county's agent for administration and collection of the
6 tax and shall have the power to distrain property and to
7 initiate civil suits for collection of this tax. The county
8 commission may promulgate such regulations and return
9 forms as may be necessary or desirable for the administration
10 and collection of the tax.

11 (b) The county assessor shall have the power and the duty
12 to issue tax returns and to receive tax returns for this tax.

13 (c) In any dispute arising among or between cities or
14 counties or cities and counties as to jurisdiction to tax or
15 apportionment of taxes collected, the tax commissioner may
16 by ruling or regulation decide such disputes.

17 (d) Notwithstanding any other provisions of this section,
18 taxing authorities may, in accordance with the provisions of
19 article twenty-three, chapter eight of this code, enter into
20 agreements among and between such taxing authorities for the
21 collection or administration of this tax.

22 (e) Notwithstanding any other provisions of this section,
23 taxing authorities may, in accordance with the provisions of
24 article twenty-three, chapter eight of this code, enter into
25 agreements with the tax commissioner for auditing services:
26 *Provided*, That the taxing authorities shall pay to the tax
27 commissioner the reasonable cost of such audits.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* — The net proceeds of the tax
2 collected and remitted to the taxing authority pursuant to this
3 article shall be deposited into the general revenue fund of such
4 municipality or county commission, and after appropriation
5 thereof shall be expended only as provided in subsections (b)
6 and (c) of this section.

7 (b) *Required expenditures.* — At least fifty percent of the

8 net revenue receivable during the fiscal year by a county, or
9 a municipality, pursuant to this article shall be expended in the
10 following manner for the promotion of conventions and
11 tourism:

12 (1) *Municipalities.* — If a convention and visitor's bureau
13 is located within the municipality, the governing body of such
14 municipality shall appropriate the percentage required by this
15 subsection (b) to that bureau. If a convention and visitor's
16 bureau is not located within the municipality, but such a
17 bureau is located within the county in which the municipality
18 is located, then the percentage appropriation required by this
19 subsection (b) shall be appropriated to such convention and
20 visitor's bureau located within such county. If a convention
21 and visitor's bureau is not located within such county, then
22 the percentage appropriation required by this subsection (b)
23 shall be appropriated as follows:

24 (i) Any hotel located within such municipality may apply
25 to such municipality for an appropriation to such hotel of a
26 portion of the tax authorized by this article and collected by
27 such hotel and remitted to such municipality, for uses directly
28 related to the promotion of tourism and travel, including
29 advertising, salaries, travel, office expenses, publications and
30 similar expenses. The portion of such tax allocable to such
31 hotel shall not exceed seventy-five percent of that portion of
32 such tax collected and remitted by such hotel which is required
33 to be expended pursuant to subsection (b) of this section:
34 *Provided,* That prior to appropriating any moneys to such
35 hotel such municipality shall require the submission of, and
36 give approval to, a budget setting forth the proposed uses of
37 such moneys.

38 (ii) The balance of net revenue required to be expended by
39 subsection (b) of this section shall be appropriated to the
40 regional travel council serving the area in which the
41 municipality is located.

42 (2) *Counties.* — If a convention and visitor's bureau is
43 located within a county, the county commission shall
44 appropriate the percentage required by this subsection (b) to
45 that convention and visitor's bureau. If a convention and
46 visitor's bureau is not located within such county, then the

47 percentage appropriation required by this subsection (b) shall
48 be appropriated as follows:

49 (i) Any hotel located within such county may apply to such
50 county for an appropriation to such hotel of a portion of the
51 tax authorized by this article and collected by such hotel and
52 remitted to such county, for uses directly related to the
53 promotion of tourism and travel, including advertising,
54 salaries, travel, office expenses, publications and similar
55 expenses. The portion of such tax allocable to such hotel shall
56 not exceed seventy-five percent of that portion of such tax
57 collected and remitted by such hotel which is required to be
58 expended pursuant to subsection (b) of this section: *Provided*,
59 That prior to appropriating any moneys to such hotel such
60 county shall require the submission of, and give approval to,
61 a budget setting forth the proposed uses of such moneys.

62 (ii) The balance of net revenue required to be expended by
63 subsection (b) of this section shall be appropriated to the
64 regional travel council serving the area in which the county
65 is located.

66 (3) *Legislative finding.* — The Legislature hereby finds that
67 the support of convention and visitor's bureaus, hotels and
68 regional travel councils is a public purpose for which funds
69 may be expended. Local convention and visitor's bureaus,
70 hotels and regional travel councils receiving funds under this
71 subsection (b) may expend such funds for the payment of
72 administrative expenses, and for the direct or indirect
73 promotion of conventions and tourism, and for any other uses
74 and purposes authorized by subdivisions one and two of this
75 subsection (b).

76 (c) *Permissible expenditures.* — After making the appropri-
77 ation required by subsection (b) of this section, the remaining
78 portion of the net revenues receivable during the fiscal year
79 by such county or municipality, pursuant to this article, may
80 be expended for one or more of the purposes set forth in this
81 subsection, but for no other purpose. The purposes for which
82 expenditures may be made pursuant to this subsection are as
83 follows:

84 (1) The planning, construction, reconstruction, establish-
85 ment, acquisition, improvement, renovation, extension,
86 enlargement, equipment, maintenance, repair and operation of
87 publicly owned convention facilities including, but not limited

- 88 to, arenas, auditoriums, civic centers and convention centers;
- 89 (2) The payment of principal or interest or both on revenue
90 bonds issued to finance such convention facilities;
- 91 (3) The promotion of conventions;
- 92 (4) The construction or maintenance of public parks, tourist
93 information centers and recreation facilities (including land
94 acquisition); or
- 95 (5) The promotion of the arts.
- 96 (d) *Definitions.* — For purposes of this section, the
97 following terms are defined:
- 98 (1) *Convention and visitor's bureau and visitor's and*
99 *convention bureau.* — “Convention and visitor’s bureau” and
100 “visitor’s and convention bureau” are interchangeable, and
101 either shall mean a nonstock, nonprofit corporation with a
102 full-time staff working exclusively to promote tourism and to
103 attract conventions, conferences and visitors to the municipal-
104 ity or county in which such convention and visitor’s bureau
105 or visitor’s and convention bureau is located.
- 106 (2) *Convention center.* — “Convention center” means a
107 convention facility owned by the state, a county, a municipal-
108 ity or other public entity or instrumentality and shall include
109 all facilities, including armories, commercial, office, commun-
110 ity service and parking facilities, and publicly owned facilities
111 constructed or used for the accommodation and entertainment
112 of tourist and visitors, constructed in conjunction with the
113 convention center and forming reasonable appurtenances
114 thereto.
- 115 (3) *Fiscal year.* — “Fiscal year” means the year beginning
116 July first and ending June thirtieth of the next calendar year.
- 117 (4) *Net proceeds.* — “Net proceeds” means the gross
118 amount of tax collections less the amount of tax lawfully
119 refunded.
- 120 (5) *Promotion of the arts.* — “Promotion of the arts” means
121 activity to promote public appreciation and interest in one or
122 more of the arts. It includes the promotion of music for all
123 types, the dramatic arts, dancing, painting and the creative arts
124 through shows, exhibits, festivals, concerts, musicals and plays.

125 (6) *Recreational facilities.* — “Recreational facilities” means
126 and includes any public park, parkway, playground, public
127 recreation center, athletic field, sports arena, stadium, skating
128 rink or arena, golf course, tennis courts and other park and
129 recreation facilities, whether of a like or different nature, that
130 are owned by a county or municipality.

131 (7) *Regional travel council.* — “Regional travel council”
132 means a nonstock, nonprofit corporation, with a full-time staff
133 working exclusively to promote tourism and to attract
134 conventions, conferences and visitors to the region of this state
135 served by the regional travel council.

§7-18-15. **Criminal penalties.**

1 (a) It shall be unlawful for any person to willfully refuse
2 to collect or to pay the tax or to willfully refuse to make the
3 return required to be made by this article; or to willfully make
4 any false or fraudulent return or false statement in any return
5 with the intent to defraud any taxing authority, or to willfully
6 evade the payment of the tax, or any part thereof; or for any
7 person to willfully aid or abet another in any attempt to evade
8 the payment of the tax, or any part thereof; or for any officer,
9 partner or principal of any corporation or association to
10 willfully make or willfully permit to be made for such
11 corporation or association any false return, or any false
12 statement in any return authorized by this article, with the
13 intent to evade the payment of this tax.

14 (b) Any person willfully violating any of the provisions of
15 this article shall for the first offense be guilty of a misdemea-
16 nor, and, upon conviction thereof, shall be fined not more than
17 five hundred dollars or imprisoned for a period of not more
18 than thirty days, or both fined and imprisoned. For each
19 offense after the first offense, such person shall be guilty of
20 a felony, and, upon conviction thereof, shall be fined not less
21 than one thousand dollars nor more than ten thousand dollars,
22 or imprisoned in the penitentiary not less than one nor more
23 than three years, or in the discretion of the court be confined
24 in the county jail not more than one year, or both fined and
25 imprisoned.

26 (c) Every prosecution for any offense arising under this
27 article shall be commenced within three years after the offense
28 was committed, notwithstanding any provision of this code to
29 the contrary.

30 (d) Proceedings against any person under this section shall
31 be initiated in the county of this state wherein such person
32 resides if any element of the offense occurs in such county of
33 residence, or if no element of the offense occurs in such county
34 of residence, then in the county where the offense was
35 committed.

36 (e) For purposes of this section, the term:

37 (1) "Willfully" means the intentional violation of a known
38 legal duty to perform any act, required to be performed by
39 any provision of this article, in respect of which the violation
40 occurs: *Provided*, That the mere failure to perform any act
41 shall not be a willful violation under this article. A willful
42 violation of this article requires that the defendant have had
43 knowledge of or notice of a duty to perform such act, and
44 that the defendant, with knowledge of or notice of such duty,
45 intentionally failed to perform such act.

46 (2) "Evade" means to willfully and fraudulently commit any
47 act with the intent of depriving the state of payment of any
48 tax which there is a known legal duty to pay.

49 (3) "Fraud" means any false representation or concealment
50 as to any material fact made by any person with the knowledge
51 that it is not true and correct, with the intention that such
52 representation or concealment be relied upon by the state.

CHAPTER 97

(H. B. 1697—By Mr. Speaker, Mr. Albright and Delegate Swann)

[Passed April 2, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, eighteen and twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article eighteen-b of said chapter, all relating to the West Virginia housing development fund; defining eligible persons and families by including persons or families of higher income; defining temporary housing to include temporary residential housing for shelters for homeless people, housing for victims of flood

and other disasters, shelters for abused or battered persons and their children, housing for families with hospitalized family members, housing for students and student families and housing for handicapped; authorizing the housing development fund to own real property and to make loans for temporary housing; providing tax exemption; authorizing a limit on borrowing; providing that the housing development fund may contract with private institutions to place and service loans and authorizing an increase in the interest rate for servicing of loans.

Be it enacted by the Legislature of West Virginia:

That sections three, six, eighteen and twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article eighteen-b of said chapter be amended and reenacted, all to read as follows:

Article.

18. West Virginia Housing Development Fund.

18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-3. Definitions.

§31-18-6. Corporate powers.

§31-18-18. Tax exemption.

§31-18-20. Authorized limit on borrowing.

§31-18-3. Definitions.

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

2 (1) "Annual sinking fund payment" means the amount of
3 money specified in the resolution or resolutions authorizing
4 term bonds as payable into a sinking fund during a particular
5 calendar year for the retirement of term bonds at maturity
6 after such calendar year, but shall not include any amount
7 payable by reason only of the maturity of a bond;

8 (2) "Development costs" means the costs approved by the
9 housing development fund as appropriate expenditures by the
10 housing development fund, by sponsors of land development
11 for residential housing, or by sponsors of residential housing,
12 within this State, including, but not limited to:

13 (a) Payments for options to purchase properties on the

14 proposed residential housing site, deposits on contracts of
15 purchase, or, with prior approval of the housing development
16 fund, payments for the purchase of such properties;

17 (b) Legal and organization expenses, including payments of
18 attorneys' fees, project manager and clerical staff salaries,
19 office rent and other incidental expenses;

20 (c) Payment of fees for preliminary feasibility studies and
21 advances for planning, engineering and architectural work;

22 (d) Expenses for tenant surveys and market analyses; and

23 (e) Necessary application and other fees;

24 (3) "Eligible persons and families" means:

25 (a) Persons and families of low and moderate income; or

26 (b) Persons or families of higher income to the extent the
27 housing development fund shall find and determine, by
28 resolution, that construction of new or rehabilitated residential
29 housing for occupancy by them will cause to be vacated
30 existing sanitary, decent and safe residential housing available
31 at prices or rentals which persons and families of low and
32 moderate income can afford; or

33 (c) Persons or families of higher income to the extent the
34 housing development fund shall find and determine, by
35 resolution, that construction of new or rehabilitated multi-
36 family rental housing or new, rehabilitated or existing home
37 ownership housing in the state for occupancy by them will
38 further economic growth, increase the housing stock in the
39 state by eliminating substandard or deteriorating housing
40 conditions, or provide additional housing opportunities in the
41 state; or

42 (d) Persons who because of age or physical disability are
43 found and determined by the housing development fund, by
44 resolution, to require residential housing of a special location
45 or design in order to provide them with sanitary, decent and
46 safe residential housing; or

47 (e) Persons and families for whom, as found and determined
48 by the housing development fund by resolution, construction
49 of new or rehabilitated residential housing some designated
50 area or areas of the state is necessary for the purpose of

51 retaining in, or attracting to, such area or areas qualified
52 manpower resources essential to modern mining, industrial
53 and commercial operations and development in such area or
54 areas;

55 (4) "Federally insured construction loan" means a construc-
56 tion loan for land development for residential housing or for
57 residential housing which is either secured by a federally
58 insured mortgage or a federal mortgage, or which is insured
59 by the United States or an instrumentality thereof, or a
60 commitment by the United States or an instrumentality thereof
61 to insure such loan;

62 (5) "Federal insured mortgage" means a mortgage loan for
63 land development for residential housing or for residential
64 housing insured or guaranteed by the United States or an
65 instrumentality thereof to insure such a mortgage;

66 (6) "Federal mortgage" means mortgage loan for land
67 development for residential housing or for residential housing
68 made by the United States or an instrumentality thereof, or
69 a commitment by the United States or an instrumentality
70 thereof to make such a mortgage loan;

71 (7) "Housing development fund" means the West Virginia
72 housing development fund heretofore created and established
73 by section four of this article;

74 (8) "Land development" means the process of acquiring
75 land for residential housing construction and of making,
76 installing or constructing nonresidential housing improve-
77 ments, including waterlines and water supply installations,
78 sewer lines and sewage disposal installations, steam, gas and
79 electric lines and installations, roads, streets, curbs, gutters,
80 sidewalks, whether on or off the site, which the housing
81 development fund deems necessary or desirable to prepare
82 such land for residential housing construction within this state;

83 (9) "Land development fund" means the land development
84 fund which may be created and established by the housing
85 development fund in accordance with section twenty-a of this
86 article;

87 (10) "Minimum bond insurance requirement" means, as of
88 any particular date of computation, an amount of money equal
89 to the greatest of the respective amounts, for the then current

90 or any future calendar year, of annual debt service of the
91 housing development fund on all outstanding mortgage finance
92 bonds, such annual debt service for any calendar year being
93 the amount of money equal to the aggregate of (a) all interest
94 payable during such calendar year on such mortgage finance
95 bonds on said date of computation, plus (b) the principal
96 amount of such mortgage finance bonds outstanding which
97 matures during such calendar year, other than mortgage
98 finance bonds for which annual sinking fund payments have
99 been or are to be made in accordance with the resolution
100 authorizing such bonds, plus (c) the amount of all annual
101 sinking fund payments payable during such calendar year with
102 respect to any such mortgage finance bonds, all calculated on
103 the assumption that bonds will after said date of computation
104 cease to be outstanding by reason, but only by reason, of the
105 payment of bonds when due, and the payment when due and
106 application in accordance with the resolution authorizing such
107 bonds of all such sinking fund payments payable at or after
108 said date of computation;

109 (11) "Mortgage finance bonds" means bonds issued or to be
110 issued by the housing development fund and secured by a
111 pledge of amounts payable from the mortgage finance bond
112 insurance fund in the manner and to the extent provided in
113 section twenty-b of this article;

114 (12) "Mortgage finance bond insurance fund" means the
115 special trust fund created and established in the state treasury
116 in accordance with section twenty-b of this article;

117 (13) "Operating loan fund" means the operating loan fund
118 which may be created and established by the housing
119 development fund in accordance with section nineteen of this
120 article;

121 (14) "Persons and families of low and moderate income"
122 means persons and families, irrespective of race, creed,
123 national origin or sex, determined by the housing development
124 fund to require such assistance as is made available by this
125 article on account of personal or family income not sufficient
126 to afford sanitary, decent and safe housing, and to be eligible
127 or potentially eligible to occupy residential housing con-
128 structed and financed, wholly or in part, with federally insured
129 construction loans, federally insured mortgages, federal

130 mortgages or with other public or private assistance, or with
131 uninsured construction loans, or uninsured mortgage loans,
132 and in making such determination the fund shall take into
133 account the following: (a) The amount of the total income of
134 such persons and families available for housing needs, (b) the
135 size of the family, (c) the cost and condition of housing
136 facilities available, (d) the eligibility of such persons and
137 families for federal housing assistance of any type predicated
138 upon low or moderate income basis, and (e) the ability of such
139 persons and families to compete successfully in the normal
140 housing market and to pay the amounts at which private
141 enterprise is providing sanitary, decent and safe housing:
142 *Provided*, That to the extent found and determined by the
143 housing development fund, by resolution, to be necessary or
144 appropriate for the purposes of eliminating undesirable social
145 conditions and permanently eliminating slum conditions, the
146 income limitation requirements of this article may be waived
147 as to any persons or families who are eligible to occupy
148 residential housing constructed in whole, or in part, with
149 federally insured construction loans, federally insured
150 mortgages or federal mortgages under housing assistance or
151 mortgage insurance programs of the United States, or an
152 instrumentality thereof, predicated upon any low or moderate
153 income basis;

154 (15) "Residential housing" means a specific work or
155 improvement within this State undertaken primarily to provide
156 dwelling accommodations, including the acquisition, construc-
157 tion or rehabilitation of land, buildings and improvements
158 thereto, for residential housing, including, but not limited to,
159 nursing homes and intermediate care facilities, and such other
160 nonhousing facilities as may be incidental or appurtenant
161 thereto;

162 (16) "Special bond insurance commitment fee" means a fee
163 in the amount of one per centum of the total principal amount
164 of each loan which is to be temporarily or permanently
165 financed from the proceeds of mortgage finance bonds, other
166 than a federally insured construction loan, a federally insured
167 mortgage or a federal mortgage, or an amount equal to an
168 equivalent discount on each loan purchased or invested in by
169 the housing development fund from the proceeds of mortgage
170 finance bonds, other than a federally insured construction

171 loan, a federally insured mortgage or a federal mortgage, and
172 which may be payable from the proceeds of such bonds or
173 any other source available to the housing development fund
174 for such use: *Provided*, That if the period of time between the
175 first disbursement of proceeds of such loan and the date upon
176 which it is specified that the first repayment of principal of
177 such a loan shall be payable exceeds twelve months, an
178 additional amount computed on the basis of one twelfth of
179 one per centum per month on the total principal amount of
180 such loan over the number of months of such period of time
181 in excess of twelve months shall be included in such fee;

182 (17) "Special bond insurance premium" means (i) a fee at
183 the rate of one half of one percent per annum on the
184 outstanding principal balance which the housing development
185 fund shall charge the borrower of a mortgage loan, or of a
186 loan secured by a mortgage, financed from the proceeds of
187 mortgage finance bonds, other than a federally insured
188 construction loan, a federally insured mortgage or a federal
189 mortgage, which shall accrue from a date which is one month
190 prior to the date on which the first installment payment of
191 principal of such a loan is payable and which shall be payable
192 thereafter in monthly installments on the same day of each
193 successive month that installment payments of principal of
194 such a loan are payable, and (ii) with respect to any loan, other
195 than a federally insured construction loan, a federally insured
196 mortgage or a federal mortgage, purchased, or invested in with
197 such proceeds, an equivalent amount which the housing
198 development fund shall set aside from payments it receives on
199 such loan or from any other source available to the housing
200 development fund for such use;

201 (18) "State sinking fund commission" means the commis-
202 sion known as such and continued in existence pursuant to
203 article three, chapter thirteen of this code and any body,
204 board, person or commission which shall, by law, hereafter
205 succeed to the powers and duties of such commission;

206 (19) "Temporary housing" means a specific work or
207 improvement within this state undertaken primarily to provide
208 dwelling accommodations, including the acquisition, construc-
209 tion or rehabilitation of land, buildings and improvements
210 thereto, for temporary residential housing, including, but not
211 limited to, shelters for homeless people, housing for victims

212 of floods and other disasters, shelters for abused or battered
213 persons and their children, housing for families with
214 hospitalized family members, housing for students and student
215 families, and housing for the handicapped and such other
216 nonhousing facilities as may be incidental or appurtenant
217 thereto;

218 (20) "Uninsured construction loans" means a construction
219 loan for land development or for residential housing which is
220 not secured by either a federally insured mortgage or a federal
221 mortgage, and which is not insured by the United States or
222 an instrumentality thereof, and as to which there is no
223 commitment by the United States or an instrumentality thereof
224 to provide insurance;

225 (21) "Uninsured mortgage" and "uninsured mortgage loan"
226 means a mortgage loan for land development or for residential
227 housing which is not insured or guaranteed by the United
228 States or an instrumentality thereof, and as to which there is
229 no commitment by the United States or an instrumentality
230 thereof to provide insurance.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and
2 may exercise all powers necessary or appropriate to carry out
3 and effectuate its corporate purpose, including, but not limited
4 to, the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land development for
7 residential or temporary housing for occupancy by eligible
8 persons and families or to sponsors of residential or temporary
9 housing for occupancy by eligible persons and families. Such
10 loans shall be made only upon determination by the housing
11 development fund that construction loans are not otherwise
12 available, wholly or in part, from private lenders upon
13 reasonably equivalent terms and conditions;

14 (2) To make temporary loans, with or without interest, but
15 with such security for repayment as the housing development
16 fund determines reasonably necessary and practicable, from
17 the operating loan fund, if created, established, organized and
18 operated in accordance with the provisions of section nineteen
19 of this article, to defray development costs to sponsors of land

20 development for residential or temporary housing for
21 occupancy by persons and families of low and moderate
22 income or residential or temporary housing construction for
23 occupancy by persons and families of low and moderate
24 income which is eligible or potentially eligible for federally
25 insured construction loans, federally insured mortgages,
26 federal mortgages or uninsured construction loans or
27 uninsured mortgage loans;

28 (3) To make or participate in the making of long-term
29 federally insured mortgage loans to sponsors of residential or
30 temporary housing for occupancy by eligible persons and
31 families, or to eligible persons and families, who may purchase
32 or construct such residential or temporary housing. Such loans
33 shall be made only upon determination by the housing
34 development fund that long-term mortgage loans are not
35 otherwise available, wholly or in part, from private lenders
36 upon reasonably equivalent terms and conditions;

37 (4) To accept appropriations, gifts, grants, bequests and
38 devises, and to utilize or dispose of the same to carry out its
39 corporate purpose;

40 (5) To make and execute contracts, releases, compromises,
41 compositions and other instruments necessary or convenient
42 for the exercise of its powers, or to carry out its corporate
43 purpose;

44 (6) To collect reasonable fees and charges in connection
45 with making and servicing its loans, notes, bonds, obligations,
46 commitments and other evidences of indebtedness, and in
47 connection with providing technical, consultative and project
48 assistance services. Such fees and charges shall be limited to
49 the amounts required to pay the costs of the housing
50 development fund, including operating and administrative
51 expenses, and reasonable allowances for losses which may be
52 incurred;

53 (7) To invest any funds not required for immediate
54 disbursement in any of the following securities:

55 (i) Direct obligations of or obligations guaranteed by the
56 United States of America;

57 (ii) Bonds, debentures, notes or other evidences of indebted-
58 ness issued by any of the following agencies: Banks for

59 cooperatives; federal intermediate credit banks; federal home
60 loan bank system; Export-Import Bank of the United States;
61 federal land banks; the Federal National Mortgage Association
62 or the Government National Mortgage Association;

63 (iii) Public housing bonds issued by public agencies or
64 municipalities and fully secured as to the payment of both
65 principal and interest by a pledge of annual contributions
66 under an annual contributions contract or contracts with the
67 United States of America; or temporary notes issued by public
68 agencies or municipalities or preliminary loan notes issued by
69 public agencies or municipalities, in each case, fully secured
70 as to the payment of both principal and interest by a
71 requisition or payment agreement with the United States of
72 America;

73 (iv) Certificates of deposit secured by obligation of the
74 United States of America;

75 (v) Direct obligations of or obligations guaranteed by the
76 State of West Virginia;

77 (vi) Direct and general obligations of any other state within
78 the territorial United States, to the payment of the principal
79 of and interest on which the full faith and credit of such state
80 is pledged: *Provided*, That at the time of their purchase, such
81 obligations are rated in either of the two highest rating
82 categories by a nationally recognized bond-rating agency; and

83 (vii) Any fixed interest bond, note or debenture of any
84 corporation organized and operating within the United States:
85 *Provided*, That such corporation shall have a minimum net
86 worth of fifteen million dollars and its securities or its parent
87 corporation's securities are listed on one or more of the
88 national stock exchanges: *Provided, however*, That (1) such
89 corporation has earned a profit in eight of the preceding ten
90 fiscal years as reflected in its statements, and (2) such
91 corporation has not defaulted in the payment of principal or
92 interest on any of its outstanding funded indebtedness during
93 its preceding ten fiscal years, and (3) the bonds, notes or
94 debentures of such corporation to be purchased are rated
95 "AA" or the equivalent thereof or better than "AA" or the
96 equivalent thereof by at least two or more nationally
97 recognized rating services such as Standard and Poor's, Dun
98 & Bradstreet or Moody's;

- 99 (8) To sue and be sued;
- 100 (9) To have a seal and alter the same at will;
- 101 (10) To make, and from time to time, amend and repeal
102 bylaws and rules and regulations not inconsistent with the
103 provisions of this article;
- 104 (11) To appoint such officers, employees and consultants as
105 it deems advisable and to fix their compensation and prescribe
106 their duties;
- 107 (12) To acquire, hold and dispose of real and personal
108 property for its corporate purposes;
- 109 (13) To enter into agreements or other transactions with any
110 federal or state agency, any person and any domestic or
111 foreign partnership, corporation, association or organization;
- 112 (14) To acquire real property, or an interest therein, in its
113 own name, by purchase or foreclosure, where such acquisition
114 is necessary or appropriate to protect any loan in which the
115 housing development fund has an interest and to sell, transfer
116 and convey any such property to a buyer and, in the event
117 such sale, transfer or conveyance cannot be effected with
118 reasonable promptness or at a reasonable price, to lease such
119 property to a tenant;
- 120 (15) To sell, at public or private sale, any mortgage or other
121 negotiable instrument or obligation securing a construction,
122 rehabilitation, improvement, land development, mortgage or
123 temporary loan;
- 124 (16) To procure insurance against any loss in connection
125 with its property in such amounts, and from such insurers, as
126 may be necessary or desirable;
- 127 (17) To consent, whenever it deems it necessary or desirable
128 in the fulfillment of its corporate purpose, to the modification
129 of the rate of interest, time of payment or any installment of
130 principal or interest, or any other terms, of mortgage loan,
131 mortgage loan commitment, construction loan, rehabilitation
132 loan, improvement loan, temporary loan, contract or
133 agreement of any kind to which the housing development fund
134 is a party;
- 135 (18) To make and publish rules and regulations respecting

136 its federally insured mortgage lending, uninsured mortgage
137 lending, construction lending, rehabilitation lending, improve-
138 ment lending and lending to defray development costs and any
139 such other rules and regulations as are necessary to effectuate
140 its corporate purpose;

141 (19) To borrow money to carry out and effectuate its
142 corporate purpose and to issue its bonds or notes as evidence
143 of any such borrowing in such principal amounts and upon
144 such terms as shall be necessary to provide sufficient funds for
145 achieving its corporate purpose, except that no notes shall be
146 issued to mature more than ten years from date of issuance
147 and no bonds shall be issued to mature more than fifty years
148 from date of issuance;

149 (20) To issue renewal notes, to issue bonds to pay notes and,
150 whenever it deems refunding expedient, to refund any bonds
151 by the issuance of new bonds, whether the bonds to be
152 refunded have or have not matured except that no such
153 renewal notes shall be issued to mature more than ten years
154 from date of issuance of the notes renewed and no such
155 refunding bonds shall be issued to mature more than fifty years
156 from the date of issuance;

157 (21) To apply the proceeds from the sale of renewal notes
158 or refunding bonds to the purchase, redemption or payment
159 of the notes or bonds to be refunded;

160 (22) To provide technical services to assist in the planning,
161 processing, design, construction, or rehabilitation or improve-
162 ment of residential and temporary housing for occupancy by
163 eligible persons and families or land development for
164 residential and temporary housing for occupancy by eligible
165 persons and families;

166 (23) To provide consultative project assistance services for
167 residential and temporary housing for occupancy by eligible
168 persons and families and for land development for residential
169 and temporary housing for occupancy by eligible persons and
170 families and for the residents thereof with respect to
171 management, training and social services;

172 (24) To promote research and development in scientific
173 methods of constructing low cost residential and temporary
174 housing of high durability;

175 (25) With the proceeds from the issuance of notes or bonds
176 of the housing development fund, including, but not limited
177 to, mortgage finance bonds, or with other funds available to
178 the housing development fund for such purpose, to participate
179 in the making of or to make loans to mortgagees approved
180 by the housing development fund and take such collateral
181 security therefor as is approved by the housing development
182 fund and to invest in, purchase, acquire, sell or participate in
183 the sale of, or take assignments of, notes and mortgages,
184 evidencing loans for the construction, rehabilitation, improve-
185 ment, purchase or refinancing of residential and temporary
186 housing in this state: *Provided*, That the housing development
187 fund shall obtain such written assurances as shall be
188 satisfactory to it that the proceeds of such loans, investments
189 or purchases will be used, as nearly as practicable, for the
190 making of or investment in long-term federally insured
191 mortgage loans or federally insured construction loans,
192 uninsured mortgage loans or uninsured construction loans, for
193 residential and temporary housing for occupancy by eligible
194 persons and families in this state or that other moneys in an
195 amount approximately equal to such proceeds shall be
196 committed and used for such purpose;

197 (26) To make or participate in the making of uninsured
198 construction loans to sponsors of land development for
199 residential or temporary housing for occupancy by eligible
200 persons and families or to sponsors of residential or temporary
201 housing for occupancy by eligible persons and families, or to
202 eligible persons and families who may construct such housing.
203 Such loans shall be made only upon determination by the
204 housing development fund that construction loans are not
205 otherwise available, wholly or in part, from private lenders
206 upon reasonably equivalent terms and conditions;

207 (27) To make or participate in the making of long-term
208 uninsured mortgage loans to sponsors of residential or
209 temporary housing for occupancy by eligible persons and
210 families, or to eligible persons and families who may purchase
211 or construct such residential housing. Such loans shall be made
212 only upon determination by the housing development fund
213 that long-term mortgage loans are not otherwise available,
214 wholly or in part, from private lenders upon reasonably
215 equivalent terms and conditions;

216 (28) To obtain options to acquire and to acquire real
217 property, or any interest therein, in its own name, by purchase,
218 or lease, or otherwise, which is found by the housing
219 development fund to be suitable, or potentially suitable, as a
220 site, or as part of a site, for the construction of residential or
221 temporary housing; to hold such real property; to make loans
222 to finance the performance of land development activities on
223 or in connection with any such real property or to perform
224 land development activities on or in connection with any such
225 real property; to sponsor the development of residential and
226 temporary housing for occupancy by eligible persons and
227 families on such real property; and to sell, transfer and convey,
228 lease or otherwise dispose of such real property, or lots, tracts
229 or parcels of such real property, or residential or temporary
230 housing, for such prices, upon such terms, conditions and
231 limitations, and at such time or times as the housing
232 development fund shall determine, to sponsors of residential
233 or temporary housing: *Provided*, That if the housing
234 development fund shall determine that any such real property
235 or any lots, tracts or parcels of such real property are not at
236 any time or times needed for present or future residential or
237 temporary housing, the housing development fund may sell,
238 transfer and convey, lease or otherwise dispose of the same,
239 to such purchasers or lessees, for such prices, upon such terms,
240 conditions and limitations, and for such uses and purposes as
241 the housing development fund shall determine;

242 (29) To make loans, with or without interest, but with such
243 security for repayment as the housing development fund
244 determines reasonably necessary and practicable from the land
245 development fund, if created, established, organized and
246 operated in accordance with the provisions of section twenty-
247 a of this article, to sponsors of land development, to defray
248 development costs and other costs of land development;

249 (30) To exercise all of the rights, powers and authorities of
250 a public housing authority as set forth and provided in article
251 fifteen, chapter sixteen of this code in any area or areas of
252 the state which the housing development fund shall determine
253 by resolution to be necessary or appropriate;

254 (31) To make or participate in the making of loans to
255 eligible persons and families for the purpose of rehabilitating
256 or improving existing residential and temporary housing, or

257 to owners of existing residential or temporary housing for
258 occupancy by eligible persons and families for the purpose of
259 rehabilitating or improving such residential or temporary
260 housing and, in connection therewith, to refinance existing
261 loans involving the same property. Such loans shall be made
262 only upon determination by the housing development fund
263 that rehabilitation or improvement loans are not otherwise
264 available, wholly or in part, from private lenders upon
265 reasonably equivalent terms and conditions;

266 (32) Whenever the housing development fund deems it
267 necessary in order to exercise any of its powers set forth in
268 subdivision (28) of this section, and upon being unable to agree
269 with the owner or owners of real property or interest therein
270 sought to be acquired by the fund upon a price for acquisition
271 of private property not being used or operated by the owner
272 in the production of agricultural products, to exercise the
273 powers of eminent domain in the acquisition of such real
274 property or interest therein in the manner provided under
275 chapter fifty-four of this code, and the purposes set forth in
276 subdivision (28) of this section are hereby declared to be public
277 purposes for which private property may be taken. For the
278 purposes of this section, the determination of "use or operation
279 by the owner in the production of agricultural products"
280 means that the principal use of such real estate is for the
281 production of food and fiber by agricultural production other
282 than forestry, and the fund shall not initiate or exercise any
283 powers of eminent domain without first receiving an opinion
284 in writing from both the governor and the commissioner of
285 agriculture of this state that at the time the fund had first
286 attempted to acquire such real estate or interest therein, such
287 real estate or interest therein was not in fact being used or
288 operated by the owner in the production of agricultural
289 products.

§31-18-18. Tax exemption.

1 The housing development fund shall not be required to pay
2 any taxes and assessments to the state of West Virginia, or
3 any county, municipality or other governmental subdivision of
4 the state of West Virginia, upon any of its property or upon
5 its obligations or other evidences of indebtedness pursuant to
6 the provisions of this article, or upon any moneys, funds,
7 revenues or other income held or received by the housing

8 development fund. The notes and bonds of the housing
9 development fund and the income therefrom shall at all times
10 be exempt from taxation, except for death and gift taxes, taxes
11 on transfers, sales taxes, real property taxes and business and
12 occupation taxes.

§31-18-20. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued
2 by the housing development fund shall not exceed one billion,
3 two hundred fifty million dollars outstanding at any one time:
4 *Provided*, That in computing the total amount of bonds and
5 notes which may at any one time be outstanding, the principal
6 amount of any outstanding bonds or notes refunded or to be
7 refunded either by application of the proceeds of the sale of
8 any refunding bonds or notes of the housing development fund
9 or by exchange for any such refunding bonds or notes, shall
10 be excluded.

**ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT
INVESTMENT POOL.**

**§31-18B-9. Housing development fund may contract with private
institutions to place and service loans or may itself
provide such servicing; increasing interest rate and
payment of a portion of interest to cover cost of
servicing.**

1 (a) The housing development fund may contract with
2 private mortgage companies, savings and loan associations or
3 banks to provide for the placement, origination and servicing
4 of the mortgages described in this article or the housing
5 development fund may provide such servicing: *Provided*, That
6 such institutions must be licensed to do business in West
7 Virginia and, in the case of a savings and loan, or a bank,
8 must be under the supervision of the department of banking
9 of this state as provided in chapter thirty-one-a of this code
10 or must be a national bank or a federally insured savings and
11 loan. Such institutions shall follow the same restrictions as the
12 housing development fund, and shall act only as the agent for
13 such.

14 (b) Notwithstanding the maximum interest rate specified in
15 section six of this article, the housing development fund is
16 authorized to increase the interest rate, up to one half of one
17 percent over the rate provided in section six to pay the cost

18 of placing and servicing the mortgages.

19 (c) If the housing development fund so determines, one of
20 the points provided for in section six of this article may be
21 paid to the private mortgage company, bank or savings and
22 loan to cover the expense of origination of the loan.

CHAPTER 98

(S. B. 704—Originating in the Committee on Finance)

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

AN ACT to amend and reenact section five, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; compensation of members and reimbursement for expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-5. Composition; appointment, terms and oath of members; compensation and expenses.

1 The commission shall be composed of nine members,
2 all residents and citizens of the state of West Virginia and
3 broadly representative of the several racial, religious and
4 ethnic groups residing within the state, to be appointed
5 by the governor, by and with the advice and consent of
6 the Senate. Not more than five members of the com-
7 mission shall be members of the same political party and
8 at least one member, but not more than three members,
9 shall be from any one congressional district.

10 Members of the commission shall be appointed for
11 terms of three years commencing on the first day of July
12 of the year of their appointments, except that the nine
13 members first appointed hereunder shall be appointed

14 for terms of from one to three years, respectively, so
15 that the terms of three members of the commission will
16 expire on the thirtieth day of June of each succeeding
17 year thereafter. Upon the expiration of the initial terms,
18 all subsequent appointments shall be for terms of three
19 years each, except that appointments to fill vacancies
20 shall be for the unexpired term thereof. Members shall
21 be eligible for reappointment. Before assuming and per-
22 forming any duties as a member of the commission, each
23 commission member shall take and subscribe to the of-
24 ficial oath prescribed by section 5, article IV of the Con-
25 stitution of West Virginia, which executed oath shall be
26 filed in the office of the secretary of state.

27 The members of the commission shall not receive a
28 salary, but each appointed member shall be paid twenty-
29 five dollars per diem for actual time spent in the per-
30 formance of duties under this article and shall be re-
31 imburbed for actual and necessary expenses incident to
32 the performance of their duties, upon presentation of an
33 itemized and sworn statement thereof. The foregoing per
34 diem and reimbursement for actual and necessary ex-
35 penses shall be paid from appropriations made by the
36 Legislature to the commission.

CHAPTER 99

(H. B. 1100—By Delegate Knight and Delegate McKinley)

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

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the department of human services.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF
COMMISSIONER OF HUMAN SERVICES; POW-
ERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

**§9-2-1a. Department of welfare renamed department of human
services; continuation.**

1 The state department of welfare, created pursuant to the
2 provisions of chapter nine of this code, is hereby continued
3 as an official department of the state of West Virginia, but
4 effective May twenty-nine, one thousand nine hundred eighty-
5 three, its name shall be the department of human services. All
6 references in the code to the department of welfare shall mean
7 the department of human services, and all references to the
8 commissioner of the department of welfare shall mean the
9 commissioner of the department of human services and for all
10 other legal purposes the department of welfare shall continue
11 as the department of human services.

12 After having conducted a performance audit through its
13 joint committee on government operations, pursuant to section
14 nine, article ten, chapter four of this code, the Legislature
15 hereby finds and declares that the department of human
16 services should be continued and reestablished. Accordingly,
17 notwithstanding the provisions of section four, article ten,
18 chapter four of this code, the department of human services
19 shall continue to exist until the first day of July, one thousand
20 nine hundred ninety-one.

CHAPTER 100

(S. B. 606—By Senator Whitacre)

[Passed April 10, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale and transportation of legally taken furs, pelts and parts of legally taken fur-bearing animals and fish beyond the limits of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

§20-2-12. Transportation of wildlife out of state; penalties.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate pri-
2 vate game preserves for the purpose of propagating game
3 for commercial purposes, and those legally licensed to
4 propagate or sell fish, amphibians and other forms of
5 aquatic life, shall purchase or offer to purchase, sell or
6 offer to sell, expose for sale, or have in his possession for
7 the purpose of sale any wildlife, or part thereof, which
8 has been designated as game animals, fur-bearing ani-
9 mals, game birds, game fish or amphibians, or any of the
10 song or insectivorous birds of the state, or any other spe-
11 cies of wildlife which the director may designate: *Pro-*
12 *vided*, That pelts of game or fur-bearing animals taken
13 during the legal season may be sold: *Provided, however,*
14 That hide, head, antlers and feet of a legally killed deer
15 and the hide, head, skull, organs and feet of a legally
16 killed black bear may be sold.

17 No person, including a common carrier, shall transport,
18 carry or convey, or receive for such purposes any wildlife,
19 the sale of which is prohibited, if such person knows or
20 has reason to believe that such wildlife has been or is to
21 be sold in violation of this section.

22 The selling or exposing for sale, having in possession for
23 sale, transporting or carrying in violation of this section
24 shall each constitute a separate misdemeanor offense.
25 Notwithstanding the provisions of this or any other sec-
26 tion of this chapter, any game birds or game bird meats
27 sold by licensed retailers may be served at any hotel,
28 restaurant or other licensed eating place in this state.

29 The director shall have authority to promulgate rules

30 and regulations in accordance with chapter twenty-nine-
31 a of this code, dealing with the sale of wildlife and the
32 skins thereof.

§20-2-12. Transportation of wildlife out of state; penalties.

1 No person shall at any time transport or have in his
2 possession with the intention of transporting beyond the
3 limits of the state, any species of wildlife or any part
4 thereof killed, taken, captured or caught within this state:
5 *Provided*, That a nonresident legally entitled to hunt and
6 fish in this state may take with him personally, when
7 leaving the state, any wildlife that he has lawfully taken
8 or killed, not exceeding, during the open season, the num-
9 ber that any person may lawfully take or kill in any
10 two days. This section shall not apply to persons legally
11 entitled to propagate and sell wild animals, wild birds,
12 fish, amphibians and other forms of aquatic life: *Provided*,
13 *however*, That licensed resident hunters and trappers and
14 resident and nonresident fur dealers may transport be-
15 yond the limits of the state pelts of game and fur-bearing
16 animals taken during the legal season: *Provided further*,
17 That hide, head, antlers and feet of a legally killed deer,
18 and the hide, head, skull, organs and feet of a legally
19 killed black bear may also be transported beyond the
20 limits of the state. The director shall have authority to
21 promulgate rules and regulations in accordance with
22 chapter twenty-nine-a of this code, dealing with the
23 transportation and tagging of wildlife and the skins
24 thereof.

25 Notwithstanding any provision of this section, any per-
26 son violating the provisions of this section by transporting
27 or possessing with the intention of transporting beyond
28 the limits of this state, deer or wild boar, shall be deemed
29 to have committed a separate offense for each animal so
30 transported or possessed. Any person violating the provi-
31 sions of this section shall be guilty of a misdemeanor, and,
32 upon conviction thereof, shall be fined not less than
33 twenty dollars nor more than three hundred dollars and
34 be imprisoned in the county jail not less than ten nor
35 more than sixty days.

CHAPTER 101

(H. B. 1995—By Delegate M. Harman)

[Passed April 9, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. **Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.**

1 (a) No person in any county of this state shall hunt, capture
2 or kill any bear, or have in his possession any bear, or any
3 part thereof, including fresh pelt, except during the hunting
4 season for bear designated by rules and regulations to be
5 promulgated by the department of natural resources and at no
6 other time nor in any other way than as herein and therein
7 provided. A person on killing a bear shall, within twenty-four
8 hours after killing, deliver the bear or fresh skin to a
9 conservation officer or checking station for tagging. The bear
10 shall have affixed thereto an appropriate tag provided by the
11 department before any part of the bear may be transported
12 more than seventy-five miles from the point of kill. Any bear
13 not properly tagged, or any part of such bear, shall be forfeited
14 to the state for disposal to a charitable institution, or school,
15 or as otherwise designated by the department of natural
16 resources.

17 It shall be unlawful:

18 (1) To hunt bear without a bear damage stamp as prescribed
19 in section forty-four-b of this article, in addition to a hunting
20 license as prescribed in this article;

21 (2) To hunt a bear with (a) a shotgun using ammunition
22 loaded with more than one solid ball, or (b) a rifle of less than
23 twenty-five caliber using rimfire ammunition or (c) a crossbow;

24 (3) To kill or attempt to kill any bear through the use of
25 poison, or explosives, or through the use of snares, steel traps
26 or deadfalls other than as authorized herein;

27 (4) To shoot at or kill a cub bear weighing less than one
28 hundred pounds or to kill any bear accompanied by such cub;

29 (5) To have in possession any part of a bear not tagged in
30 accordance with the provisions of this section;

31 (6) To enter a state game refuge with firearms for the
32 purpose of pursuing or killing a bear except under the direct
33 supervision of department personnel;

34 (7) To hunt bear with dogs during seasons other than those
35 designated for such purpose by the department of natural
36 resources; after a bear is spotted and the chase has begun, to
37 pursue the bear with other than the pack of dogs in use at
38 the beginning of the hunt;

39 (8) To train bear hunting dogs on bear or to cause dogs
40 to chase bear at times other than those designated by the
41 department of natural resources for the hunting of bear;

42 (9) Notwithstanding the provisions of sections twenty-three
43 and twenty-four of this article, for any person to organize for
44 commercial purposes, or to professionally outfit a bear hunt
45 or to give or receive any consideration whatsoever or any
46 donation in money, goods or services in connection with a bear
47 hunt;

48 (10) For any person, who is not a resident of this state, to
49 hunt bear with dogs or to use dogs in any fashion for the
50 purpose of hunting bear in this state, except in legally
51 authorized hunts.

52 (b) The following shall apply to bear destroying property:

53 (1) Any property owner including a lessee, who has suffered
54 damage to real or personal property including loss occasioned
55 by the death of livestock or the injury thereto or the unborn
56 issue thereof, caused by an act of a bear may complain to any
57 conservation officer of the department of natural resources, for

58 the protection against such bear. Upon receipt of the
59 complaint, such officer shall immediately proceed to investi-
60 gate the circumstances giving rise to such complaint, and if
61 such officer is unable to personally investigate the complaint,
62 he shall designate a wildlife biologist to investigate on his
63 behalf and if the complaint is found to be justified, such officer
64 or designated person, may, together with the owner and other
65 residents, proceed to hunt and destroy or capture the bear
66 which is determined to have caused the property damage:
67 *Provided*, That only the conservation officer or the wildlife
68 biologist shall determine whether the bear shall be destroyed
69 or captured. Notwithstanding any provision of this article, if
70 it is determined that the complaint is justified, the officer or
71 designated person may summon or use dogs from within or
72 without this state to effectuate the hunting and destruction or
73 capture of such bear. *Provided, however*, That in the event
74 dogs from without this state are used in such hunt, the owners
75 thereof shall be the only nonresidents permitted to participate
76 in hunting such bear.

77 (2) When a property owner has suffered damage as the
78 result of an act by a bear, such owner shall file a report with
79 the director of the department of natural resources, stating
80 whether or not such bear was hunted and destroyed and if so,
81 the sex, weight and estimated age of subject bear, and also
82 submit to the department an appraisal of the property damage
83 occasioned by subject bear duly signed by three competent
84 appraisers, fixing the value of the property lost. Such report
85 shall be ruled upon and the alleged damages examined by a
86 commission to which it shall be referred by the department.
87 The commission shall be composed of the complaining
88 property owner, an officer of the department and a person to
89 be selected by the officer of the department and the
90 complaining property owner. The department shall by rules
91 and regulations to be promulgated, establish the procedures
92 to be followed in presenting and deciding claims under this
93 section and all such claims shall be paid in the first instance
94 from the bear damage fund provided in section forty-four-b
95 of this article, and in the event such fund is insufficient to pay
96 all claims determined by the commission to be just and proper
97 the remainder due to owners of lost or destroyed property shall
98 be paid from the special revenue account of the department
99 of natural resources.

100 (3) In all cases where the act of the bear complained of by
101 the property owner is the killing of livestock, the value to be
102 established is the fair market value of the livestock at the date
103 of death, and in cases where livestock killed is pregnant, the
104 total value shall be the sum of the values of the mother and
105 the unborn issue, with the value of the unborn issue to be
106 determined on the basis of the fair market value of the issue,
107 had it been born. In no event shall the fair market value of
108 the livestock exceed twice the assessed value of the livestock
109 for personal property taxes.

110 (c) Any person who kills a bear in violation of the
111 provisions of this section shall be guilty of a misdemeanor,
112 and, upon conviction thereof, shall be fined not less than two
113 hundred dollars nor more than five hundred dollars, or
114 imprisoned in the county jail not less than thirty nor more than
115 one hundred days, or both fined and imprisoned.

CHAPTER 102

(Com. Sub. for S. B. 685—By Senator Tucker)

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

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty-two, relating to former prisoners of war being permitted to hunt and fish in season without licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-62. Persons exempt from obtaining hunting and fishing licenses; qualification.

1 Any person who has been a prisoner of war, was hon-

2 orably discharged from the military forces and is a resi-
3 dent of this state may take, or catch by angling, fish of
4 the kind lawfully permitted to be taken or caught and
5 may hunt or trap wild birds or wild quadrupeds lawfully
6 permitted to be hunted or trapped without procuring a
7 fishing license, hunting license or trapping permit. The
8 person, while taking or catching fish or hunting or trap-
9 ping wild birds or wild quadrupeds for which he would
10 otherwise be required to have a fishing license, hunting
11 license or trapping permit, shall carry written evidence
12 in the form of a record of separation, a letter from one of
13 the military forces of the United States, or such other
14 evidence as the director of the department of natural
15 resources requires by rule that satisfies the eligibility
16 criteria established by this section.

17 For purposes of this section, the term "prisoner of war"
18 means any member of the armed forces of the United
19 States, including the United States coast guard and na-
20 tional guard, who was held by any hostile force with
21 which the United States was actually engaged in armed
22 conflict during any period of the incarceration; or any
23 person, military or civilian, assigned to duty on the U.S.S.
24 Pueblo who was captured by the military forces of North
25 Korea on the twenty-third of January, one thousand nine
26 hundred sixty-eight, and thereafter held prisoner. Not-
27 withstanding any provision in this section, a prisoner of
28 war shall not include any person who, at any time, volun-
29 tarily, knowingly and without duress, gave aid to or col-
30 laborated with or in any manner served any such hostile
31 force.

CHAPTER 103

(Com. Sub. for H. B. 1424—By Delegate Givens)

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

AN ACT to amend chapter sixteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article twenty-nine-c, relating to the establishment and funding of an indigent care fund; assessment of hospitals by health care cost review authority; rules and regulations; legislative task force on uncompensated health care and medicaid expenditures created; termination of article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29C. INDIGENT CARE.

- §16-29C-1. Short title.
- §16-29C-2. Legislative findings.
- §16-29C-3. Indigent care fund.
- §16-29C-4. Legislative study; appointment of members; expenses; reports; termination.
- §16-29C-5. Effective date and termination date.

§16-29C-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Indigent Care Act."

§16-29C-2. Legislative findings.

- 1 The Legislature does hereby find as follows:
- 2 (a) That hospitals in this state presently are required to bear
- 3 without compensation a substantial portion of the cost of the
- 4 health care services rendered to indigent patients in this state;
- 5 (b) That, as a result of this burden, hospitals in this state
- 6 presently are forced to shift the cost of these uncompensated
- 7 services onto private pay patients and increase substantially
- 8 their charges to private pay patients;
- 9 (c) That, as a further result of this burden, the financial
- 10 status of hospitals in this state and the health and welfare of
- 11 the citizens of this state are threatened;
- 12 (d) That, in order to alleviate this burden and the results
- 13 thereof, special funds for the state's medicaid program must
- 14 be established to assist hospitals in financing these uncompen-
- 15 sated services;
- 16 (e) That, increasing numbers of citizens of this state are

17 experiencing difficulties having access to medical care due to
18 the lack of resources to pay for medical services;

19 (f) That, no immediate relief is seen for such individuals by
20 way of their obtaining medical insurance or having access to
21 sufficient funds to pay for such medical services;

22 (g) That, the state medicaid program faces serious financial
23 difficulties in terms of decreasing amounts of available federal
24 and state dollars by which to fund the medicaid program and
25 in paying debts presently owed hospitals;

26 (h) That the magnitude of the present problem may
27 necessitate an assessment of hospitals for a period limited to
28 one year as a means of raising additional revenue to address
29 the problem;

30 (i) That, the provision of primary health services in the
31 hospital setting is inefficient from both a cost containment and
32 a medical practices viewpoint; and

33 (j) That, the health and well-being of all state citizens is of
34 primary concern to state government.

§16-29C-3. Indigent care fund.

1 (a) There is hereby created in the state treasury a special
2 fund to be known as the indigent care fund.

3 (b) Moneys from the following sources shall be paid into
4 the indigent care fund:

5 (1) For the state's fiscal year beginning in the year one
6 thousand nine hundred eighty-five, the Legislature shall make
7 an appropriation to the indigent care fund in an amount to
8 be determined by it which shall be in addition to its general
9 appropriation to the state's medicaid program; and

10 (2) On the first day of July, one thousand nine hundred
11 eighty-five, the West Virginia health care cost review authority
12 may assess hospitals under the jurisdiction of the authority,
13 with the exception of hospitals owned and operated by the
14 state government, an aggregate amount which is either equal
15 to the Legislature's fiscal year one thousand nine hundred
16 eighty-five-eighty-six appropriation to the indigent care fund
17 or three million dollars, whichever is less: *Provided*, That if
18 the authority makes such an assessment, the authority shall

19 certify that such assessment is for a one-year period and is
20 necessary for the health and well-being of all the citizens of
21 the state and provide the reasons therefor.

22 (c) Each hospital assessed pursuant to subdivision (2),
23 subsection (b) of this section shall be assessed on a pro rata
24 basis based upon a three year average of net revenues less
25 expenditures and taxes for each hospital's one thousand nine
26 hundred eighty-two, one thousand nine hundred eighty-three
27 and one thousand nine hundred eighty-four fiscal years
28 weighted by the hospital's ratio of West Virginia gross
29 medicaid revenues to gross patient revenues for the same three-
30 year period. Payment of this assessment shall be made in four
31 equal quarterly payments and remittable no later than the end
32 of the month succeeding the close of each quarter.

33 (d) All moneys paid into the indigent care fund shall be used
34 to supplement the Legislature's general appropriation to the
35 state's medicaid program in order that the state may receive
36 corresponding matching funds from the federal government
37 and the state's medicaid program shall be utilized to finance
38 the amount of inpatient and outpatient acute care hospital
39 services practicable.

40 (e) If it is determined by the United States department of
41 health and human services that federal medicaid funds will not
42 be forthcoming to match all or part of the funds assessed from
43 hospitals, that portion of the hospital assessment for which no
44 matching federal funds will be forthcoming will not be
45 collected from hospitals and any such hospital assessment
46 already collected will be returned to said hospitals.

47 (f) Any balance remaining in the indigent care fund at the
48 end of the state's fiscal year shall not revert to the state
49 treasury, but shall remain in the indigent care fund and be used
50 consistent with subsection (d) of this section.

51 (g) The West Virginia health care cost review authority shall
52 administer and promulgate rules and regulations to implement
53 the provisions of this section: *Provided*, That in so doing the
54 authority shall seek the advice of the department of human
55 services: *Provided, however*, That nothing in this article shall
56 be construed to give the West Virginia health care cost review
57 authority any jurisdiction over the medicaid program or its
58 operations.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1 Not later than the first day of June, one thousand nine
2 hundred eighty-five, the president of the Senate and speaker
3 of the House of Delegates of the West Virginia Legislature
4 shall appoint a legislative task force on uncompensated health
5 care and medicaid expenditures which shall meet, study and
6 make recommendations as herein provided.

7 The task force shall be composed of three members of the
8 Senate appointed by the president from the membership of the
9 Senate standing committee on health and human resources,
10 three members of the House of Delegates appointed by the
11 speaker from the membership of the House of Delegates
12 standing committee on health and welfare, and a number of
13 citizens appointed jointly by the president and speaker which,
14 in their discretion, adequately provides for the appropriate
15 representation of the interests of the providers of health care
16 services, the providers of health care insurance, state
17 departments involved in the administration of health care and
18 health care related programs and the citizens of this state. Of
19 the members of the Senate appointed by the president, not
20 more than two shall be from the same political party. Of the
21 members of the House of Delegates appointed by the speaker,
22 not more than two shall be from the same political party.

23 Members originally appointed to the task force shall serve
24 for terms beginning on the date of appointment and ending
25 on the thirtieth day of June, one thousand nine hundred
26 eighty-eight, unless sooner replaced by the president or the
27 speaker as applicable, or, in the discretion of the president and
28 the speaker, unless the work of the task force is completed
29 or the need for the task force no longer exists prior to that
30 date. The task force shall cease to exist on the thirtieth day
31 of June, one thousand nine hundred eighty-eight.

32 The task force shall meet on such dates as may be approved
33 by the joint committee on government and finance for the
34 regular meetings of its subcommittees unless approval is first
35 obtained from the joint committee on government and finance
36 for additional meetings. The task force shall conduct studies
37 on the amount of funds expended by hospitals and other
38 health care providers of this state for services to persons who

39 are unable to pay for those services and for which they receive
40 no other form of reimbursement, the extent to which persons
41 in this state forego needed medical services because of
42 insufficient income and assets to pay for those services, the
43 extent to which the the state is maximizing available federal
44 programs and moneys in providing health care services to the
45 citizens of this state, the operation of the programs and funds
46 created by this article and the roles of the public, private and
47 private nonprofit sectors in providing health care services to
48 the citizens of this state. The task force shall also study the
49 state medicaid program in order to determine if the state
50 medicaid agency, as the payor of last resort, is expending
51 maximum effort to identify alternate private insurance
52 resources for medicaid beneficiaries and shall study the
53 feasibility and financial impact upon the state of assuring
54 increased access to medicaid beneficiaries to primary health
55 care in the nonhospital setting by requiring enrollment in a
56 primary care clinic program, if available, and of the
57 establishment of different and lesser schedules of payment for
58 primary health services delivered by a hospital emergency
59 room as compared to the schedule of payments for emergency
60 room services of a true medical emergency nature. The task
61 force shall make such recommendations as it deems appropri-
62 ate to address the needs identified in the studies.

63 The task force shall file an interim report with the joint
64 committee on government and finance and the Legislature on
65 the date of the last meeting of the joint committee on
66 government and finance prior to commencement of the regular
67 session of the Legislature in each year before the final report
68 of the task force is filed with the joint committee on
69 government and finance and the Legislature on or before the
70 thirtieth day of June, one thousand nine hundred eighty-eight.

71 The members of the task force shall be entitled to
72 compensation at the rate authorized for members of the
73 Legislature participating in legislative interim meetings and to
74 reimbursement for reasonable and necessary expenses actually
75 incurred in attending meetings of the task force, except that
76 any employee of the state appointed to the task force is not
77 entitled to such compensation. Funds necessary for the work
78 of the task force shall be paid from joint appropriations to
79 the Senate and House of Delegates but no such funds shall

80 be spent or obligations incurred in the conduct of such work
81 without prior approval of the joint committee on government
82 and finance.

§16-29C-5. Effective date and termination date.

1 This article shall be effective from passage, and section three
2 of this article shall terminate on the thirtieth day of June, one
3 thousand nine hundred eighty-six. The other sections of this
4 article shall be subject to termination pursuant to the
5 provisions of article ten, chapter four of the code on the
6 thirtieth day of June, one thousand nine hundred eighty-eight,
7 unless extended by legislation enacted prior to this termination
8 date.

CHAPTER 104

(H. B. 1290—By Delegate Smirl)

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

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to allowing for the group purchase of vehicle insurance for the states transit properties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-5b. Transit insurance.

1 In accordance with the terms and provisions of this article
2 the state board of risk and insurance management shall
3 provide appropriate aid and assistance to the transit author-
4 ities in this state in their procurement of fleet liability
5 insurance for all vehicles operated by any such authorities and
6 any and all expense associated with the procurement of

7 purchase of said insurance coverage shall be borne by the
8 transit authorities.

CHAPTER 105

(H. B. 1861—By Delegate Riffle)

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

AN ACT to amend and reenact section fourteen-a, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver of charitable or governmental immunity in public liability insurance policies issued to charitable associations and governmental units.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-14a. Public liability insurance policies issued to charitable associations and governmental units to contain provision for waiving of immunity defense.

1 Any policy or contract of public liability insurance providing
2 coverage for public liability sold, issued or delivered in this
3 state to any religious or charitable corporation or association,
4 either directly or to the trustees of such associations, or sold,
5 issued or delivered to any governmental unit, agency or
6 subdivision, shall be read so as to contain a provision or
7 endorsement whereby the company issuing such policy waives,
8 or agrees not to assert as a defense, on behalf of the
9 policyholder or any beneficiary thereof, to any claim covered
10 by the terms of such policy within the policy limits, the
11 immunity from liability of the insured by reason of such
12 insured's charitable or governmental status, unless such
13 provision or endorsement is rejected in writing by the named
14 insured.

CHAPTER 106

(H. B. 1763—By Delegate Riffle)

[Passed April 2, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a; and to amend and reenact sections five, eight and eighteen, article twenty-six of said chapter, all relating to the rehabilitation and liquidation of insurers.

Be it enacted by the Legislature of West Virginia:

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

Article.

10. Rehabilitation and Liquidation.

26. West Virginia Insurance Guaranty Association Act.

ARTICLE 10 REHABILITATION AND LIQUIDATION.

§33-10-19a. Priority of distribution.

1 The priority of distribution of claims from the insurer's
2 estate shall be in accordance with the order in which each class
3 of claims is herein set forth. Every claim in each class shall
4 be paid in full or adequate funds retained for such payment
5 before the members of the next class receive any payment. No
6 subclasses shall be established within any class. The order of
7 distribution shall be:

8 (a) Class I. The costs and expenses of administration,
9 including, but not limited to, the following:

10 (1) The actual and necessary costs of preserving or
11 recovering the assets of the insurer;

12 (2) Compensation for all services rendered in the

- 13 liquidation;
- 14 (3) Any necessary filing fees;
- 15 (4) The fees and mileage payable to witnesses;
- 16 (5) Reasonable attorney's fees; and
- 17 (6) The reasonable expenses of a guaranty association or
18 foreign guaranty association in handling claims.
- 19 (b) Class II. Debts due to employees for compensation
20 under the provisions of section twenty-seven of this article.
- 21 (c) Class III. All claims under the provisions of subsection
22 (a), section thirty-six of this article.
- 23 (d) Class IV. Claims under nonassessable policies for
24 unearned premium or other premium refunds and claims of
25 general creditors.
- 26 (e) Class V. Claims of the federal or any state or local
27 government. Claims, including those of any governmental
28 body for a penalty or forfeiture, shall be allowed in this class
29 only to the extent of the pecuniary loss sustained from the act,
30 transaction or proceeding out of which the penalty or
31 forfeiture arose, with reasonable and actual costs occasioned
32 thereby. The remainder of such claims shall be postponed to
33 the class of claims under subdivision (h) of this section.
- 34 (f) Class VI. Claims filed late or any other claims other than
35 claims under subdivisions (g) and (h) of this section.
- 36 (g) Class VII. Surplus or contribution notes, or similar
37 obligations and premium refunds on assessable policies.
38 Payments to members of domestic mutual insurance compan-
39 ies shall be limited in accordance with law.
- 40 (h) Class VIII. The claims of shareholders or other owners.

ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSOCIATION ACT.

§33-26-5. Definitions.

§33-26-8. Powers and duties of the association.

§33-26-18. Stay of proceedings; reopening of default judgments.

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the two accounts created
3 by section six of this article.

4 (2) "Association" means the West Virginia insurance
5 guaranty association created under section six of this article.

6 (3) "Commissioner" means the insurance commissioner of
7 West Virginia.

8 (4) "Covered claim" means an unpaid claim, including one
9 for unearned premiums other than retrospective premiums or
10 other premiums subject to adjustment after the date of
11 liquidation, which arises out of and is within the coverage of
12 an insurance policy to which this article applies and which
13 policy is in force at the time of the occurrence giving rise to
14 such unpaid claims if (a) the insurer issuing the policy becomes
15 an insolvent insurer after the effective date of this article and
16 (b) the claimant or insured is a resident of this state at the
17 time of the insured occurrence, or the property from which
18 the claim arises is permanently located in this state. "Covered
19 claim" shall not include (i) any amount in excess of the
20 applicable limits of coverage provided by an insurance policy
21 to which this article applies; nor (ii) any amount due any
22 reinsurer, insurer, insurance pool or underwriting association,
23 as subrogation recoveries or otherwise from an insolvent
24 insurer or the insured of an insolvent insurer to the extent of
25 coverage under the insured's policy.

26 (5) "Insolvent insurer" means an insurer (a) licensed to
27 transact insurance in this state either at the time the policy
28 was issued or when the insured event occurred and (b) against
29 whom an order of liquidation with a finding of insolvency has
30 been entered by a court of competent jurisdiction in the
31 insurer's state of domicile or of this state.

32 (6) "Member insurer" means any person who (a) writes any
33 kind of insurance to which this article applies under section
34 three of this article, including farmers' mutual fire insurance
35 companies and the exchange of reciprocal or interinsurance
36 contracts, and (b) is licensed to transact insurance in this state.

37 (7) "Net direct written premiums" means direct gross
38 premiums written in this state on insurance policies to which
39 this article applies, less return premiums thereon and dividends
40 paid or credited to policyholders on such direct business. "Net

41 direct written premiums” does not include premiums on
42 contracts between insurers or reinsurers.

43 (8) “Person” includes an individual, company, insurer,
44 association, organization, society, reciprocal, partnership,
45 syndicate, business trust, corporation or any other legal entity.

46 (9) “Receiver” means receiver, liquidator, rehabilitator or
47 conservator as the context may require.

§33-26-8. Powers and duties of the association.

1 (1) The association shall:

2 (a) Be obligated to the extent of the covered claims existing
3 prior to the determination of insolvency, and for such claims
4 arising within thirty days after the determination of insolvency,
5 but such obligation shall include only that amount of each
6 covered claim which is in excess of one hundred dollars and
7 is less than three hundred thousand dollars. In no event shall
8 the association be obligated to a policyholder or claimant in
9 an amount in excess of the obligations of the insolvent insurer
10 under the policy from which the claim arises. Notwithstanding
11 any other provision of this article, a covered claim shall not
12 include any claim filed with the guaranty fund after the final
13 date set by the court for the filing of claims against the
14 liquidator or receiver of an insolvent insurer, nor shall any
15 default judgment or stipulated judgment against the insolvent
16 insurer, or against the insured of an insolvent insurer, be
17 binding against the association.

18 (b) Be deemed the insurer to the extent of its obligation on
19 the covered claims and to such extent shall have all rights,
20 duties, defenses and obligations of the insolvent insurer as if
21 the insurer had not become insolvent.

22 (c) Allocate claims paid and expenses incurred among the
23 two accounts separately, and assess member insurers separately
24 for each account amounts necessary to pay the obligations of
25 the association under subdivision (a) of this subsection
26 subsequent to an insolvency, the expenses of handling covered
27 claims subsequent to an insolvency, the cost of examinations
28 under section thirteen of this article and other expenses
29 authorized by this article. The assessments of each member
30 insurer shall be in the proportion that the net direct written
31 premiums of the member insurer for the preceding calendar

32 year on the kinds of insurance in the account bears to the net
33 direct written premiums of all member insurers for the
34 preceding calendar year on the kinds of insurance in the
35 account. Each member insurer shall be notified of the
36 assessment not later than thirty days before it is due. No
37 member insurer may be assessed in any one year on any
38 account an amount greater than two percent of that member
39 insurer's net direct written premiums for the preceding
40 calendar year on the kinds of insurance in the account. If the
41 maximum assessment, together with the other assets of the
42 association in any account, does not provide in any one year
43 in any account an amount sufficient to make all necessary
44 payments from that account, the funds available shall be
45 prorated and the unpaid portion shall be paid as soon
46 thereafter as funds become available. The association may
47 exempt or defer, in whole or in part, the assessment of any
48 member insurer, if the assessment would cause the member
49 insurer's financial statement to reflect the amounts of capital
50 or surplus less than the minimum amounts required for a
51 certificate of authority by any jurisdiction in which the
52 member insurer is authorized to transact insurance. Each
53 member insurer may set off against any assessment, authorized
54 payments made on covered claims and expenses incurred in
55 the payment of such claims by the member insurer if they are
56 chargeable to the account for which the assessment is made.

57 (d) Investigate claims brought against the association and
58 adjust, compromise, settle and pay covered claims to the extent
59 of the association's obligation and deny all other claims and
60 may review settlements, releases and judgments to which the
61 insolvent insurer or its insureds were parties to determine the
62 extent to which such settlements, releases and judgments may
63 be properly contested.

64 (e) Notify such persons as the commissioner directs under
65 subsection (2), section ten of this article.

66 (f) Handle claims through its employees or through one or
67 more insurers or other persons designated as servicing
68 facilities. Designation of a servicing facility is subject to the
69 approval of the commissioner, but such designation may be
70 declined by a member insurer.

71 (g) Reimburse each servicing facility for obligations of the

72 association paid by the facility and for expenses incurred by
73 the facility while handling claims on behalf of the association
74 and shall pay the other expenses of the association authorized
75 by this article.

76 (2) The association may:

77 (a) Employ or retain such persons as are necessary to handle
78 claims and perform other duties of the association.

79 (b) Borrow funds necessary to effect the purposes of this
80 article in accord with the plan of operation.

81 (c) Sue or be sued.

82 (d) Negotiate and become a party to such contracts as are
83 necessary to carry out the purpose of this article.

84 (e) Perform such other acts as are necessary or proper to
85 effectuate the purpose of this article.

86 (f) Refund to the member insurers in proportion to the
87 contribution of each member insurer to an account that
88 amount by which the assets of the account exceed the
89 liabilities, if, at the end of any calendar year, the board of
90 directors finds that the assets of the association in any account
91 exceed the liabilities of that account as estimated by the board
92 of directors for the coming year.

§33-26-18. Stay of proceedings; reopening of default judgments.

1 All proceedings in which the insolvent insurer is a party or
2 obligated to defend a party in any court in this state shall be
3 stayed for six months from the date the proof of claims
4 provided for in section eighteen, article ten of this chapter is
5 filed with the receiver to permit proper defense by the
6 association of all pending causes of action. As to any covered
7 claims arising from a judgment under any order, decision,
8 verdict or finding based on the default of the insolvent insurer
9 or its wrongful failure to defend an insured, the association
10 either on its own behalf or on behalf of such insured may
11 apply to have such judgment, order, decision, verdict or
12 finding set aside by the same court or administrator that made
13 such judgment, order, decision, verdict or finding and shall be
14 permitted to defend against such claim on the merits.

CHAPTER 107

(H. B. 1851—By Delegate Yanni and Delegate Mastrantoni)

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

AN ACT to amend and reenact section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of insurance benefits; when benefits must be paid; exceptions; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

1 The following are hereby defined as unfair methods of
2 competition and unfair or deceptive acts or practices in the
3 business of insurance:

4 (1) *Misrepresentation and false advertising of insurance*
5 *policies.* — No person shall make, issue, circulate, or cause
6 to be made, issued or circulated, any estimate, circular,
7 statement, sales presentation, omission or comparison which:

8 (a) Misrepresents the benefits, advantages, conditions or
9 terms of any insurance policy; or

10 (b) Misrepresents the dividends or share of the surplus to
11 be received on any insurance policy; or

12 (c) Make any false or misleading statements as to the
13 dividends or share of surplus previously paid on any insurance
14 policy; or

15 (d) Is misleading or is a misrepresentation as to the financial
16 condition of any person, or as to the legal reserve system upon
17 which any life insurer operates; or

18 (e) Uses any name or title of any insurance policy or class

19 of insurance policies misrepresenting the true nature thereof;
20 or

21 (f) Is a misrepresentation for the purpose of inducing or
22 tending to induce the lapse, forfeiture, exchange, conversion
23 or surrender of any insurance policy; or

24 (g) Is a misrepresentation for the purpose of effecting a
25 pledge or assignment of or effecting a loan against any
26 insurance policy; or

27 (h) Misrepresents any insurance policy as being shares of
28 stock.

29 (2) *False information and advertising generally.* — No
30 person shall make, publish, disseminate, circulate or placed
31 before the public, or cause, directly or indirectly, to be made,
32 published, disseminated, circulated or place before the public,
33 in a newspaper, magazine or other publication, or in the form
34 of a notice, circular, pamphlet, letter or poster or over any
35 radio or television station, or in any other way, an advertise-
36 ment, announcement or statement containing any assertion,
37 representation or statement with respect to the business of
38 insurance or with respect to any person in the conduct of his
39 insurance business, which is untrue, deceptive or misleading.

40 (3) *Defamation.* — No person shall make, publish, dissem-
41 inate or circulate, directly or indirectly, or aid, abet or
42 encourage the making, publishing, disseminating or circulating
43 of any oral or written statement or any pamphlet, circular,
44 article or literature which is false, or maliciously critical of or
45 derogatory to the financial condition of any person and which
46 is calculated to injure such person.

47 (4) *Boycott, coercion and intimidation.* — No person shall
48 enter into any agreement to commit, or by any concerted
49 action commit, any act of boycott, coercion or intimidation
50 resulting in or tending to result in unreasonable restraint of,
51 or monopoly in, the business of insurance.

52 (5) *False statements and entries.* — (a) No person shall
53 knowingly file with any supervisory or other public official,
54 or knowingly make, publish, disseminate, circulate or deliver
55 to any person, or place before the public, or knowingly cause
56 directly or indirectly, to be made, published, disseminated,
57 circulated, delivered to any person or placed before the public,

58 any false material statement of fact as to the financial
59 condition of a person.

60 (b) No person shall knowingly make any false entry of a
61 material fact in any book, report or statement of any person
62 or knowingly omit to make a true entry of any material fact
63 pertaining to the business of such person in any book, report
64 or statement of such person.

65 (6) *Stock operations and advisory board contracts.* — No
66 person shall issue or deliver or permit agents, officers or
67 employees to issue or deliver, agency company stock or other
68 capital stock, or benefit certificates or shares in any common-
69 law corporation, or securities or any special or advisory board
70 contracts or other contracts of any kind promising returns and
71 profits as an inducement to insurance.

72 (7) *Unfair discrimination.* — (a) No person shall make or
73 permit any unfair discrimination between individuals of the
74 same class and equal expectation of life in the rates charged
75 for any contract of life insurance or of life annuity or in the
76 dividends or other benefits payable thereon, or in any other
77 of the terms and conditions of such contract.

78 (b) No person shall make or permit any unfair discrimina-
79 tion between individuals of the same class and of essentially
80 the same hazard in the amount of premium policy fees, or rates
81 charged for any policy or contract of accident and sickness
82 insurance or in the benefits payable thereunder, or in any of
83 the terms or conditions of such contract, or in any other
84 manner whatever.

85 (c) As to kinds of insurance other than life and accident and
86 sickness, no person shall make or permit any unfair discrim-
87 ination in favor of particular persons, or between insureds or
88 subjects of insurance having substantially like insuring, risk
89 and exposure factors or expense elements, in the terms or
90 conditions of any insurance contract, or in the rate or amount
91 of premium charge therefor. This paragraph shall not apply
92 as to any premium or premium rate in effect pursuant to
93 article twenty of this chapter.

94 (8) *Rebates.* — (a) Except as otherwise expressly provided
95 by law, no person shall knowingly permit or offer to make
96 or make any contract of life insurance, life annuity, or accident

97 and sickness insurance, or agreement as to such contract other
98 than as plainly expressed in the insurance contract issued
99 thereon, or pay or allow or give or offer to pay, allow or give,
100 directly or indirectly, as inducement to such insurance or
101 annuity, any rebate of premiums payable on the contract, or
102 any special favor or advantage in the dividends or other
103 benefits thereon, or any valuable consideration or inducement
104 whatever not specified in the contract; or give or sell, or
105 purchase or offer to give, sell or purchase as inducement to
106 such insurance contract or annuity or in connection therewith,
107 any stocks, bonds or other securities of any insurance company
108 or other corporation, association or partnership, or any
109 dividends or profits accrued thereon, or anything of value
110 whatsoever not specified in the contract.

111 (b) Nothing in subdivision seven or paragraph (a) of
112 subdivision eight of this section shall be construed as including
113 within the definition of unfair discrimination or rebates any
114 of the following practices:

115 (i) In the case of any contract of life insurance or life
116 annuity, paying bonuses to policyholders or otherwise abating
117 their premiums in whole or in part out of surplus accumulated
118 from nonparticipating insurance: *Provided*, That any such
119 bonuses or abatement of premiums shall be fair and equitable
120 to policyholders and for the best interests of the insurer and
121 its policyholders;

122 (ii) In the case of life insurance policies issued on the
123 industrial debit plan, making allowance to policyholders who
124 have continuously for a specified period made premium
125 payments directly to an office of the insurer in an amount
126 which fairly represents the saving in collection expenses;

127 (iii) Readjustment of the rate of premium for a group
128 insurance policy based on the loss or expense thereunder, at
129 the end of the first or any subsequent policy year of insurance
130 thereunder, which may be made retroactive only for such
131 policy year;

132 (iv) Issuing life or accident and sickness policies on a salary
133 savings or payroll deduction plan at a reduced rate commensurate
134 with the savings made by the use of such plan.

135 (c) With respect to insurance other than life, accident and

136 sickness, ocean marine or marine protection and indemnity
137 insurance, no person shall knowingly charge, demand or
138 receive a premium for such insurance except in accordance
139 with an applicable filing on file with the commissioner. No such
140 person shall pay, allow or give, directly or indirectly, either
141 as an inducement to insurance or after insurance has been
142 effected, any rebate, discount, abatement, credit or reduction
143 of the premium named in a policy of insurance, or any special
144 favor or advantage in the dividends or other benefits to accrue
145 thereon, or any valuable consideration or inducement
146 whatever, not specified in the policy of insurance, except to
147 the extent provided for in an applicable filing. No insured
148 named in a policy of insurance, nor any relative, representative
149 or employee of such insured shall knowingly receive or accept
150 directly or indirectly, any such rebate, discount, abatement,
151 credit or reduction of premium, or any such special favor or
152 advantage or valuable consideration or inducement. Nothing
153 in this section shall be construed as prohibiting the payment
154 of commissions or other compensation to duly licensed agents
155 and brokers, nor as prohibiting any insurer from allowing or
156 returning to its participating policyholders, members or
157 subscribers, dividends, savings or unabsorbed premium
158 deposits. As used in this section the word "insurance" includes
159 suretyship and the word "policy" includes bond.

160 (9) *Unfair claim settlement practices.* — No person shall
161 commit or perform with such frequency as to indicate a
162 general business practice any of the following:

163 (a) Misrepresenting pertinent facts or insurance policy
164 provisions relating to coverages at issue;

165 (b) Failing to acknowledge and act reasonably promptly
166 upon communications with respect to claims arising under
167 insurance policies;

168 (c) Failing to adopt and implement reasonable standards for
169 the prompt investigation of claims arising under insurance
170 policies;

171 (d) Refusing to pay claims without conducting a reasonable
172 investigation based upon all available information;

173 (e) Failing to affirm or deny coverage of claims within a
174 reasonable time after proof of loss statements have been
175 completed;

- 176 (f) Not attempting in good faith to effectuate prompt, fair
177 and equitable settlements of claims in which liability has
178 become reasonably clear;
- 179 (g) Compelling insureds to institute litigation to recover
180 amounts due under an insurance policy by offering substan-
181 tially less than the amounts ultimately recovered in actions
182 brought by such insureds, when such insureds have made
183 claims for amounts reasonably similar to the amounts
184 ultimately recovered;
- 185 (h) Attempting to settle a claim for less than the amount
186 to which a reasonable man would have believed he was entitled
187 by reference to written or printed advertising material
188 accompanying or made part of an application;
- 189 (i) Attempting to settle claims on the basis of an application
190 which was altered without notice to, or knowledge or consent
191 of the insured;
- 192 (j) Making claims payments to insureds or beneficiaries not
193 accompanied by a statement setting forth the coverage under
194 which payments are being made;
- 195 (k) Making known to insureds or claimants a policy of
196 appealing from arbitration awards in favor of insureds or
197 claimants for the purpose of compelling them to accept
198 settlements or compromises less than the amount awarded in
199 arbitration;
- 200 (l) Delaying the investigation or payment of claims by
201 requiring an insured, claimant or the physician of either to
202 submit a preliminary claim report and then requiring the
203 subsequent submission of formal proof of loss forms, both of
204 which submissions contain substantially the same information;
- 205 (m) Failing to promptly settle claims, where liability has
206 become reasonably clear, under one portion of the insurance
207 policy coverage in order to influence settlements under other
208 portions of the insurance policy coverage;
- 209 (n) Failing to promptly provide a reasonable explanation of
210 the basis in the insurance policy in relation to the facts or
211 applicable law for denial of a claim or for the offer of a
212 compromise settlement;

213 (o) Failing to notify the first party claimant and the
214 provider(s) of services covered under accident and sickness
215 insurance and hospital and medical service corporation
216 insurance policies whether the claim has been accepted or
217 denied and if denied, the reasons therefore within fifteen
218 calendar days from the filing of the proof of loss: *Provided*,
219 That should benefits due the claimant be assigned, notice to
220 the claimant shall not be required: *Provided, however*, That
221 should the benefits be payable directly to the claimant, notice
222 to the health care provider shall not be required. If the insurer
223 needs more time to investigate the claim, it shall so notify the
224 first party claimant in writing within fifteen calendar days from
225 the date of the initial notification and every thirty calendar
226 days, thereafter; but in no instance shall a claim remain
227 unsettled and unpaid for more than ninety calendar days from
228 the first party claimant's filing of the proof of loss unless there
229 is, as determined by the insurance commissioner, (1) a
230 legitimate dispute as to coverage, liability or damages; or (2)
231 if the claimant has fraudulently caused or contributed to the
232 loss. In the event that the insurer fails to pay the claim in full
233 within ninety calendar days from the claimant's filing of the
234 proof of loss, except for exemptions provided above, there
235 shall be assessed against the insurer and paid to the insured
236 a penalty which will be in addition to the amount of the claim
237 and assessed as interest on such at the then current prime rate
238 plus one percent. Any penalty paid by an insurer pursuant to
239 this section shall not be a consideration in any rate filing made
240 by such insurer.

241 (10) *Failure to maintain complaint handling procedures.* —
242 No insurer shall fail to maintain a complete record of all the
243 complaints which it has received since the date of its last
244 examination under section nine, article two of this chapter.
245 This record shall indicate the total number of complaints, their
246 classification by line of insurance, the nature of each
247 complaint, the disposition of these complaints and the time it
248 took to process each complaint. For purposes of this
249 subsection, "complaint" shall mean any written communica-
250 tion primarily expressing a grievance.

251 (11) *Misrepresentation in insurance applications.* — No
252 person shall make false or fraudulent statements or represen-
253 tations on or relative to an application for an insurance policy,

254 for the purpose of obtaining a fee, commission, money or
255 other benefit from any insurer, agent, broker or individual.

CHAPTER 108

(Com. Sub. for S. B. 118—By Senator Tucker)

[Passed March 21, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of debtor groups credit life insurance and removal of certain statutory policy amount limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-3. Debtor groups.

1 The lives of a group of individuals may be insured
2 under a policy issued to a creditor, who shall be deemed
3 the policyholder, to insure debtors of the creditor, subject
4 to the following requirements:

5 (a) The debtors eligible for insurance under the
6 policy shall be all of the debtors of the creditor whose
7 indebtedness is repayable either (i) in installments, or
8 (ii) in one sum at the end of a period not in excess of
9 eighteen months from the initial date of debt, or all of
10 any class or classes thereof determined by conditions
11 pertaining to the indebtedness or to the purchase
12 giving rise to the indebtedness. The policy may
13 provide that the term "debtors" shall include the
14 debtors of one or more subsidiary corporations, and the
15 debtors of one or more affiliated corporations, proprietors
16 or partnerships if the business of the policyholder and of
17 such affiliated corporations, proprietors or partnerships

18 is under common control through stock ownership, con-
19 tract or otherwise. No debtor shall be eligible unless the
20 contract of indebtedness constitutes an obligation to re-
21 pay which is binding upon him during his lifetime, at and
22 from the date the insurance becomes effective upon his
23 life.

24 (b) The premium for the policy shall be paid by the
25 policyholder, either from the creditor's funds, or from
26 charges collected from the insured debtors, or from both.
27 A policy on which part or all of the premium is to be
28 derived from the collection from the insured debtors of
29 identifiable charges not required of uninsured debtors
30 shall not include, in the class or classes of debtors eligible
31 for insurance, debtors under obligations outstanding at its
32 date of issue without evidence of individual insurability
33 unless at least seventy-five percent of the then eligible
34 debtors elect to pay the required charges. A policy on
35 which no part of the premium is to be derived from the
36 collection of such identifiable charges must insure all
37 eligible debtors, or all except any as to whom evidence of
38 individual insurability is not satisfactory to the insurer.

39 (c) The policy may be issued only if the group of
40 eligible debtors is then receiving new entrants at the rate
41 of at least one hundred persons yearly, or may reason-
42 ably be expected to receive at least one hundred new
43 entrants during the first policy year, and only if the policy
44 reserves to the insurer the right to require evidence of
45 individual insurability if less than seventy-five percent
46 of the new entrants become insured. The policy may ex-
47 clude from the classes eligible for insurance classes of
48 debtors determined by age.

49 (d) The amount of insurance on the life of any debtor
50 shall at no time exceed the amount owed by him which is
51 repayable in installments to the creditor. Where the
52 indebtedness is repayable in one sum to the creditor, the
53 insurance on the life of any debtor shall in no instance be
54 in effect for a period in excess of eighteen months except
55 that such insurance may be continued for an additional
56 period not exceeding six months in the case of default,
57 extension or recasting of the loan.

58 (e) The insurance shall be payable to the policyholder.
 59 Such payment shall reduce or extinguish the unpaid
 60 indebtedness of the debtor to the extent of such payment.

CHAPTER 109

(Com. Sub. for H. B. 1334—By Delegate Springston and Delegate Leary)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four, six, seven, eight, ten, twelve and thirteen of said article, all generally relating to mine subsidence insurance; definition; mine subsidence; waivers; insurance fund; mine subsidence coverage; providing for waiver in certain counties; a waiting period; limited right of insurers to refuse to provide subsidence coverage; refusing coverage where damage is in progress; reinsurance agreements; adjustment of losses and administration of the fund; payment of losses; right of recourse; subrogation.

Be it enacted by the Legislature of West Virginia:

That section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, four, six, seven, eight, ten, twelve and thirteen of said article be amended and reenacted to read as follows:

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

- §33-30-3. Definitions.
- §33-30-4. Mine subsidence insurance fund.
- §33-30-6. Mine subsidence coverage; waivers.
- §33-30-7. Limited right of insurers to refuse to provide subsidence coverage.
- §33-30-8. Reinsurance agreements.
- §33-30-10. Payment of losses.
- §33-30-12. Right of recourse.
- §33-30-13. Subrogation.

§33-30-3. Definitions.

- 1 As used in this article:

2 (1) "Board" means the state board of risk and insurance
3 management;

4 (2) "Mine subsidence" means loss to the structure caused by
5 lateral or vertical movement, including collapse which results
6 therefrom, of structures from collapse of man-made under-
7 ground coal mines. It does not include loss caused by
8 earthquake, landslide, volcanic eruption or collapse of storm
9 and sewer drains and rapid transit tunnels;

10 (3) "Mine subsidence insurance fund" or "fund" means the
11 fund established by this article within the office of the state
12 board of risk and insurance management;

13 (4) "Policy" means a contract of insurance providing mine
14 subsidence insurance;

15 (5) "Premium" means the gross rate charged policyholders
16 for insurance provided by this article; and

17 (6) "Structure" means any dwelling, building or fixture
18 permanently affixed to realty located in West Virginia,
19 including basements, footings, foundations, septic systems and
20 underground pipes directly servicing the dwelling or building.
21 "Structure" shall not include driveways, sidewalks, parking
22 lots, land, trees, plants, crops or agricultural field drainage tile.

§33-30-4. Mine subsidence insurance fund.

1 (a) There is hereby established within the office of the state
2 board of risk and insurance management a fund to be known
3 as the "mine subsidence insurance fund." The board shall
4 operate the fund pursuant to this article.

5 (b) The fund shall make available insurance coverage
6 against losses arising out of or due to mine subsidence within
7 this state as to any structure within this state.

8 (c) The moneys in the fund shall be derived from premiums
9 for subsidence insurance collected on behalf of the board
10 pursuant to this article. The board shall be empowered to
11 invest the fund and first use the interest therefrom for claim
12 payments and administration expenses.

13 (d) Premiums for subsidence insurance shall be established
14 by the board, who shall periodically review the premium level

15 and the experience data applicable to operation of the fund
16 and make changes as required.

17 (e) Premiums shall be established at a rate or within a
18 schedule of rates sufficient to satisfy all foreseeable claims
19 upon the fund during the period of coverage, giving due
20 consideration to relevant loss or claim experience or trends,
21 to cover normal costs of operation of the fund by the board
22 and provide a reasonable reserve fund for unexpected
23 contingencies. Deviation from the premium set by the board
24 shall not be allowed.

§33-30-6. Mine subsidence coverage; waivers.

1 Beginning the first day of October, one thousand nine
2 hundred eighty-two, every insurance policy issued or renewed
3 insuring on a direct basis a structure located in this state shall
4 include, at a separately stated premium, insurance for loss
5 occurring on or after October first, one thousand nine hundred
6 eighty-two, caused by mine subsidence unless waived by the
7 insured: *Provided*, That no waiver shall be required and such
8 coverage shall only be provided if requested by the insured in
9 the following counties: Berkeley, Cabell, Calhoun, Hampshire,
10 Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton,
11 Pleasants, Ritchie, Roane, Wirt, Wood: *Provided, however*,
12 That the effective date of a new policy or endorsement
13 containing mine subsidence insurance coverage shall be on the
14 thirtieth calendar day after the application date. The premium
15 charged for coverage shall be set by the board. The loss
16 coverage shall be the loss in excess of two percent of the
17 policy's total insured value, but at no time shall the deductible
18 be less than two hundred fifty dollars nor more than five
19 hundred dollars; and total insured value reinsured by the
20 board shall not exceed seventy-five thousand dollars: *Provided*
21 *further*, That in no event shall the amount of mine subsidence
22 reinsurance exceed the amount of the fire insurance on the
23 structure.

§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.

1 An insurer may refuse to provide subsidence coverage (1)
2 on a structure evidencing unrepaired subsidence damage, until
3 necessary repairs are made; or (2) where the insurer has
4 declined, nonrenewed or canceled all coverage under a policy

5 for underwriting reasons unrelated to mine subsidence:
6 *Provided*, That an insurer shall refuse to provide subsidence
7 coverage on a structure which evidences a loss or damage in
8 progress.

9 Any dispute arising under this section shall be subject to the
10 hearing and appeal provisions of article two of this chapter.

§33-30-8. Reinsurance agreements.

1 All companies authorized to write fire insurance in this state
2 shall enter into a reinsurance agreement with the board in
3 which each insurer agrees to cede to the board one hundred
4 percent, up to seventy-five thousand dollars, of any subsidence
5 insurance coverage issued and, in consideration of the ceding
6 commission retained by the insurer, agree to absorb all
7 expenses of the insurer necessary for sale of policies and any
8 administration duties of the mine subsidence insurance
9 program imposed upon it pursuant to the terms of the
10 reinsurance agreement. The board is authorized to undertake
11 adjustment of losses and administer the fund, or it may
12 provide in a reinsurance agreement that the insurer do so. The
13 board shall agree to reimburse the insurer from the fund for
14 all amounts paid policyholders for claims resulting from mine
15 subsidence and shall pay from the fund all costs of admin-
16 istration incurred by the board but an insurer is not required
17 to pay any claim for any loss insured under this article except
18 to the extent that the amount available in the mine subsidence
19 insurance fund, as maintained pursuant to sections four and
20 five of this article, is sufficient to reimburse the insurer for
21 such claim under this section, and without moral obligation.

§33-30-10. Payment of losses.

1 (a) Pursuant to the reinsurance agreements, authorized by
2 this article, the board shall, within ninety days after receiving
3 the loss report, pay the insurer all amounts due out of the
4 fund.

5 (b) No claim of an insured shall be paid by an insurer in
6 respect of a loss covered by mine subsidence insurance prior
7 to February fifteenth, one thousand nine hundred eighty-three.
8 On and after February fifteenth, one thousand nine hundred
9 eighty-three, all claims of insureds shall be paid within one
10 hundred twenty days after proof of loss is presented to an

- 11 insurer unless otherwise agreed by the insurer and claimant.
 12 Upon payment of the claim of an insured from the fund, the
 13 insured shall be deemed to have waived any cause of action
 14 for damages caused by subsidence to the extent of the payment
 15 from the fund.

§33-30-12. Right of recourse.

- 1 Except in the case of fraud by an insurer, the board does
 2 not have any right of recourse against the insurer and the
 3 insurer may settle losses in the customary manner consistent
 4 with this article.

- 5 The board may require an insurer to attempt recovery from
 6 a policyholder for the amounts paid to such policyholder if,
 7 in the judgment of the board, the policyholder was not entitled
 8 to the amounts paid because of fraud or violation of the policy
 9 conditions. The costs of such recovery attempt shall be borne
 10 by the board. Any dispute under this section shall be subject
 11 to the hearing and appeal provisions of article two of this
 12 chapter.

§33-30-13. Subrogation.

- 1 Each insurer issuing mine subsidence insurance policies in
 2 this state has the right of subrogation.
 3 The board may exercise the right of subrogation.

CHAPTER 110

(Com. Sub. for H. B. 1232—By Delegate Wooton)

[Passed March 14, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grand juries; and providing not less than six nor more than twelve alternate grand jurors to be selected for a term of court.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter fifty-two of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. GRAND JURIES.

§52-2-3. Summoning jury commissioners; selection and summoning of jurors.

1 The clerk of any court requiring a grand jury shall, at least
2 thirty days before the term of court, summon the jury
3 commissioners to attend at his office at a day specified, which
4 shall not be less than twenty days before such term, and select
5 persons for the grand jury, but the court or judge thereof may
6 require such jury commissioners to appear forthwith, or at any
7 specified time, and select grand jurors for either a regular,
8 special or adjourned term of court. On the day appointed, the
9 jury commissioners shall appear and draw the names of sixteen
10 persons from the grand jury box, and the persons so drawn
11 shall constitute the grand jury, and at the same time the jury
12 commissioners shall draw the names of not less than six nor
13 more than twelve additional persons from the grand jury box,
14 as the judge of the court or if more than one judge the chief
15 judge of the court shall by prior order direct, and the persons
16 so drawn shall constitute alternate jurors for the grand jury,
17 and the judge may replace any absent members of the grand
18 jury from among the alternate grand jurors. If when drawing
19 the ballots it appears to the commissioners that any person
20 so drawn is dead or for any reason disqualified or unable to
21 serve, they shall destroy the ballot and cancel the name on
22 the list and draw another in that person's stead. They shall
23 enter the names of all persons so drawn in a book kept for
24 that purpose and deliver a list thereof to the clerk, who shall
25 issue a summons for the persons drawn, directed to the sheriff
26 of the county requiring him to summon them to appear on
27 the day required and serve as grand jurors. The provisions of
28 article one of this chapter relating to the drawing and
29 summoning of petit jurors and drawing ballots and cancella-
30 tion and marking thereof, so far as applicable and not
31 inconsistent with the provisions of this article, shall be
32 observed and govern the selection of a grand jury, except in
33 that the ballots shall be drawn from the several envelopes in
34 proportion as near as may be to the numbers endorsed
35 thereon, but so that at least one ballot shall be drawn from
36 each envelope.

CHAPTER 111

(Com. Sub. for S. B. 78—By Senator Rogers)

[Passed April 2, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve-a and thirteen, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reducing from twelve to six the size of juries in civil trials; specifying that juries in criminal trials in circuit court shall consist of twelve members; jury in cases of eminent domain to consist of twelve freeholders; waiver of right to jury trial in criminal cases; alternate jurors, qualifications and challenges, number of alternate jurors; special juries, number of special jurors.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve-a and thirteen, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. TRIAL.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain and criminal trials.

§56-6-12a. Alternate jurors for protracted civil cases; qualifications and challenges.

§56-6-13. Special jury in civil cases.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain and criminal trials.

1 The court, in an action at law, if neither party requires a
2 jury, or if the defendant has failed to appear and the
3 plaintiff does not require a jury, shall ascertain the amount
4 the plaintiff is entitled to recover in the action, if any, and
5 render judgment accordingly. In any case in which a trial by
6 jury would be otherwise proper, the parties or their counsel,

7 by consent entered of record, may waive the right to have a
8 jury, and thereupon the whole matter of law and fact shall
9 be heard and determined, and judgment given by the court.
10 Absent such waiver, in any civil trial a jury shall consist of
11 six members and in any criminal trial a jury shall consist of
12 twelve members.

13 The provisions of this section shall not apply to any
14 proceeding had pursuant to article two, chapter fifty-four
15 of this code, the provisions of which shall apply in all cases
16 involving the taking of property for a public use.

§56-6-12a. Alternate jurors for protracted civil cases; qualifications and challenges.

1 In any civil case, whenever in the opinion of the court the
2 trial is likely to be a protracted one, the court may direct
3 that not more than four jurors, in addition to the regular
4 jury, be called and impaneled to sit as alternate jurors. Said
5 alternate jurors shall be chosen from a separate panel of six
6 after the regular jury of six or twelve, as the case may be, has
7 been selected. Alternate jurors in the order in which they
8 are called shall replace jurors who, prior to the time the jury
9 retires to consider its verdict, become unable or disqualified
10 to perform their duties. Alternate jurors shall be drawn in
11 the same manner, shall have the same qualifications, shall
12 be subject to the same examination and challenges, shall
13 take the same oath and shall have the same functions,
14 powers, facilities and privileges as the regular jurors. An
15 alternate juror who does not replace a regular juror shall be
16 discharged after the jury retires to consider its verdict. Each
17 side is entitled to one peremptory challenge in addition to
18 those otherwise allowed by law if one or two alternate
19 jurors are to be impaneled, and two peremptory challenges
20 if three or four alternate jurors are to be impaneled. The
21 additional peremptory challenges may be used against an
22 alternate juror only, and the other peremptory challenges
23 allowed by this section may not be used against an alternate
24 juror.

§56-6-13. Special jury in civil cases.

1 (a) Except as provided in subsection (b) of this section,
2 any court may allow a special jury in any civil case, to be
3 formed in the following manner: The court shall direct a

4 panel of ten jurors to be drawn by the clerk, in the presence
5 of the court, from the box mentioned in section seven,
6 article one, chapter fifty-two of this code, who shall be
7 summoned by the sheriff to attend on the day named in the
8 order, from which number eight shall be chosen by lot; and
9 the parties thereupon, the plaintiff's attorney beginning,
10 shall alternately strike off one until the number be reduced
11 to six, which number shall complete the jury for the trial of
12 the case. The court may also allow a special jury in any civil
13 case when the panel of drawn jurors is exhausted, upon the
14 motion of either of the parties, to be summoned by the
15 sheriff so far as may be required from the body of the
16 county; but no such special jury shall be allowed in any case
17 unless the court certifies of record that the interest of the
18 parties so asking such jury will be promoted by the
19 allowance of such special jury.

20 (b) In any case held pursuant to article two, chapter
21 fifty-four of this code, for the taking of property for a public
22 use, any court may allow a special jury to be formed in the
23 following manner: The court shall direct a panel of twenty
24 jurors, who are qualified freeholders of the county wherein
25 the property to be taken is situate, to be drawn by the clerk,
26 in the presence of the court, from the box mentioned in
27 section seven, article one, chapter fifty-two of this code,
28 who shall be summoned by the sheriff to attend on the day
29 named in the order, from which number sixteen shall be
30 chosen by lot; and the parties thereupon, the plaintiff's
31 attorney beginning, shall alternately strike off one until the
32 number be reduced to twelve, which number shall complete
33 the jury for the trial of the case, but no such special jury
34 shall be allowed in any case unless the court certifies of
35 record that the interest of the parties so asking such jury
36 will be promoted by the allowance of such special jury.

CHAPTER 112

(S. B. 283—By Mr. Tonkovich, Mr. President and Senator Tomblin)

[Passed March 29, 1985; in effect ninety days from passage. Vetoed by the Governor.
Passed 4/13/85 notwithstanding objections of Governor.]

AN ACT to amend and reenact section five, article eleven, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article two, chapter five-a of said code, all relating to legislative appropriation authority in respect of federal funds; providing authorization for the governor to approve and permit expenditure of certain unanticipated federal funds received when Legislature not in session, with limitations thereon, including governor seeking recommendation of council of finance and administration, during interim periods, in certain instances; and providing for commissioner of finance and administration to be primary approval official for, and repository agency of, information and activity in respect of federal funds by state agencies at times of application for, and change, receipt and expenditure of, federal funds.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

4. The Legislature.

5A. Department of Finance and Administration.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-5. Legislative appropriation authority.

1 (a) No spending unit may make expenditures of any
2 federal funds, whether such funds are advanced prior to
3 expenditure or as reimbursement, unless such expendi-
4 tures are made pursuant to specific appropriations by the
5 Legislature, except as may be hereinafter provided.

6 (b) To the extent not precluded by the terms and con-
7 ditions under which federal funds are made available to
8 the spending unit by the United States government, the
9 spending unit shall use federal funds in accordance with
10 any purposes, policies or priorities the Legislature may

11 have established for the activity being assisted or for the
12 use of state, federal and other fiscal resources in a par-
13 ticular fiscal year.

14 (c) If the federal funds received by a spending unit for
15 a specific purpose are greater than the amount of such
16 funds contained in the appropriation by the Legislature
17 for such purpose, the total appropriation of federal funds
18 and any state matching funds for such purpose shall
19 remain at the level appropriated, except as hereinafter
20 provided.

21 (d) If federal funds become available to the spending
22 unit for expenditure while the Legislature is not in ses-
23 sion and the availability of such funds could not reason-
24 ably have been anticipated and included in the budget
25 approved by the Legislature for the next fiscal year, the
26 treasurer may accept such funds on behalf of the spend-
27 ing unit and the governor may authorize, in writing, the
28 expenditure of such funds by the spending unit during
29 that fiscal year as authorized by federal law and pursuant
30 to the provisions of article two, chapter five-a of the code,
31 which permits expenditure of amounts in excess of the
32 appropriation upon the filing of a proper expenditure
33 schedule: *Provided*, That the governor may not authorize
34 the expenditure of such funds received for the creation of
35 a new program or for a significant alteration of an exist-
36 ing program. For purposes of this article, a mere new
37 source of funding of federal moneys for a program which
38 has been prior approved by legislative appropriation will
39 not be deemed to be a "new program" or a "significant
40 alteration of an existing program" and the governor may
41 authorize the expenditure of such funds as herein pro-
42 vided. Should a question arise concerning whether such
43 expenditures would constitute a new program or sig-
44 nificant alteration of an existing program, while the
45 Legislature is not in session, the governor shall seek the
46 recommendation of the council of finance and administra-
47 tion, as created and existing pursuant to the provisions
48 of section three, article one, chapter five-a of the code.
49 Upon application to the federal government for such
50 funds and upon receipt of such funds, the governor shall

51 submit to the legislative auditor two copies of a state-
52 ment:

53 (1) Describing the proposed expenditure of such funds
54 in the same manner as it would be described in the state
55 budget; and

56 (2) Explaining why the availability of such federal
57 funds and why the necessity of their expenditure could
58 not have been anticipated in time for such expenditures
59 to have been approved as part of the adopted budget for
60 that particular fiscal year.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 2. BUDGET DIVISION.

§5A-2-26. Approval of commissioner of requests for, changes, receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished commissioner and legislative auditor; and consolidated report of federal funds.

1 Every agency of the state government when making
2 requests or preparing budgets to be submitted to the
3 federal government for funds, equipment, material or
4 services, the grant or allocation of which is conditioned
5 upon the use of state matching funds, shall have such
6 request or budget approved in writing by the commis-
7 sioner before submitting it to the proper federal author-
8 ity. At the time such agency submits such a request or
9 budget to the commissioner for his approval, it shall send
10 a copy thereof to the legislative auditor. When such
11 federal authority has approved the request or budget,
12 the agency of the state government shall resubmit it to
13 the commissioner for recording before any allotment or
14 encumbrance of the federal funds can be made and the
15 commissioner shall send a copy of the federally approved
16 request or budget to the legislative auditor. Whenever
17 any agency of the state government shall receive from
18 any agency of the federal government a grant or alloca-
19 tion of funds which do not require state matching, the
20 state agency shall report to the commissioner and the

21 legislative auditor for their information the amount of
22 the federal funds so granted or allocated.

23 Unless contrary to federal law, any agency of state
24 government, when making requests or preparing budgets
25 to be submitted to the federal government for funds for
26 personal services, shall include in such request or budget
27 the amount of funds necessary to pay for the costs of any
28 fringe benefits related to such personal service. For the
29 purposes of this section "fringe benefits" means any
30 employment benefit granted by the state which involves
31 state funds, including, but not limited to, contributions to
32 insurance, retirement and social security, and which does
33 not affect the basic rate of pay of an employee.

34 In addition to the other requirements of this section,
35 the commissioner shall, as soon as possible after the end
36 of each fiscal year but no later than the first day of
37 October of each year, submit to the governor and the
38 legislative auditor a consolidated report which shall con-
39 tain a detailed itemization of all federal funds received
40 by the state during the preceding and current fiscal years,
41 as well as those scheduled or anticipated to be received
42 during the next ensuing fiscal year. Such itemization
43 shall show: (a) Each spending unit which has received
44 or is scheduled or expected to receive federal funds in
45 either of such fiscal years, (b) the amount of each sepa-
46 rate grant or distribution received or to be received, (c) a
47 brief description of the purpose of every such grant or
48 other distribution, with the name of the federal agency,
49 bureau or department making such grant or distribution:
50 *Provided*, That it shall not be necessary to include in such
51 report an itemization of federal revenue sharing funds
52 deposited in and appropriated from the revenue sharing
53 trust fund, or federal funds received for the benefit of the
54 department of highways and the state road fund.

55 The commissioner is authorized and empowered to ob-
56 tain from the spending units any and all information
57 necessary to prepare such report.

58 Notwithstanding the other provisions of this section
59 and in supplementation thereof, the Legislature hereby

60 determines that the department of finance and adminis-
61 tration and its commissioner need to be the single and
62 central agency for receipt of information and documents
63 in respect of applications for, and changes, receipt and
64 expenditure of, federal funds by state agencies. Every
65 agency of state government, when making application
66 for federal funds in the nature of a grant, allocation or
67 otherwise; when amending such applications or requests;
68 when in receipt of such federal funds; or when under-
69 taking any expenditure of federal funds; in all such
70 respective instances, provide to the commissioner of fi-
71 nance and administration document copies or sufficient
72 summary information in respect thereof as to enable the
73 commissioner to provide approval in writing for such
74 activity in respect to the federal funds, and such state
75 agencies shall, at the same time, provide such a document
76 copy or sufficient summary information report to the
77 legislative auditor's office; in order to permit continuing
78 meaningful cooperative overview of federal funds and
79 their use budgetarily and in establishing state fiscal
80 policies.

CHAPTER 113

(Com. Sub. for S. B. 555—By Mr. Tonkovich, Mr. President)

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

AN ACT to amend and reenact section eleven, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public libraries; willful retention of library property; providing criminal penalties; and liability of parents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-11. Willful retention of library property.

1 Any person who willfully retains a book, newspaper,
2 plate, picture, photograph, engraving, painting, drawing,
3 map, magazine, document, letter, public record, microfilm,
4 sound recording, audio visual materials in any format,
5 magnetic or other tapes, artifacts or other documentary
6 (written or printed) materials, or all materials of any
7 kind whatsoever belonging to any public library for
8 thirty days after the mailing date of a written notice
9 demanding the return of said material and giving notice
10 of said violation, forwarded to that person's last known
11 address, is guilty of a misdemeanor, and, upon conviction
12 thereof, shall be fined not more than two hundred dollars:
13 *Provided*, That a date or dates designating a grace period
14 for the return of library materials to public libraries shall
15 be established, said dates to be established by the state
16 library commission pursuant to rules and regulations
17 promulgated thereto.

18 A conviction or payment of any fine shall not be con-
19 strued to constitute payment for library material, nor
20 shall a person convicted under this section be thereby
21 relieved of any obligation to return to the library such
22 material. Further, a conviction or payment of any fine
23 shall not be construed as a waiver of any nominal daily
24 fine which may be imposed by library rules, regulations
25 or policies.

26 The parent or guardian of a minor who willfully com-
27 mits any act prohibited by this section shall be liable for
28 all damages so caused by the minor up to the amount of
29 two thousand five hundred dollars, after the parent or
30 guardian is served with proper written notice as afore-
31 mentioned.

CHAPTER 114

(Com. Sub. for S. B. 26—By Senator Holliday, et al)

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

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections twenty-four, twenty-five and twenty-six, all relating to creation of the West Virginia litter control program; definitions; additional duties of the director of the department of natural resources in the administration of the West Virginia litter control program; matching grants to localities for litter control programs and regulations relating thereto; lawful disposal of litter and criminal penalties therefor; costs for cleanup, investigation and prosecution to be assessed against violators and transmitted to litter control fund account in state treasury; notice of penalties for unlawful disposal of litter; mandatory placement and maintenance of litter receptacles; penalties for failure to place and maintain litter receptacles upon two warnings; construction of section; and duty of law-enforcement officers to enforce against violations.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated sections twenty-four, twenty-five and twenty-six, all to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING; WEST VIRGINIA LITTER CONTROL
PROGRAM.**

PART III. WEST VIRGINIA LITTER CONTROL PROGRAM.

§20-7-24. Definitions.

§20-7-25. West Virginia litter control programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

§20-7-26. Unlawful disposal of litter; penalties; evidence; notice of violations; litter receptacle placement; penalties; duty to enforce violations.

§20-7-24. Definitions.

- 1 As used in sections twenty-five and twenty-six of this
- 2 article, unless the context requires a different meaning:
- 3 "Litter" means all waste material including, but not
- 4 limited to, any garbage, refuse, trash, disposable package,

5 container, can, bottle, paper, ashes, cigarette or cigar butt,
6 carcass of any dead animal or any part thereof, or any
7 other offensive or unsightly matter, but not including the
8 wastes of primary processes of mining, logging, sawmill-
9 ing, farming or manufacturing.

10 "Litter receptacle" means those containers suitable for
11 the depositing of litter at each respective public area
12 designated by the director's regulations promulgated pur-
13 suant to subdivision eight, subsection (a), section twen-
14 ty-five of this article.

15 "Public area" means an area outside of a municipality,
16 including public road and highway rights-of-way, parks
17 and recreation areas owned or controlled by this state or
18 any county thereof, or an area held open for unrestricted
19 access by the general public.

**§20-7-25. West Virginia litter control programs; additional
duties of director; grants to counties and municipal-
ities; and regulations relating thereto.**

1 (a) In addition to all other powers, duties and respon-
2 sibilities granted and assigned to the director of the de-
3 partment of natural resources in this chapter and else-
4 where by law, the director is hereby authorized and
5 empowered, in the administration of the West Virginia litter
6 control program created by this section, to:

7 (1) Coordinate all industry and business organizations
8 seeking to aid in the litter control effort;

9 (2) Cooperate with all local governments to accomplish
10 coordination of local litter control efforts;

11 (3) Encourage, organize and coordinate all voluntary
12 litter control campaigns, including citizen litter watch
13 programs, seeking to focus the attention of the public on
14 the litter control programs of the state and local govern-
15 ments;

16 (4) Recommend to local governing bodies that they
17 adopt ordinances similar to the provisions of section
18 twenty-six of this article;

19 (5) Investigate the methods and success of techniques
20 of litter control, removal and disposal utilized in other

21 states, and develop, encourage, organize and coordinate
22 local litter control programs funded by grants awarded
23 pursuant to subsection (b) of this section utilizing such
24 successful techniques;

25 (6) Investigate the availability of, and apply for, funds
26 available from any and all private or public sources to be
27 used in the litter control program created by this section;

28 (7) Promulgate regulations pursuant to article three,
29 chapter twenty-nine-a of this code establishing criteria
30 for the awarding of direct and/or matching grants for
31 the study of available research and development in the
32 fields of litter control, removal and disposal, methods for
33 the implementation of such research and development,
34 and the development of public educational programs con-
35 cerning litter control;

36 (8) Promulgate regulations pursuant to article three,
37 chapter twenty-nine-a of this code designating public
38 areas where litter receptacles shall be placed in accor-
39 dance with subsection (d), section twenty-six of this ar-
40 ticle. The director is further authorized to specify within
41 such regulations the minimum number of litter recep-
42 tacles required to be placed at each designated public
43 area; and

44 (9) Expend for the purposes set forth in this section
45 any and all moneys credited to the special revenue fund
46 known as the "litter control fund" by the state treasurer
47 pursuant to subsection (b), section twenty-six of this
48 article.

49 (b) Commencing on the first day of July, one thousand
50 nine hundred eighty-six, the director shall expend an-
51 nually at least fifty percent of the moneys credited to the
52 "litter control fund" in the previous fiscal year for match-
53 ing grants to counties and municipalities for the initiation
54 and administration of local litter control programs. The
55 director may promulgate regulations pursuant to article
56 three, chapter twenty-nine-a of this code establishing
57 criteria for the awarding of matching grants.

58 (c) The director of the department of natural resources
59 in cooperation with the commissioner of highways, the

60 department of public safety, the United States forestry
61 service, and other local, state and federal law-enforce-
62 ment agencies, shall be responsible for the administration
63 and enforcement of all laws and regulations relating to
64 the maintenance of cleanliness and improvement of ap-
65 pearances on and along highways, roads, streets, alleys
66 and other public areas of the state and shall make recom-
67 mendations to the director from time to time concerning
68 means and methods of accomplishing litter control con-
69 sistent with the provisions of this chapter.

**§20-7-26. Unlawful disposal of litter; penalties; evidence; no-
tice of violations; litter receptacle placement;
penalties; duty to enforce violations.**

1 (a) Any person who places, deposits, dumps or throws or
2 causes to be placed, deposited, dumped or thrown any litter
3 as defined in section twenty-four, article seven of this
4 chapter, in or upon any public or private highway, road,
5 street or alley, or upon any private property without the
6 consent of the owner, or in or upon any public park or other
7 public property other than in such place as may be set aside
8 for such purpose by the governing body having charge
9 thereof, is guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not less than fifty dollars nor more
11 than one thousand dollars, or imprisoned in the county jail
12 not more than sixty days, or sentenced to remove litter from
13 any public highway, road, street, alley or any other public
14 park or property as designated by the court for a total of
15 not less than thirty hours under the supervisor of the county
16 supervisor of the department of highways, or his designated
17 agent.

18 If any litter be thrown or cast from a motor vehicle,
19 such action is prima facie evidence that the driver of such
20 motor vehicle intended to violate the provisions of this
21 section. If any litter be dumped or discharged from a
22 motor vehicle, such action is prima facie evidence that
23 the owner and driver of such motor vehicle intended to
24 violate the provisions of this section.

25 (b) Every person who is convicted of or pleads guilty
26 to disposing of litter in violation of subsection (a) of this

27 section shall pay the sum of fifty dollars as costs for clean-
28 up, investigation and prosecution in such case, in addition
29 to any other court costs that the court is otherwise re-
30 quired by law to impose upon such convicted person. The
31 clerk of the circuit court, magistrate court or municipal
32 court wherein such additional costs are imposed shall, on
33 or before the last day of each month, transmit all such
34 costs received under this subsection to the state treasurer
35 for deposit in the state treasury to the credit of a special
36 revenue fund to be known as the "litter control fund"
37 which is hereby created. All moneys collected and re-
38 ceived under this subsection and paid into the state
39 treasury and credited to the "litter control fund" in the
40 manner prescribed by section two, article two, chapter
41 twelve of this code, shall be kept and maintained for
42 expenditure by the director for the specific purposes of
43 section twenty-five of this article, and shall not be treated
44 by the state auditor and treasurer as part of the general
45 revenue of the state. At the end of each fiscal year, any
46 unexpended balance of the "litter control fund" shall not
47 be transferred to the general revenue fund, but shall
48 remain in the "litter control fund."

49 (c) The commissioner of motor vehicles, upon register-
50 ing a motor vehicle or issuing an operator's or chauffeur's
51 license, shall issue to the owner or licensee, as the case
52 may be, a copy of subsection (a) of this section.

53 The commissioner of highways may cause appropriate
54 signs to be placed at the state boundary on each primary
55 and secondary road, informing those entering the state
56 of the maximum penalty provided for disposing of litter
57 in violation of subsection (a) of this section.

58 (d) Any person who owns, operates or otherwise con-
59 trols any public area as may be designated by the director
60 by regulation promulgated pursuant to subdivision eight,
61 subsection (a), section twenty-five of this article, shall
62 procure and place litter receptacles at his own expense
63 upon his premises and shall remove and dispose of litter
64 collected in such litter receptacles. After receiving two
65 written warnings from any law-enforcement officer or
66 officers to comply with this subsection or the said regula-

67 tions of the director, any person who fails to place and
68 maintain such litter receptacles upon his premises in vio-
69 lation of this subsection or the regulations of the director
70 shall be fined fifteen dollars per day of such violation.

71 (e) No portion of this section shall be construed to
72 restrict a private owner in the use of his own private
73 property or to prohibit the disposal of litter in any man-
74 ner otherwise authorized by law.

75 (f) Any law-enforcement officer who shall observe a
76 person violating the provisions of this section shall have a
77 mandatory duty to arrest or otherwise prosecute the vio-
78 lator to the limits provided herein. The West Virginia
79 department of highways shall investigate and cause to be
80 prosecuted violations of this section occurring upon the
81 highways of the state as the term "highways" is defined in
82 chapter seventeen of this code.

CHAPTER 115

(Com. Sub. for H. B. 1929—By Delegate Rollins and Delegate Love)

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

AN ACT to amend and reenact section nine, article fifteen, and section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter twenty-nine of said code by adding thereto a new article, designated article twenty-two, relating to taxation; consumers sales tax, exemption of lottery sales therefrom; personal income tax, exemption of lottery prizes therefrom; relating to the state lottery act; short title; legislative findings and intent; definitions; state lottery commission created; composition; qualifications; appointment; terms of office; removal; vacancies; chairperson; meetings; quorum; compensation and expenses; oath and bond; powers and duties; cooperation of other agencies; designation of enforcement agents; lottery director; appointment; qualifications; oath and bond; salary; divisions of the state lottery office; lottery director; powers and duties; appointment of deputy directors; hiring of staff; civil service coverage;

submission of proposed appropriations; initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems; licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; bond; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond; prohibited acts; crimes; selling without license; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts; crimes; forgery, counterfeiting of lottery tickets; criminal penalties; prohibited acts; conflicts of interest; prohibited gifts, gratuities; administrative violations of article; hearings; administrative penalties; payment of prizes to minors; disposition of unclaimed prize money; lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability; state lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes; net profit and expenses; surplus; appropriation of net profits; post audit of accounts and transactions of office; monthly and annual reports; official's name not to appear on lottery materials or advertising; official not to appear at any lottery drawing, exceptions; exemption of lottery prizes from state and local taxation; procurement; disclosures by vendors and related persons and entities; authorizing background investigations; unenforceability of contracts in contravention of section; disclosures by vendors and related persons and entities of political contributions; preemption of state laws or local regulation; termination of state lottery commission; penalties for criminal violations; and severability.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, and section twelve, article twenty-

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

Chapter.

11. Taxation.

29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

Article

15. Consumers Sales Tax.

21. Personal Income Tax.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (1) Sales of gas, steam and water delivered to consumers
3 through mains or pipes, and sales of electricity;

4 (2) Sales of textbooks required to be used in any of the
5 schools of this state;

6 (3) Sales of property or services to the state, its institutions
7 or subdivisions, and to the United States, including agencies
8 of federal, state or local governments for distribution in public
9 welfare or relief work;

10 (4) Sales of motor vehicles which are titled by the
11 department of motor vehicles and which are subject to the tax
12 imposed by section four, article three, chapter seventeen-a of
13 the code;

14 (5) Sales of property or services to churches and bona fide
15 charitable organizations who make no charge whatsoever for
16 the services they render: *Provided*, That the exemption herein
17 granted shall apply only to services, equipment, supplies and
18 materials directly used or consumed by these organizations,
19 and shall not apply to purchases of gasoline or special fuel;

20 (6) Sales of property or services to corporations or
21 organizations qualified under section 501(c)(3) of the Internal
22 Revenue Code of 1954, as amended, or under section 501(c)(4)
23 of the Internal Revenue Code of 1954, as amended, who make

24 casual and occasional sales not conducted in a repeated
25 manner or in the ordinary course of repetitive and successive
26 transactions of like character: *Provided*, That the exemption
27 herein granted shall apply only to services, equipment, supplies
28 and materials directly used or consumed by these organizations
29 and shall not apply to purchases of gasoline or special fuel;

30 (7) Sales of property or services to persons engaged in this
31 state in the business of contracting, manufacturing, transpor-
32 tation, transmission, communication or in the production of
33 natural resources: *Provided*, That the exemption herein
34 granted shall apply only to services, machinery, supplies and
35 materials directly used or consumed in the businesses or
36 organizations named above, and shall not apply to purchases
37 of gasoline or special fuel;

38 (8) An isolated transaction in which any tangible personal
39 property is sold, transferred, offered for sale, or delivered by
40 the owner thereof or by his representative for the owner's
41 account, such sale, transfer, offer for sale or delivery not being
42 made in the ordinary course of repeated and successive
43 transactions of like character by such owner or on his account
44 by such representative;

45 (9) Sales of tangible personal property and services rendered
46 for use or consumption in connection with the conduct of the
47 business of selling tangible personal property to consumers or
48 dispensing a service subject to tax under this article or which
49 would be subject to tax under this article but for the
50 exemption for food provided in section eleven of this article
51 and sales of tangible personal property and services rendered
52 for use or consumption in connection with the commercial
53 production of an agricultural product the ultimate sale of
54 which will be subject to the tax imposed by this article or
55 which would have been subject to tax under this article but
56 for the exemption for food provided in section eleven of this
57 article: *Provided*, That sales of tangible personal property and
58 services to be used or consumed in the construction of or
59 permanent improvement to real property and sales of gasoline
60 and special fuel shall not be exempt;

61 (10) Sales of tangible personal property for the purpose of
62 resale in the form of tangible personal property: *Provided*,
63 That sales of gasoline and special fuel by distributors and

64 importers shall be taxable except when the sale is to another
65 distributor for resale;

66 (11) Sales of property or services to nationally chartered
67 fraternal or social organizations for the sole purpose of free
68 distribution in public welfare or relief work: *Provided*, That
69 sales of gasoline and special fuel shall be taxable;

70 (12) Sales and services, fire fighting, or station house
71 equipment, including construction and automotive, made to
72 any volunteer fire department organized and incorporated
73 under the laws of the state of West Virginia: *Provided*, That
74 sales of gasoline and special fuel shall be taxable;

75 (13) Sales of newspapers when delivered to consumers by
76 route carriers;

77 (14) Sales of drugs dispensed upon prescription and sales
78 of insulin to consumers for medical purposes;

79 (15) Sales of radio and television broadcasting time,
80 newspaper and outdoor advertising space for the advertisement
81 of goods or services;

82 (16) Sales and services performed by day care centers;

83 (17) Casual and occasional sales of property or services not
84 conducted in a repeated manner or in the ordinary course of
85 repetitive and successive transactions of like character by
86 corporations or organizations qualified under section 501(c)(3)
87 of the Internal Revenue Code of 1954, as amended, or under
88 section 501(c)(4) of the Internal Revenue Code of 1954, as
89 amended;

90 (18) Bank safety deposit boxes;

91 (19) Sales of property or services to a school which has
92 approval from the West Virginia board of regents to award
93 degrees, which has its principal campus in this state, and which
94 is exempt from federal and state income taxes under section
95 501(c)(3) of the Internal Revenue Code of 1954, as amended:
96 *Provided*, That sales of gasoline and special fuel shall be
97 taxable;

98 (20) Sales of mobile homes to be utilized by purchasers as
99 their principal year-round residence and dwelling: *Provided*,
100 That these mobile homes shall be subject to tax at the three
101 percent rate; and

102 (21) Sales of lottery tickets and materials by licensed lottery
103 sales agents and lottery retailers authorized by the state lottery
104 commission, under the provisions of article twenty-two,
105 chapter twenty-nine of this code.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross income of
2 a resident individual means his federal adjusted gross income
3 as defined in the laws of the United States for the taxable year
4 with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross in-*
6 *come.*—There shall be added to federal adjusted gross income
7 the following items, except that modifications (5), (6) and (7)
8 shall be required only with respect to tax periods ending on
9 or after the first day of January, one thousand nine hundred
10 eighty-two:

11 (1) Interest income on obligations of any state other than
12 this state, or of a political subdivision of any such other state
13 unless created by compact or agreement to which this state
14 is a party;

15 (2) Interest or dividend income on obligations or securities
16 of any authority, commission or instrumentality of the United
17 States, which the laws of the United States exempt from
18 federal income tax but not from state income taxes;

19 (3) Income taxes imposed by this state or any other taxing
20 jurisdiction, to the extent deductible in determining federal
21 adjusted gross income and not credited against federal income
22 tax;

23 (4) Interest on indebtedness incurred or continued to
24 purchase or carry obligations or securities the income from
25 which is exempt from tax under this article, to the extent
26 deductible in determining federal adjusted gross income;

27 (5) Interest on a depository institution tax-exempt savings
28 certificate which is allowed as an exclusion from federal gross
29 income under section 128 of the Internal Revenue Code, for
30 the federal taxable year;

31 (6) The amount allowed as a deduction from federal gross
32 income under section 221 of the Internal Revenue Code by
33 married couples who file a joint federal return for the federal
34 taxable year; and

35 (7) The deferral value of certain income that is not
36 recognized for federal tax purposes, which value shall be an
37 amount equal to a percentage of the amount allowed as a
38 deduction in determining federal adjusted gross income
39 pursuant to the accelerated cost recovery system under section
40 168 of the Internal Revenue Code for the federal taxable year,
41 with the percentage of the federal deduction to be added as
42 follows with respect to the following recovery property: Three-
43 year property—no modification; five-year property—ten
44 percent; ten-year property—fifteen percent; fifteen-year public
45 utility property—twenty-five percent; and fifteen-year real
46 property—thirty-five percent: *Provided*, That this modification
47 shall not apply to any person whose federal deduction is
48 determined by the use of the straight line method.

49 (c) *Modifications reducing federal adjusted gross income.*—
50 There shall be subtracted from federal adjusted gross income:

51 (1) Interest income on obligations of the United States and
52 its possessions to the extent includible in gross income for
53 federal income tax purposes;

54 (2) Interest or dividend income on obligations or securities
55 of any authority, commission or instrumentality of the United
56 States to the extent includible in gross income for federal
57 income tax purposes but exempt from state income taxes
58 under the laws of the United States;

59 (3) Any gain from the sale or other disposition of property
60 having a higher fair market value on the first day of January,
61 one thousand nine hundred sixty-one, than the adjusted basis
62 at said date for federal income tax purposes: *Provided*, That
63 the amount of this adjustment is limited to that portion of any
64 such gain which does not exceed the difference between such
65 fair market value and such adjusted basis: *Provided, however*,
66 That if such gain is considered a long-term capital gain for
67 federal income tax purposes, the modification shall be limited
68 to forty percent of such portion of the gain;

69 (4) The amount of any refund or credit for overpayment of
70 income taxes imposed by this state, or any other taxing
71 jurisdiction, to the extent properly included in gross income
72 for federal income tax purposes;

73 (5) Annuities, retirement allowances, returns of contribu-
74 tions and any other benefit received under the public
75 employees retirement system, the department of public safety
76 death, disability and retirement fund, the state teachers
77 retirement system, and all forms of military retirement,
78 including regular armed forces, reserves and national guard,
79 including any survivorship annuities derived therefrom, to the
80 extent includible in gross income for federal income tax
81 purposes;

82 (6) Retirement income received in the form of pensions and
83 annuities after the thirty-first day of December, one thousand
84 nine hundred seventy-nine, under any police or firemen's
85 retirement system, including any survivorship annuities derived
86 therefrom, to the extent includible in gross income for federal
87 income tax purposes;

88 (7) Federal adjusted gross income in the amount of eight
89 thousand dollars received from any source after the thirty-first
90 day of December, one thousand nine hundred seventy-nine, by
91 any person who has attained the age of sixty-five on or before
92 the last day of the taxable year, or by any person certified
93 by proper authority as permanently and totally disabled,
94 regardless of age, on or before the last day of the taxable year,
95 to the extent includible in federal adjusted gross income for
96 federal tax purposes: *Provided*, That if a person has a medical
97 certification from a prior year and he is still permanently and
98 totally disabled, a copy of the original certificate is acceptable
99 as proof of disability. A copy of the form filed for the federal
100 disability income tax exclusion is acceptable: *Provided*,
101 *however*, That

102 (i) Where the total modification under subdivisions (1), (2),
103 (5) and (6) of this subsection is eight thousand dollars per
104 person or more, no deduction shall be allowed under this
105 subdivision, and

106 (ii) Where the total modification under subdivisions (1), (2),
107 (5) and (6) of this subsection is less than eight thousand dollars
108 per person, the total modification allowed under this

109 subdivision for all gross income received by such person shall
110 be limited to the difference between eight thousand dollars and
111 the sum of modifications under such subdivisions;

112 (8) Federal adjusted gross income in the amount of eight
113 thousand dollars received from any source after the thirty-first
114 day of December, one thousand nine hundred seventy-nine, by
115 the surviving spouse of any person who had attained the age
116 of sixty-five or who had been certified as permanently and
117 totally disabled, to the extent includible in federal adjusted
118 gross income for federal tax purposes: *Provided*, That

119 (i) Where the total modification under subdivisions (1), (2),
120 (5), (6) and (7) of this subsection is eight thousand dollars or
121 more, no deduction shall be allowed under this subdivision,
122 and

123 (ii) Where the total modification under subdivisions (1), (2),
124 (5), (6) and (7) of this subsection is less than eight thousand
125 dollars per person, the total modification allowed under this
126 subdivision for all gross income received by such person shall
127 be limited to the difference between eight thousand dollars and
128 the sum of such subdivisions;

129 (9) Any pay or allowances received, after the thirty-first day
130 of December, one thousand nine hundred seventy-nine, by
131 West Virginia residents who have not attained the age of sixty-
132 five, as compensation for active service in the armed forces
133 of the United States: *Provided*, That such deduction shall be
134 limited to an amount not to exceed four thousand dollars;

135 (10) Gross income to the extent included in federal adjusted
136 gross income under section 86 of the Internal Revenue Code
137 for federal income tax purposes; and

138 (11) The amount of any lottery prize awarded by the West
139 Virginia state lottery commission, to the extent properly
140 included in gross income for federal income tax purposes.

141 (d) *Modification for West Virginia fiduciary adjustment.*—
142 There shall be added to or subtracted from federal adjusted
143 gross income, as the case may be, the taxpayer's share, as
144 beneficiary of an estate or trust, of the West Virginia fiduciary
145 adjustment determined under section nineteen of this article.

146 (e) *Partners.*—The amounts of modifications required to be

147 made under this section by a partner, which relate to items
148 of income, gain, loss or deduction of a partnership, shall be
149 determined under section seventeen of this article.

150 (f) *Husband and wife.*—If husband and wife determine their
151 federal income tax on a joint return but determine their West
152 Virginia income taxes separately, they shall determine their
153 West Virginia adjusted gross incomes separately as if their
154 federal adjusted gross incomes had been determined separately.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

- §29-22-1. Short title.
- §29-22-2. Legislative findings and intent.
- §29-22-3. Definitions.
- §29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses; quorum; oath and bond.
- §29-22-5. State lottery commission; powers and duties; cooperation of other agencies.
- §29-22-6. Lottery director; appointment; qualifications; oath and bond; salary.
- §29-22-7. Divisions of the state lottery office.
- §29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.
- §29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games machines or devices; distinguishing numbers, winner selection; public drawings; witnessing of tickets; claim for and payments of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.
- §29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.
- §29-22-11. Prohibited acts; restrictions on sales agents and retailers; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts.
- §29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.
- §29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

- §29-22-14. Administrative violations of article; hearing; administrative penalties.
- §29-22-15. Payment of prizes to minors.
- §29-22-16. Disposition of unclaimed prize money.
- §29-22-17. Lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability.
- §29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; appropriation of net profits.
- §29-22-19. Postaudit of accounts and transactions of office.
- §29-22-20. Monthly and annual reports.
- §29-22-21. Official's name not to appear on lottery materials or at drawing.
- §29-22-22. Exemption of lottery prizes from state and local taxation.
- §29-22-23. Procurement; disclosures by vendors and related persons and entities; authorizing background investigation; unenforceability of contracts in contravention of section.
- §29-22-24. Disclosures by vendors and related persons and entities of political contributions.
- §29-22-25. Preemption of state laws or local regulation.
- §29-22-26. Termination of state lottery commission.
- §29-22-27. Penalties for criminal violations.
- §29-22-28. Severability.

§29-22-1. Short title.

1 This article shall be known and may be cited as the "State
2 Lottery Act."

§29-22-2. Legislative findings and intent.

1 The Legislature finds and declares that the purpose of this
2 article is to establish and implement a state-operated lottery
3 under the supervision of the state lottery commission and the
4 director of the state lottery office who shall be appointed by
5 the governor and hold broad authority to administer the
6 system in a manner which will provide the state with a highly
7 efficient operation.

§29-22-3. Definitions.

1 (a) "State lottery commission" or "commission" means the
2 state lottery commission created by this article.

3 (b) "Director" means the individual appointed by the
4 governor to provide management and administration necessary
5 to direct the state lottery office.

6 (c) "Lottery" means the public gaming systems or games
7 established and operated by the state lottery office.

8 (d) "Lottery tickets" or "tickets" means tickets or other
9 tangible evidence of participation used in lottery games or
10 gaming systems.

**§29-22-4. State lottery commission created; composition; qualifica-
tions; appointment; terms of office; chairman; removal;
vacancies; compensation and expenses; quorum; oath
and bond.**

1 (a) There is hereby created a state lottery commission which
2 shall consist of seven members, all residents and citizens of
3 the state, one who shall be a lawyer, one who shall be a
4 certified public accountant, one who shall be a computer
5 expert, one who shall have not less than five years experience
6 in law enforcement and one who shall be qualified by
7 experience and training in the field of marketing. The two
8 remaining members shall be representative of the public at
9 large. The commission shall carry on a continuous study and
10 investigation of the lottery throughout the state and advise and
11 assist the director of the state lottery. The commission
12 members shall be appointed by the governor, by and with the
13 advice and consent of the Senate, no later than the first day
14 of July, one thousand nine hundred eighty-five. At least one
15 member shall be appointed from each congressional district
16 existing as of the twenty-eighth day of January, one thousand
17 nine hundred eighty-two. The terms of members first
18 appointed expire as designated by the governor at the time of
19 appointment: One at the end of one year; two at the end of
20 two years; one at the end of three years; two at the end of
21 four years; and one at the end of five years. No more than
22 four members of such commission shall belong to the same
23 political party. Members serve overlapping terms of five years
24 and are eligible for successive appointments to the commission.
25 On the first day of July of each year, the commission shall
26 select a chairman from its membership. The governor may

27 remove any commission member for cause, notwithstanding
28 the provisions of section four, article six, chapter six of this
29 code. Vacancies shall be filled in the same manner as the
30 original appointment but only for the remainder of the term.
31 No person convicted of a felony or crime involving moral
32 turpitude shall be eligible for appointment nor appointed as
33 a commissioner.

34 (b) The members of the lottery commission receive one
35 hundred dollars for each day or portion thereof spent in the
36 discharge of their official duties. Members are reimbursed for
37 reasonable and necessary expenses incurred in the discharge
38 of their official duties. All such payments shall be made from
39 the state lottery fund.

40 (c) At least one meeting per month shall be held by the
41 commission. Additional meetings may be held at the call of
42 the chairman, director or majority of the commission
43 members.

44 (d) A majority of the members constitutes a quorum for the
45 transaction of business, and all actions require a majority vote
46 of the members present.

47 (e) Before entering upon the discharge of the duties as
48 commissioner, each commissioner shall take and subscribe to
49 the oath of office prescribed in section 5, article IV of the
50 Constitution of West Virginia and shall enter into a bond in
51 the penal sum of one hundred thousand dollars with a
52 corporate surety authorized to engage in business in this state,
53 conditioned upon the faithful discharge and performance of
54 the duties of the office. The executed oath and bond shall be
55 filed in the office of the secretary of state.

**§29-22-5. State lottery commission; powers and duties; cooperation
of other agencies.**

1 (a) The commission shall have the authority to:

2 (1) Promulgate rules in accordance with chapter twenty-
3 nine-a of this code: *Provided*, That those rules promulgated
4 by the commission that are necessary to begin the lottery
5 games selected shall be exempted from the provisions of

- 6 chapter twenty-nine-a of this code in order that the selected
7 games may commence as soon as possible;
- 8 (2) Establish rules for conducting lottery games, a manner
9 of selecting the winning tickets and manner of payment of
10 prizes to the holders of winning tickets;
- 11 (3) Select the type and number of public gaming systems
12 or games, to be played in accordance with the provisions of
13 this article;
- 14 (4) Contract, if deemed desirable, with the educational
15 broadcasting authority to provide services through its
16 microwave interconnection system to make available to public
17 broadcasting stations servicing this state, and, at no charge,
18 for rebroadcast to commercial broadcasting stations within
19 this state, any public gaming system or games drawing;
- 20 (5) Enter into interstate lottery agreements with other states;
- 21 (6) Adopt an official seal;
- 22 (7) Maintain a principal office and, if necessary, regional
23 suboffices at locations properly designated or provided;
- 24 (8) Prescribe a schedule of fees and charges;
- 25 (9) Sue and be sued;
- 26 (10) Lease, rent, acquire, purchase, own, hold, construct,
27 equip, maintain, operate, sell, encumber and assign rights of
28 any property, real or personal, consistent with the objectives
29 of the commission as set forth in this article;
- 30 (11) Designate one of the deputy directors to serve as acting
31 director during the absence of the director;
- 32 (12) Hold hearings on any matter of concern to the
33 commission relating to the lottery, subpoena witnesses,
34 administer oaths, take testimony, require the production of
35 evidence and documentary evidence and designate hearing
36 examiners and employees to so act; and

37 (13) To make and enter into all agreements and do all acts
38 necessary or incidental to the performance of its duties and
39 the exercise of its powers under this article.

40 (b) Departments, boards, commissions or other agencies of
41 this state shall provide assistance to the state lottery office
42 upon the request of the director.

43 (c) Upon the request of the deputy director for the security
44 and licensing division in conjunction with the director, the
45 attorney general, department of public safety and all other law-
46 enforcement agencies shall furnish to the director and the
47 deputy director such information as may tend to assure the
48 security, honesty, fairness and integrity in the operation and
49 administration of the lottery as they may have in their
50 possession, including, but not limited to, manual or compu-
51 terized information and data. The director is to designate such
52 employees of the security and licensing division as may be
53 necessary to act as enforcement agents. Such agents are
54 authorized to investigate complaints made to the commission
55 or the state lottery office concerning possible violation of the
56 provisions of this article and determine whether to recommend
57 criminal prosecution. If it is determined that action is
58 necessary, an agent, after approval of the director, is to make
59 such recommendation to the prosecuting attorney in the
60 county wherein the violation occurred or to any appropriate
61 law-enforcement agency.

**§29-22-6. Lottery director; appointment; qualifications; oath and
bond; salary.**

1 (a) There is hereby created the position of the lottery
2 director whose duties include the management and adminis-
3 tration of the state lottery office. The director shall be qualified
4 by training and experience to direct the operations of the
5 lottery, and shall be appointed, within ninety days of the
6 effective date of this article, by the governor and shall serve
7 at the will and pleasure of the governor. No person shall be
8 appointed as lottery director who has been convicted of a
9 felony or crime involving moral turpitude.

10 (b) The director serves on a full-time basis and may not be
11 engaged in any other profession or occupation.

12 (c) The director:

13 (1) Shall have a good reputation, particularly as a person
14 of honesty and integrity, and shall favorably pass a thorough
15 background investigation prior to appointment;

16 (2) The director shall not hold political office in the
17 government of the state either by election or appointment
18 while serving as director;

19 (3) The director shall be a citizen of the United States and
20 must become a resident of the state within ninety days of
21 appointment;

22 (4) The director shall receive an annual salary as provided
23 for by the governor; and

24 (5) The director and his or her executive secretary are
25 ineligible for civil service coverage as provided in section four,
26 article six, chapter twenty-nine of this code.

27 (d) Before entering upon the discharge of the duties as
28 director, the director shall take and subscribe to the oath of
29 office prescribed in section 5, article IV of the Constitution
30 of West Virginia and shall enter into a bond in the penal sum
31 of one hundred thousand dollars with a corporate surety
32 authorized to engage in business in this state, conditioned
33 upon the faithful discharge and performance of the duties of
34 the office. The executed oath and bond shall be filed in the
35 office of the secretary of state.

§29-22-7. Divisions of the state lottery office.

1 There shall be established within the state lottery office a
2 security and licensing division; a personnel, data processing,
3 accounting and administration division; and a marketing,
4 education and information division. Each division shall be
5 under the supervision of a deputy director who shall
6 administer and coordinate the operation of authorized
7 activities in the respective division. Each deputy director shall
8 have had three years management experience in areas pertinent
9 to his prospective responsibilities and an additional three years
10 of experience in the same field.

**§29-22-8. Lottery director; powers and duties; deputy directors;
hiring of staff; civil service coverage; submission of
proposed appropriations.**

1 (a) The director shall have the authority to:

2 (1) Appoint, with the approval of the commission, a deputy
3 director for each of the divisions established in this article. The
4 deputy directors appointed shall serve at the will and pleasure
5 of the director at an annual salary established by the
6 commission. Deputy directors shall not be eligible for civil
7 service coverage as provided in section four, article six, chapter
8 twenty-nine of this code;

9 (2) The director shall hire, pursuant to the approval of the
10 commission, such professional, clerical, technical and adminis-
11 trative personnel as may be necessary to carry out the
12 provisions of this article. No person shall be employed by the
13 lottery who has been convicted of a felony or other crime
14 involving moral turpitude. Each person employed by the
15 commission shall execute an authorization to allow an
16 investigation of that person's background;

17 (3) Designate the number and types of locations at which
18 tickets may be sold.

19 (b) Effective the first day of July, one thousand nine
20 hundred eighty-six, all employees of the commission, except
21 as otherwise provided herein, shall be in the classified service
22 under the provisions of article six, chapter twenty-nine of this
23 code.

24 (c) The director shall, pursuant to the approval of the
25 commission, prepare and submit the annual proposed
26 appropriations for the commission to the governor.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

1 (a) The commission shall initiate operation of the state
2 lottery on a continuous basis at the earliest feasible and
3 practical time, first initiating operation of the preprinted
4 instant winner type lottery. The lottery shall be initiated and
5 shall continue to be operated so as to produce the maximum

6 amount of net revenues to benefit the public purpose described
7 in this article consonant with the public good. Other state
8 government departments, boards, commissions, agencies and
9 their officers shall cooperate with the lottery commission so
10 as to aid the lottery commission in fulfilling these objectives.

11 (b) The commission shall promulgate rules and regulations
12 specifying the types of lottery games to be conducted by the
13 lottery: *Provided, That:*

14 (1) No lottery may use the theme of bingo, roulette, dice
15 or similar game, or similar games commonly associated with
16 casino gaming.

17 (2) No lottery may use the results of any amateur or
18 professional sporting event, dog race or horse race to
19 determine the winner.

20 (3) Electronic video lottery systems must include a central
21 site system of monitoring the lottery terminals utilizing an on-
22 line or dial-up inquiry.

23 (4) In a lottery utilizing a ticket, each ticket shall bear a
24 unique number distinguishing it from each other ticket.

25 (5) No lottery utilizing a machine may use machines which
26 dispense coins or currency.

27 (6) Selection of the winner must be predicated totally on
28 chance.

29 (7) Any drawings or winner selections shall be held in public
30 and witnessed by an independent accountant designated by the
31 director for such purposes.

32 (8) All lottery equipment and materials shall be regularly
33 inspected and tested, before and after any drawings or winner
34 selections, by independent qualified technicians.

35 (9) The director shall establish the price for each lottery and
36 determine the method of selecting winners and the manner of
37 payment of prizes, including providing for payment by the
38 purchase of annuities for prizes payable in installments.

39 (10) All claims for prizes shall be examined and no prize
40 shall be paid as a result of altered, stolen or counterfeit tickets
41 or materials, or which fail to meet validation rules or
42 regulations established for a lottery. No prize shall be paid

43 more than once, and, in the event of a binding determination
44 by the commission that more than one person is entitled to
45 a particular prize, the sole remedy of the claimants shall be
46 the award to each of them of an equal share in the single prize.

47 (11) A detailed tabulation of the estimated number of prizes
48 of each particular prize denomination that are expected to be
49 awarded in each lottery, or the estimated odds of winning such
50 prizes shall be printed on any lottery ticket, where feasible,
51 or in descriptive materials, and shall be available at the offices
52 of the commission.

53 (12) No prizes shall be paid which are invalid and not
54 contemplated by the prize structure of the lottery involved.

55 (13) By purchasing a ticket or participation in a lottery, a
56 participant agrees to abide by, and be bound by, the lottery
57 rules which apply to the lottery or game play involved. An
58 abbreviated form of such rules may appear on tickets and shall
59 appear on descriptive materials and shall be available at the
60 offices of the commission. A participant in a lottery agrees that
61 the determination of whether the participant is a valid winner
62 is subject to the lottery or game play rules and the winner
63 validation tests established by the commission. The determin-
64 ation of the winner by the commission shall be final and
65 binding upon all participants in a lottery and shall not be
66 subject to review or appeal.

67 (14) The commission shall institute such security procedures
68 as it deems necessary to ensure the honesty and integrity of
69 the winner selection process for each lottery. All such security
70 and validation procedures and techniques shall be, and remain,
71 confidential, and shall not be subject to any discovery
72 procedure in any civil judicial, administrative or other
73 proceeding, nor subject to the provisions of article one, chapter
74 twenty-nine-b of the code of West Virginia, one thousand nine
75 hundred thirty-one, as amended.

76 (c) The commission shall proceed with operation of such
77 additional lottery games, including the implementation of
78 games utilizing a variety of existing or future technological
79 advances at the earliest feasible date. The commission may
80 operate lottery games utilizing electronic computers and
81 electronic computer terminal devices and systems, which
82 systems must include a central site system of monitoring the

83 lottery terminals utilizing direct communication systems, or
84 other technological advances and procedures, ensuring honesty
85 and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

1 (a) The commission shall promulgate rules and regulations
2 for the licensing of lottery sales agents for the sale and
3 dispensing of lottery tickets, materials and lottery games, and
4 the operations of electronic computer terminals therefor,
5 subject to the following:

6 (1) The commission shall issue its annual license to such
7 lottery sales agents for each lottery outlet and for such fee as
8 is established by the commission to cover its costs thereof, but
9 not to exceed one thousand dollars. Application for licensing
10 as a lottery sales agent shall be on forms to be prescribed and
11 furnished by the director.

12 (2) No licensee may engage in business exclusively as a
13 lottery sales agent.

14 (3) The commission shall ensure geographic distribution of
15 lottery sales agents throughout the state.

16 (4) Before issuance of a license to an applicant, the
17 commission shall consider factors such as the financial
18 responsibility, security, background, accessibility of the place
19 of business or activity to the public, public convenience and
20 the volume of expected sales.

21 (5) No person under the age of twenty-one may be licensed
22 as an agent. No licensed agent shall employ any person under
23 the age of eighteen for sales or dispensing of lottery tickets
24 or materials or operation of a lottery terminal.

25 (6) A license is valid only for the premises stated thereon.

26 (7) The director may issue a temporary license when deemed
27 necessary.

28 (8) A license is not assignable or transferable.

29 (9) Before a license is issued, an agent shall be bonded for
30 an amount and in the form and manner to be determined by
31 the director.

32 (10) The commission may issue licenses to any legitimate
33 business, organization, person or entity, including, but not
34 limited to, civic or fraternal organizations, parks and
35 recreation commissions or similar authorities, senior citizen
36 centers, state owned stores, persons lawfully engaged in
37 nongovernmental business on state property, persons lawfully
38 engaged in the sale of alcoholic beverages, political subdivi-
39 sions or their agencies or departments, state agencies,
40 commission operated agencies, persons licensed under the
41 provisions of article twenty-three, chapter nineteen of this
42 code, religious, charitable or seasonal businesses.

43 (11) Licensed lottery sales agents shall receive five percent
44 of gross sales as commission for the performance of their
45 duties. In addition, the commission may promulgate a bonus-
46 incentive plan as additional compensation not to exceed one
47 percent of annual gross sales. The method and time of
48 payment shall be determined by the commission.

49 (12) Licensed lottery sales agents shall prominently display
50 the license on the premises where lottery sales are made.

51 (13) No person or entity or subsidiary, agent or subcontrac-
52 tor thereof shall receive or hold more than twenty-five percent
53 of the licenses to act as licensed lottery sales agent in any one
54 county or municipality nor more than five percent of the
55 licenses issued throughout this state: *Provided*, That the
56 limitations of twenty-five percent and five percent in this
57 subdivision shall not apply if it is determined by the
58 commission that there are not a sufficient number of qualified
59 applicants for licenses to comply with these requirements.

60 (b) The commission shall promulgate rules and regulations
61 specifying the terms and conditions for contracting with lottery
62 retailers for sale of preprinted instant type lottery tickets and
63 may provide for the dispensing of such tickets through
64 machines and devices. Tickets may be sold or dispensed in any
65 public or private store, operation or organization, without
66 limitation. The commission may establish an annual fee not

67 to exceed fifty dollars for such persons, per location or site,
68 and shall issue a certificate of authority to act as a lottery
69 retailer to such persons. The commission shall establish
70 procedures to ensure the security, honesty and integrity of the
71 lottery and distribution system. The commission shall establish
72 the method of payment, commission structure, methods of
73 payment of winners, including payment in merchandise and
74 tickets, and may require prepayment by lottery retailers,
75 require bond or security for payment and require deposit of
76 receipts in accounts established therefor. Retailers shall
77 prominently display the certificate of authority issued by the
78 commission on the premises where lottery sales are made.

**§29-22-11. Prohibited acts; restrictions on sales agents and retailers;
unauthorized sales; sales to minors; gifts to minors;
prizes to commission officers and staff prohibited;
criminal penalties for prohibited acts..**

1 (a) No person may sell lottery tickets or materials unless
2 authorized by the commission to so act. No person may
3 perform the functions of a licensed lottery sales agent unless
4 licensed by the commission. No person may perform the
5 functions of a lottery retailer unless authorized therefor by the
6 commission. No person may sell a lottery ticket or material
7 at a price greater than that established by the commission;
8 except, that nothing in this section may be construed to
9 prevent any person from giving a lottery ticket or material to
10 another as a gift or bonus. No person other than a licensed
11 lottery sales agent or an employee thereof, while acting within
12 the scope of such employment, shall sell lottery tickets, and
13 then only on the premises stated on the license.

14 (b) No ticket shall be sold to any person under the age of
15 eighteen years. This section does not prohibit the purchase of
16 a ticket by a person eighteen years of age or older for the
17 purpose of making the ticket a gift to a person less than that
18 age.

19 (c) No ticket may be purchased by and no prizes received
20 by or awarded to any officers or employees of the commission
21 or any member of their immediate household.

22 (d) Any person who violates the provisions of this section
23 is guilty of a misdemeanor, and, upon conviction thereof, shall
24 be fined not less than fifty dollars nor more than five hundred

25 dollars, or imprisoned in the county jail not more than one
26 year, or both fined and imprisoned.

§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.

1 Any person who, with intent to defraud, falsely makes,
2 alters, forges, utters, passes or counterfeits a lottery ticket is
3 guilty of a felony, and, upon conviction thereof, shall be fined
4 not more than one thousand dollars, or be imprisoned in the
5 penitentiary for not less than one year or both fined and
6 imprisoned.

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

1 (1) The commissioner, the deputy directors and the
2 employees of the lottery may not directly or indirectly,
3 individually, or as a member of a partnership or as a
4 shareholder of a corporation have an interest in dealing in a
5 lottery.

6 (2) A member of the commission, an employee of the lottery
7 or a member of their immediate families may not ask for, offer
8 to accept or receive any gift, gratuity or other thing of value
9 from any person, corporation, association or firm contracting
10 or seeking to contract with the state to supply gaming
11 equipment or materials for use in the operation of a lottery
12 or from an applicant for a license to sell tickets in the lottery
13 or from a licensee.

14 (3) A person, corporation, association or firm contracting
15 or seeking to contract with the state to supply gaming
16 equipment or materials for use in the operation of a lottery,
17 an applicant for a license to sell tickets in the lottery or a
18 licensee may not offer a member of the commission, an
19 employee of the lottery, or a member of their immediate
20 families any gift, gratuity or other thing of value.

§29-22-14. Administrative violations of article; hearing; administrative penalties.

1 (a) In addition to any criminal penalty imposed under the
2 provisions of this article or any other chapter of this code:

3 (1) No person shall be appointed, employed or continue to
4 serve in any position or employment with the commission who

5 has been convicted of any violation of this article, or of any
6 felony or any crime related to theft or gambling or involving
7 moral turpitude. The commission shall remove or discharge
8 any person so convicted.

9 (2) No person shall be licensed as a lottery sales agent nor
10 authorized to act as a lottery retailer who has been convicted
11 of any violation of this article, or of any felony or any crime
12 related to theft or gambling or involving moral turpitude. The
13 commission shall revoke the license or the authority of any
14 person so convicted.

15 (3) No person shall be permitted to act as vendor to the
16 commission who has been convicted of any violation of this
17 article, or of any felony or any crime related to theft, bribery
18 or gambling or involving moral turpitude. The commission
19 shall deny the privilege of acting as a vendor to the
20 commission for any person so convicted.

21 (b) Any person aggrieved by any action of the commission
22 under the provisions of this article may in writing to the
23 commission request a hearing which shall be held before the
24 commission or its duly authorized representative. Upon receipt
25 of the request for a hearing, the commission shall set a hearing
26 date within thirty days of the receipt of the request and shall
27 notify the aggrieved party in writing at least seven days in
28 advance of the hearing date of the time, date and place of the
29 hearing. The commission shall issue an order within thirty days
30 after the hearing date, either affirming or reversing the action
31 of the director. The provisions of chapter twenty-nine-a of this
32 code shall apply to such hearings.

33 (c) After hearing and determination that any provision of
34 this article or rule or regulation of the commission has been
35 violated, the commission may impose a penalty not to exceed
36 one hundred dollars per violation.

§29-22-15. Payment of prizes to minors.

1 If the person entitled to a prize or any winning ticket is
2 under the age of eighteen years, and such prize is less than
3 five thousand dollars, the director may direct payment of the
4 prize by delivery to an adult member of the minor's family
5 or a legal guardian of the minor of a check or draft payable
6 to the order of the minor. If the person entitled to a prize

7 or any winning ticket is under the age of eighteen years, and
8 the prize is five thousand dollars or more, the director may
9 direct payment to the minor by depositing the amount of the
10 prize in any bank to the credit of an adult member of the
11 minor's family or a legal guardian of the minor as guardian
12 for the minor. The person so named as guardian shall have
13 qualified under and shall have the same duties and powers as
14 a person designated as a guardian in the manner as provided
15 in article ten, chapter forty-four of this code. The commission
16 and director shall be discharged of all further liability upon
17 payment of a prize pursuant to this section.

§29-22-16. Disposition of unclaimed prize money.

1 Unclaimed prize money for the prize on a winning ticket
2 shall be retained by the director for the person entitled thereto
3 for one hundred eighty days after the drawing in which the
4 prize was won or for one hundred eighty days after the
5 announced end of a game. If no claim is made for said money
6 within one hundred eighty days, the prize money reverts to
7 the state lottery fund for the purpose of awarding additional
8 prizes. The commission shall promulgate rules for the
9 awarding of additional prizes.

**§29-22-17. Lottery proceeds; accounting therefor; deposit into
account of state treasurer; reports; funds to be held
in trust; failure to collect, account or deposit;
personal liability.**

1 (a) The commission shall establish rules and regulations for
2 accounting for sales of lottery tickets and materials and
3 accounting for all funds from sales and dispensing of lottery
4 tickets, materials and games. Such regulations shall require all
5 licensed lottery sales agents and lottery retailers to deposit in
6 the bank account of the state treasurer in banks regularly used
7 by said agents or retailers and approved by the director all
8 moneys received by such agents and retailers from the sale of
9 lottery tickets, materials and games, within twenty-four hours
10 of the receipt thereof, and in accordance with the provisions
11 of section two, article two, chapter twelve of the code of West
12 Virginia, one thousand nine hundred thirty-one, as amended,
13 unless the director specifies a different time within which the
14 deposit must be made. The state treasurer shall credit all funds
15 so deposited to the credit of the state lottery fund. The director

16 shall require such reports of lottery receipts and transactions
17 in the sale of lottery tickets and materials in such form and
18 containing such information as the director deems necessary.

19 (b) All funds from the sale of lottery tickets, materials and
20 games are the funds of the state and until deposited in the
21 accounts and in the manner specified by the director are held
22 in trust by the person or entity receiving them for deposit. If
23 a person or entity fails to collect, account for or deposit such
24 funds to the accounts and in the manner specified by the
25 director, such person and entity shall be personally liable for
26 the full amount of such funds. If the person so failing is an
27 association, corporation or other entity, the officers thereof
28 shall be personally liable, jointly and severally, for any default
29 on the part of the association, corporation or entity, and
30 payment may be enforced against them as against the
31 association, corporation or entity.

**§29-22-18. State lottery fund; appropriations and deposits; not part
of general revenue; no transfer of state funds after
initial appropriation; use and repayment of initial
appropriation; allocation of fund for prizes, net
profit and expenses; surplus; appropriation of net
profits.**

1 (a) There is hereby created a special fund in the state
2 treasury which shall be designated and known as the "state
3 lottery fund." The fund shall consist of all appropriations to
4 the fund and all interest earned from investment of the fund,
5 and any gifts, grants or contributions received by the fund.
6 All revenues received from the sale of lottery tickets, materials
7 and games shall be deposited with the state treasurer and
8 placed into the "state lottery fund." The revenue shall be
9 disbursed in the manner herein provided for the purposes
10 stated herein and shall not be treated by the auditor and
11 treasurer as part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds
13 shall be made to the commission or lottery fund after the
14 initial appropriation. The initial appropriation shall be used
15 solely for the establishment and operation of the commission
16 and lottery operations during the period until the lottery
17 becomes a revenue-producing agency but no longer than
18 eighteen months. After such period, but in no event longer

19 than eighteen months from the effective date of this article,
20 the commission shall commence repayment to the state general
21 revenue fund of the amount of the initial appropriation from
22 the general revenue fund to be repaid in equal installments
23 over the ensuing twelve months from the funds provided in
24 subsection (e) below.

25 (c) A minimum annual average of forty-five percent of the
26 gross amount received from each lottery shall be allocated and
27 disbursed as prizes.

28 (d) A minimum annual average of forty percent of the gross
29 amount received from each lottery shall be allocated as net
30 profit. The director is authorized to expend the necessary
31 percentage of the amount allocated as net profit, not to exceed
32 fifteen percent thereof, for the purposes of entering into
33 contractual arrangements for the acquisition, financing, lease
34 and lease-purchase, and other financing transactions, of lottery
35 goods and services, including tickets, equipment, machinery,
36 electronic computer systems and terminals, and supplies and
37 maintenance therefor, for the first thirty-six months of
38 operation, and may apportion the costs, expenses and
39 expenditures related thereto among the commission, vendor or
40 vendors and licensed lottery sales agents.

41 (e) Not more than fifteen percent of the gross amount
42 received from each lottery shall be allocated to and may be
43 disbursed as necessary for fund operation and administration
44 expenses: *Provided*, That in the initial year of operation not
45 more than twenty percent may be so allocated and disbursed.
46 In the event that the percentage allotted for operations and
47 administration generates a surplus, the surplus will be allowed
48 to accumulate to an amount not to exceed two hundred fifty
49 thousand dollars. On a monthly basis the director shall report
50 to the joint committee on government and finance of the
51 Legislature any surplus in excess of two hundred fifty
52 thousand dollars and remit to the state treasurer the entire
53 amount of those surplus funds in excess of two hundred fifty
54 thousand dollars which shall be allocated as net profit.

55 (f) Annually, the Legislature shall appropriate the amounts
56 allocated as net profit above for such purposes as it deems
57 beneficial to the citizens of this state.

§29-22-19. Postaudit of accounts and transactions of office.

1 The legislative auditor shall conduct a yearly post audit of

2 all accounts and transactions of the state lottery office. The
3 cost of the audit shall be paid out of the state lottery fund
4 moneys designated for payment of operating expenses. The
5 commission shall have an annual audit performed by an
6 independent certified public accountant.

§29-22-20. Monthly and annual reports.

1 (a) The director shall, upon the tenth day of each month
2 provide the joint committee on government and finance of the
3 Legislature with a report reviewing the lottery operations,
4 including, but not limited to, the amount of gross sales, the
5 amount of net profit, the types of games being played, the
6 number of licensed sales agents, the names and amounts of
7 winners and any other information requested by the Legisla-
8 ture or by the joint committee on government and finance.

9 (b) The director shall, no later than the tenth day of each
10 regular session of the Legislature, provide to the Legislature,
11 legislative auditor, governor and state treasurer an annual
12 report focused upon subjects of interest concerning lottery
13 operations, including, but not limited to, an annual financial
14 analysis of the lottery operations, a discussion of the types of
15 games played and revenues generated, a statement of
16 expenditures for the last fiscal year, a summary of the benefit
17 programs and recommendations to the Legislature.

§29-22-21. Official's name not to appear on lottery materials or at drawing.

1 No elected or appointed official's name shall appear on any
2 lottery ticket or material or in connection with any advertise-
3 ment, nor shall any elected or appointed official, other than
4 the members of the lottery commission, the director or deputy
5 directors, preside or appear at any lottery drawing.

§29-22-22. Exemption of lottery prizes from state and local taxation.

1 No state or local taxes of any type whatsoever shall be
2 imposed upon any prize awarded by the state lottery.

§29-22-23. Procurement; disclosures by vendors and related persons and entities; authorizing background investigation; unenforceability of contracts in contravention of section.

1 (a) The commission shall utilize the provisions of article

2 three, chapter five-a of this code in the procurement of all
3 commodities, printing, services and goods, materials, lottery
4 tickets and other items necessary for the commission and
5 lottery, subject to the provisions of subsection (b) of this
6 section.

7 (b) For the printing of tickets used in any lottery game, any
8 goods or services involving the receiving or recording of
9 number selection of any lottery game, or any goods or services
10 involving the determination of winners on any lottery game,
11 which are hereby referred to as major procurements, the
12 commission shall evaluate the competence, integrity, character,
13 reputation and background of the vendor. To allow for this
14 evaluation, potential vendors shall supply the following
15 information prior to the submission of an initial bid or
16 proposal and on or before the first day of July of each year
17 thereafter;

18 (1) If the vendor is a corporation, the officers, directors and
19 each stockholder in such corporation; except that, in the case
20 of stockholders of publicly held equity securities of a publicly
21 traded corporation, only the names and addresses of those
22 known to the corporation to own beneficially five percent or
23 more of such securities need be disclosed; and

24 (2) If the vendor is a partnership or joint venture, all of the
25 general and limited partners or joint venturers; if such general
26 and limited partners or joint venturers are themselves a
27 partnership, joint venture, trust, association, corporation,
28 subsidiary or intermediary corporation, the same information
29 required by this section shall be supplied for such entities also;

30 (3) If the vendor is a trust, the name of the trustee;

31 (4) If the vendor is an association, the members, officers and
32 directors; and

33 (5) If the vendor intends to or does subcontract to another
34 person or entity any integral or substantial portion of the work
35 to be performed in supplying such materials or equipment,
36 then the vendor shall supply the above-mentioned information
37 for all such persons or entities.

38 (6) The following information shall also be submitted:

39 (A) Other jurisdictions in which the vendor has contracts
40 to supply gaming materials or equipment and the types of
41 gaming materials or equipment involved therewith;

42 (B) The details of any felony conviction of a criminal
43 offense, state or federal, of the vendor or any person whose
44 name and address are required by this section;

45 (C) The details of any disciplinary action of a judicial nature
46 relating to gaming taken by any state or person against the
47 vendor or any person whose name and address are required
48 by this section;

49 (D) The number of years the vendor has been in the
50 business of supplying gaming materials or equipment;

51 (E) A disclosure of each state and jurisdiction in which the
52 vendor has been denied, or has had revoked a gaming license
53 of any kind, and the disposition of such in each such state
54 or jurisdiction. If any gaming license has been revoked or has
55 not been renewed or any gaming license application has been
56 either denied or is pending and has remained pending for more
57 than six months, all of the facts and circumstances underlying
58 such failure to receive such license must be disclosed;

59 (F) A disclosure of the details of any bankruptcy, insol-
60 vency, reorganization or any pending litigation relating to
61 gaming of each vendor;

62 (G) A signed authorization by each vendor and officer
63 thereof allowing the deputy director for security to conduct
64 a background investigation of such person; and

65 (H) Such other information, accompanied by such docu-
66 ments, as the commission, by rule or contract procurement
67 documents, may require as being necessary or appropriate in
68 the public interest to accomplish the purposes of this section.

69 (c) No contract for the supply of gaming materials or
70 equipment for use in the operation of the state lottery is
71 enforceable against the state if the provisions of this section
72 are not complied with.

**§29-22-24. Disclosures by vendors and related persons and entities
of political contributions.**

1 (a) For purposes of this section:

2 "Vendor" means any person required to make any disclosure
3 under the provisions of section twenty-three of this article.

4 "Major procurement" has the same meaning as set out in
5 section twenty-three of this article.

6 (b) Prior to the submission of the initial bid or proposal,
7 and on or before the first day of July of each year thereafter,
8 a vendor who is submitting an initial bid or proposal to, or
9 who has submitted such within the preceding twelve months
10 to, or who has a current contract with, the state lottery
11 commission or any state agency, board or commission or
12 political subdivision, for any major procurement, shall file with
13 the secretary of state a detailed itemized disclosure statement,
14 subscribed and sworn to before an officer authorized to
15 administer oaths, setting forth each contribution to any local,
16 state or federal political candidate or political committee in
17 this state, made in the preceding three years, or a statement
18 that no such contributions have been made.

§29-22-25. Preemption of state laws or local regulation.

1 (a) No state or local law or regulation providing any
2 penalty, disability, restriction, regulation or prohibition for the
3 manufacture, transportation, storage, distribution, advertising,
4 possession or sale of any lottery tickets or materials or for the
5 operation of any lottery shall apply to authorized operations
6 by or for the state lottery or commission.

7 (b) The provisions of this article preempt all regulations,
8 rules, ordinances and laws of any county or municipality in
9 conflict herewith: *Provided*, That nothing herein shall
10 invalidate any zoning law, or Sunday closing law under article
11 ten, chapter sixty-one of this code.

12 (c) Nothing in this article shall be deemed to permit the
13 operation of any lottery otherwise prohibited by the laws of
14 this state, not owned and operated by this state and permitted
15 by this article.

§29-22-26. Termination of state lottery commission.

1 The state lottery commission shall be terminated pursuant
2 to the provisions of article ten, chapter four of this code on
3 the first day of July, one thousand nine hundred ninety-one,

- 4 unless sooner terminated or unless continued or reestablished
5 pursuant to such article and chapter.

§29-22-27. Penalties for criminal violations.

1 (a) Any person violating any of the provisions of this article,
2 except sections eleven and twelve of this article, is guilty of
3 a misdemeanor, and, upon conviction thereof, for the first
4 offense, shall be fined not less than one hundred nor more than
5 five hundred dollars, or imprisoned in the county jail not more
6 than one year, or both fined and imprisoned.

7 (b) Any person violating any of the provisions of this
8 article, except sections eleven and twelve of this article, shall,
9 for the second offense, be guilty of a felony, and, upon
10 conviction thereof, shall be fined not more than one thousand
11 dollars, or be imprisoned in the penitentiary for not less than
12 one year, or both fined and imprisoned.

§29-22-28. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall
3 not affect other provisions or applications of this article, and
4 to this end the provisions of this article are declared to be
5 severable.

CHAPTER 116

(S. B. 15—By Senator Tucker)

[Passed March 6, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the jurisdiction of magistrate courts in civil matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. JURISDICTION AND AUTHORITY.**§50-2-1. Civil jurisdiction.**

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the
3 peace, magistrate courts shall have jurisdiction of all civil
4 actions wherein the value or amount in controversy or the
5 value of property sought, exclusive of interest and cost, is
6 not more than three thousand dollars. Notwithstanding the
7 provisions of section eleven, article five of this chapter, or
8 any other limitations to the contrary, magistrate courts
9 shall have jurisdiction to enter an order for support and to
10 enforce said orders as provided in articles seven and eight,
11 chapter forty-eight of this code. Magistrate courts shall
12 have jurisdiction of matters involving unlawful entry or
13 detainer of real estate so long as the title to such real estate
14 is not in dispute. Except as the same may be in conflict with
15 the provisions of this chapter, the provisions of article
16 three, chapter fifty-five of this code, regarding unlawful
17 entry and detainer, shall apply to such actions in magistrate
18 court. Magistrate courts shall have jurisdiction of actions
19 on bonds given pursuant to the provisions of this chapter.
20 Magistrate courts shall have continuing jurisdiction to
21 entertain motions in regard to post-judgment process
22 issued from magistrate court and decisions thereon may be
23 appealed in the same manner as judgments.

24 Magistrate courts shall not have jurisdiction of actions in
25 equity, of matters in eminent domain, of matters in which
26 the title to real estate is in issue, of proceedings seeking
27 satisfaction of liens through the sale of real estate, of
28 actions for false imprisonment, of actions for malicious
29 prosecution or of actions for slander or libel or of any of the
30 extraordinary remedies set forth in chapter fifty-three of
31 this code.

32 Magistrates, magistrate court clerks, magistrate court
33 deputy clerks and magistrate assistants shall have the
34 authority to administer any oath or affirmation, to take any
35 affidavit or deposition, unless otherwise expressly provided
36 by law, and to take, under such regulations as are
37 prescribed by law, the acknowledgment of deeds and other
38 writings.

CHAPTER 117

(Com. Sub. for H. B. 1280—By Delegate Yanni and Delegate Burke)

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

AN ACT to amend and reenact section three, article twenty-three chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article four, chapter seventeen-a of said code; and to amend and reenact sections four and ten, article six, chapter seventeen-a of said code, all relating to salvage yards; increasing licensing fee; permitting one assignment of salvage certificates for wrecked or damaged vehicles without charge therefor; increasing time period for surrender of certificates; requiring surrender of title, vehicle identification number plate and submission of photograph for certain vehicles; reducing salvage certificates fee; exempting from payment of privilege tax certain applicants for titles to reconstructed vehicles; changing certain titling provisions for reconstructed vehicles; expanding bonding provisions for applicants for license certificates; deleting reference to license certificate appeal board; and providing special license plates for used parts dealers, wreckers and dismantlers.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article four, chapter seventeen-a of said code be amended and reenacted; and that sections four and ten, article six of chapter seventeen-a of said code be amended and reenacted, all to read as follows:

Chapter.

17. **Roads and Highways.**
17A. **Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.**

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 23. SALVAGE YARDS.

- §17-23-3. **License required; issuance; fee; renewal; disposition of fees.**

1 No salvage yard or any part thereof shall be established,

2 operated or maintained without a state license. The commis-
3 sioner shall have the sole authority to issue such a state license,
4 and he shall charge therefor a fee of two hundred dollars
5 payable annually in advance. All licenses issued under this
6 section shall expire on the first day of January following the
7 date of issuance. A license may be renewed from year to year
8 upon paying the commissioner the sum of two hundred dollars
9 for each such renewal. All such renewal license fees collected
10 under the provisions of this article shall be deposited in the
11 special fund provided for in section ten of this article.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.**

Article.

4. Transfer of Title or Interest.

**6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates;
Temporary Plates or Markers, etc.**

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

**§17A-4-10. Salvage certificates for certain wrecked or damaged
vehicles; fee; penalty.**

1 In the event a motor vehicle is determined to be a total loss
2 or otherwise designated as "totaled" by any insurance company
3 or insurer, and upon payment of an agreed price as a claim
4 settlement to any insured or claimant owner for the purchase
5 of the vehicle, the insurance company or the insurer shall
6 receive the certificate of title and the vehicle. The insurance
7 company or insurer shall within ten days surrender the
8 certificate of title and a copy of the claim settlement to the
9 department of motor vehicles. The department shall issue a
10 "salvage certificate," on a form prescribed by the commis-
11 sioner, in the name of the insurance company or the insurer.
12 Such certificate shall contain on the reverse thereof spaces for
13 one successive assignment before a new certificate at an
14 additional fee is required. Upon the sale of the vehicle the
15 insurance company or insurer shall endorse the assignment of
16 ownership on the salvage certificate and deliver it to the
17 purchaser who shall also apply for a salvage certificate, even
18 if the insured or claimant owner is the purchaser. The vehicle
19 shall not be titled or registered for operation on the streets

20 or highways of this state unless there is compliance with
21 subsection (b) of this section:

22 (a) Any owner, who scraps, compresses, dismantles or
23 destroys a vehicle for which a certificate of title or salvage
24 certificate has been issued, shall, within twenty days, surrender
25 the certificate of title or salvage certificate to the department
26 for cancellation. Any person who purchases or acquires a
27 vehicle as salvage or scrap, to be dismantled, compressed or
28 destroyed, shall within twenty days surrender the certificate to
29 the department. Should a vehicle less than eight years old be
30 determined to be a complete fire, flood or basket, the vehicle
31 identification number plate and a photograph of the vehicle
32 shall accompany the surrendered certificate: *Provided*, That
33 the term "basket" means a vehicle which has been damaged
34 more than seventy-five percent of the retail price as described
35 in the national automobile dealers association official used car
36 guide. If the vehicle is to be reconstructed, the owner must
37 obtain a salvage certificate and comply with the provisions of
38 subsection (b) of this section.

39 (b) If the motor vehicle is a "reconstructed vehicle" as
40 defined in section one, article one of this chapter, it may not
41 be titled or registered for operation until it has been inspected
42 by an authorized law-enforcement officer or official state
43 inspection station to determine the operating condition and
44 vehicle identification number and all other inspection
45 requirements. Following an approved inspection, an applica-
46 tion for a new certificate of title may be submitted to the
47 department; however, the applicant may be required to submit
48 all receipts for component parts, equipment and materials used
49 in the reconstruction. The salvage certificate must also be
50 surrendered to the department before a certificate of title may
51 be issued.

52 (c) The department shall charge a fee of fifteen dollars for
53 the issuance of each salvage certificate but shall not require
54 the payment of the five percent privilege tax. However, upon
55 application for a certificate of title for a reconstructed vehicle,
56 the department shall collect the five percent privilege tax on
57 the fair market value of the vehicle as determined by the
58 commissioner unless the applicant is otherwise exempt from
59 the payment of such privilege tax.

60 (d) A certificate of title issued by the department for a
61 reconstructed vehicle shall contain markings in bold print on
62 the face of the title that it is for a reconstructed vehicle:
63 *Provided*, That if the application for a certificate of title is
64 accompanied by a sworn statement under penalty of perjury
65 that cost of repair to the vehicle is not more than fifty percent
66 of the national automobile dealers association official used car
67 guide value of the vehicle, the boldface markings "recon-
68 structed vehicle" shall not appear on the title.

69 Any person who violates the provisions of this section shall
70 be guilty of a misdemeanor, and, upon conviction thereof,
71 shall be fined not less than five hundred dollars nor more than
72 one thousand dollars, or imprisoned in the county jail for not
73 more than one year, or both fined and imprisoned.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DIS-
MANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-4. Application for license certificate; insurance; bonds; investigation;
information confidential.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-4. **Application for license certificate; insurance; bonds;
investigation; information confidential.**

1 (a) Application for any license certificate required by section
2 three of this article shall be made on such form as may be
3 prescribed by the commissioner. There shall be attached to the
4 application a certificate of insurance certifying that the
5 applicant has in force an insurance policy issued by an
6 insurance company authorized to do business in this state
7 insuring the applicant and any other person, as insured, using
8 any vehicle or vehicles owned by the applicant with the express
9 or implied permission of such named insured, against loss from
10 the liability imposed by law for damages arising out of the
11 ownership, operation, maintenance or use of such vehicle or
12 vehicles, subject to minimum limits, exclusive of interest and
13 cost, with respect to each such vehicle, as follows: Ten
14 thousand dollars because of bodily injury to or death of one
15 person in any one accident and, subject to said limit for one
16 person, twenty thousand dollars because of bodily injury to
17 or death of two or more persons in any one accident, and five
18 thousand dollars because of injury to or destruction of

19 property of others in any one accident.

20 (b) In the case of an application for a license certificate to
21 engage in the business of new motor vehicle dealer, used motor
22 vehicle dealer or house trailer dealer, such application shall
23 disclose, but not be limited to, the following:

24 (1) The type of business for which a license certificate is
25 sought;

26 (2) If the applicant be an individual, the full name and
27 address of the applicant and any trade name under which he
28 will engage in said business;

29 (3) If the applicant be a copartnership, the full name and
30 address of each partner therein, the name of the copartnership,
31 its post-office address and any trade name under which it will
32 engage in said business;

33 (4) If the applicant be a corporation, its name, the state of
34 its incorporation, its post-office address and the full name and
35 address of each officer and director thereof;

36 (5) The location of each place in this state at which the
37 applicant will engage in said business and whether the same
38 is owned or leased by the applicant;

39 (6) Whether the applicant, any partner, officer or director
40 thereof has previously engaged in said business or any other
41 business required to be licensed under the provisions of this
42 article and if so, with or for whom, at what location and for
43 what periods of time;

44 (7) Whether the applicant, any partner, officer, director or
45 employer thereof has previously applied for a license certificate
46 under the provisions of this article or a similar license
47 certificate in this or any other state, and if so, whether such
48 license certificate was issued or refused, and, if issued, whether
49 it was ever suspended or revoked;

50 (8) A statement of previous general business experience and
51 past history of the applicant; and

52 (9) Such other information as the commissioner may
53 reasonably require which may include information relating to
54 any contracts, agreements or understandings between the
55 applicant and other persons respecting the transaction of said

56 business, and any criminal record of the applicant if an
57 individual, or of each partner if a copartnership, or of each
58 officer and director, if a corporation.

59 (c) In the case of an application for a license certificate to
60 engage in the business of new motor vehicle dealer, such
61 application shall, in addition to the matters outlined in
62 subsection (b) of this section disclose:

63 (1) The make or makes of new motor vehicles which the
64 applicant will offer for sale in this state during the ensuing
65 fiscal year; and

66 (2) The exact number of new motor vehicles, if any, sold
67 at retail in this state by such applicant or his predecessor, if
68 any, during the preceding fiscal year, and if no new motor
69 vehicles were sold at retail in this state by such applicant or
70 his predecessor, if any, during the preceding fiscal year, the
71 number of new motor vehicles the applicant reasonably
72 expects to sell at retail in this state during the ensuing fiscal
73 year.

74 (d) In the case of an application for a license certificate to
75 engage in the business of used motor vehicle dealer, such
76 application shall in addition to the matters outlined in
77 subsection (b) of this section, disclose the exact number of
78 used motor vehicles, if any, sold at retail in this state by such
79 applicant or his predecessor, if any, during the preceding fiscal
80 year, and if no used motor vehicles were sold at retail in this
81 state by such applicant or his predecessor, if any, during the
82 preceding fiscal year, the number of used motor vehicles the
83 applicant reasonably expects to sell at retail in this state during
84 the ensuing fiscal year.

85 (e) In the case of an application for a license certificate to
86 engage in the business of trailer dealer, motorcycle dealer, used
87 parts dealer, or wrecker or dismantler, such application shall
88 disclose such information as the commissioner may reasonably
89 require.

90 (f) Such application shall be verified by the oath or
91 affirmation of the applicant, if an individual, or if the
92 applicant is a copartnership or corporation, by a partner or
93 officer thereof, as the case may be. Such application must be
94 accompanied by a bond of the applicant in the penal sum of

95 two thousand dollars, in such form as may be prescribed by
96 the commissioner, conditioned that the applicant will not in
97 the conduct of his business practice any fraud which, or make
98 any fraudulent representation which, shall cause a financial
99 loss to any purchaser, seller or financial institution or agency,
100 or the state of West Virginia, with a corporate surety thereon
101 authorized to do business in this state, which bond shall be
102 effective as of the date on which the license certificate sought
103 is issued.

104 (g) Upon receipt of any such fully completed application,
105 together with any bond required as aforesaid, the certificate
106 of insurance as aforesaid and the appropriate fee as hereinafter
107 provided in section ten of this article, the commissioner may
108 conduct such investigation, as he deems necessary to determine
109 the accuracy of any statements contained in such application
110 and the existence of any other facts which he deems relevant
111 in considering such application. To facilitate such investiga-
112 tion, the commissioner may withhold issuance or refusal of the
113 license certificate for a period not to exceed twenty days.

114 (h) Any application for a license certificate under the
115 provisions of this article and any information submitted
116 therewith shall be confidential for the use of the department.
117 No person shall divulge any information contained in any such
118 application or any information submitted therewith except in
119 response to a valid subpoena or subpoena duces tecum issued
120 pursuant to law.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

1 (a) The annual fee required for a license certificate to engage
2 in the business of new motor vehicle dealer shall be one
3 hundred dollars. This fee shall also entitle such licensee to one
4 dealer's special plate which shall be known as a Class D special
5 plate. Up to nine additional Class D special plates shall be
6 issued to any such licensee upon application therefor on a form
7 prescribed by the commissioner for such purpose and the
8 payment of a fee of five dollars for each additional Class D
9 special plate. Any such licensee who obtains a total of ten
10 Class D special plates as aforesaid shall be entitled to receive
11 additional Class D special plates on a formula basis, that is,
12 one additional Class D special plate per twenty new motor

13 vehicles sold at retail in this state by such licensee or his
14 predecessor during the preceding fiscal year, upon application
15 therefor on a form prescribed by the commissioner for such
16 purpose and the payment of a fee of five dollars for each such
17 additional Class D special plate: *Provided*, That in the case
18 of a licensee who did not own or operate such business during
19 such preceding fiscal year and who has no predecessor who
20 owned or operated such business during the preceding fiscal
21 year, additional Class D special plates shall be issued, for the
22 ensuing fiscal year only, on a formula basis of one additional
23 Class D special plate per twenty new motor vehicles which
24 such licensee estimates on his application for his license
25 certificate he will sell at retail in this state during said ensuing
26 fiscal year. Any such licensee may obtain Class D special plates
27 in addition to the ten plates authorized above and any
28 authorized on a formula basis, but the cost of each such Class
29 D special plate shall be thirty dollars.

30 (b) The annual fee required for a license certificate to
31 engage in the business of used motor vehicle dealer shall be
32 one hundred dollars. This fee shall also entitle such licensee
33 to one dealer's special plate which shall be known as a Class
34 D-U/C special plate. Up to four additional Class D-U/C
35 special plates shall be issued to any such licensee upon
36 application therefor on a form prescribed by the commissioner
37 for such purpose and the payment of a fee of five dollars for
38 each additional Class D-U/C special plate. Any such licensee
39 who obtains a total of five Class D-U/C special plates as
40 aforesaid shall be entitled to receive additional Class D-U/C
41 special plates on a formula basis, that is, one additional Class
42 D-U/C special plate per thirty used motor vehicles sold at
43 retail in this state by such licensee or his predecessor during
44 the preceding fiscal year, upon application therefor on a form
45 prescribed by the commissioner for such purpose and the
46 payment of a fee of five dollars for each such additional Class
47 D-U/C special plate: *Provided*, That in the case of a licensee
48 who did not own or operate such business during such
49 preceding fiscal year and who has no predecessor who owned
50 or operated such business during the preceding fiscal year,
51 additional Class D-U/C special plates shall be issued, for the
52 ensuing fiscal year only, on a formula basis of one additional
53 Class D-U/C special plate per thirty used motor vehicles which
54 such licensee estimates on his application for his license

55 certificate he will sell at retail in this state during said ensuing
56 fiscal year. Any such licensee may obtain Class D-U/C special
57 plates, in addition, to the five plates authorized above and any
58 authorized on a formula basis, but the cost of each such Class
59 D-U/C special plate shall be thirty dollars.

60 (c) The annual fee required for a license certificate to engage
61 in the business of house trailer dealer or trailer dealer, as the
62 case may be, shall be twenty-five dollars. This fee shall also
63 entitle such licensee to four dealer's special plates which shall
64 be known as Class D-T/R special plates. Additional Class D-
65 T/R special plates shall be issued to any such licensee upon
66 application therefor on a form prescribed by the commissioner
67 for such purpose and the payment of a fee of five dollars for
68 each such additional Class D-T/R special plate.

69 (d) The annual fee required for a license certificate to
70 engage in the business of motorcycle dealer shall be ten dollars.
71 This fee shall also entitle such licensee to two dealer's special
72 plates which shall be known as Class F special plates.
73 Additional Class F special plates shall be issued to any such
74 dealer upon application therefor on a form prescribed by the
75 commissioner for such purpose and the payment of a fee of
76 five dollars for each such additional Class F special plate.

77 (e) The annual fee required for a license certificate to engage
78 in the business of used parts dealer, or wrecker, or dismantler,
79 as the case may be, shall be fifteen dollars. Upon payment of
80 the fee for said license certificate, a licensee shall be entitled
81 to up to four special license plates which shall be known as
82 Class WD special plates. Such plates shall be issued to any
83 such licensee upon application therefor on a form prescribed
84 by the commissioner for such purpose and the payment of a
85 fee of twenty-five dollars for each such plate. Such plate issued
86 under the provisions of this subsection shall have the words
87 "Towing Only" affixed thereon.

88 (f) All of the special plates provided for in this section shall
89 be of such form and design and contain such other distinguish-
90 ing marks or characteristics as the commissioner may
91 prescribe.

CHAPTER 118

(Com. Sub. for S. B. 329—By Senator Tucker)

[Passed April 10, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred four and one hundred six, article two, chapter forty-six-a of said code; and to amend and reenact sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, all relating to credit transactions generally; priority of a security interest in a motor vehicle by delivery of certificate of origin and actual and continued possession of such certificate; notice of liability to a surety, cosigner, comaker, endorser or guarantor of a consumer credit sale or consumer loan obligation; notice of a consumer's right to cure default; curing of such default and acceleration of the maturity of a consumer credit sale or consumer loan; application of payments on account; rebate upon prepayment, refinancing or consolidation of a consumer loan or consumer credit sale; judgments and interest on judgments arising from a consumer credit sale or consumer loan; delinquency charges on precomputed consumer credit sales or consumer loans; and delinquency charges on non-precomputed consumer credit sales or consumer loans.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one hundred four and one hundred six, article two, chapter forty-six-a of said code be amended and reenacted; and that sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, be amended and reenacted, all to read as follows:

Article.

2. **Consumer Credit Protection.**
3. **Finance Charges and Related Provisions.**

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-104. Notice to cosigners.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

§46A-2-104. Notice to cosigners.

1 No person shall be held liable as surety, cosigner, co-
2 maker, endorser or guarantor or be charged with personal
3 liability for payment in a consumer credit sale or con-
4 sumer loan unless that person, in addition to and before
5 signing any instrument evidencing the transaction, signs
6 and receives a separate notice which clearly explains his
7 liability in the event of default by the consumer and also
8 receives a copy of the disclosure required by the "Federal
9 Consumer Credit Protection Act." Such notice shall be
10 sufficient if it appears under the conspicuous caption
11 "NOTICE TO COSIGNER" and contains substantially the
12 following language:

13 "You are being asked to guarantee this debt. Think
14 carefully before you do. If the borrower doesn't pay the
15 debt, you will have to. Be sure you can afford to pay it
16 if you have to, and that you want to accept this responsi-
17 bility."

18 "You may have to pay up to the full amount of the debt
19 if the borrower does not pay. You may also have to pay late
20 fees or collection costs, which increase this amount."

21 "The creditor can collect this debt from you without
22 first trying to collect from the borrower. The creditor can
23 use the same collection methods against you that can be
24 used against the borrower, such as suing you, garnishing
25 your wages, etc. If this debt is ever in default, that fact
26 may become a part of your credit record."

27 "This notice is not the contract that makes you liable
28 for the debt."

29 The caption shall be typewritten or printed in at least
30 twelve point bold Helvetica upper case type. The body of
31 the notice shall be typewritten or printed in at least eight
32 point regular Helvetica type, in upper or lower case.
33 where appropriate.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

1 After a consumer has been in default on any install-
 2 ment obligation or any other secured obligation for five
 3 days for failure to make a scheduled payment or other-
 4 wise perform pursuant to such a consumer credit sale or
 5 consumer loan other than with respect to a covenant to
 6 provide insurance for or otherwise to protect and pre-
 7 serve the property covered by a security interest, the
 8 creditor may give him notice of such fact in the manner
 9 provided for herein. Actual delivery of such notice to a
 10 consumer or delivery or mailing of same to the last
 11 known address of the consumer is sufficient for the pur-
 12 pose of this section. If given by mail, notice is given when
 13 it is deposited in a mailbox properly addressed and post-
 14 age prepaid. Notice shall be in writing and shall con-
 15 spicuously state the name, address and telephone number
 16 of the creditor to whom payment or other performance
 17 is owed, a brief description of the transaction, the con-
 18 sumer's right to cure such default and the amount of
 19 payment and other required performance and date by
 20 which it must be paid or accomplished in order to cure
 21 the default. A copy of the notice required by this section
 22 shall be (i) retained by the creditor, (ii) certified in the
 23 manner prescribed by this section by an officer or other
 24 authorized representative of such creditor, and (iii) no-
 25 tarized by a person licensed as a notary under the laws
 26 of the state of West Virginia or any other state or terri-
 27 tory of the United States. The certification required by
 28 this section shall substantially conform to the following
 29 language:

30 "I, (name of person certifying),
 31 the (title of person certifying)
 32 of (creditor's name), hereby
 33 certify that the notice of the consumer's right to cure
 34 default on which this certification appears [or to which
 35 this certification is attached] was on this day of
 36, 19....., mailed to the person(s) whose
 37 name(s) appear herein [therein] at the address(es) set

38 forth herein [therein].

39

40

.....”
(Signature)

41 Except as hereinafter provided in this section, after a de-
42 fault on any installment obligation or any other secured
43 obligation other than with respect to a covenant to provide
44 insurance for or otherwise to protect and preserve the
45 property covered by a security interest, a creditor may
46 not accelerate maturity of the unpaid balance of any
47 such installment obligation or any other such secured
48 obligation, commence any action or demand or take pos-
49 session of collateral on account of default until ten days
50 after notice has been given to the consumer of his right
51 to cure such default. Until such period expires, the con-
52 sumer shall have the right to cure any default by tender-
53 ing the amount of all unpaid sums due at the time of the
54 tender, without acceleration, plus any unpaid delinquen-
55 cy or deferral charges and by tendering any other per-
56 formance necessary to cure such default. Any such cure
57 shall restore a consumer to all his rights under the agree-
58 ment the same as if there had been no default. A con-
59 sumer who has been in default three or more times on the
60 same obligation and who has been given notice of such
61 fact three or more times shall not have the right to cure
62 a default under this section even though previous de-
63 faults have been cured and his creditor's right to proceed
64 against him and his collateral shall not be impaired or
65 limited in any way by this section. There shall be no
66 acceleration of the maturity of all or part of any amount
67 owing in such a consumer credit sale or consumer loan,
68 except where nonperformance specified in the agree-
69 ment as constituting default has occurred.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (1) When a consumer credit sale or consumer loan is
2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except
4 as provided in subsection (3), section one hundred twelve
5 of this article. When the total amount is payable in sub-
6 stantially equal consecutive monthly installments, the
7 portion of the sales finance charge or loan finance charge
8 attributable to any particular monthly installment period
9 shall be that proportion of the sales finance charge or loan
10 finance charge originally contracted for, as the balance
11 scheduled to be outstanding on the last day of the month-
12 ly installment period before deducting the payment, if
13 any, scheduled to be made on that day bears to the sum
14 of all the monthly instalment balances under the original
15 schedule of payments. (This method of allocation is the
16 sum of the digits method, commonly referred to as the
17 "Rule of 78.")

18 (2) Upon prepayment in full of a precomputed consum-
19 er credit sale or consumer loan by cash, a new loan,
20 refinancing, consolidation or otherwise, the creditor shall
21 rebate to the consumer that portion of the sales finance
22 charge or loan finance charge in the manner specified in
23 section five-d, article six, chapter forty-seven of this code:
24 *Provided*, That no rebate of less than one dollar need be
25 made.

26 (3) If the maturity of a precomputed consumer credit
27 sale or consumer loan is accelerated for any reason and
28 judgment is obtained, the debtor is entitled to the same
29 rebate as if the payment had been made on the date
30 judgment is entered and such judgment shall bear in-
31 terest until paid at the rate of ten percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale
2 or consumer loan, refinancing or consolidation, the parties

3 may contract for a delinquency charge on any install-
4 ment not paid in full within ten days after its scheduled
5 due date in an amount not exceeding the greater of:

6 (a) An amount, not exceeding ten dollars, which is
7 five percent of the unpaid amount of the installment, but
8 in any event not less than one dollar; or

9 (b) An amount equivalent to the deferral charge that
10 would be permitted to defer the unpaid amount of the
11 installment for the period that it is delinquent.

12 (2) A delinquency charge under subdivision (a) of
13 subsection (1) may be collected only once on an in-
14 stallment however long it remains in default. No delin-
15 quency charge may be collected with respect to a de-
16 ferred installment unless the installment is not paid in
17 full within ten days after its deferred due date. A
18 delinquency charge may be collected at the time it ac-
19 crues or at any time thereafter.

20 (3) No delinquency charge may be collected on an
21 installment which is paid in full within ten days after
22 its scheduled or deferred installment due date, even
23 though an earlier maturing installment or a delinquency
24 or deferral charge on an earlier installment may not
25 have been paid in full. For purposes of this subsection,
26 payments shall be applied first to current installments,
27 then to delinquent installments, and then to delinquency
28 and other charges.

29 (4) If two installments or parts thereof of a precomputed
30 consumer credit sale or consumer loan are in default
31 for ten days or more, the creditor may elect to convert
32 such sale or loan from a precomputed sale or loan to
33 one in which the sales finance charge or loan finance
34 charge is based on unpaid balances. In such event the
35 creditor shall make a rebate pursuant to the provisions
36 on rebate upon prepayment, refinancing or consolidation
37 as of the maturity date of any installment then delin-
38 quent, and thereafter may make a sales finance charge
39 or loan finance charge as authorized by the appropriate
40 provisions on sales finance charges or loan finance charges
41 for consumer credit sales or consumer loans.

42 The amount of the rebate shall not be reduced by the
43 amount of any permitted minimum charge. If the
44 creditor proceeds under this subsection, any delinquency
45 or deferral charges made with respect to installments
46 due at or after the maturity date of the delinquent
47 installments shall be rebated, and no further delinquency
48 or deferral charges shall be made.

49 (5) The commissioner shall prescribe by rule the
50 method or procedure for the calculation of delinquency
51 charges consistent with the other provisions of this
52 chapter where the precomputed consumer credit sale
53 or consumer loan is payable in unequal or irregular
54 installments.

**§46A-3-113. Delinquency charges on nonprecomputed con-
sumer credit sales or consumer loans repayable
in installments.**

1 (1) As an alternative to the continuation of the sales
2 finance charge or loan finance charge on a delinquent
3 installment of a nonprecomputed credit sale or consumer
4 loan, refinancing or consolidation, repayable in install-
5 ments, the parties may contract for a delinquency charge
6 on any installment not paid in full within ten days after
7 its scheduled due date in an amount, not exceeding ten
8 dollars, which is five percent of the unpaid amount of the
9 installment, but in any event not less than one dollar.

10 (2) A delinquency charge under subsection (1) may be
11 collected only once on an installment however long it
12 remains in default. A delinquency charge may be col-
13 lected at the time it accrues or at any time thereafter.

14 (3) No delinquency charge may be collected on an
15 installment which is paid in full within ten days after
16 its scheduled due date, even though an earlier maturing
17 installment or a delinquency or deferral charge on an
18 earlier installment may not have been paid in full. For
19 purposes of this subsection, payments shall be applied
20 first to current installments, then to delinquent install-
21 ments, and then to delinquency and other charges.

CHAPTER 119

(S. B. 254—By Senators Tucker and Spears)

[Passed March 19, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to providing accident reports to the commissioner of the department of highways when property of the department is damaged as a result of the accident and to the mayor of a municipality when property of the municipality is damaged as a result of the accident.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCIDENTS.

§17C-4-16. Accidents involving state and municipal property; reports to be provided.

1 Whenever a report of a motor vehicle accident prepared
2 by a member of the department of public safety, a mem-
3 ber of a county sheriff's department or a municipal police
4 officer, in the regular course of their duties, indicates that
5 as a result of such accident damage has occurred to any
6 bridge, sign, guardrail or other property, exclusive of
7 licensed motor vehicles, a copy of such report shall, in
8 the case of such property belonging to the department of
9 highways, be provided to the commissioner of the depart-
10 ment of highways, and, in the case of such property be-
11 longing to a municipality, be provided to the mayor of
12 that municipality. The copies of such reports shall be
13 provided to the commissioner or mayor, as applicable,
14 without cost to them.

CHAPTER 120

(S. B. 463—By Senator Tomblin)

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

AN ACT to amend and reenact sections four and eleven-b, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the height and weight of vehicles and loads; length of combination vehicles permitted.

Be it enacted by the Legislature of West Virginia:

That sections four and eleven-b, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

§17C-17-11b. Authority of state road commissioner to increase length limitations upon highways designated by him.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not
 2 exceed a height of thirteen feet six inches, but the owner or
 3 owners of such vehicles shall be responsible for damage to
 4 any bridge or highway structure and to municipalities for
 5 any damage to traffic control devices or other highway
 6 structures where such bridges, devices or structures have a
 7 vehicle clearance of less than thirteen feet six inches.

8 (b) A motor vehicle including any load thereon shall not
 9 exceed a length of forty feet extreme overall dimension,
 10 inclusive of front and rear bumpers.

11 (c) Except as hereinafter provided, a combination of
 12 vehicles coupled together shall not consist of more than two
 13 units, and no such combination of vehicles including any
 14 load thereon shall have an overall length, inclusive of front
 15 and rear bumpers, in excess of fifty-five feet, except as
 16 provided in section eleven-b of this article, and except as
 17 otherwise provided in respect to the use of a pole trailer as
 18 authorized in section five of this article: *Provided, That the*

19 limitation that a combination of vehicles coupled together
20 shall not consist of more than two units shall not apply to a
21 combination of vehicles coupled together by a saddle mount
22 device used to transport motor vehicles in a drive-away
23 service when no more than three saddle mounts are used:
24 *Provided, however,* That equipment used in said
25 combination meets the requirements of the safety
26 regulations of the United States department of
27 transportation and shall not exceed an overall length of
28 more than sixty-five feet.

29 (d) The length limitations for truck tractor-semitrailer
30 combinations and truck tractor-semitrailer-trailer
31 combinations operating on the national system of interstate
32 and defense highways and those classes of qualifying
33 federal-aid primary system highways so designated by the
34 United States secretary of transportation, and those
35 highways providing reasonable access to and from
36 terminals, facilities for food, fuel, repairs and rest, and
37 points of loading and unloading for household goods
38 carriers from such highways, and further, as to other
39 highways so designated by the West Virginia commissioner
40 of highways, shall be as follows: The maximum length of a
41 semitrailer unit operating in a truck tractor-semitrailer
42 combination shall not exceed forty-eight feet in length and
43 the maximum length of any semitrailer or trailer operating
44 in a truck tractor-semitrailer-trailer combination shall not
45 exceed twenty-eight feet in length and in no event shall any
46 combinations exceed three units, including the truck
47 tractor: *Provided,* That nothing herein contained shall
48 impose an overall length limitation as to commercial motor
49 vehicles operating in truck tractor-semitrailer or truck
50 tractor-semitrailer-trailer combinations.

**§17C-17-11b. Authority of state road commissioner to increase
length limitations upon highways designated
by him.**

1 If, in the opinion of the commissioner of the department
2 of highways, the design, construction and safety of any
3 highway, or portion thereof, are such that the length
4 limitations prescribed in subsection (c), section four of this
5 article can be increased without undue risk of damage to

6 other vehicles lawfully using such highway or portion
7 thereof, to bridges or other road structures, and to
8 municipal and utility company facilities, wires, traffic
9 devices or other structures, the commissioner may, by order,
10 increase the length limitations of vehicles which may be
11 operated upon any such highway, or portion thereof,
12 designated by him in such order and may establish therein
13 the maximum length limitations which shall thereafter be
14 applicable to the highway or portion thereof so designated
15 by him; *Provided*, That the maximum length of any
16 combination of vehicles including any load thereon shall not
17 exceed sixty feet, except as otherwise provided in this article
18 with respect to the size of vehicles: *Provided, however*, That
19 no such order of the commissioner shall establish any height
20 or length limitation in excess of or in conflict with any
21 height or length limitation prescribed by or pursuant to acts
22 of Congress with respect to the national system of interstate
23 defense highways.

CHAPTER 121

(H. B. 1450—By Delegate McCormick)

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

AN ACT to amend and reenact section two, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parties subject to penalties for certain traffic violations; creating a violation of driving less than ten miles per hour over the stated speed limit on certain highways; penalty; violations not subject to report to department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS
IN CRIMINAL CASES.**

§17C-19-2. Offenses by persons owning or controlling vehicles; owner present in vehicle to be arrested rather than driver for certain traffic violations.

1 It is unlawful for the owner, or any other person, employing
2 or otherwise directing the driver of any vehicle to require or
3 knowingly to permit the operation of such vehicle upon a
4 highway in any manner contrary to law.

5 If the owner of a motor vehicle is present in the vehicle at
6 a time when another driver is operating the vehicle upon the
7 highways of this state (1) with defective or improper equipment
8 in violation of the provisions of article fifteen of this chapter,
9 (2) in violation of the weight, height, length or width
10 provisions of article seventeen of this chapter, (3) with
11 improper registration in violation of the provisions of article
12 three, chapter seventeen-a of this code or (4) with an expired
13 vehicle inspection decal or certificate in violation of the
14 provisions of article sixteen of this chapter, the owner rather
15 than the driver shall be arrested for any violation enumerated
16 herein in lieu of an arrest of the driver. If the owner of the
17 vehicle is not present therein, then the driver shall be arrested
18 for any violation enumerated in this section.

19 If an owner or driver is arrested under the provisions of this
20 section for the offense of driving above the speed limit on a
21 controlled access highway or interstate highway, and if the
22 evidence shall show that the motor vehicle was being operated
23 at less than ten miles per hour above said speed limit, then
24 upon conviction thereof, such person shall be fined not more
25 than five dollars, plus court costs.

26 If an owner or driver is convicted under the provisions of
27 this section for the offense of driving above the speed limit
28 on a controlled access highway or interstate highway, and if
29 the evidence shall show that the motor vehicle was being
30 operated at less than ten miles per hour above said speed limit,
31 then notwithstanding the provisions of section four, article
32 three, chapter seventeen-b of this code, a certified abstract of
33 the judgment on such conviction shall not be transmitted to
34 the department of motor vehicles.

CHAPTER 122

(Com. Sub. for H. B. 1064—By Delegate Given)

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

AN ACT to amend and reenact section two, article three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article four of said chapter, all relating generally to the framing and adopting of city charters; election of charter boards; convening and organizing of charter boards; powers and duties of charter boards; requiring that a city charter provide for a form of city government; specifying such forms of city government as may be provided in a city charter; effective date of an approved charter; recordation of an approved charter and the election results relating thereto; and rejection of a proposed charter.

Be it enacted by the Legislature of West Virginia:

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

Article.

3. Framing and Adopting an Original Charter Following Incorporation of a City; Revising or Amending a Charter; Expenses of Incorporation.
4. Framing and Adopting a Charter Other Than Immediately Following Incorporation; Revising or Amending a Charter; Elections and Expenses.

ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.

§8-3-2. Charter board for cities—Organization; journal; quorum; duties; time for draft of charter; form of city government.

- 1 If on the returns being canvassed on the question of
- 2 incorporation of a city, such canvassing to be done by the
- 3 county commission, a majority of the legal votes cast be in
- 4 favor of such incorporation, then the legal votes cast for
- 5 members of the charter board shall be counted and canvassed
- 6 by the county commission, and the candidates in the number

7 to be chosen who received the highest number of votes shall
8 be declared elected. The charter board shall be convened at
9 a suitable place within the territory, by the member receiving
10 the highest number of votes, not less than five days nor more
11 than ten days after the canvass of the returns. He shall notify
12 the other members of the board in writing of the time and
13 place of the first meeting of the charter board. At such first
14 meeting, the board shall perfect its organization by electing a
15 chairman and secretary from its membership and by determin-
16 ing the rules to govern its proceedings. Any vacancy in the
17 membership of the board occurring before a charter is
18 approved by the qualified voters of the incorporated territory
19 shall be filled by appointment by majority action of the
20 remaining members, and any vacancy occurring after approval
21 of a charter as aforesaid shall be filled as specified in section
22 nine of this article. A journal shall be kept by the secretary,
23 in which journal shall be entered, upon demand by any
24 member, the vote by ayes and nays on any question. A
25 majority of the members of said board shall constitute a
26 quorum. The board shall specify the manner for nominating
27 and electing candidates for the first elective offices provided
28 for in the proposed charter at the election to be held on the
29 question of approval of the charter. It shall fix the date of
30 said election and it shall do and provide all other things
31 necessary for making nominations and holding and conducting
32 such election. Any qualified voter and any freeholder of the
33 incorporated territory may file with said charter board any
34 written material bearing upon the purposes of the board, and
35 the board shall give such material so filed such consideration
36 as it may deem proper. The charter drafting process may be
37 carried on through committees, but their work shall be
38 advisory only. The charter board shall complete its draft of
39 a charter within ninety days after its first meeting. It shall be
40 the duty of the charter board to provide in the charter so
41 drafted for a form of city government in accordance with one
42 of the following plans:

43 Plan 1—“*Mayor-Council Plan.*” Under this plan:

44 (1) There shall be a city council, elected at large or by
45 wards, or both at large and by wards, by the qualified voters
46 of the city; a mayor elected by the qualified voters of the city;
47 and such other elective officers as the charter may prescribe;

48 and

49 (2) The mayor and council shall be the governing body and
50 administrative authority.

51 Plan II—“*Strong-Mayor Plan.*” Under this plan:

52 (1) There shall be a mayor elected by the qualified voters
53 of the city; and a city council elected at large or by wards,
54 or both at large and by wards, by the qualified voters of the
55 city;

56 (2) The council shall be the governing body;

57 (3) The mayor shall be the administrative authority; and

58 (4) Other officers and employees shall be appointed by the
59 mayor or by his order in accordance with this chapter, but
60 such appointments by the mayor or by his order may be made
61 subject to the approval of the council.

62 Plan III—“*Commission Government.*” Under this plan:

63 (1) There shall be, except as hereinafter in this plan
64 provided, a commission of five members elected at large by
65 the qualified voters of the city;

66 (2) The members of the commission shall be a commissioner
67 of public affairs, a commissioner of finance, a commissioner
68 of public safety, a commissioner of public works and a
69 commissioner of streets: *Provided*, That a charter for a Class
70 I or Class II city may, and a charter for a Class III city shall,
71 provide for a commission of three members, viz., a commis-
72 sioner of finance, a commissioner of public works and a
73 commissioner of public safety;

74 (3) The members of the commission shall elect a mayor
75 from among their membership;

76 (4) The commission shall be the governing body and
77 administrative authority; and

78 (5) Officers and employees, other than members of the
79 commission, shall be appointed in accordance with this chapter
80 by the commissioners or by each commissioner with respect
81 to his department, as the charter may prescribe.

82 Plan IV—“*Manager Plan.*” Under this plan:

83 (1) There shall be a council of not less than five nor more
84 than eleven members, elected either at large or from such
85 geographical districts as may be established by the charter, or
86 partly at large and partly from such geographical districts, and
87 the charter may empower the council to change, from time to
88 time, such districts without amending the charter: *Provided,*
89 That the change of such districts shall not take effect during
90 the terms of office of the members of such council making such
91 change;

92 (2) There shall be a mayor elected by the council from
93 among its membership who shall serve as the presiding officer
94 of the council; and a city manager who shall be appointed by
95 the council;

96 (3) The council shall be the governing body; and

97 (4) The manager shall be the administrative authority. He
98 shall manage the affairs of the city under the supervision of
99 the council and he shall be responsible to such council. He
100 shall appoint or employ, in accordance with this chapter, all
101 subordinates and employees for whose duties or work he is
102 responsible to the council.

103 Plan V—"Manager-Mayor Plan." Under this plan:

104 (1) There shall be a council of not less than five nor more
105 than eleven members, elected either at large or from such
106 geographical districts as may be established by the charter, or
107 partly at large and partly from such geographical districts, and
108 the charter may empower the council to change, from time to
109 time, such districts without amending the charter: *Provided,*
110 That the change of such districts shall not take effect during
111 the terms of office of the members of such council making such
112 change;

113 (2) There shall be a mayor elected at large by the qualified
114 voters of the municipality as may be established by the charter,
115 who shall serve as a member and the presiding officer of the
116 council; and a city manager who shall be appointed by the
117 council;

118 (3) The council shall be the governing body; and

119 (4) The manager shall be the administrative authority. He
120 shall manage the affairs of the city under the supervision of

121 the council and he shall be responsible to such council. He
122 shall appoint or employ, in accordance with this chapter, all
123 subordinates and employees for whose duties or work he is
124 responsible to the council.

125 The purpose of the provisions of this section pertaining to
126 Plan I, Plan II, Plan III, Plan IV and Plan V is to establish
127 basic requirements of alternative plans of structure and
128 organization of city government. The structure and organiza-
129 tion of a city government may be specified by the charter in
130 respects other than those enumerated, and in elaboration of
131 the basic requirements, insofar as such charter provisions do
132 not conflict with the purpose and the provisions of the
133 alternative plans prescribed.

**ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN
IMMEDIATELY FOLLOWING INCORPORATION; RE-
VISING OR AMENDING A CHARTER; ELECTIONS
AND EXPENSES.**

**§8-4-5. Approval of charter; effective date; certification; judicial
notice; recordation; effect of rejection.**

1 If the proposed charter shall be approved by a majority of
2 the legal votes cast at the election thereon, the charter shall
3 take effect on July first next after the date of the election. If
4 approved as aforesaid, one of the signed copies of the charter
5 on file with the recorder of the city, together with a certified
6 copy of the declaration of the results of the election showing
7 the total legal votes cast for and against approval, shall be
8 certified forthwith by such recorder to the clerk of the House
9 of Delegates, in his capacity as keeper of the rolls. The same
10 shall be preserved by said clerk of the House of Delegates as
11 an authentic public record. After the effective date of a charter
12 so filed, all courts shall take judicial notice of its provisions.

13 If the charter is approved as aforesaid, a certified copy of
14 the declaration of the results of the election showing the total
15 legal votes cast for and against approval shall be forwarded
16 by the recorder of the city to the clerk of the county
17 commission for filing with the signed copy of the charter
18 previously filed with him.

19 Rejection of the proposed charter by a majority of the legal
20 votes cast shall have the same effect as a majority vote against
21 the question of framing a charter as specified in section two

22 of this article, and no further effort shall be made to have a
23 charter approved until the question of framing a charter is
24 again submitted to the qualified voters of the city and is
25 approved by a majority vote, subject to the two-year limitation
26 set forth in said section two of this article.

CHAPTER 123

(H. B. 1522—By Delegate J. Martin)

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

AN ACT to amend and reenact section twenty, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and providing for alternative methods by which a municipality may provide for the defeasance or payment of bonded indebtedness.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. TAXATION AND FINANCE.

§8-13-20. Balances in municipal bond commission fund may be transferred or remitted to general fund where bonded indebtedness has been paid or where defeasance or payment of bonded indebtedness has been provided for; use of transferred or remitted funds.

1 (a) As used in this section, unless the context in which used
2 clearly requires a different meaning, the word "commission"
3 means the West Virginia municipal bond commission.

4 (b) Every municipality shall have plenary power and
5 authority to transfer to the general fund of such municipality:

6 (1) Any unexpended balances of funds raised to pay the
7 interest on and create sinking funds for any bonded indebted-
8 ness when the bonded indebtedness for the payment of which

9 such funds were raised has been fully paid and discharged or
10 when provision has been made, as hereinafter provided in
11 subsection (d) of this section, to fully pay and discharge such
12 bonded indebtedness, and

13 (2) Any balance remaining in any fund levied and collected
14 under authority of any special levy election.

15 (c) The commission is authorized to remit to the municipi-
16 pality which has issued or issues any bonds, to be credited to
17 the general fund of such municipality, any balances of funds
18 remaining under the supervision and control of the commis-
19 sion when the bonded indebtedness for the payment of which
20 such funds were raised and paid to the commission has been
21 fully paid and discharged or when provision has been made,
22 as hereinafter provided in subsection (d) of this section, to fully
23 pay and discharge such bonded indebtedness.

24 (d) All outstanding bonds of any series shall, prior to the
25 maturity date thereof, be deemed to have been fully paid and
26 discharged when there shall have been deposited with the
27 commission:

28 (1) Either moneys in an amount which shall be sufficient,
29 or

30 (2) Securities of a quality in which the commission is
31 authorized by law to invest moneys in its possession and
32 control, the principal of and interest on which will provide
33 moneys which, together with the moneys, and investment
34 securities, if any, theretofore deposited with, or acquired by,
35 the commission and held by it for the payment of such bonds
36 and the moneys, if any, then deposited with the commission
37 for such purpose, (i) shall be sufficient to pay when due the
38 principal and interest due and to become due on said bonds
39 on and prior to the maturity date thereof, or (ii) if the
40 outstanding bonds are redeemable and the municipality by
41 ordinance determines to redeem said outstanding bonds, shall
42 be sufficient to pay when due the redemption price, and
43 interest due and to become due on said bonds on and prior
44 to the next redemption date thereof.

45 The moneys and securities held by the commission pursuant
46 to this subsection (d) shall be held by the commission in trust
47 for the payment of the principal or redemption price, if

48 applicable, of and interest on the bonds for the payment or
49 redemption of which such provision is made: *Provided*, That
50 any cash received from principal or interest payments on
51 securities so held by the commission, if not then needed for
52 such purpose, shall, to the extent practicable, be reinvested in
53 securities maturing at times and in principal amounts sufficient
54 to pay when due the principal or redemption price, if
55 applicable, of and interest to become due on such bonds on
56 and prior to the redemption date or maturity date thereof, as
57 the case may be, and the interest earned from any such
58 reinvestments shall be paid over to the municipality which
59 issued such bonds, as received by the commission, free and
60 clear of any trust. Any moneys, and the proceeds of any
61 securities, held by the commission in trust for the redemption,
62 if applicable, or for the payment and discharge of any series
63 of bonds, which are in excess of the moneys required to fully
64 pay and discharge such bonds, by redemption, if applicable,
65 or upon maturity thereof, shall also be transferred to the
66 general fund of the municipality which issued such bonds after
67 such bonds are redeemed, if applicable, or after such bonds
68 are fully paid and discharged at maturity, as the case may be.

69 (e) In any case where such funds are transferred from
70 sinking funds, or are remitted from the commission, as
71 hereinabove provided, no part of the moneys so transferred
72 or remitted shall be expended for the payment of current
73 expenses of the municipality, but such funds shall be expended
74 as the governing body of such municipality shall elect for the
75 liquidation of existing nonbonded indebtedness, if any, of such
76 municipality or for the liquidation of other bonded indebted-
77 ness of such municipality or for any combination of such uses.

CHAPTER 124

(Com. Sub. for S. B. 147—By Senators Loehr and Cook)

[Passed March 22, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authoriz-

ing municipalities to contract to provide services for the prevention and extinguishment of fire for property located outside corporate limits; providing such services beyond three miles of corporate limits in accordance with a rural fire protection district plan approved by the state fire commission; disallowing such rural fire protection district plans to infringe upon the response area of an existing fire department without such department's written consent; annual payments for contracted fire services; liens for and collection of defaulted payments; cancellation of contracts upon default; such contracts passing to the successors in title to property covered by such contracts; and cancellation of such contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires beyond three miles of corporate limits.

1 (a) Any municipality may contract to render services
 2 in the prevention and extinguishment of fires upon prop-
 3 erty located within three miles of its corporate limits. A
 4 municipality may contract beyond the three-mile limit
 5 for fire service protection, if fire protection is provided
 6 in accordance with and under a rural fire protection dis-
 7 trict plan based upon the fire suppression rating schedule
 8 approved by the state insurance commissioner. All rural
 9 fire protection district plans shall be approved by the
 10 state fire commission. No rural fire protection district
 11 plan providing for a municipality to contract beyond the
 12 three-mile limit may infringe upon an existing fire depart-
 13 ment's response area without the written consent of the
 14 fire department providing fire services for that area.

15 No contract entered into under the authority of this

16 section may operate to impose any greater obligation or
17 liability upon the municipality than that with respect to
18 property within its corporate limits. Nothing contained in
19 this section may be construed as requiring any municipi-
20 pality to contract to render such services.

21 Any contract entered into under the authority of this
22 section, on or after the first day of July, one thousand
23 nine hundred sixty-nine, shall require the property owner
24 to pay as consideration for said services an annual pay-
25 ment, determined as provided in the remainder of this
26 subsection. If the municipality does not impose a fire
27 service fee on the users of such service within the munici-
28 pality as authorized in section thirteen, article thirteen
29 of this chapter, the annual payment shall be equivalent
30 to eighty percent of the annual tax levied for current
31 municipal purposes upon property within said municipi-
32 pality of like assessed valuation to the property under
33 contract. If the municipality does impose a fire service
34 fee on the users of such service within the municipality,
35 as authorized in section thirteen, article thirteen of this
36 chapter, the annual payment shall be equivalent to the
37 amount of fire service fee which would be imposed if the
38 property under contract were located within the munici-
39 pality plus at least fifty percent of the annual tax levied
40 for current municipal purposes upon property within said
41 municipality of like assessed valuation to the property
42 under contract. No contract entered into under the au-
43 thority of this section, and nothing herein contained, may
44 be construed as requiring or permitting any municipality
45 to install or maintain any special additional apparatus or
46 equipment beyond that necessary for the protection of
47 property within its corporate limits.

48 (b) The annual payments due under any such contract
49 are payable on or before the first day of October of each
50 calendar year in which such contract remains in effect, or
51 upon such day as may be hereinafter provided as the due
52 date of the first installment of ad valorem taxes. If any
53 annual payment is in default for a period of more than
54 thirty days, it shall bear interest at the same rate as that
55 provided for delinquent property taxes and shall be a lien

56 upon the property under contract if a notice of such lien
57 is recorded in the proper deed of trust book in the office
58 of the clerk of the county commission of the county in
59 which such property or the major portion thereof is lo-
60 cated. Such lien is void at the expiration of two years
61 after such defaulted annual payment became due, unless
62 within such two-year period a civil action seeking equi-
63 table relief to enforce the lien was instituted by the
64 municipality. The municipality may by civil action collect
65 any annual payment and the interest thereon at any time
66 within five years after such payment became due; and
67 upon default in any annual payment, the municipality
68 may cancel the contract involved.

69 (c) Any contract made under the authority of this sec-
70 tion shall inure to the benefit of and be binding upon the
71 successors in title of the person making the same con-
72 tract; and such person, upon conveying the property
73 subject to such contract is no longer liable under such
74 contract, except as to annual payments which were due
75 prior to the conveyance and which remain unpaid.

76 (d) Any property owner may cancel any such contract
77 with respect to the property of such owner upon giving
78 a thirty-day written notice to the municipality, if the
79 owner is not in default with respect to any annual pay-
80 ment due thereunder, except that if such notice is given
81 subsequent to July first of any calendar year, the next
82 succeeding annual payment shall be made by the prop-
83 erty owner as soon as the amount thereof is ascertainable.
84 Upon cancellation as aforesaid, the municipality shall
85 deliver to the property owner a recordable release dis-
86 charging such owner and such property from any further
87 lien or obligation with respect to the annual payments.
88 The annual payments due under any such contract shall
89 be made to the officials as the municipality, in the con-
90 tract, designates to receive them, who likewise may re-
91 ceive notice of cancellation and execute upon behalf of
92 the municipality the release for which provision is here-
93 inbefore made.

CHAPTER 125

(H. B. 1488—By Delegate Seacrist)

[Passed March 18, 1985; in effect April 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-four, twenty-five and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to municipal policemen and firemen pension and relief funds; increase of minimum benefits paid to certain disability and retirement pensioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-24. Disability pensions.

§8-22-25. Retirement pensions.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

***§8-22-24. Disability pensions.**

1 (a) The monthly sum to be paid to each member eligible
2 for disability under the provisions of section twenty-three-a of
3 this article, shall be equal to sixty percent of the monthly
4 salary or compensation being received by such member, at the
5 time he is so disabled, or the sum of three hundred dollars
6 per month, whichever shall be greater: *Provided*, That the
7 limitation provided in subsection (b) of this section is not
8 exceeded.

9 (b) Effective for any member who becomes eligible for
10 disability benefits on or after the first day of July, one
11 thousand nine hundred eighty-one, under the provisions of

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.

12 section twenty-three-a of this article, as a proximate result of
13 service rendered in the performance of his duties within such
14 departments, his monthly disability payment as provided in
15 subsection (a) of this section shall not, when aggregated with
16 the monthly amount of state workers' compensation, result in
17 such disabled member receiving a total monthly income from
18 such sources in excess of one hundred percent of the basic
19 compensation which is paid to members holding the same
20 position which such member held within such department at
21 the time of his disability. Lump sum payments of state
22 workers' compensation benefits shall not be considered for
23 purposes of this subsection unless such lump sum payments
24 represent commuted values of monthly state workers'
25 compensation benefits.

***§8-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire department who
2 is entitled to a retirement pension hereunder, and who has
3 been in the honorable service of such department for twenty
4 years, may, upon written application to the board of trustees,
5 be retired from all service in such department without medical
6 examination or disability; and on such retirement the board
7 of trustees shall authorize the payment of annual retirement
8 pension benefits commencing upon his retirement or upon his
9 attaining the age of fifty years, whichever is later, payable in
10 twelve monthly installments for each year of the remainder of
11 his life, in an amount equal to sixty percent of such member's
12 average annual salary or compensation received during the
13 three twelve-consecutive-month periods, not necessarily
14 consecutive, each of such three periods beginning with the
15 same calendar month of different years and all such three
16 periods falling within the member's final five years of
17 employment with such department, in which such member
18 received his highest salary or compensation while a member
19 of the department, or an amount of three hundred dollars per
20 month, whichever shall be greater.

21 (b) Any member of any such department who is entitled to
22 a retirement pension under the provisions of subsection (a) of
23 this section and who has been in the honorable service of such
24 department for more than twenty years at the time of his
25 retirement, as herein provided, shall, in addition to the sixty

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.

26 percent authorized in said subsection (a), receive one
27 additional percent, to be added to the sixty percent, per each
28 year served in excess of twenty years up to a maximum of
29 ten additional percent.

30 (c) Any member of any such department whose service has
31 been interrupted by duty with the armed forces of the United
32 States as provided in section twenty-seven of this article prior
33 to the first day of July, one thousand nine hundred eighty-
34 one, shall be eligible for retirement pension benefits imme-
35 diately upon retirement, regardless of his age, if he shall
36 otherwise be eligible for such retirement pension benefits.

37 Any member of any such department who has served in
38 active duty with the armed forces of the United States as
39 described in section twenty-seven of this article, whether prior
40 to or subsequent to becoming a member of a paid police or
41 fire department covered by the provisions of this article, shall
42 receive, in addition to the sixty percent authorized in
43 subsection (a) of this section and the additional percent credit
44 authorized in subsection (b) of this section, one additional
45 percent per each year so served in active military duty, up to
46 a maximum of four additional percent. In no event, however,
47 may the total benefit granted to any member exceed seventy-
48 five percent of the member's annual average salary calculated
49 in accordance with subsection (a) of this section.

50 (d) Any member of a paid police or fire department shall
51 be retired at the age of sixty-five years in the manner provided
52 in this subsection. When a member of the paid police or fire
53 department shall have reached the age of sixty-five years, the
54 said board of trustees shall notify the mayor of this fact, within
55 thirty days of such member's sixty-fifth birthday; and the
56 mayor shall cause such sixty-five-year-old member of the paid
57 police or fire department to be retired within a period of not
58 more than thirty additional days. Upon retirement under the
59 provisions of this subsection, such member shall receive
60 retirement pension benefits payable in twelve monthly
61 installments for each year of the remainder of his life, in an
62 amount equal to sixty percent of such member's average
63 annual salary or compensation received during the three
64 twelve-consecutive-month periods, not necessarily consecutive,
65 each of such three periods beginning with the same calendar
66 month of different years and all such three periods falling

67 within the member's final five years of employment with such
68 department, in which such member received his highest salary
69 or compensation while a member of the department, or an
70 amount of three hundred dollars per month, whichever is
71 greater. If such member has been employed in said department
72 for more than twenty years, the provisions of subsection (b)
73 of this section shall apply.

74 (e) It shall be the duty of each member of a paid police or
75 fire department at the time a fund is hereafter established to
76 furnish the necessary proof of his date of birth to the said
77 board of trustees, as specified in section twenty-three of this
78 article, within a reasonable length of time, said length of time
79 to be determined by the said board of trustees; and then the
80 board of trustees and the mayor shall proceed to act in the
81 manner provided in subsection (d) of this section and shall
82 cause all members of the paid police or fire department who
83 are over the age of sixty-five years to be retired in not less
84 than sixty days from the date the fund is established. Upon
85 retirement under the provisions of this subsection (e), such
86 member, whether he has been employed in said department
87 for twenty years or not, shall receive retirement pension
88 benefits payable in twelve monthly installments for each year
89 of the remainder of his life, in an amount equal to sixty
90 percent of such member's average annual salary or compen-
91 sation received during the three twelve-consecutive-month
92 periods, not necessarily consecutive, each of such three periods
93 beginning with the same calendar month of different years and
94 all such three periods falling within the member's final five
95 years of employment with such department, in which such
96 member received his highest salary or compensation while a
97 member of the department, or an amount of three hundred
98 dollars per month, whichever shall be greater. If such member
99 has been employed in said department for more than twenty
100 years, the provisions of subsection (b) of this section shall
101 apply.

***§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a
2 paid police or fire department for the purpose of ascertaining
3 certain disability pension benefits, all retirement pension

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.

4 benefits and certain death benefits, the following provisions
5 shall be applicable:

6 (1) Absence from the service because of sickness or injury
7 for a period of two years or less shall not be construed as time
8 out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through twenty-
11 eight of this article who has been required to or shall at any
12 future time be required to enter the armed forces of the United
13 States by conscription, by reason of being a member of some
14 reserve unit of the armed forces or a member of the West
15 Virginia national guard or air national guard, whose reserve
16 unit or guard unit is called into active duty for one year or
17 more, or who enlists in one of the armed forces of the United
18 States during hostilities, and who upon receipt of an honorable
19 discharge from such armed forces presents himself for
20 resumption of duty to his appointing municipal official within
21 six months from his date of discharge, and is accepted by the
22 pension board's board of medical examiners as being mentally
23 and physically capable of performing his required duties as a
24 member of such paid police or fire department, shall be given
25 credit for continuous service in said paid police or fire
26 department, and his rights shall be governed as herein
27 provided. No member of a paid police or fire department shall
28 be required to pay the monthly assessment as now required
29 by law, during his period of service in the armed forces of the
30 United States.

31 (b) As to any former member of a paid police or fire
32 department receiving disability pension benefits or retirement
33 pension benefits from a policemen's or firemen's pension and
34 relief fund, on the effective date of this article, the following
35 provisions shall govern and control the amount of such
36 pension benefits:

37 (1) A former member who on June thirtieth, one thousand
38 nine hundred sixty-two, was receiving disability pension
39 benefits or retirement pension benefits from a policemen's or
40 firemen's pension and relief fund, shall continue to receive
41 pension benefits, but on and after July one, one thousand nine
42 hundred eighty-five, such pension benefits shall be in the
43 amount of three hundred dollars per month; and

44 (2) A former member who became entitled to disability
45 pension benefits or retirement pension benefits on or after July
46 one, one thousand nine hundred sixty-two, shall continue to
47 receive pension benefits, but on and after July one, one
48 thousand nine hundred eighty-five, shall receive not less than
49 the minimum disability pension benefits, or not less than the
50 minimum retirement pension benefits provided for in section
51 twenty-four or section twenty-five of this article, as the case
52 may be.

53 (c) As to any dependent spouse, child or children, or
54 dependent father or mother, or dependent brothers or sisters,
55 of any former member of a paid police or fire department,
56 receiving any death benefits from a policemen's pension and
57 relief fund or firemen's pension and relief fund, on the effective
58 date of this article, the following provisions shall govern and
59 control the amount of such death benefits:

60 (1) A dependent spouse, child or children, or dependent
61 father or mother, or dependent brothers or sisters, of any
62 former member, who on June thirty, one thousand nine
63 hundred sixty-two, was receiving any death benefits from a
64 policemen's pension and relief fund or firemen's pension and
65 relief fund, shall continue to receive death benefits, but on and
66 after July one, one thousand nine hundred seventy-one, such
67 death benefits shall be in the following amounts: To a
68 dependent spouse, until death or remarriage, the sum of two
69 hundred dollars per month; to each dependent child the sum
70 of thirty dollars per month, until such child shall attain the
71 age of eighteen years or marry, whichever first occurs; to each
72 dependent orphaned child the sum of forty-five dollars per
73 month, until such child shall attain the age of eighteen years
74 or marry, whichever first occurs; to each dependent father and
75 mother the sum of thirty dollars per month for each; to each
76 dependent brother or sister the sum of five dollars per month,
77 until such individual shall attain the age of eighteen years or
78 marry, whichever first occurs, but in no event shall the
79 aggregate amount paid to such brothers and sisters exceed
80 thirty dollars per month; but if at any time, because of the
81 number of dependents, all such dependents cannot be paid in
82 full as herein provided, then each dependent shall receive his
83 pro rata share of such payments: *Provided*, That in no case
84 shall the payments to the surviving spouse and children be cut

85 below sixty-five percent of the total amount to be paid to all
86 dependents;

87 (2) A dependent spouse, child or children, or dependent
88 father or mother, or dependent brothers or sisters, of any
89 former member, who became eligible for death benefits on or
90 after July one, one thousand nine hundred sixty-two, shall
91 continue to receive death benefits, but on and after July one,
92 one thousand nine hundred seventy-one, shall receive the death
93 benefits provided for in section twenty-six of this article.

94 (d) A former member who is receiving disability pension
95 benefits on the thirtieth day of June, one thousand nine
96 hundred eighty-one, shall continue to receive disability pension
97 benefits provided for in section twenty-four of this article.

CHAPTER 126

(Com. Sub. for S. B. 440—By Senator Boettner)

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

AN ACT to amend and reenact sections twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to municipal policemen's and firemen's pension and relief funds generally; calculation of monthly disability pensions; maximum aggregate monthly payments from disability pension and workers' compensation benefits; increasing the minimum amount of monthly disability and retirement pensions; calculation of monthly retirement benefits; providing an additional benefit credit on retirement pensions for members with more than twenty years of service; retirement pensions for members who served in the armed forces; requiring retirement of members at age sixty-five; requiring members to furnish proof of birth date to the board of trustees; providing for death benefits to surviving dependents of deceased members and calculation thereof; calculation of years of service of members; and monthly disability, retirement and death benefits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-24. Disability pensions.

§8-22-25. Retirement pensions.

§8-22-26. Death benefits.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

***§8-22-24. Disability pensions.**

1 (a) The monthly sum to be paid to each member eligible
2 for disability under the provisions of section twenty-three-
3 a of this article, shall be equal to sixty percent of the
4 monthly salary being received by such member, at the time
5 he is so disabled, or the sum of five hundred dollars per
6 month, whichever shall be greater: *Provided*, That the
7 limitation provided in subsection (b) of this section is not
8 exceeded.

9 (b) Effective for any member who becomes eligible for
10 disability benefits on or after the first day of July, one
11 thousand nine hundred eighty-one, under the provisions of
12 section twenty-three-a of this article, as a proximate result
13 of service rendered in the performance of his duties within
14 such departments, his monthly disability payment as
15 provided in subsection (a) of this section shall not, when
16 aggregated with the monthly amount of state workers'
17 compensation, result in such disabled member receiving a
18 total monthly income from such sources in excess of one
19 hundred percent of the basic compensation which is paid to
20 members holding the same position which such member
21 held within such department at the time of his disability.
22 Lump sum payments of state workers' compensation

* Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.

23 benefits shall not be considered for purposes of this
24 subsection unless such lump sum payments represent
25 commuted values of monthly state workers' compensation
26 benefits.

***§8-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire department who
2 is entitled to a retirement pension hereunder, and who has
3 been in the honorable service of such department for twenty
4 years, may, upon written application to the board of
5 trustees, be retired from all service in such department
6 without medical examination or disability. On such
7 retirement the board of trustees shall authorize the
8 payment of annual retirement pension benefits
9 commencing upon his retirement or upon his attaining the
10 age of fifty years, whichever is later, payable in twelve
11 monthly installments for each year of the remainder of his
12 life, in an amount equal to sixty percent of such member's
13 average annual salary or compensation received during the
14 three twelve-consecutive-month periods of employment
15 with such department in which such member received his
16 highest salary or compensation while a member of the
17 department, or an amount of five hundred dollars per
18 month, whichever is greater.

19 (b) Any member of any such department who is entitled
20 to a retirement pension under the provisions of subsection
21 (a) of this section and who has been in the honorable service
22 of such department for more than twenty years at the time
23 of his retirement shall receive, in addition to the sixty
24 percent authorized in said subsection (a):

25 (1) Two additional percent, to be added to the sixty
26 percent, for each of the first five additional years of service
27 completed at the time of retirement in excess of twenty
28 years of service up to a maximum of seventy percent; and

29 (2) One additional percent, to be added to such
30 maximum of seventy percent, for each of the first five
31 additional years of service completed at the time of
32 retirement in excess of twenty-five years of service up to a
33 maximum of seventy-five percent.

34 The total additional credit provided for in this subsection

* Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.

35 may not exceed fifteen additional percent.

36 (c) Any member of any such department whose service
37 has been interrupted by duty with the armed forces of the
38 United States as provided in section twenty-seven of this
39 article prior to the first day of July, one thousand nine
40 hundred eighty-one, shall be eligible for retirement pension
41 benefits immediately upon retirement, regardless of his age,
42 if he shall otherwise be eligible for such retirement pension
43 benefits.

44 Any member or previously retired member of any such
45 department who has served in active duty with the armed
46 forces of the United States as described in section twenty-
47 seven of this article, whether prior to or subsequent to
48 becoming a member of a paid police or fire department
49 covered by the provisions of this article, shall receive, in
50 addition to the sixty percent authorized in subsection (a) of
51 this section and the additional percent credit authorized in
52 subsection (b) of this section, one additional percent for
53 each year so served in active military duty, up to a
54 maximum of four additional percent. In no event, however,
55 may the total benefit granted to any member exceed
56 seventy-five percent of the member's annual average salary
57 calculated in accordance with subsection (a) of this section.

58 (d) Any member of a paid police or fire department shall
59 be retired at the age of sixty-five years in the manner
60 provided in this subsection. When a member of the paid
61 police or fire department reaches the age of sixty-five years,
62 the said board of trustees shall notify the mayor of this fact,
63 within thirty days of such member's sixty-fifth birthday.
64 The mayor shall cause such sixty-five-year-old member of
65 the paid police or fire department to retire within a period
66 of not more than thirty additional days. Upon retirement
67 under the provisions of this subsection, such member shall
68 receive retirement pension benefits payable in twelve
69 monthly installments for each year of the remainder of his
70 life in an amount equal to sixty percent of such member's
71 average annual salary or compensation received during the
72 three twelve-consecutive-month periods of employment
73 with such department in which such member received his
74 highest salary or compensation while a member of the
75 department, or an amount of five hundred dollars per
76 month, whichever is greater. If such member has been

77 employed in said department for more than twenty years,
78 the provisions of subsection (b) of this section shall apply.
79 (e) It shall be the duty of each member of a paid police or
80 fire department at the time a fund is hereafter established to
81 furnish the necessary proof of his date of birth to the said
82 board of trustees, as specified in section twenty-three of
83 this article, within a reasonable length of time, said length
84 of time to be determined by the said board of trustees. Then
85 the board of trustees and the mayor shall proceed to act in
86 the manner provided in subsection (d) of this section and
87 shall cause all members of the paid police or fire
88 department who are over the age of sixty-five years to retire
89 in not less than sixty days from the date the fund is
90 established. Upon retirement under the provisions of this
91 subsection (e), such member, whether he has been employed
92 in said department for twenty years or not, shall receive
93 retirement pension benefits payable in twelve monthly
94 installments for each year of the remainder of his life in an
95 amount equal to sixty percent of such member's average
96 annual salary or compensation received during the three
97 twelve-consecutive-month periods of employment with
98 such department in which such member received his
99 highest salary or compensation while a member of the
100 department, or an amount of five hundred dollars per
101 month, whichever is greater. If such member has been
102 employed in said department for more than twenty years,
103 the provisions of subsection (b) of this section shall apply.

§8-22-26. Death benefits.

1 (a) In case:
2 (1) Any member of a paid police or fire department who
3 has been in continuous service for more than five years dies
4 from any cause other than as specified in subsection (b) of
5 this section before retirement on a disability pension under
6 the provisions of, prior to the first day of July, one thousand
7 nine hundred eighty-one, section twenty-four of this article
8 or, after the thirtieth day of June, one thousand nine
9 hundred eighty-one, sections twenty-three-a and twenty-
10 four of this article or a retirement pension under the
11 provisions of subsection (a) or both subsections (a) and (b),
12 section twenty-five of this article, leaving in either case
13 surviving a spouse, or any dependent child or children

14 under the age of eighteen years, or dependent father or
15 mother or both, or any dependent brothers or sisters or both
16 under the age of eighteen years; or
17 (2) Any former member of any such department who is
18 on a disability pension prior to the first day of July, one
19 thousand nine hundred eighty-one, under section twenty-
20 four of this article, or after the thirtieth day of June, one
21 thousand nine hundred eighty-one, under sections twenty-
22 three-a and twenty-four of this article, or is receiving or is
23 entitled to receive retirement pension benefits under the
24 provisions of subsection (a) or both subsections (a) and (b),
25 section twenty-five of this article, dies from any cause other
26 than as specified in subsection (b) of this section leaving in
27 either case surviving a spouse or any dependent child or
28 children under the age of eighteen years or dependent
29 father or mother or both, or any dependent brothers or
30 sisters or both under the age of eighteen years; then in any of
31 the cases set forth above in (1) and (2) the board of trustees
32 of such pension and relief fund shall, immediately following
33 the death of such member, pay to or for each of such entitled
34 surviving dependents the following pension benefits: To
35 such spouse, until death or remarriage, a sum per month
36 equal to sixty percent of such member's pension or, in the
37 event such member was not receiving a pension at the time
38 of his death, a sum per month equal to sixty percent of the
39 monthly retirement pension such member would have been
40 entitled to receive pursuant to section twenty-five of this
41 article on the date of his death if such member had then
42 been eligible for a retirement pension thereunder, or the
43 sum of three hundred dollars per month, whichever is
44 greater; to each such dependent child, a sum per month
45 equal to ten percent of such member's pension or, in the
46 event such member was not receiving a pension on the date
47 of his death, a sum per month equal to ten percent of the
48 monthly retirement pension such member would have been
49 entitled to receive pursuant to section twenty-five of this
50 article on the date of his death if such member had then
51 been eligible for a retirement pension thereunder, or until
52 such child attains the age of eighteen years or marries,
53 whichever first occurs; to each such dependent orphaned
54 child, a sum per month equal to twenty-five percent of such
55 member's pension or, in the event such member was not

56 receiving a pension at the time of his death, a sum per month
57 equal to twenty-five percent of the monthly retirement
58 pension such member would have been entitled to receive
59 pursuant to section twenty-five of this article on the date of
60 his death if such member had then been eligible for a
61 retirement pension thereunder, until such child attains the
62 age of eighteen years or marries, whichever first occurs; to
63 each such dependent father or mother, a sum per month for
64 each equal to ten percent of such member's pension or, in
65 the event such member was not receiving a pension on the
66 date of his death, a sum per month equal to ten percent of
67 the monthly retirement pension such member would have
68 been entitled to receive pursuant to section twenty-five of
69 this article on the date of his death if such member had then
70 been eligible for a retirement pension thereunder; to each
71 such dependent brother or sister, the sum of fifty dollars per
72 month until such individual attains the age of eighteen
73 years or marries, whichever first occurs, but in no event
74 shall the aggregate amount paid to such brothers and sisters
75 exceed one hundred dollars per month. If at any time,
76 because of the number of dependents, all such dependents
77 cannot be paid in full as herein provided, then each
78 dependent shall receive his pro rata share of such payments.
79 In no case shall the payments to the surviving spouse and
80 children be cut below sixty-five percent of the total amount
81 paid to all dependents.

82 (b) The surviving spouse, child or children, or
83 dependent father or mother, or dependent brothers or
84 sisters, of any such member who dies by reason of service
85 rendered in the performance of such member's duties shall,
86 regardless of the length of such member's service and
87 irrespective of whether such member was or was not
88 entitled to receive, or was or was not receiving, disability
89 pension or temporary disability payments at the time of his
90 death, receive the death benefits provided for in subsection
91 (a) of this section. If such member had less than three years'
92 service at the time of his death, the member's pension shall
93 be computed on the basis of the actual number of years of
94 service.

95 (c) If a member dies without leaving a spouse,
96 dependent child or children, or dependent father or mother,
97 or dependent brothers or sisters, his contributions to the

98 fund plus six percent interest shall be refunded to his
99 named beneficiary or, if no beneficiary has been named, to
100 his estate to the extent that such contributions plus interest
101 exceed any disability or retirement benefits that he may
102 have received before his death.

103 (d) The provisions of this section shall not be construed
104 as creating or establishing any contractual or vested rights
105 in favor of any individual who may be or become qualified
106 as a beneficiary of the death benefits herein authorized to
107 be made, all the provisions hereof and benefits provided for
108 hereunder being expressly subject to such subsequent
109 legislative enactments as may provide for any change,
110 modification or elimination of the beneficiaries or benefits
111 specified herein.

***§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a
2 paid police or fire department for the purpose of
3 ascertaining certain disability pension benefits, all
4 retirement pension benefits and certain death benefits, the
5 following provisions shall be applicable:

6 (1) Absence from the service because of sickness or
7 injury for a period of two years or less shall not be construed
8 as time out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through
11 twenty-eight of this article who has been required to or
12 shall at any future time be required to enter the armed
13 forces of the United States by conscription, by reason of
14 being a member of some reserve unit of the armed forces or a
15 member of the West Virginia national guard or air national
16 guard, whose reserve unit or guard unit is called into active
17 duty for one year or more, or who enlists in one of the armed
18 forces of the United States during hostilities, and who upon
19 receipt of an honorable discharge from such armed forces
20 presents himself for resumption of duty to his appointing
21 municipal official within six months from his date of
22 discharge, and is accepted by the pension board's board of
23 medical examiners as being mentally and physically

* Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.

24 capable of performing his required duties as a member of
25 such paid police or fire department, shall be given credit for
26 continuous service in said paid police or fire department,
27 and his rights shall be governed as herein provided. No
28 member of a paid police or fire department shall be required
29 to pay the monthly assessment as now required by law,
30 during his period of service in the armed forces of the
31 United States.

32 (b) As to any former member of a paid police or fire
33 department receiving disability pension benefits or
34 retirement pension benefits from a policemen's or firemen's
35 pension and relief fund, on the first day of July, one
36 thousand nine hundred eighty-five, the following
37 provisions shall govern and control the amount of such
38 pension benefits:

39 (1) A former member who on June thirtieth, one
40 thousand nine hundred sixty-two, was receiving disability
41 pension benefits or retirement pension benefits from a
42 policemen's or firemen's pension and relief fund, shall
43 continue to receive pension benefits, but on and after July
44 one, one thousand nine hundred eighty-five, such pension
45 benefits shall be no less than the amount of five hundred
46 dollars per month; and

47 (2) A former member who became entitled to disability
48 pension benefits or retirement pension benefits on or after
49 July one, one thousand nine hundred sixty-two, shall
50 continue to receive pension benefits, but on and after July
51 one, one thousand nine hundred eighty-five, shall receive
52 the disability pension benefits, or retirement pension
53 benefits provided for in section twenty-four or section
54 twenty-five of this article, as the case may be.

55 (c) As to any surviving spouse, dependent child or
56 children, or dependent father or mother, or dependent
57 brothers or sisters, of any former member of a paid police or
58 fire department receiving any death benefits from a
59 policemen's pension and relief fund or firemen's pension
60 and relief fund, on the first day of July, one thousand nine
61 hundred eighty-five, the following provisions shall govern
62 and control the amount of such death benefits:

63 (1) A surviving spouse, dependent child or children, or
64 dependent father or mother, or dependent brothers or
65 sisters of any former member, who on June thirty, one
66 thousand nine hundred sixty-two, was receiving any death
67 benefits from a policemen's pension and relief fund or
68 firemen's pension and relief fund, shall continue to receive
69 death benefits, but on and after July one, one thousand nine
70 hundred eighty-five, such death benefits shall be no less
71 than the following amounts: To a surviving spouse, until
72 death or remarriage, the sum of three hundred dollars per
73 month; to each dependent child, the sum of thirty dollars
74 per month, until such child attains the age of eighteen years
75 or marries, whichever first occurs; to each dependent
76 orphaned child, the sum of forty-five dollars per month,
77 until such child attains the age of eighteen years or marries,
78 whichever first occurs; to each dependent father or mother,
79 the sum of thirty dollars per month for each; to each
80 dependent brother or sister, the sum of fifty dollars per
81 month, until such individual attains the age of eighteen
82 years or marries, whichever first occurs, but in no event
83 shall the aggregate amount paid to such brothers and sisters
84 exceed one hundred dollars per month. If at any time,
85 because of the number of dependents, all such dependents
86 cannot be paid in full as herein provided, then each
87 dependent shall receive his pro rata share of such payments.
88 In no case shall the payments to the surviving spouse and
89 children be cut below sixty-five percent of the total amount
90 paid to all dependents; and

91 (2) A surviving spouse, dependent child or children, or
92 dependent father or mother, or dependent brothers or
93 sisters, of any former member who became eligible for
94 death benefits on or after July one, one thousand nine
95 hundred sixty-two, shall continue to receive death benefits,
96 but on and after July one, one thousand nine hundred
97 eighty-five, shall receive the death benefits provided for in
98 section twenty-six of this article.

99 (d) A former member who is receiving disability pension
100 benefits on the first day of July, one thousand nine hundred
101 eighty-five, shall continue to receive disability pension
102 benefits provided for in section twenty-four of this article.

CHAPTER 127

(Com. Sub. for S. B. 9—By Senator Palumbo)

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

AN ACT to amend article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to prohibiting smoking on any urban mass transportation system vehicle; providing for signs to be posted; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS
TRANSPORTATION SYSTEMS.**

**§8-27-10a. Smoking on vehicles prohibited; posting of signs
required; criminal penalties.**

1 (a) Every authority operating any vehicle accessible to
2 the public, designed for the ground transportation of eight
3 or more persons, shall post "No Smoking" signs
4 conspicuously at the entrance to, and on the inside of, each
5 such vehicle. No person shall smoke or carry a lighted pipe,
6 cigar or cigarette in any such vehicle wherein a sign
7 prohibiting smoking is posted.

8 (b) The posting requirements set forth in subsection (a)
9 above do not apply to any vehicle operated in interstate
10 commerce, nor to any chartered vehicle: *Provided*, That if
11 any vehicle operated in interstate commerce or chartered
12 vehicle has a posted nonsmoking area, no person shall
13 smoke or carry a lighted pipe, cigar or cigarette in the
14 posted nonsmoking area of such vehicle.

15 (c) Any person who violates any provision of this section
16 is guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not less than twenty nor more than one
18 hundred dollars.

CHAPTER 128

(H. B. 1456—By Delegate Sattes)

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

AN ACT to amend and reenact section five, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing municipalities and counties to make appropriations for the celebration of historical and commemorative occasions; legislative findings; nonprofit corporations eligible to receive such appropriations; such appropriations to be made from general funds; requiring accounting of funds received; requiring recipients to return any unexpended funds at the conclusion of the funded event; prohibiting indebtedness to be incurred for such appropriations; recordation and certification of an eligible nonprofit corporation's charter; and prohibiting such appropriation as a prerequisite for grants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

**PART V. CELEBRATION OF HISTORICAL AND
COMMEMORATIVE EVENTS.**

§8-32-5. Legislative findings; authority of municipalities and counties to make appropriations for the celebration of historical and commemorative events; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of
2 nonstock, nonprofit corporations dedicated to making
3 available to the general public, programs, activities or events
4 organized by a commission, committee, group, organization or
5 community, for the purpose of providing historical or cultural
6 activities, municipal, county or regional improvement events

7 or other programs related to the celebration of historical and
8 commemorative events, is for the general welfare of the public
9 and is a public purpose for which funds of a municipality or
10 county may be lawfully expended. This section is enacted in
11 view of this finding and shall be liberally construed in the light
12 thereof.

13 (b) When a commission, committee, group, organization or
14 community (hereinafter referred to as corporation) is chartered
15 as a nonstock, nonprofit corporation under the laws of this
16 state, and, (1) is organized for the purpose of providing
17 historical or cultural activities, municipal, county or regional
18 improvement events or other programs related to the
19 celebration of a historical or commemorative event, and
20 provides in its charter that its programs, activities or events
21 shall be devoted to the use by the public for all purposes set
22 forth in such charter without regard to race, sex, religion,
23 national origin or economic circumstance, and free from
24 charge except such as is necessary to provide the means to
25 keep any buildings, facilities or grounds in proper condition
26 and repair, or to pay the cost of insurance, care, management,
27 operations, programs, activities or events, so that the general
28 public may have the benefit of such establishments, programs,
29 activities or events for the uses set forth in such corporation's
30 charter at as little expense as possible, (2) provides in its
31 charter that no member, trustee or member of the board of
32 directors (by whatever name the same may be called) of the
33 corporation shall receive any compensation, gain or profit
34 from such corporation, and (3) is operated in compliance with
35 such charter provisions as aforesaid, any municipality in the
36 county in which such corporation is operating, and the county
37 commission of any county in which such corporation is
38 operating, are hereby empowered and authorized to appro-
39 priate funds to any such corporation, subject to the provisions
40 and limitations set forth in this section.

41 (c) Any appropriation shall be made from the general funds
42 of such municipality or county that have not been otherwise
43 appropriated. Each corporation receiving an appropriation
44 from a municipality or county shall upon demand at any time
45 make a full and complete accounting of all such funds to such
46 governing body of the municipality or to the county
47 commission, as the case may be, and shall in every event

48 without demand make to such governing body or county
49 commission an accounting thereof. Each corporation shall
50 return to the county or municipality all of the funds the county
51 or municipality appropriated pursuant to this section or
52 pursuant to the previous enactments of this section for the
53 celebration of the American Revolution Bicentennial which are
54 unexpended after the conclusion of the programs, activities or
55 events relating to the historical or commemorative event. The
56 county or municipality may at any time set a date after the
57 conclusion of the programs, activities or events by which such
58 return shall be made.

59 (d) Under no circumstances whatever shall any action taken
60 by any municipality or county commission under the authority
61 of this section give rise to or create any indebtedness on the
62 part of the municipality, the governing body of such
63 municipality, the county, such county commission, any
64 member of such governing body or county commission or any
65 municipal or county official or employee.

66 (e) No municipality or county commission may appropriate
67 funds to any corporation under this article unless and until
68 such corporation has recorded a certified copy of its corporate
69 charter in the county in which the principal office of such
70 corporation is located, and has received from the prosecuting
71 attorney a written statement that the charter of such
72 corporation contains the necessary language to comply with
73 the provisions of this article.

74 (f) No officer, agent or instrumentality of the state shall
75 require that local government funds be appropriated or
76 expended under this section as a prerequisite for, or as
77 matching funds for, a federal or state grant or as a prerequisite
78 to entitle such corporation to receive a grant of federal or state
79 funds.

CHAPTER 129

(Com. Sub. for S. B. 469—By Senators Whitlow and Palumbo)

[Passed April 10, 1985; in effect from passage. Approved by the Governor.]

**AN ACT to repeal section two hundred five, article two, chapter
twenty-nine-c of the code of West Virginia, one thousand**

nine hundred thirty-one, as amended; to amend and reenact section one hundred three, article one, section three hundred one, article two, section one hundred two, article three, section one hundred two, article four and section one hundred one, article six, all of said chapter; and to further amend said chapter by adding thereto a new article, designated article nine, all relating to notary publics; prospective effect of chapter; exceptions; removing required bond; clarifying disqualifying interest; application to notaries public commissioned prior to the effective date of the uniform notary act; optional use of rubber stamp seals by notaries appointed under prior law; requiring such notaries not commissioned on a statewide basis to include the county on the seal; uniform application of chapter; validation of good faith notarial acts; and nonliability for such good faith acts.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions.
2. Appointment Provisions.
3. Powers.
4. Duties.
6. Liability, Fines and Imprisonment.
9. Curative Provisions.

ARTICLE 1. GENERAL PROVISIONS.

§29C-1-103. Prospective effect of chapter; exceptions.

- 1 Except as otherwise provided herein, this chapter ap-
- 2 plies prospectively and shall be applicable to all notaries
- 3 public whether commissioned before, on or after the
- 4 effective date of this chapter: *Provided*, That the follow-
- 5 ing sections in article two of this chapter shall apply only

6 to those notaries public commissioned on or after the
7 effective date of this chapter: Subsections (a) and (b) of
8 section one hundred one, sections two hundred one, two
9 hundred two, two hundred three, two hundred four,
10 two hundred six, two hundred seven and three hundred
11 one, relating to the appointment and qualifications of
12 notaries, and section one hundred two, relating to juris-
13 diction and terms of notaries public.

ARTICLE 2. APPOINTMENT PROVISIONS.

§29C-2-301. State and local government employees.

1 (a) The governor may appoint and commission such
2 number of state and local government employees as
3 notaries public, to act for and in behalf of their respec-
4 tive state and local government offices, as he deems
5 proper. An appointee commissioned as a notary public
6 under this section may act only for and in behalf of the
7 government office or offices in which he is employed.

8 (b) An appointee under this section shall meet the re-
9 quirements for qualification and appointment prescribed
10 in article two of this chapter except that the head of the
11 state or local government office where the applicant is
12 employed may execute a certificate that the application is
13 made for the purposes of the office and in the public in-
14 terest and submit it to the governor together with the
15 application for appointment as a notary public, in which
16 case the fee for appointment specified in article two,
17 section two hundred two, is waived.

18 (c) The costs of all notary supplies for a commissioned
19 state or local government employee shall be paid from
20 funds available to the office in which he is employed.

21 (d) All fees received for notarial services by a notary
22 public appointed for and in behalf of a state or local
23 government office shall be remitted by him to the state or
24 local government office in which he is employed.

25 (e) A notary public who is an employee of a state or
26 local government office in this state must comply with
27 all provisions of this chapter.

ARTICLE 3. POWERS.**§29C-3-102. Limitations on powers.**

1 (a) A notary public who has a disqualifying interest,
2 as hereinafter defined, in a transaction may not legally
3 perform any notarial act in connection with the trans-
4 action.

5 (b) For the purposes of this chapter, a notary public
6 has a disqualifying interest in a transaction in connection
7 with which notarial services are requested if he:

8 (1) May receive directly, and as a proximate result
9 of the notarization, any advantage, right, title, interest,
10 cash or property, exceeding in value the sum of any fee
11 properly received in accordance with section three hun-
12 dred one, article four of this chapter, or exceeding his
13 regular compensation and benefits as an employee whose
14 duties include performing notarial acts for and in behalf
15 of his employer; or

16 (2) Is named, individually, as a party to the transaction.

ARTICLE 4. DUTIES.**§29C-4-102. Rubber stamp seal.**

1 Under or near his official signature on every notarial
2 certificate, a notary public shall rubber stamp clearly and
3 legibly, so that it is capable of photographic reproduction:

4 (a) The words "Official Seal";

5 (b) His name exactly as he writes his official signa-
6 ture;

7 (c) The words "Notary Public," "State of West Vir-
8 ginia" and "My Commission expires (commission expira-
9 tion date)";

10 (d) The address of his business or residence in this
11 state; and

12 (e) A serrated or milled edge border in a rectangular
13 form not more than one inch in width by two and one-
14 half inches in length surrounding the information.

15 No person holding a notary commission pursuant to
16 former section two, article four, chapter twenty-nine on

17 the effective date of this chapter may be required to
18 obtain or use a rubber stamp seal prior to the expiration
19 of that commission. However, such a notary who was
20 appointed for one or more counties of the state may
21 obtain and use the rubber stamp seal prior to the expira-
22 tion of that commission if the name of the county in
23 which the notarial act is performed is on the seal used
24 for that act.

ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.

§29C-6-101. Liability of notary.

1 A notary public is liable to the persons involved for all
2 damages proximately caused by the notary's official
3 misconduct.

ARTICLE 9. CURATIVE PROVISIONS.

§29C-9-101. Uniform application of chapter; validation of good faith notarial acts; nonliability for good faith notarial acts.

1 This article is to prevent or redress problems which
2 might be caused by notaries public who in good faith
3 performed notarial acts in substantial compliance with
4 the laws which were replaced by the uniform notary act,
5 chapter twenty-nine-c of this code, during a forgiveness
6 period which begins with the effective date of that act
7 and ends with the effective date of this section.

8 With respect to notarial acts performed in good faith
9 and in substantial compliance with prior law during the
10 forgiveness period:

11 (a) Instruments so notarized shall be conclusively
12 presumed to have been validly notarized;

13 (b) Notaries public and all parties to such notarial
14 acts shall be immune from civil and criminal liability for
15 such acts or the consequences of such acts. The rebuttable
16 presumption created by section nine, article seven, chap-
17 ter fifty-five of this code, that any violation of a statute
18 which proximately causes injury constitutes negligence,
19 does not apply; and

20 (c) The retrospective application of this section
21 applies to all litigation which has not been fully adjudi-
22 cated, including cases pending on appeal. This section
23 does not apply to notarial acts performed prior to or
24 subsequent to the forgiveness period.

25 The purposes of this article are remedial and shall be
26 construed liberally to accomplish the purposes set forth
27 herein.

CHAPTER 130

(Com. Sub. for H. B. 1431—By Delegate McCormick)

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

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of physicians to practice medicine in this state; permitting certain temporary permittees points on the licensure examination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry; educational training permits; temporary licenses and permits.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is
3 qualified to do so in accordance with the provisions of this
4 article.

5 (b) For an individual to be licensed to practice medicine and
6 surgery in this state, he must meet the following requirements:

7 (1) He shall submit an application to the board on a form
8 provided by the board and remit to the board an examination

9 fee not to exceed two hundred fifty dollars, the amount of such
10 fee to be set by the board. The application must, as a
11 minimum, require a sworn and notarized statement that the
12 applicant is of good moral character and that he is physically
13 and mentally capable of engaging in the practice of medicine
14 and surgery;

15 (2) He must provide evidence of graduation and receipt of
16 the degree of doctor of medicine or its equivalent from a
17 school of medicine, which is approved by the liaison committee
18 on medical education or by the board;

19 (3) He must submit evidence to the board of having
20 completed a minimum of one year of graduate clinical training
21 in a program approved by the board; and

22 (4) He must pass an examination approved by the board,
23 which examination can be related to a national standard. The
24 examination shall be in the English language and be designed
25 to ascertain an applicant's fitness to practice medicine and
26 surgery. The board shall before the date of examination
27 determine what will constitute a passing score: *Provided*, That
28 the said board, or a majority of them, may accept in lieu of
29 an examination of applicants, the certificate of the national
30 board of medical examiners issued within the previous eight
31 years, or diplomate certificate from an American specialty
32 board: *Provided, however*, That any certificate or license to
33 practice which is granted by the board by virtue of such
34 diplomate certificate shall only be valid so long as the holder
35 thereof maintains such diplomate certificate in good standing
36 with the applicable American specialty board and no longer
37 and such certificate shall be limited to that specific specialty
38 in the practice of medicine and surgery in this state. If an
39 applicant fails to pass the examination on two occasions, he
40 shall successfully complete a course of study or training, as
41 approved by the board, designed to improve his ability to
42 engage in the practice of medicine and surgery, before being
43 eligible for reexamination: *Provided further*, That said board
44 is required to establish a program that will assist all temporary
45 license holders in preparing for and passing the medical
46 examination prescribed by it: *And provided further*, That said
47 board shall maintain the program until the first day of July,
48 one thousand nine hundred eighty-four, and shall make an

49 annual report of its activities to the Legislature for each year
50 the program is maintained.

51 (c) In addition to the requirements of subsection (b) hereof,
52 any individual who has received the degree of doctor of
53 medicine or its equivalent from a school of medicine located
54 outside of the United States, the Commonwealth of Puerto
55 Rico and Canada, to be licensed to practice medicine in this
56 state, must also meet the following additional requirements
57 and limitations:

58 (1) He must be able to demonstrate to the satisfaction of
59 the board his ability to communicate in the English language;
60 and

61 (2) He must have fulfilled the requirements of the educa-
62 tional council for foreign medical graduates for certification
63 before taking a licensure examination, including the receipt of
64 a passing score on the educational council for foreign medical
65 graduates examination; and

66 (3) An individual subject to the provisions of this subsection
67 shall not be awarded a temporary permit unless such
68 individual was a bona fide resident of this state for the six-
69 month period preceding the filing of his application for such
70 temporary permit: *Provided*, That an individual subject to the
71 provisions of this subsection who did not hold a temporary
72 permit before June eight, one thousand nine hundred seventy-
73 nine, shall be ineligible for a temporary permit if he has failed
74 to pass the medical examination prescribed by the board on
75 two or more occasions.

76 (4) An individual subject to the provisions of this subsection
77 and holding a temporary permit who shall have taken the
78 examination after the first day of June, one thousand nine
79 hundred eighty-two, and no later than the thirtieth day of
80 June, one thousand nine hundred eighty-five, shall be allowed
81 one point toward his score on the licensure examination for
82 every year he has held a temporary permit in this state, up
83 to a maximum of five points for five years of practice.

84 (d) For an individual to be licensed to practice podiatry in
85 this state, he must meet the following requirements:

86 (1) He shall submit an application to the board on a form
87 provided by the board and remit to the board an examination
88 fee not to exceed two hundred fifty dollars, the amount of such
89 fee to be set by the board. The application must, as a
90 minimum, require a sworn and notarized statement that the
91 applicant is of good moral character and that he is physically
92 and mentally capable of engaging in the practice of podiatric
93 medicine;

94 (2) He must provide evidence of graduation and receipt of
95 the degree of doctor of podiatric medicine or its equivalent
96 from a school of podiatric medicine which is approved by the
97 council of podiatry education or by the board;

98 (3) He must pass an examination approved by the board,
99 which examination can be related to a national standard. The
100 examination shall be in the English language and be designed
101 to ascertain an applicant's fitness to practice podiatric
102 medicine. The board shall before the date of examination
103 determine what will constitute a passing score. If an applicant
104 fails to pass the examination on two occasions, he shall
105 successfully complete a course of study or training, as
106 approved by the board, designed to improve his ability to
107 engage in the practice of podiatric medicine, before being
108 eligible for reexamination.

109 (e) An individual meeting the requirements set forth in
110 subdivisions (1) and (2), subsection (b) and subdivisions (1)
111 and (2), subsection (c), if applicable, of this section, may be
112 granted an educational training permit to practice medicine
113 and surgery. Such permits shall authorize the permit holder
114 to practice medicine and surgery only under the supervision
115 of a licensed physician in a training program approved by the
116 liaison committee on graduate medical education or the board.
117 The board may fix and collect a fee not to exceed fifty dollars
118 for this class of permit.

119 (f) If the board determines that the public health in a
120 specified geographical area of the state requires such action,
121 the board may grant a temporary permit to an individual who
122 meets the requirements set forth in subdivisions (1) and (2),
123 subsection (b) and subdivisions (1) and (2), subsection (c), if
124 applicable, of this section. Such license shall be limited to the

125 specified geographical area and shall be valid for a period of
126 not more than one year. The board may fix and collect a fee
127 not to exceed fifty dollars for this class of temporary permit.

128 (g) All licenses or temporary permits granted prior to the
129 effective date of this article and valid on the effective date of
130 this article shall continue in full effect for such term and under
131 such conditions as provided by law at the time of the granting
132 of the license or temporary permit: *Provided*, That any
133 physician who has been certified by the educational council
134 for foreign medical graduates or who, as of the effective date
135 of this section, holds a temporary permit to practice in a
136 prescribed area, shall not when under the supervision of a
137 licensed physician be ineligible for a temporary license permit
138 to practice in any mental health or state-owned facility and
139 in any hospital, clinic, physician's office and any other
140 approved health care facility until the first day of July, one
141 thousand nine hundred eighty-five, by virtue of his failure to
142 pass the medical examination prescribed by the board, so long
143 as such physician shall take said examination at least once
144 each year: *Provided, however*, That such physician shall be
145 enrolled in an educational program approved by the board
146 that will assist him in preparing for the examination and that
147 the program sponsored by the University of Charleston shall
148 be deemed to be approved: *Provided further*, That any such
149 physician granted a temporary permit who fails to pass the
150 medical examination prescribed by the board before the first
151 day of July, one thousand nine hundred eighty-five, shall be
152 thereafter disqualified from obtaining any further temporary
153 permits in this state: *And provided further*, That notwithstand-
154 ing any provision of law to the contrary, the name, address,
155 and type of license or permit held by any physician shall be
156 public information: *And provided further*, That the provisions
157 of subsection (d) of this section shall not apply to any person
158 legally entitled to practice chiropody or podiatry in this state
159 prior to June eleventh, one thousand nine hundred sixty-five:
160 *And provided further*, That all persons licensed to practice
161 chiropody prior to June eleventh, one thousand nine hundred
162 sixty-five, shall be permitted to use the term "chiropody-
163 podiatry" and shall have the rights, privileges and responsi-
164 bilities of a podiatrist set out in this article.

CHAPTER 131

(Com. Sub. for H. B. 1157—By Delegate Wooton)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fees charged by the board of dental examiners; changing the term West Virginia dental society to West Virginia dental association; requiring the annual registration of dental corporations; expanding the voting rights of dental hygienist member of the board; requiring the board to promulgate rules and regulations pursuant to legislative rule-making authority; and increasing the per diem payments to members of the board.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

- §30-4-4. Board of dental examiners.
- §30-4-4a. Powers and duties of board.
- §30-4-4b. Registration of dental corporations.
- §30-4-4c. Practice of dentistry by dental corporations; limitations; dentist-patient relationship not affected; biennial registration; penalty; severability.
- §30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.
- §30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.
- §30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.
- §30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.
- §30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.
- §30-4-17a. Specialities; qualifications; application for certificate; fee; limitation of practice.
- §30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fee; waiver of payment of fee on retirement or disability; change of address.

§30-4-4. Board of dental examiners.

1 The "West Virginia Board of Dental Examiners" heretofore
2 established shall be continued and shall be composed of six
3 members. The members of the board in office on the date this
4 section takes effect shall, unless sooner removed, continue to
5 serve until their respective terms expire and until their
6 successors have been appointed and have qualified. Members
7 of the board shall serve for a term of five years. In addition
8 to the five practicing dentists appointed to the board, there
9 shall be appointed one dental hygienist with a degree in dental
10 hygiene from an accredited college, who shall be appointed for
11 a term beginning on the first day of July, one thousand nine
12 hundred seventy-seven. The member of the board who is a
13 licensed dental hygienist is empowered to participate in and
14 vote on all transactions and business of the board.

15 All members of the board shall be appointed by the
16 governor, by and with the advice and consent of the Senate.
17 Each member of the board, at the time of his appointment
18 and during his term as such member, shall have been a citizen
19 of this state and shall have been either a licensed dentist or
20 a licensed dental hygienist for a period of not less than five
21 years immediately preceding his appointment.

22 No person may be eligible for appointment to the board who
23 is connected with or interested in any dental college or dental
24 department of any institution of learning or in a dental supply
25 business.

26 Except for the dental hygienist, any member shall be eligible
27 for reappointment for one additional consecutive term.

28 Each appointment of a licensed dentist, whether for a full
29 term or to fill a vacancy, shall be made by the governor from
30 among three nominees therefor selected by the West Virginia
31 dental association and each appointment of a licensed dental
32 hygienist, whether for a full term or to fill a vacancy, shall
33 be made by the governor from among three nominees therefor
34 selected by the West Virginia dental hygienists' association. In
35 the case of an appointment for a full term such nominations
36 shall be submitted to the governor not later than eight months
37 prior to the date on which the appointment shall become
38 effective. In the case of an appointment to fill a vacancy, such
39 nominations shall be submitted to the governor within thirty

40 days after a request for such nominations shall have been made
41 by the governor to the president of the West Virginia dental
42 association or the president of the West Virginia dental
43 hygienists' association. In the event of the failure of an
44 association to submit to the governor nominations for an
45 appointment in accordance with the requirements of this
46 section, the governor may make the appointment without such
47 nominations.

48 Each member of the board shall receive one hundred dollars
49 for each day actually spent in attending meetings of the board,
50 or of its committees, and shall also be reimbursed for all
51 reasonable and necessary expenses actually incurred in the
52 discharge of his duties under the provisions of this article.

§30-4-4a. Powers and duties of board.

1 The West Virginia board of dental examiners shall examine
2 all qualified applicants for license to practice dentistry or
3 dental hygiene, and it shall license all such applicants who are
4 qualified under applicable statutes and who pass the exami-
5 nations that may be required by statute or by any legally
6 adopted rule or regulation. The board shall examine all
7 applications filed in accordance with the provisions of section
8 four-b of this article and shall issue certificates of authoriza-
9 tion to all applicants legally entitled to receive the same, such
10 certificates to be signed by the chairman and secretary of the
11 board.

12 The said board shall have the power to make such
13 examination of all applicants appearing before it for any type
14 of license as may be necessary to determine that the applicant
15 is qualified. The board shall also have authority to license
16 dental corporations authorized under the provisions of and
17 subject to the limitations of this article, to practice dentistry
18 through duly licensed dentists. The said board shall also have
19 the power to revoke or suspend any license issued by it, for
20 cause, after having given the person whose license is sought
21 to be revoked or suspended, an opportunity to be heard in
22 the manner provided by section eight, article one, chapter
23 thirty of this code. It shall have the power to reinstate any
24 license revoked or suspended by it.

25 The said board is authorized and empowered to hold and
26 conduct hearings and investigations on the issuance, suspen-

27 sion, revocation or reinstatement of licenses and on charges
28 of unauthorized practice of dentistry or dental hygiene.

29 The board shall have the authority to promulgate such rules
30 and regulations as are necessary to carry out the provisions
31 of this article, in accordance with chapter twenty-nine-a of this
32 code.

33 The board, acting by and through its members, employees
34 and agents, is further authorized and empowered, at any time
35 during customary office hours, to enter into the office or place
36 of business of any dental laboratory, licensed dentist, dental
37 corporation or other dental practitioner of this state, and to
38 obtain access to, make inspection of and request information
39 regarding any work authorization which such dental labora-
40 tory, licensed dentist, dental corporation or other dental
41 practitioner is required under the provisions of section two-
42 a of this article, to retain therein, and is further authorized
43 and empowered to inspect any items of dental technological
44 work then in the course of performance by such dental
45 laboratory or person employed by it, and to inspect any dental
46 prosthesis then in the place of business of, or upon the
47 premises occupied by, such dental laboratory for making,
48 production, reproduction, construction, repair, alteration or
49 restoration, and to request any information which it, its
50 members, employees or agents deem to be pertinent relating
51 to any such dental technological work and any such dental
52 prosthesis. For the purpose of this paragraph the definition
53 of terms contained in subsection-a, section two-a of this article
54 is made expressly applicable.

55 The said board shall have the power to hire, fix the
56 compensation of and discharge such employees as are
57 necessary for the performance of the powers and duties vested
58 in the said board by law and to expend such sums as said
59 board may deem necessary to maintain an office and to carry
60 out and enforce the provisions of this article.

61 All fees and other moneys collected by the board pursuant
62 to the provisions of this article shall be kept in a separate fund
63 and expended solely for the purpose of carrying out the
64 provisions of this article. The compensation provided for in
65 this article and all expenses incurred under this article shall
66 be paid from this special fund. No compensation or expense

67 incurred under this article shall be a charge against or payable
68 out of the general revenue fund of this state.

§30-4-4b. Registration of dental corporations.

1 When any one or more dentists duly licensed to practice
2 dentistry in the state of West Virginia wish to form a dental
3 corporation, such dentist or dentists shall file a written
4 application with the board of dental examiners, on a form
5 prescribed by the board, and shall furnish proof satisfactory
6 to the board that the signer is such a duly licensed dentist,
7 or if there be more than one that all of the signers of such
8 application are such duly licensed dentists. A fee of two
9 hundred dollars shall accompany each such application, no
10 part of which shall be returnable.

11 If the board finds that the signer is a duly licensed dentist,
12 or if there be more than one that all of the signers of such
13 application are such duly licensed dentists, the board shall
14 notify the secretary of state that a certificate of authorization
15 has been issued to the individual or individuals signing such
16 application to form a dental corporation.

17 When the secretary of state receives notification from the
18 board of dental examiners that a person or persons have been
19 issued a certificate of authorization, he shall attach such
20 authorization to the agreement of incorporation and upon
21 compliance by the corporation with the applicable provisions
22 of chapter thirty-one of this code, shall notify the incorpor-
23 ators that such corporation, through a duly licensed dentist
24 or dentists, may engage in the practice of dentistry.

**§30-4-4c. Practice of dentistry by dental corporations; limitations;
dentist-patient relationship not affected; biennial
registration; penalty; severability.**

1 (1) A dental corporation may practice dentistry only
2 through an individual dentist or dentists duly licensed to
3 practice dentistry in the state of West Virginia, but such dentist
4 or dentists may be employees rather than shareholders of such
5 corporation, and nothing herein contained shall be construed
6 to require a license or other legal authorization of any
7 individual employed by such corporation to perform services
8 for which no license or other legal authorization is otherwise
9 required. Nothing contained in this article is meant or intended

10 to change in any way the rights, duties, privileges, responsi-
11 bilities and liabilities incident to the dentist-patient relationship
12 nor is it meant or intended to change in any way the personal
13 character of the dentist-patient relationship. A corporation
14 holding such certificate of authorization shall register annually,
15 on or before the thirtieth day of June, on a form prescribed
16 by the board of dental examiners and shall pay an annual
17 registration fee of one hundred fifty dollars.

18 (2) A dental corporation holding a certificate of authoriza-
19 tion shall cease to engage in the practice of dentistry upon
20 being notified by the board of dental examiners that any of
21 its shareholders is no longer a duly licensed dentist, or when
22 any shares of such corporation have been sold or disposed of
23 to a person who is not a duly licensed dentist: *Provided*, That
24 the personal representative of a deceased shareholder shall
25 have a period, not to exceed twelve months from the date of
26 such shareholder's death, to dispose of such shares; but
27 nothing contained herein shall be construed as affecting the
28 existence of such corporation or its right to continue to
29 operate for all lawful purposes other than the practice of
30 dentistry.

31 (3) No corporation shall practice dentistry, or any of its
32 branches, or hold itself out as being capable of doing so,
33 without a certificate from the board of dental examiners, nor
34 shall any corporation practice dentistry, or any of its branches,
35 or hold itself out as being capable of doing so, after its
36 certificate has been revoked, or if suspended, during the term
37 of such suspension. A certificate signed by the secretary of the
38 board of dental examiners to which is affixed the official seal
39 of the board to the effect that it appears from the records of
40 the board that no such certificate to practice dentistry or any
41 of its branches in the state has been issued to any such
42 corporation specified therein or that such certificate has been
43 revoked or suspended shall be admissible in evidence in all
44 courts of this state and shall be prima facie evidence of the
45 facts stated therein.

46 (4) Any officer, shareholder or employee of such corpora-
47 tion who participates in a violation of any provision of this
48 section shall be guilty of a misdemeanor, and, upon conviction,
49 shall be fined not exceeding one thousand dollars.

50 (5) If any provision of section four-b or four-c of this article
51 be held to be invalid, such invalidity shall not affect the other
52 provisions of said sections, and to this end the provisions of
53 said sections are severable.

**§30-4-5. License required as prerequisite to practice dentistry;
exceptions; temporary and special permits.**

1 Except as otherwise provided in this section, no person shall
2 practice or offer to practice dentistry or dental hygiene in this
3 state until a license for such purpose shall be issued to him
4 by the board of dental examiners, nor shall any person so
5 practice after the first anniversary of the issuance of such
6 license until he shall have in his possession a current renewal
7 certificate issued by the board.

8 The board of dental examiners under such regulations as it
9 may prescribe may issue a temporary permit to practice
10 dentistry or dental hygiene to graduates of schools of dentistry
11 or dental hygiene approved by the board who are certified to
12 the board of directors of dental clinics established by law, by
13 the chief executive of any hospital or sanitarium licensed or
14 operated by the state or by the chief dental officer of the health
15 department of the state. Such permits shall expire thirty days
16 after the date of the next examination given by the board for
17 licenses in dentistry or dental hygiene and shall not be subject
18 to renewal. Such permits shall terminate when the holder
19 thereof ceases to be employed by the person certifying him.
20 A fee of one hundred dollars shall be paid to the board upon
21 issuance of such permit by the person certifying the applicant.

22 The board of dental examiners under such regulations as it
23 may prescribe may issue a dental intern or dental residency
24 permit to graduates of dental schools approved by the board
25 who are not licensed to practice dentistry in this state and who
26 have not failed an examination for a license to practice
27 dentistry in this state. Applicants for such permits shall be
28 certified to the board by the director of a hospital operated
29 or licensed by the state which maintains a dental intern or
30 residency program. Such permits shall authorize the holder
31 thereof to serve as a dental intern or a dental resident for a
32 period of not more than one year in any hospital licensed or
33 operated by the state which maintains an established dental
34 department under the supervision of a licensed dentist. The

35 holder of such a permit shall function under the supervision
36 of the dental staff of the hospital and shall limit his practice
37 to patients selected by the hospital. The holder of such a
38 permit shall not be entitled to receive any fee or other
39 compensation other than such salary as may be paid by such
40 hospital. Permits may be revoked by the board for cause and
41 shall expire at the end of one year or on the date the dental
42 internship or residency is discontinued, whichever first occurs.
43 A fee of fifty dollars shall be paid to the board upon the
44 issuance of such a permit by the hospital nominating him.

45 The board of dental examiners under such regulations as it
46 may prescribe may issue teaching permits to persons who are
47 graduates of a school of dentistry or dental hygiene approved
48 by the board where such persons are not licensed to practice
49 dentistry or dental hygiene in this state. Such permits shall be
50 issued only upon the certification of the dean of a dental
51 school located in this state that the applicant is a bona fide
52 member of the staff of that school. Such permits shall be valid
53 for one year and may be reissued by the board in its discretion.
54 The holder of such a permit shall be entitled to perform all
55 operations which a person licensed to practice dentistry or
56 dental hygiene in this state would be entitled to perform, but
57 only within the facilities of the dental school and as an adjunct
58 to his teaching functions in such school. A fee of one hundred
59 dollars shall be paid to the board on the issuance of a teaching
60 permit or upon each renewal thereof by the school nominating
61 the applicant.

62 Nothing in this article shall be deemed to prohibit the
63 practice of dentistry or dental hygiene by persons licensed in
64 another state who, at the request of an approved dental school
65 or any regularly organized dental society, may give a clinic at
66 such school or at a scientific meeting of such dental society
67 for the purpose of advancing the professional knowledge of
68 members of the dental profession or members of the student
69 body of a dental school.

70 An applicant for a permit under this section shall transmit
71 with his application a fee of fifty dollars which sum the board
72 is authorized to expend in an investigation of the applicant's
73 qualifications. No portion of this fee is refundable.

§30-4-6. Qualifications of applicant for license; examinations;

examination fee; licensing.

1 An applicant for a dental license shall be of good moral
2 character, a citizen of the United States or an individual who
3 has declared his intention to become and who shows progress
4 toward becoming a citizen of the United States, at least
5 eighteen years of age at the time of making application, and
6 be a graduate of, and possess an acceptable dental diploma
7 from the faculty of a dental school approved by the board.
8 The board may require the application to be accompanied by
9 sufficient evidence of these qualifications.

10 The applicant shall transmit with his application an
11 examination fee of fifty dollars, which sum the board is
12 authorized to expend in an investigation of the applicant's
13 qualifications. No portion of this fee is refundable.

14 An applicant whose application has been accepted by the
15 board shall be given an examination on subjects selected by
16 the board from among those currently being taught in
17 approved dental schools which shall test the qualifications of
18 the applicant to practice dentistry. The testing body for such
19 examinations shall be decided by the board under rules and
20 regulations promulgated by it.

21 The board may recognize a certificate granted by the
22 national board of dental examiners in lieu of the written
23 portion of the required examination.

24 An applicant obtaining a satisfactory grade on such
25 examination and otherwise fulfilling the requirements of the
26 board shall be granted a license by the board to practice
27 dentistry, which license shall bear a serial number, the full
28 name of the licensee, the date of issuance of the license, the
29 seal of the board and the signatures of a majority of the
30 members of the board.

31 The board shall not issue a license to any person found
32 guilty of cheating, deception or fraud in the examination or
33 on any part of the application. All manuscripts used in any
34 examination and all applications for licensure shall be filed for
35 a period of two years by the secretary of the board for the
36 purpose of reference and inspection.

**§30-4-10. Fees for licenses and certificates issued under §§30-4-8
and 30-4-9.**

1 The fee for issuing the license to a legal practitioner from
2 another state, as provided in section eight of this article, shall
3 be one hundred dollars, and the fee for issuing a certificate
4 to a legal practitioner in this state, as provided in section nine
5 of this article, shall be ten dollars, and in each case the fee
6 shall be paid before the license or certificate, respectively, is
7 issued. No portion of these fees is refundable.

§30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.

1 No person who has not been licensed as a dental hygienist
2 in this state on or before the first day of September, one
3 thousand nine hundred thirty-seven, shall practice as a dental
4 hygienist until he has first passed an examination or
5 examinations selected by the West Virginia board of dental
6 examiners and otherwise qualifies under such rules and
7 regulations as the board may establish. Such examination or
8 examinations shall be both practical and theoretical. The fee
9 for the examination shall be thirty-five dollars and shall
10 accompany the application. An applicant failing to pass the
11 first examination shall be entitled to one reexamination at the
12 next regular meeting of the board without additional cost. The
13 fee for every reexamination after that shall be ten dollars. No
14 portion of these fees is refundable.

15 The board of dental examiners shall issue a license to
16 practice dental hygiene in this state to any person who has
17 passed such an examination and who has otherwise qualified
18 to practice dental hygiene under the rules and regulations
19 established by the board: *Provided*, That no person shall be
20 entitled to such dental hygiene license unless he be: (a) At least
21 eighteen years of age, (b) of good moral character, (c) a
22 graduate of a first class high school of this state or its
23 equivalent and (d) be a graduate of, and possess an acceptable
24 diploma in dental hygiene from a school having a course in
25 dental hygiene approved by the board of dental examiners.

§30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.

1 The board of dental examiners may, at its discretion,
2 without the examination herein provided, issue a license to
3 practice dental hygiene to any applicant therefor, who shall
4 furnish proof satisfactory to the board that he has been duly

5 licensed to practice as a dental hygienist in another state after
6 full compliance with the requirements of its dental laws:
7 *Provided*, That his professional and preliminary education
8 shall not be less than that required in this state, and that he
9 shall have been in active practice at least two years previous
10 to his application for a license. The fee for issuing a license
11 to a legal practitioner of dental hygiene from another state
12 shall be fifty dollars, which shall be paid before the license
13 is issued. No portion of this fee is refundable.

§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

1 No licensee shall announce or otherwise hold himself out
2 to the public as a specialist or as being specially qualified in
3 any particular branch of dentistry, or as giving special
4 attention to any branch of dentistry, or as limiting his practice
5 to any branch of dentistry, unless he has first complied with
6 the requirements established by the board of dental examiners
7 for such specialty and has been issued a certificate of
8 qualification authorizing him so to do .

9 The board of dental examiners may establish higher
10 standards and additional requirements for any licensee who
11 desires to announce or otherwise hold himself out to the public
12 as being specially qualified in a branch or specialty of dentistry
13 recognized by the board. The board may give such examina-
14 tions and secure such assistance as it may deem necessary in
15 determining the qualifications of applicants.

16 The state board of dental examiners may appoint not more
17 than three specialists to examine the credentials of applicants,
18 and each specialist so appointed shall receive ten dollars for
19 each day actually spent in examining the credentials of
20 applicants and shall be entitled to be reimbursed for all
21 reasonable and necessary expenses actually incurred in
22 discharging such duties. The state board of dental examiners
23 may appoint not more than three specialists to administer and
24 grade the specialty examination given to applicants, and each
25 specialist so appointed shall receive forty dollars for each day
26 actually spent in administering and grading such examination.

27 Application to the board for a certificate of qualification in
28 a specialty of dentistry shall be upon such form and contain
29 such information as the board may require and shall be

30 accompanied by a fee of three hundred dollars. No portion
31 of this fee is refundable. A licensee found by the board to be
32 qualified under the standards and other requirements
33 promulgated by the board in the specialty indicated in his
34 application shall be issued a certificate of qualification
35 authorizing the licensee to announce or otherwise hold himself
36 out to the public as specially qualified in the indicated specialty
37 under such terms and in a manner approved by the board.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fee; waiver of payment of fee on retirement or disability; change of address.

1 On or before the first day of February of each year, every
2 dentist licensed to practice dentistry in this state, and every
3 dental hygienist licensed to practice dental hygiene in this state,
4 shall transmit to the secretary of the board upon a form
5 prescribed by the board, his signature, post-office address,
6 office address, the serial number of his license certificate,
7 whether he has been engaged during the preceding year in the
8 active and continuous practice of dentistry or dental hygiene,
9 as the case may be, whether within or without this state, and
10 such other information as may be required by the board,
11 together with an information and renewal fee herein provided
12 for.

13 The annual information and renewal fee for a dentist shall
14 be fifty dollars and for a dental hygienist shall be twenty-five
15 dollars.

16 Upon receipt of the required information and the payment
17 of the proper renewal fee, the licensee shall be issued a renewal
18 certificate authorizing him to continue the practice of dentistry
19 or the practice of dental hygiene in this state for a period of
20 one year from the first day of February.

21 A license to practice dentistry or dental hygiene granted
22 under the authority of this article shall be canceled on the first
23 day of May if the holder thereof fails to secure a current
24 renewal certificate by that date. Any licensee whose license is
25 thus canceled by reason of the failure, neglect or refusal to
26 secure the proper renewal certificate may be reinstated by the
27 board at any time within six months from the date of the
28 cancellation of said license upon the payment of the proper
29 renewal fee and an additional fee of twenty-five dollars. If the

30 licensee shall not apply for renewal of his license as herein
31 required within the said six months, that person shall, at the
32 discretion of said board, be required to file an application for
33 and take the examination provided in this article should he
34 desire to practice dentistry or dental hygiene in this state.

35 Upon failure of any licensee to submit the required
36 information and pay the annual renewal fee as herein required
37 by the statutory date, the board shall attempt to notify such
38 licensee in writing by mailing to his last registered address a
39 notice of the requirements of this section apprising him of the
40 fact that his license to practice will be canceled on the statutory
41 date: *Provided*, That failure to mail or receive such notice shall
42 not affect the cancellation of his license.

43 The board may waive the annual payment of the renewal
44 fee herein required, and issue a renewal certificate to any West
45 Virginia licensee who has held a West Virginia license for at
46 least twenty-five years and is presently retired from active
47 practice, or to any West Virginia licensee who has retired for
48 reasons of physical disability, so long as such retirement
49 continues: *Provided*, That the licensee provides the board with
50 the information required by this section.

51 Every licensed dentist within thirty days of changing his
52 place of practice or establishing additional offices shall furnish
53 the secretary of the board with his new professional address.

54 Every licensed dental hygienist within thirty days of
55 changing his place of employment shall furnish the secretary
56 of the board with his new professional address and the name
57 of his employer.

CHAPTER 132

(S. B. 423—By Senator Palumbo)

[Passed April 4, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and sixteen,
article five, chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relat-

ing generally to the powers and duties of the West Virginia board of pharmacy; removing the requirement that a registered pharmacist be a citizen of the United States; requiring a permit for the distribution of any legend drug; extending the requirement of obtaining a permit to manufacture, package, make or prepare or distribute certain products to include partnerships, companies, cooperative societies or organizations; and providing penalties for the violation of such section sixteen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

§30-5-16. Permit for manufacture, packaging, etc., of drugs, medicines, cosmetics, distribution of legend drugs, etc.; regulations as to sanitation and equipment; penalties; revocation of permit.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

1 In order to be registered as a pharmacist within the
2 meaning of this article, a person shall be not less than
3 eighteen years of age, shall present to the board of phar-
4 macy satisfactory evidence that he or she is a graduate of
5 a recognized school of pharmacy as defined by the board
6 of pharmacy. In addition thereto, he or she shall have had
7 at least nine months of practical experience in a pharmacy
8 or drugstore under the instruction and supervision of a
9 registered pharmacist and shall pass satisfactorily an
10 examination by or under the direction of the board of
11 pharmacy: *Provided*, That any registered pharmacist who
12 has renewed his or her registration as such assistant phar-
13 macist for each consecutive year since his or her original
14 registration with the state board of pharmacy, may upon
15 application to the board of pharmacy, be registered as a

16 pharmacist within the meaning of this article. An appli-
17 cant for examination shall forward to the secretary a fee
18 of one hundred twenty-five dollars with his or her appli-
19 cation.

20 Every applicant for registration as a pharmacist shall
21 present to the board of pharmacy satisfactory evidence
22 that he or she is a person of good moral character and
23 not addicted to drunkenness or the use of controlled sub-
24 stances. The board shall issue certificates of registration
25 to all persons who successfully pass the required exami-
26 nation and are otherwise qualified and to all those whose
27 certificates or licenses the board shall accept in lieu of an
28 examination as provided in section six of this article.

**§30-5-16. Permit for manufacture, packaging, etc., of drugs,
medicines, cosmetics, distribution of legend drugs,
etc.; regulations as to sanitation and equipment;
penalties; revocation of permit.**

1 No drugs or medicines, or toilet articles, dentifrices,
2 or cosmetics, shall be manufactured, made, produced,
3 packed, packaged or prepared within the state, except
4 under the personal and immediate supervision of a regis-
5 tered pharmacist or such other person as may be approved
6 by the board of pharmacy, after an investigation and
7 determination by the said board that they are qualified
8 by scientific or technical training and/or experience to
9 perform such duties of supervision as may be necessary to
10 protect the public health and safety; and no person shall
11 manufacture, make, produce, pack, package or prepare
12 any such articles without first obtaining a permit to do so
13 from the board of pharmacy. Such permit shall be sub-
14 ject to such rules and regulations, with respect to sani-
15 tation and/or equipment, as the said board of pharmacy
16 may from time to time adopt for the protection of the
17 public health and safety.

18 Any person, firm, corporation, partnership, company,
19 cooperative society or organization who offers for sale,
20 sells, offers or exposes for sale through the method of
21 distribution any legend drug shall be subject to this ar-
22 ticle.

23 The application for such permit shall be made on a
24 form to be prescribed and furnished by the said board of
25 pharmacy and shall be accompanied by the required fee
26 of fifty dollars which amount shall also be paid as the fee
27 for each annual renewal of such permit. Separate appli-
28 cations shall be made and separate permits issued for
29 each separate place of manufacture, distribution, making,
30 producing, packing, packaging or preparation.

31 Permits issued under the provisions of this section
32 shall be posted in a conspicuous place in the factory or
33 place for which issued; such permits shall not be trans-
34 ferable, and shall expire on the thirtieth day of June
35 following the day of issue and shall be renewed annually.
36 Nothing in this section shall be construed to apply to
37 those operating registered pharmacies or drugstores.

38 Any person, firm or corporation, partnership, company,
39 cooperative society or organization violating any of the
40 provisions of this section and any permittee hereunder
41 who shall violate any of the conditions of this permit or
42 any of the rules and regulations adopted by the said board
43 of pharmacy in pursuance of the power hereby conferred,
44 shall, upon conviction, be deemed guilty of a misdemea-
45 nor and fined not more than fifty dollars for each offense,
46 and each and every day such violation continues shall
47 constitute a separate and distinct offense, and upon con-
48 viction of a permittee, his permit shall also forthwith be
49 revoked and become null and void.

50 Any person, firm, corporation, partnership, company,
51 cooperative society or organization or any permittee
52 hereunder who shall have been convicted of two or more
53 successive violations of the provisions of this section or
54 of the rules and regulations adopted by the board of
55 pharmacy in pursuance of the powers hereby conferred,
56 shall at the discretion of the board of pharmacy have such
57 permit permanently revoked, and the board of pharmacy
58 is hereby authorized to refuse the issuance of further
59 permits to such person, firm, corporation, partnership,
60 company, cooperative society or organization or permit-
61 tee.

CHAPTER 133

(H. B. 1543—By Delegate Wiedebusch)

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

AN ACT to amend and reenact section four, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to osteopathic physicians and surgeons; application for examination; fee increase.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

1 Each applicant for examination by the board, with the
 2 exception of assistants to osteopathic physicians and surgeons,
 3 as hereinafter provided, shall submit an application therefor
 4 on forms prepared and furnished by the board, accompanied
 5 by evidence verified by oath and satisfactory to the board,
 6 establishing that the applicant has satisfied the following
 7 requirements: (a) That the applicant is eighteen years of age
 8 or over; (b) that the applicant is of good moral character; (c)
 9 that the applicant has graduated from an approved osteopathic
 10 college; and (d) that the applicant has paid to the board a fee
 11 of one hundred fifty dollars.

CHAPTER 134

(Com. Sub. for H. B. 1493—By Delegate Ryan and Delegate Stacy)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers and beauticians; shop to be managed by licensed barbers and

beauticians; sign; removal of certain prohibitions on conduct of business other than barbering or beauty culture; removal of prohibition on advertising of prices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-7. Shop to be managed by licensed barbers and beauticians; sign.

- 1 Every barber or beauty shop in this state shall be operated
- 2 under the supervision and management of a barber or
- 3 beautician who is licensed as such in this state. A barbershop
- 4 and a beauty shop may be conducted within the same shop.
- 5 A suitable sign shall be displayed at the main entrance of all
- 6 barber and beauty shops, plainly indicating the business
- 7 conducted therein.

CHAPTER 135

(H. B. 1442—By Delegate Roop and Delegate Mastrantonì)

[Passed March 25, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the governor's committee on crime, delinquency and corrections; law-enforcement training subcommittee; addition of member from the department of natural resources enforcement division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-2. Law-enforcement training subcommittee.

- 1 (a) A subcommittee of the governor's committee on crime,

2 delinquency and corrections is hereby created and assigned
3 responsibility for review and administration of programs for
4 qualification, training and certification of law-enforcement
5 officers in the state. The subcommittee shall be comprised of
6 ten members of the governor's committee including one
7 representative of each of the following: The department of
8 public safety, the law-enforcement division of the department
9 of natural resources, the West Virginia sheriffs association, the
10 West Virginia association of chiefs of police, the West Virginia
11 deputy sheriffs association, the West Virginia fraternal order
12 of police lodge, the West Virginia municipal league, the West
13 Virginia association of county officials, the human rights
14 commission and the public at large.

15 (b) The subcommittee shall elect a chairperson and a vice
16 chairperson. Special meetings may be held upon the call of
17 the chairperson, vice chairperson or a majority of the members
18 of the subcommittee. A majority of the members of the
19 subcommittee constitutes a quorum.

CHAPTER 136

(Com. Sub. for S. B. 312—By Senator R. Williams, et al)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections two, fourteen, seven-
teen and twenty-two-b, article ten, chapter five of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended; and to amend and reenact section twenty-six-
h, article seven-a, chapter eighteen of said code, all relat-
ing to the state public employees retirement act and the
state teachers retirement system; providing increased sup-
plemental benefits for certain annuitants contingent on
legislative budgetary action; specifying factors for eligi-
bility and computation thereof, under both systems; provid-
ing, in respect of the public employees retirement act, for
all temporary employees of the Legislature who have
been employed for ten years or more to be eligible for par-
ticipation in such public employees retirement system;
membership; definitions; and service credit.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, seventeen and twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six-h, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

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

18. **Education.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

§5-10-14. Service credit.

§5-10-17. Retirement system membership.

§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, shall have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation or

14 instrumentality established by one or more counties, cities
15 or towns, as permitted by law; any corporation or instru-
16 mentality supported in most part by counties, cities
17 or towns; any public corporation charged by law with the
18 performance of a governmental function and whose juris-
19 diction is coextensive with one or more counties, cities
20 or towns, any agency or organization established by, or
21 approved by the department of mental health for the
22 provision of community health or mental retardation
23 services, and which is supported in part by state, county
24 or municipal funds;

25 (5) "Participating public employer" means the state of
26 West Virginia, any board, commission, department, in-
27 stitution or spending unit, and shall include any agency
28 created by rule of the supreme court of appeals having
29 full-time employees, which for the purposes of this article
30 shall be deemed a department of state government; and
31 any political subdivision in the state which has elected to
32 cover its employees, as defined in this article, under the
33 West Virginia public employees retirement system;

34 (6) "Employee" means any person who serves regularly
35 as an officer or employee, full time, on a salary basis, whose
36 tenure is not restricted as to temporary or provisional
37 appointment, in the service of, and whose compensation
38 is payable, in whole or in part, by any political subdivi-
39 sion, or an officer or employee whose compensation is
40 calculated on a daily basis and paid monthly or on com-
41 pletion of assignment, including technicians and other
42 personnel employed by the West Virginia national guard
43 whose compensation, in whole or in part, is paid by the
44 federal government: *Provided*, That members of the state
45 Legislature, the Clerk of the House of Delegates, the
46 Clerk of the state Senate, employees of the state Legisla-
47 ture whose term of employment is otherwise classified as
48 temporary and who are employed to perform services
49 required by the Legislature for its regular sessions or
50 during the interim between regular sessions and who
51 have been or are so employed during regular sessions or
52 during the interim between regular sessions for ten or
53 more years, members of the legislative body of any politi-

54 cal subdivision and judges of the state court of claims
55 shall be considered to be employees, anything contained
56 herein to the contrary notwithstanding. In any case of
57 doubt as to who is an employee within the meaning of
58 this article the board of trustees shall decide the ques-
59 tion;

60 (7) "Member" means any person who is included in the
61 membership of the retirement system;

62 (8) "Retirant" means any member who retires with an
63 annuity payable by the retirement system;

64 (9) "Beneficiary" means any person, except a retirant,
65 who is entitled to, or will be entitled to, an annuity or
66 other benefit payable by the retirement system;

67 (10) "Service" means personal service rendered to a
68 participating public employer by an employee, as defined
69 in this article, of a participating public employer;

70 (11) "Prior service" means service rendered prior to
71 July one, one thousand nine hundred sixty-one, to the
72 extent credited a member as provided in this article;

73 (12) "Contributing service" means service rendered by
74 a member from and after the date of his entrance in the
75 retirement system, to the extent credited him as provided
76 in this article;

77 (13) "Credited service" means the sum of a member's
78 prior service credit and contributing service credit stand-
79 ing to his credit as provided in this article;

80 (14) "Compensation" means the remuneration paid a
81 member by a participating public employer for personal
82 services rendered by him to the participating public em-
83 ployer. In the event a member's remuneration is not all
84 paid in money, his participating public employer shall fix
85 the value of the portion of his remuneration which is not
86 paid in money;

87 (15) "Final average salary" means either (a) the aver-
88 age of the highest annual compensation received by a
89 member (including a member of the Legislature who
90 participates in the retirement system in the year one
91 thousand nine hundred seventy-one or thereafter) during

92 any period of three consecutive years of his credited ser-
93 vice contained within his ten years of credited service
94 immediately preceding the date his employment with a
95 participating public employer last terminated, or (b) if he
96 has less than five years of credited service, the average of
97 the annual rate of compensation received by him during
98 his total years of credited service; and in determining the
99 annual compensation, under either (a) or (b) of this sub-
100 division (15), of a member of the Legislature who partic-
101 ipates in the retirement system as a member of the
102 Legislature in the year one thousand nine hundred sev-
103 enty-one or in any year thereafter, his actual legislative
104 compensation (the total of all compensation paid under
105 sections two, three, four and five, article two-a, chapter
106 four of this code) in the year one thousand nine hundred
107 seventy-one or in any year thereafter, plus any other
108 compensation he receives in any such year from any other
109 participating public employer including the state of West
110 Virginia, without any multiple in excess of one times his
111 actual legislative compensation as aforesaid and other
112 compensation, shall be used: *Provided*, That "final average
113 salary" for any former member of the Legislature or for
114 any member of the Legislature in the year one thousand
115 nine hundred seventy-one who, in either event, was a
116 member of the Legislature on November thirty, one thou-
117 sand nine hundred sixty-eight, or November thirty, one
118 thousand nine hundred sixty-nine, or November thirty,
119 one thousand nine hundred seventy, or on November
120 thirty in any one or more of said three years, and who
121 participated in the retirement system as a member of the
122 Legislature in any one or more of such years of one thou-
123 sand nine hundred sixty-eight, one thousand nine hun-
124 dred sixty-nine or one thousand nine hundred seventy,
125 means (i) either (notwithstanding the provisions of this
126 subdivision (15) preceding this proviso) one thousand five
127 hundred dollars multiplied by eight, plus the highest other
128 compensation such former member or member received
129 in any one of said three years from any other participat-
130 ing public employer including the state of West Virginia,
131 or (ii) "final average salary" determined in accordance
132 with (a) or (b) of this subdivision (15), whichever com-

133 putation shall produce the higher final average salary
134 (and in determining the annual compensation under (ii)
135 of this proviso, the legislative compensation of any such
136 former member shall be computed on the basis of one
137 thousand five hundred dollars multiplied by eight, and
138 the legislative compensation of any such member shall be
139 computed on the basis set forth in the provisions of this
140 subdivision (15) immediately preceding this proviso or on
141 the basis of one thousand five hundred dollars multiplied
142 by eight, whichever computation as to such member shall
143 produce the higher annual compensation);

144 (16) "Accumulated contributions" means the sum of all
145 amounts deducted from the compensations of a member
146 and credited to his individual account in the members'
147 deposit fund, together with regular interest thereon;

148 (17) "Regular interest" means such rate or rates of
149 interest per annum, compounded annually, as the board of
150 trustees shall from time to time adopt;

151 (18) "Annuity" means an annual amount payable by
152 the retirement system throughout the life of a person. All
153 annuities shall be paid in equal monthly installments,
154 using the upper cent for any fraction of a cent;

155 (19) "Annuity reserve" means the present value of all
156 payments to be made to a retirant or beneficiary of a
157 retirant on account of any annuity, computed upon the
158 basis of such mortality and other tables of experience, and
159 regular interest, as the board of trustees shall from time
160 to time adopt;

161 (20) "Retirement" means a member's withdrawal from
162 the employ of a participating public employer with an
163 annuity payable by the retirement system;

164 (21) "Actuarial equivalent" means a benefit of equal
165 value computed upon the basis of such mortality table
166 and regular interest as the board of trustees shall from
167 time to time adopt; and

168 (22) The masculine gender shall include the feminine
169 gender, and words of the singular number with respect to
170 persons shall include the plural number, and vice versa.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which
3 he is entitled based upon such rules and regulations as the
4 board of trustees shall from time to time adopt: *Provided*,
5 That in no case shall less than ten days of service ren-
6 dered by a member in any calendar month be credited as
7 a month of service; nor shall less than ten months of ser-
8 vice rendered in any calendar year be credited as a year
9 of service; nor shall more than one year of service be
10 credited any member for all service rendered by him in
11 any calendar year; nor shall any member who was not in
12 the employ of a political subdivision within a period of
13 twenty-five years immediately preceding the date the
14 political subdivision became a participating public em-
15 ployer be credited with prior service.

16 (b) The board of trustees shall grant service credit to
17 employees of boards of health, the Clerk of the House of
18 Delegates and the Clerk of the state Senate, or to any
19 former and present member of the state teachers retire-
20 ment system who have been contributing members for
21 more than three years, for service previously credited by
22 the state teachers' retirement system, and shall require
23 the transfer of the member's contributions to the retire-
24 ment system, and shall also require a deposit, with inter-
25 est, of any withdrawals of contributions any time prior to
26 said member's retirement. Repayment of withdrawals
27 shall be as directed by the board of trustees.

28 (c) Court reporters who are acting in an official ca-
29 pacity, although paid by funds other than the county
30 commission or state auditor, may receive prior service
31 credit for such time as served in such capacity.

32 (d) Employees of the state Legislature whose term of
33 employment is otherwise classified as temporary and who
34 are employed to perform services required by the Legis-
35 lature for its regular sessions or during the interim be-
36 tween regular sessions and who have been or are so
37 employed during regular sessions or during the interim
38 between sessions for ten or more years, may receive ser-
39 vice credit for such time as served in that capacity.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist
2 of the following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on and after the said
8 date shall become members of the retirement system; and
9 all persons who become employees of a participating
10 public employer on or after the said date shall thereupon
11 become members of the system; except as provided in
12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers retirement system, the
16 judges retirement system, the retirement system of the
17 department of public safety, or any municipal retirement
18 system for either, or both, policemen or firemen; and the
19 West Virginia department of employment security, by
20 the commissioner of such department, may elect whether
21 its employees will accept coverage under this article or
22 be covered under the authorization of a separate enact-
23 ment: *Provided*. That such exclusions of membership
24 shall not apply to any member of the state Legislature,
25 the Clerk of the House of Delegates, the Clerk of the
26 state Senate or to any member of the legislative body
27 of any political subdivision provided he once becomes
28 a contributing member of the retirement system: *Pro-*
29 *vided, however*, That any retired member of the retire-
30 ment system of the department of public safety, and
31 any retired member of any municipal retirement system
32 for either, or both, policemen or firemen may on and
33 after the effective date of this section become a member
34 of the retirement system as provided in this article,
35 without receiving credit for prior service as a municipal
36 policeman or fireman or as a member of the department
37 of public safety.

38 (c) Any member of the state Legislature, the Clerk of

39 the House of Delegates, the Clerk of the state Senate, any
40 employee of the state Legislature whose employment is
41 otherwise classified as temporary and who is employed to
42 perform services required by the Legislature for its regu-
43 lar sessions or during the interim between regular ses-
44 sions and who has been or is so employed during regular
45 sessions or during the interim between sessions for ten
46 or more years, or any member of the legislative body of
47 any other political subdivision shall become a member of
48 the retirement system provided he notifies the retirement
49 system in writing of his intention to be a member of the
50 system and files a membership enrollment form as the
51 board of trustees shall prescribe, and each person, upon
52 filing his written notice to participate in the retirement
53 system, shall by said act authorize the Clerk of the House
54 of Delegates or the Clerk of the state Senate or such per-
55 son or legislative agency as the legislative body of any
56 other political subdivision shall designate to deduct such
57 member's contribution, as provided in subsection (b),
58 section twenty-nine of this article, and after said deduc-
59 tions have been made from said member's compensation,
60 such deductions shall be forwarded to the retirement
61 system.

62 (d) Should any question arise regarding the member-
63 ship status of any employee, the board of trustees has the
64 final power to decide the question.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually
3 on the effective date of this section shall receive, upon
4 application, a supplemental benefit, prospectively, under
5 this section in any fiscal year for which the Legislature
6 provides by line item appropriations for the payment of
7 such benefit: *Provided*, That the effective date of retire-
8 ment for such annuitants was prior to the first day of
9 July, one thousand nine hundred seventy-eight, and he
10 had ten years or more of credited service at the time of
11 such retirement. For the purposes of this section, "effec-
12 tive date of retirement" means the last day of actual

13 employment, or the last day carried on the payroll of the
14 employer, whichever is later, together with a meeting
15 fully of all eligibility requirements for retirement prior
16 to the aforesaid effective date. Any annuitant retired pur-
17 suant to the disability provisions of this article shall be
18 considered to have had ten years or more credited service
19 at the time of such retirement.

20 Each such annuitant shall receive as his supplemental
21 benefit an increased annual amount which is the product
22 of the sum of eighteen dollars multiplied by his years of
23 credited service: *Provided*, That the total annuity of any
24 annuitant affected by the provisions of this section, to-
25 gether with any of the other provisions of this article,
26 shall not exceed seven thousand five hundred dollars
27 annually.

28 Any annuitant receiving the supplemental benefit pro-
29 vided for herein for the annuity payment period just
30 prior to the first day of July, one thousand nine hundred
31 eighty-four, or any annuitant made newly eligible for
32 receipt of such supplemental benefit on such date, shall
33 receive a nineteen percent increase in the amount of such
34 supplemental benefit prior received or newly calculated,
35 effective on and after the first day of July, one thousand
36 nine hundred eighty-four, and irrespective of the maxi-
37 mum total annuity proviso and limitation of seven thou-
38 sand five hundred dollars annually. In any fiscal year in
39 which pay increases are granted by the Legislature to
40 active public employees, there may also be given an in-
41 crease in retirement benefits for retired public employees,
42 if funding is available for this purpose.

43 For the purpose of calculating the supplemental benefit
44 provided in this section, fractional parts of a service cred-
45 it year are to be disregarded unless in excess of one half
46 of a credited service year, in which event the same shall
47 constitute a full year of service credit.

48 On or after the first day of July, one thousand nine
49 hundred eighty-two, for the purpose of computation for
50 determination of eligibility and for the amount of any
51 supplemental benefit hereunder, separate computation
52 shall be made of a retirant's own benefit and that which

53 may be receivable as beneficiary of another, under the
54 provisions of this article, with each such benefit being
55 eligible for the supplemental benefit herein provided.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually
3 on the effective date of this section shall receive a supple-
4 mental benefit, prospectively, under this section in any
5 fiscal year for which the Legislature provides by line
6 item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such
8 annuitant was prior to the first day of July, one thousand
9 nine hundred seventy-eight, and he had ten years or more
10 of credited service at the time of such retirement. For the
11 purposes of this section, "effective date of retirement"
12 means the last day of actual employment, or the last day
13 carried on the payroll of the employer, whichever is later,
14 together with a meeting fully of all eligibility require-
15 ments for retirement prior to the aforesaid effective date.
16 Any annuitant retired pursuant to the disability provisions
17 of this article shall be considered to have had ten years or
18 more credited service at the time of such retirement.

19 Each such annuitant shall receive as his supplemental
20 benefit an increased annual amount which is the product
21 of the sum of eighteen dollars multiplied by his years of
22 credited service: *Provided*, That the total annuity of any
23 annuitant affected by the provisions of this section, to-
24 gether with any of the other provisions of this article,
25 shall not exceed seven thousand five hundred dollars
26 annually.

27 Any annuitant receiving the supplemental benefit pro-
28 vided for herein for the annuity payment period just
29 prior to the first day of July, one thousand nine hundred
30 eighty-four, or any annuitant made newly eligible for
31 receipt of such supplemental benefit on such date, shall

32 receive a nineteen percent increase in the amount of such
33 supplemental benefit prior received or newly calculated,
34 effective on and after the first day of July, one thousand
35 nine hundred eighty-four, and irrespective of the maxi-
36 mum total annuity proviso, and limitation of seven thou-
37 sand five hundred dollars annually. In any fiscal year in
38 which pay increases are granted by the Legislature to
39 active teachers, there may also be given an increase in
40 retirement benefits for retired teachers, if funding is
41 available for this purpose.

42 For the purpose of calculating the supplemental benefit
43 provided in this section, fractional parts of a service
44 credit year are to be disregarded unless in excess of one
45 half of a credited service year, in which event the same
46 shall constitute a full year of service credit.

47 On or after the first day of July, one thousand nine
48 hundred eighty-two, for the purpose of computation for
49 determination of eligibility and for the amount of any
50 supplemental benefit hereunder, separate computation
51 shall be made of a retirant's own benefit and that which
52 may be receivable as beneficiary of another under the
53 provisions of this article, with each such benefit being
54 eligible for the supplemental benefit herein provided.

CHAPTER 137

(Com. Sub. for H. B. 1239—By Delegate Wooton and Delegate Shiflet)

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

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; providing coverage for certain retired employees; specifying insurance coverages available for surviving spouses and dependents of deceased employee who was either an active or retired employee just prior to such decease; and providing for premium cost payment methods.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

***§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; additional eligible retired employees.**

1 The board is hereby authorized to provide under any
2 contract or contracts entered into under the provisions of this
3 article that the costs of any such group hospital and surgical
4 insurance, group major medical insurance, group life and
5 accidental death insurance benefit plan or plans may be paid
6 by the employer and employee. In addition, each employee
7 shall be entitled to have his spouse and dependents, as defined
8 by the rules and regulations of the board, included in any
9 group hospital and surgical insurance or group major medical
10 insurance coverage provided. The board shall adopt rules and
11 regulations according to chapter twenty-nine-a of this code
12 governing the discontinuance and resumption of any em-
13 ployee's coverage for his spouse and dependents.

14 Should a participating employee be terminated from
15 employment involuntarily or in reduction of work force, the
16 employee's insurance coverage provided under this article shall
17 continue for a period of three months at no additional cost
18 to the employee: *Provided*, That an employee discharged for
19 misconduct shall not be eligible for extended benefits under
20 this section: *Provided, however*, That coverage may be
21 extended up to the maximum period of three months, while
22 administrative remedies contesting the charge of misconduct
23 are pursued: *Provided further*, That should the discharge for
24 misconduct be upheld, the full cost of the extended coverage
25 shall be reimbursed by the employee. If the employee is again
26 employed or recalled to active employment within twelve
27 months of his prior termination, he shall not be considered

* Clerks Note: This section was also amended in H. B. 2091, which passed prior to this bill.

28 a new enrollee and shall not be required to again contribute
29 his share of the premium cost, if he had already fully
30 contributed such share during the prior period of employment.

31 When a participating employee is compelled or required by
32 law to retire before reaching the age of sixty-five, or when a
33 participating employee voluntarily retires as provided by law,
34 that employee's accrued annual leave and sick leave, if any,
35 shall be credited toward an extension of the insurance coverage
36 provided by this article, according to the following formulae:
37 Such insurance coverage for a retired employee shall continue
38 one additional month for every two days of annual leave or
39 sick leave, or both, which the employee had accrued as of the
40 effective date of his retirement. For a retired employee, his
41 spouse and dependents, such insurance coverage shall continue
42 one additional month for every three days of annual leave or
43 sick leave, or both, which the employee had accrued as of the
44 effective date of his retirement.

45 Any employee who retired prior to the twenty-first of April,
46 one thousand nine hundred seventy-two, and who also
47 otherwise meets the conditions of the "retired employee"
48 definition in section two of this article, shall be eligible for
49 insurance coverage under the same terms and provisions of this
50 article. The premium cost for any such coverage shall be borne
51 by the retired employee and the rates for such coverage shall
52 accurately reflect the total cost of such coverage and shall not
53 be subsidized by the rate structure for any other insurance
54 programs administered pursuant to the West Virginia public
55 employees insurance act.

56 A surviving spouse and dependents of a deceased employee,
57 who was either an active or retired employee just prior to such
58 decease, shall be entitled to be included in any group insurance
59 coverage provided under this article, and such spouse and
60 dependents shall bear the premium cost of such insurance
61 coverage and the rates for such coverage shall accurately
62 reflect the total cost of such coverage and shall not be
63 subsidized by any other insurance programs administered
64 pursuant to the West Virginia public employees insurance act.

65 In construing the provisions of this section or any other
66 provisions of this code, the Legislature declares that it is not
67 now nor has it ever been the Legislature's intent that elected

68 public officials be provided any sick leave, annual leave or
69 personal leave, and the enactment of this section is based upon
70 the fact] and assumption that no statutory or inherent
71 authority exists extending sick leave, annual leave or personal
72 leave to elected public officials and the very nature of such
73 positions preclude the arising or accumulation of such, so as
74 to be thereafter usable as premium paying credits for which
75 such officials may claim extended insurance benefits.

CHAPTER 138

(H. B. 2091—By Delegate Farley)

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

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; payment of costs by employer and employee; coverage for employee's spouse and dependents; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; elected public officials not eligible.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

***§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; elected public officials ineligible.**

1 The board is hereby authorized to provide under any
2 contract or contracts entered into under the provisions of this

*Clerks Note: This section was also amended in H. B. 1239, which passed subsequent this bill.

3 article that the costs of any such group hospital and surgical
4 insurance, group major medical insurance, group life and
5 accidental death insurance benefit plan or plans may be paid
6 by the employer and employee. In addition, each employee
7 shall be entitled to have such employee's spouse and
8 dependents, as defined by the rules and regulations of the
9 board, included in any group hospital and surgical insurance
10 or group major medical insurance coverage provided. The
11 board shall adopt rules and regulations according to chapter
12 twenty-nine-a of this code governing the discontinuance and
13 resumption of any employee's coverage for such employee's
14 spouse and dependents.

15 Should a participating employee be terminated from
16 employment involuntarily or in reduction of work force, the
17 employee's insurance coverage provided under this article shall
18 continue for a period of three months at no additional cost
19 to the employee: *Provided*, That an employee discharged for
20 misconduct shall not be eligible for extended benefits under
21 this section: *Provided, however*, That coverage may be
22 extended up to the maximum period of three months, while
23 administrative remedies contesting the charge of misconduct
24 are pursued: *Provided further*, That should the discharge for
25 misconduct be upheld, the full cost of the extended coverage
26 shall be reimbursed by the employee. If the employee is again
27 employed or recalled to active employment within twelve
28 months of his prior termination, such employee shall not be
29 considered a new enrollee and shall not be required to again
30 contribute his share of the premium cost, if such employee had
31 already fully contributed such share during the prior period
32 of employment.

33 When a participating employee is compelled or required by
34 law to retire before reaching the age of sixty-five, or when a
35 participating employee voluntarily retires as provided by law,
36 that employee's accrued annual leave and sick leave, if any,
37 shall be credited toward an extension of the insurance coverage
38 provided by this article, according to the following formulae:
39 Such insurance coverage for a retired employee shall continue
40 one additional month for every two days of annual leave or
41 sick leave, or both, which the employee had accrued as of the
42 effective date of such retirement. For a retired employee, such
43 employee's spouse and dependents, such insurance coverage

44 shall continue one additional month for every three days of
45 annual leave or sick leave, or both, which the employee had
46 accrued as of the effective date of his retirement.

47 In construing the provisions of this section or any other
48 provisions of this code, the Legislature declares that it is not
49 now nor has it ever been the Legislature's intent that elected
50 public officials be provided any sick leave, annual leave or
51 personal leave, and the enactment of this section is based upon
52 the fact and assumption that no statutory or inherent authority
53 exists extending sick leave, annual leave or personal leave to
54 elected public officials and the very nature of such positions
55 preclude the arising or accumulation of such, so as to be
56 thereafter usable as premium paying credits for which such
57 officials may claim extended insurance benefits.

CHAPTER 139

(Com. Sub. for S. B. 194—By Senators Ash and Harman)

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

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to authorizing a minimum security facility for the housing of youthful male offenders and certain female offenders at Pruntytown Correctional Center.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1 The commissioner of corrections is hereby authorized to

2 house youthful male offenders as defined in section six,
3 article four, chapter twenty-five of this code, and any such
4 other female criminal offenders as he deems necessary to
5 the operation of a just, humane and efficient system of
6 corrections at the facility located at Pruntytown, West
7 Virginia, heretofore known as the West Virginia Indus-
8 trial School for Boys. Henceforth, this facility shall be
9 known as the Pruntytown Correctional Center and it may
10 be operated as a minimum security facility according to
11 rules and regulations promulgated by the commissioner
12 pursuant to the provisions of section four, article thirteen,
13 chapter sixty-two.

CHAPTER 140

(Com. Sub. for H. B. 1175—By Delegate Springston and Delegate Starcher)

[Passed March 21, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight and section one, article eleven, both of chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six, eight, seventeen and eighteen, article three, chapter twenty-eight of said code, all relating to changing the name of Fairmont Emergency Hospital to "Marion Health Care Hospital"; clarifying that the director of health is to manage, direct and control that institution; and deleting the name Fairmont Emergency Hospital from parts of the code pertaining to state correctional and penal institutions.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, and section one, article eleven, both of chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six, eight, seventeen and eighteen, article three, chapter twenty-eight of said code, be amended and reenacted, all to read as follows:

Chapter.

26. State Benevolent Institutions.
28. State Correctional and Penal Institutions.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.**Article.****8. Emergency Hospitals.****11. State Extended Care and Emergency Facilities.****ARTICLE 8. EMERGENCY HOSPITALS.****§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.**

1 (a) The hospitals heretofore established and known,
2 respectively, as Welch Emergency Hospital and Fairmont
3 Emergency Hospital shall be continued and shall be managed,
4 directed and controlled as prescribed in article eleven, chapter
5 twenty-six of this code: *Provided*, That the hospital heretofore
6 known as Fairmont Emergency Hospital shall henceforth be
7 known as the Marion Health Care Hospital and any reference
8 in this code to the Fairmont Emergency Hospital shall mean
9 the Marion Health Care Hospital. The chief executive officer
10 of each of said hospitals shall be the superintendent, who shall
11 be a college graduate and have a minimum of two years'
12 experience in either hospital administration, health services
13 administration or business administration with broad knowl-
14 edge of accounting, purchasing and personnel practices as
15 related to the rendition of health and health related services.

16 (b) A superintendent is the person having the fiscal
17 responsibility of the hospital and the authority to manage and
18 administer the financial, business and personnel affairs of the
19 hospital.

20 (c) A clinical director is the person having the responsibility
21 for decisions involving clinical and medical treatment of
22 patients, and who shall be a duly qualified physician licensed
23 to practice medicine in the state of West Virginia.

24 (d) The provisions of this section relating to the qualifica-
25 tion of persons eligible to serve as superintendent shall not
26 apply to any person serving in the capacity of business
27 manager on the effective date hereof, and who has served in
28 such capacity for at least six consecutive months next
29 preceding such effective date.

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.**§26-11-1. Management by director of health.**

1 The director of health or his or her successor shall manage,
2 direct, control and govern the Andrew S. Rowan Memorial
3 Home, Denmar Hospital, heretofore established and known as
4 Denmar State Hospital, Hopemont Hospital, heretofore
5 known as Hopemont State Hospital, Pinecrest Hospital,
6 Marion Health Care Hospital, heretofore known as Fairmont
7 Emergency Hospital and Welch Emergency Hospital and such
8 other state health care facilities as are or may hereafter be
9 created by law.

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

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.**

- §28-3-6. Custody and conveyance of girls committed to institutions; expenses.
§28-3-8. Transfer of certain inmates to other institutions.
§28-3-17. Same—Preparation of inmate lists for billing purposes; application
of county funds in state treasury.
§28-3-18. Same—Determination of payments due; levy; compelling payment.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.

1 Whenever a girl is committed to the industrial home by any
2 of the courts hereinbefore named, it shall be the duty of the
3 clerk of the court before whom the trial was held to prepare
4 the commitment papers in the case and forward the same by
5 mail without delay to the superintendent of the industrial
6 home. On receipt of such commitment papers, the superintend-
7 ent of the home, if the commitment is found by her to conform
8 to the provisions of this article, and there is room in said
9 home, shall promptly so advise the authority making the
10 commitment, who shall at once send the girl so committed to

11 the home, under escort of a discreet woman of mature age.
12 Such escort shall be designated by the authority by whom the
13 commitment was made, and her compensation, which shall be
14 fixed by the same authority and shall not exceed three dollars
15 per day of twenty-four hours, and her expenses, and the girl's
16 necessary traveling expenses, fully itemized and sworn to by
17 the escort, shall be paid out of the treasury of the county from
18 which the commitment was made, by the county commission
19 thereof. No girl committed to said industrial home shall be
20 lodged in any jail or lockup; but the authority committing her
21 shall designate an officer or other proper person, preferably
22 a woman, in whose custody she will be kept until she is
23 delivered to the person duly authorized to conduct her to said
24 home. The expense of keeping such girl shall be paid like any
25 other expense of the hearing or trial.

§28-3-8. Transfer of certain inmates to other institutions.

1 The state commissioner of corrections shall have authority
2 to transfer any girl who is an inmate of the industrial home,
3 in accordance with the provisions of chapter twenty-seven of
4 this code, who is mentally ill, mentally retarded or addicted,
5 to any state institution charged with the care and treatment
6 of such persons; to transfer any girl in such home who is blind
7 or deaf, or whose sight or hearing is so impaired as to make
8 a transfer desirable, to the schools for the deaf and blind; to
9 transfer to Welch Emergency Hospital, any girl infected with
10 syphilis or gonorrhoea.

**§28-3-17. Same—Preparation of inmate lists for billing purposes;
application of county funds in state treasury.**

1 The superintendent of the industrial home shall, before the
2 tenth day of January of each year, prepare and certify to the
3 auditor and the state commissioner of corrections each a list
4 by counties of all such girls as are mentioned in the preceding
5 section, who were kept in the home during the preceding year
6 or any part of it, showing as to each girl what part of the
7 year she was so kept in the home. On receiving such list the
8 auditor shall charge to each county fifty dollars on account
9 of each girl from such county who was kept in such home
10 during the preceding year, and a proportionate amount on
11 account of each girl kept in the home for any part of such
12 year less than the whole. Any money in the treasury of the

13 state to the credit of any such county, from whatever source
14 arising, and not appropriated to pay any other debt of the
15 county to the state, shall be applied, so far as necessary, to
16 the payment of the sums so charged. If any sum in the treasury
17 due the county shall not be sufficient to pay the whole amount
18 so charged against it, such sum shall be applied as a credit
19 on the amount charged, and the balance shall remain a charge
20 against the county.

§28-3-18. Same—Determination of payments due; levy; compelling payment.

1 Within ten days after receiving such list the auditor shall
2 certify to the county commission of such county a list of the
3 girls from the county in such home, stating the length of the
4 term during the year each girl was in such home, as shown
5 by the list certified by the superintendent, the amount due
6 from the county on her account, and the total amount due
7 on account of all. He shall credit on such statement whatever
8 amount has been applied as a payment thereon from any funds
9 of the county in the treasury. Such statement shall be a receipt
10 to the county for any amount so credited, and shall be a bill
11 for any amount still appearing to be due from the county.
12 Unless the bill shall have been paid by the application of funds
13 of the county in the state treasury, the county commission
14 shall, at its next levy term, provide for the payment of the
15 same, or such part as may not have been paid, and cause the
16 amount to be paid into the state treasury. If the amount so
17 due from any county be not paid in a reasonable time after
18 such levy term, the auditor may in the name of the state, apply
19 to the circuit court of the county for a mandamus to require
20 the county commission to provide for and pay the same, or
21 he may proceed in the name of the state by any other
22 appropriate remedy to recover the same.

CHAPTER 141

(S. B. 495—By Senator Tucker)

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

AN ACT to amend and reenact section fifteen, article five-b,

chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sale of prison-made goods; and authorizing prison-made goods designed and intended to be used solely by blind and handicapped persons to be offered for sale or distributed on the open market.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.

§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; exceptions.

1 (a) Subject to the provisions of subsections (b) and (c)
2 of this section, it is unlawful to sell or offer for sale on
3 the open market of this state any articles or products
4 manufactured or produced wholly or in part, in this or
5 any other state, by convicts or prisoners of this state, or
6 any other state, except convicts or prisoners on parole or
7 probation. Any person violating the provisions of this
8 section is guilty of a misdemeanor, and, upon conviction,
9 shall be punished by a fine of not less than two hundred
10 dollars nor more than five thousand dollars, or by im-
11 prisonment in jail not less than three months nor more
12 than one year, or by both fine and imprisonment. Each
13 such sale or offer for sale shall constitute a separate
14 offense under this section.

15 (b) Notwithstanding the provisions of subsection (a)
16 of this section, any articles or products manufactured or
17 produced, wholly, or in part, by inmates of West Virginia
18 penal and correctional institutions and facilities which
19 are designed and intended to be used solely by blind and
20 handicapped persons, including, but not limited to, braille
21 books and reading materials, may be sold or offered for
22 sale or distributed on the open market by the department
23 of corrections or other state department or agency.

24 (c) Notwithstanding the provisions of subsection (a)
25 of this section, arts and crafts produced by inmates may

26 be sold to the general public by the department of cor-
27 rections or by such other agencies or departments of state
28 government as the commissioner of corrections may des-
29 ignate. The arts and crafts shall be sold only on a con-
30 signment basis so that inmates whose arts and crafts
31 products are sold shall receive payment for the products.
32 The payment shall be deposited in such accounts or funds
33 and managed in such a manner as provided by section
34 six, article five of this chapter: *Provided*, That where the
35 state department of corrections or any other agency or
36 department of state government provides any materials
37 used in the production of an arts and crafts product, the
38 fair market value of such materials may be deducted from
39 the account of the individual inmate after the sale of such
40 product.

41 (d) For purposes of this section, "arts and crafts"
42 means articles produced individually by artistic or craft
43 skill such as, but not limited to, painting, sculpture, pot-
44 tery and jewelry.

CHAPTER 142

(S. B. 569—Originating in the Committee on Finance)

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

AN ACT to amend and reenact section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public moneys and the state general revenue appropriations and expenditures; providing for reducing the period within which warrants may be drawn after the close of a fiscal year for payment of bills for such fiscal year to just the subsequent month of July, with effect of weekend days being last day or days of such month; and expiration of unexpended appropriations.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, chapter twelve of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12. Expiration of unexpended appropriations.

1 Every appropriation which is payable out of the general
 2 revenue, or so much thereof as may remain undrawn
 3 at the end of the year for which made, shall be deemed
 4 to have expired at the end of the year for which it is
 5 made, and no warrant shall thereafter be issued upon it:
 6 *Provided*, That warrants may be drawn through the
 7 thirty-first day of July after the end of the year for which
 8 the appropriation is made if the warrants are in payment
 9 of bills for such year and have been encumbered by the
 10 budget office prior to July first; but appropriations for
 11 buildings and land or capital outlay shall remain in effect,
 12 and shall not be deemed to have expired until the end of
 13 three years after the passage of the act by which such
 14 appropriations are made: *Provided, however*, That if such
 15 thirty-first day of July is on Saturday, then warrants may
 16 only be drawn through the Friday immediately preceding
 17 such Saturday, but if such thirty-first day of July is on
 18 Sunday, the warrants may be drawn through the Monday
 19 immediately following such Sunday.

CHAPTER 143

(Com. Sub. for H. B. 1182—By Delegate Love)

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

AN ACT to amend article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to the establishment of a deputy sheriff's reserve in each county by the sheriff; stating purpose; relating to appointment, qualifications, duties, attire, oath, training, bond and liability insurance; reserves not employees of sheriff or county commission; and limitations on liability of sheriff and county commission for actions of reserves.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

1 (a) The sheriff of any county may, for the purposes
2 hereinafter set forth, designate and appoint a deputy sheriff's
3 reserve, hereinafter referred to as "reserve" or "reserves." No
4 such reserve shall be designated or created without the prior
5 approval of the county commission for the establishment
6 thereof.

7 (b) Each sheriff is authorized to appoint as members of the
8 reserve bona fide citizens of the county who are of good moral
9 character and who have not been convicted of a felony or
10 other crime involving moral turpitude. Any person so
11 appointed shall serve at the will and pleasure of the sheriff
12 and shall not be subject to the provisions of article fourteen,
13 chapter seven of this code. No member of the reserves shall
14 engage in any political activity or campaign involving the
15 office of sheriff or from which activity or campaign the sheriff
16 or candidates therefor appointing such member would directly
17 benefit.

18 (c) Members of the reserves shall not carry weapons nor
19 serve as law-enforcement officers. Such reserves may, however,
20 be provided with radio communication equipment for the
21 purpose of maintaining contact with the sheriff's department
22 or other law-enforcement agencies. The duties of the reserves
23 shall be limited to crowd control or traffic control and
24 direction within the county. In addition, such reserves may
25 perform such other duties of a nonlaw-enforcement nature as
26 are designated by the sheriff or by a deputy sheriff designated

27 and appointed by the sheriff for that purpose: *Provided*, That
28 in no case shall any member of the reserves aid or assist any
29 law-enforcement officer in enforcing the statutes and laws of
30 this state in any labor trouble or dispute between employer
31 and employee.

32 (d) Members of the reserves may be uniformed; however,
33 if so uniformed, such uniforms shall clearly differentiate such
34 members from other law-enforcement deputy sheriffs.

35 (e) After appointment to the reserves but prior to service
36 as such, each member of the reserves shall receive appropriate
37 training and instruction in their functions and authority as well
38 as the limitations of such authority. In addition, each member
39 of the reserves shall annually receive in-service training.

40 (f) Each member of the reserve shall take the same oath as
41 prescribed by section five, article IV of the constitution of the
42 state of West Virginia, but the taking of such oath shall not
43 serve to make such member a public officer.

44 (g) The county commission of each county shall provide for
45 the bonding and liability insurance of each member of the
46 reserve.

47 (h) No member of the reserve shall be regarded as an
48 employee of either the sheriff or of the county commission for
49 any purpose or purposes, including, but not limited to, the
50 purposes of workers' compensation, civil service, unemploy-
51 ment compensation, public employees retirement, public
52 employees insurance or for any other purpose. No member of
53 the reserves shall receive any compensation or pay for any
54 services performed as such member nor shall such member use
55 the designated uniform for any other similar work performed.

56 (i) Neither the county commission nor the sheriff shall be
57 liable for any of the acts of any member of the reserves except
58 in the case of gross negligence on the part of the county
59 commission or sheriff in the appointment of such member or
60 in the case of gross negligence on the part of either the sheriff
61 or any of his deputies in directing any action on the part of
62 such member.

CHAPTER 144

(Com. Sub. for H. B. 1013—By Delegate Murphy)

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

AN ACT to amend and reenact section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twenty-nine, thirty and thirty-one, article eight, chapter eleven of said code; and to further amend article eight by adding thereto a new section, designated section thirty-one-a, all relating generally to the liability of and the removal from office of certain public officials in the several political subdivisions of the state; setting forth the grounds upon which such persons may be so removed; identifying the person or persons and number thereof who may prefer charges against such officers; requiring such charges to be preferred in writing before the circuit court of the county wherein such officer resides; requiring the convening of a three-judge court consisting of three circuit judges to hear the matter without a jury; establishing certain procedures with respect to such proceedings and the time within which the same must be heard; requiring certain findings of fact and conclusions of law to be made with respect to any final decision of such three-judge court; providing for an appeal to the supreme court of appeals with respect to a final decision of such court and certain procedures relating to such appeal; providing for the filling of any vacancy of the office from which any such person was removed; requiring certain duties of the prosecuting attorney of the county wherein the charges are brought and of the attorney general of the state upon any appeal therefrom in certain cases; providing for the personal liability of such officers for the negligent illegal expenditure of public moneys; providing for certain criminal liability for the willful illegal expenditure of such moneys and prescribing the punishment therefor; providing that such persons may not be removed from office except upon a showing of willful or grossly negligent behavior with respect to such illegal expenditures; clarifying that certain described conduct shall not constitute gross negligence or willful conduct; setting forth certain instances wherein such officials may be personally liable or

liable upon his or her official bond; recovery of punitive damages in certain instances and the amount thereof; and providing for the recovery of attorney fees in certain instances.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

6. General Provisions.

11. Taxation.

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 6. REMOVAL OF OFFICERS.

§6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds.

1 (a) Any person holding any county, school district or
2 municipal office, including the office of member of a board
3 of education and the office of magistrate, the term or tenure
4 of which office is fixed by law, whether the office be elective
5 or appointive, except judges of the circuit courts, may be
6 removed from such office in the manner provided in this
7 section for official misconduct, malfeasance in office,
8 incompetence, neglect of duty or gross immorality or for any
9 of the causes or on any of the grounds provided by any other
10 statute.

11 (b) Charges may be preferred:

12 (1) In the case of any county officer, member of a district
13 board of education or magistrate, by the county commission,
14 or other tribunal in lieu thereof, any other officer of the county
15 or by any number of persons other than such county officers,
16 which number shall be the lesser of fifty or one percent of the
17 total number of voters of the county participating in the
18 general election next preceding the filing of such charges.

19 (2) In the case of any municipal officer, by the prosecuting
20 attorney of the county wherein such municipality, or the
21 greater portion thereof, is located, any other elective officer
22 of the municipality, or by any number of persons other than
23 the prosecuting attorney or other municipal elective officer of
24 the municipality who are residents of the municipality, which
25 number shall be the lesser of twenty-five or one percent of the
26 total number of voters of the municipality participating in the
27 election at which the governing body was chosen which
28 election next preceded the filing of the petition.

29 (3) By the chief inspector and supervisor of public offices
30 of the state where the person sought to be removed is entrusted
31 by law with the collection, custody and expenditure of public
32 moneys because of any misapplication, misappropriation or
33 embezzlement of such moneys.

34 (c) The charges shall be reduced to writing in the form of
35 a petition duly verified by at least one of the persons bringing
36 the same, and shall be entered of record by the court, or the
37 judge thereof in vacation, and a summons shall thereupon be
38 issued by the clerk of such court, together with a copy of the
39 petition, requiring the officer or person named therein to
40 appear before the court, at the courthouse of the county where
41 such officer resides, and answer the charges on a day to be
42 named therein, which summons shall be served at least twenty
43 days before the return day thereof in the manner by which
44 a summons commencing a civil suit may be served.

45 The court, or judge thereof in vacation, or in the case of
46 any multi-judge circuit, the chief judge thereof, shall without
47 delay forward a copy of the petition to the supreme court of
48 appeals and shall ask for the impaneling or convening of a
49 three-judge court consisting of three circuit judges of the state.
50 The chief justice of the supreme court of appeals shall without
51 delay designate and appoint three circuit judges within the
52 state, not more than one of whom shall be from the same
53 circuit in which the petition is filed and, in the order of such
54 appointment, shall designate the date, time and place for the
55 convening of such three-judge court, which date and time shall
56 not be less than twenty days from the date of the filing of
57 the petition.

58 Such three-judge court shall, without a jury, hear the

59 charges and all evidence offered in support thereof or in
60 opposition thereto and upon satisfactory proof of the charges
61 shall remove any such officer or person from office and place
62 the records, papers and property of his office in the possession
63 of some other officer or person for safekeeping or in the
64 possession of the person appointed as hereinafter provided to
65 fill the office temporarily. Any final order either removing or
66 refusing to remove any such person from office shall contain
67 such findings of fact and conclusions of law as the three-judge
68 court shall deem sufficient to support its decision of all issues
69 presented to it in the matter.

70 (d) An appeal from an order of such three-judge court
71 removing or refusing to remove any person from office
72 pursuant to this section may be taken to the supreme court
73 of appeals within thirty days from the date of entry of the
74 order from which the appeal is to be taken. The supreme court
75 of appeals shall consider and decide the appeal upon the
76 original papers and documents, without requiring the same to
77 be printed and shall enforce its findings by proper writ. From
78 the date of any order of the three-judge court removing an
79 officer under this section until the expiration of thirty days
80 thereafter, and, if an appeal be taken, until the date of
81 suspension of such order, if suspended by the three-judge court
82 and if not suspended, until the final adjudication of the matter
83 by the supreme court of appeals the officer, commission or
84 body having power to fill a vacancy in such office may fill
85 the same by a temporary appointment until a final decision
86 of the matter, and when a final decision is made by the
87 supreme court of appeals shall fill the vacancy in the manner
88 provided by law for such office.

89 (e) In any case wherein the charges are preferred by the
90 chief inspector and supervisor of public offices against the
91 county commission or any member thereof or any county
92 district or municipal officer, the proceedings under this section
93 shall be conducted and prosecuted by the prosecuting attorney
94 of the county in which the officer proceeded against resides,
95 and on any appeal from the order of the three-judge court in
96 any such case, the attorney general of the state shall represent
97 the people. When any municipal officer is proceeded against
98 the solicitor or municipal attorney for such municipality may
99 assist in the prosecution of the charges.

CHAPTER 11. TAXATION.**ARTICLE 8. LEVIES.**

§11-8-29. Personal liability of official participating in unlawful expenditure.

§11-8-30. Recovery of unlawful expenditure from participating official by action; costs.

§11-8-31. Criminal liability of official violating provisions of article; proceeding for removal.

§11-8-31a. Recovery of attorneys' fees authorized.

§11-8-30. Personal liability of official participating in unlawful expenditure.

1 A person who in his official capacity negligently participates
2 in the violation of either section twenty-five or section twenty-
3 six of this article shall be personally liable, jointly and
4 severally, for the amount illegally expended.

§11-8-30. Recovery of unlawful expenditure from participating official by action; costs.

1 A person who in his official capacity negligently participates
2 in an illegal expenditure may be proceeded against for the
3 recovery of the amount illegally expended. The political
4 subdivision concerned, a taxpayer of the subdivision, the state
5 tax commissioner or a person prejudiced may bring the
6 proceeding.

7 All moneys recovered in these proceedings shall be paid into
8 the treasury of the proper fiscal body and credited to the
9 proper fund. Recovery in these proceedings shall, in all cases,
10 include the principal and interest on the principal at a
11 reasonable rate of interest as set by the court in the judgment
12 order and may include, in the discretion of the court, a penalty
13 of not more than twenty-five percent of the aggregate amount
14 of the judgment and interest.

15 If the plaintiff prevail, he shall recover against the
16 defendant, the costs of the proceedings, including a reasonable
17 attorney's fee to be fixed by the trial court and included in
18 the taxation of costs.

§11-8-31. Criminal liability of official violating provisions of article; proceeding for removal.

1 A person who in his official capacity willfully violates the
2 provisions of this article shall be guilty of a misdemeanor, and,
3 upon conviction, shall be fined not more than five hundred

4 dollars, or confined in jail not more than one year, or both.
5 Upon conviction he shall also forfeit his office: *Provided*, That
6 no liability shall arise under the provisions of this section so
7 far as obligations may have been incurred or may be incurred
8 prior to the time tax levies may be made under the provisions
9 of this article by fiscal bodies having for their purpose the
10 maintenance and operation of free schools or other govern-
11 mental functions for the fiscal year one thousand nine hundred
12 thirty-three—one thousand nine hundred thirty-four.

13 Proceedings for the removal of a member of a local fiscal
14 body who has willfully or with gross negligence violated any
15 of the provisions of this article shall be brought and
16 maintained in accordance with and shall be subject to the
17 provisions of section seven, article six, chapter six of this code.

18 An attested copy of the petition and the charges contained
19 therein shall be served upon the defendants at least twenty
20 days prior to the date of hearing. No other pleading or notice
21 of the proceedings shall be necessary.

22 If any person in his or her official capacity participates in
23 an illegal expenditure and in so doing acts in accordance with
24 and upon the advice of his or her statutory attorney or duly
25 appointed attorney, which advice was asked for, received and
26 given in good faith, such person so acting shall not be deemed
27 guilty of gross negligence or of willfully violating any of the
28 provisions of this article but may be found to have so acted
29 in a negligent manner and may be proceeded against for the
30 recovery of the amount illegally or improperly expended, both
31 personally or upon his or her official bond.

§11-8-31a. Recovery of attorneys' fees authorized.

1 The governing body of the governmental entity of which a
2 person is an official is hereby authorized to reimburse such
3 person for the reasonable amount of such person's attorney
4 fees in any case:

5 (a) Wherein such person has successfully defended against
6 an action seeking his or her removal from office, or

7 (b) Wherein such person has successfully defended against
8 an action seeking the recovery of moneys alleged to have been
9 wrongfully expended.

10 In either case such governing body shall have authority to
11 determine if such reimbursement is warranted and the
12 reasonableness of the amount sought to be recovered.

CHAPTER 145

(Com. Sub. for H. B. 1758—By Delegate Wooton)

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

AN ACT to amend and reenact section two, article fourteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to facsimile signatures of public officials; use; legal effect.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT.

§6-14-2. Facsimile signature; use; legal effect.

1 Any authorized officer, after filing with the secretary of state
2 his manual signature certified by him under oath, may execute
3 or cause to be executed with a facsimile signature in lieu of
4 his manual signature:

5 (a) Any public security, provided that at least one signature
6 required or permitted to be placed thereon shall be manually
7 subscribed. If a public security is required to be manually
8 signed by a trustee, issuing agent, fiscal agent, registrar, or
9 other agent or custodian, the signature of any or all authorized
10 officers may be executed by facsimile; and

11 (b) Any instrument of payment.

12 Upon compliance with this article by the authorized officer,
13 his facsimile signature shall have the same legal effect as his
14 manual signature.

CHAPTER 146

(Com. Sub. for S. B. 654—By Mr. Tonkovich, Mr. President, and Senator Harman)

[Passed April 8, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum supplemental payment to the members of the department of public safety in lieu of overtime; and increasing salaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

- 1 Members of the department shall receive annual salaries
- 2 pursuant to appropriation by the Legislature, payable at
- 3 least monthly as follows:
- 4 Any lieutenant colonel shall receive an annual salary of
- 5 thirty-one thousand five hundred dollars; any major shall
- 6 receive an annual salary of twenty-eight thousand eight
- 7 hundred eighty-four dollars; any captain shall receive an
- 8 annual salary of twenty-six thousand seven hundred
- 9 seventy-two dollars; any lieutenant shall receive an an-
- 10 nual salary of twenty-five thousand two hundred dollars;
- 11 any master sergeant or first sergeant shall receive an an-
- 12 nual salary of twenty-three thousand six hundred twenty-
- 13 eight dollars; any sergeant shall receive an annual salary
- 14 of twenty-two thousand fifty-six dollars; any corporal
- 15 shall receive an annual salary of twenty thousand four
- 16 hundred seventy-two dollars; any trooper first class shall
- 17 receive an annual salary of eighteen thousand nine hun-
- 18 dred dollars; and any newly enlisted trooper shall receive
- 19 a salary of one thousand three hundred fifty-five dollars

20 monthly during the period of his basic training, and upon
21 the satisfactory completion of such training and assign-
22 ment to active duty, each such trooper shall receive, dur-
23 ing the remainder of his first year's service, a salary of
24 one thousand four hundred sixty-four dollars monthly.
25 During the second year of his service in the department,
26 each trooper shall receive an annual salary of seventeen
27 thousand nine hundred fifty-two dollars; during the third
28 year of his service, each such trooper shall receive an
29 annual salary of eighteen thousand two hundred fifty-two
30 dollars; and during the fourth and fifth year of such
31 trooper's service and for each year thereafter, he shall
32 receive an annual salary of eighteen thousand four hun-
33 dred ninety-two dollars. Each member of the department
34 whose salary is fixed and specified herein shall receive
35 and be entitled to an increase in salary over that herein-
36 before set forth, for grade in rank, based on length of ser-
37 vice, including that heretofore and hereafter served with
38 the department as follows: At the end of five years of
39 service with the department, such member shall receive
40 a salary increase of three hundred dollars to be effective
41 during his next three years of service and a like increase
42 at three-year intervals thereafter, with such increases to
43 be cumulative.

44 In applying the foregoing salary schedule where salary
45 increases are provided for length of service, members of
46 the department in service at the time this article becomes
47 effective shall be given credit for prior service and shall
48 be paid such salaries as the same length of service will
49 entitle them to receive under the provisions hereof.

50 The Legislature finds and declares that there is litiga-
51 tion pending in the circuit court of Kanawha County on
52 the question whether members of the department of pub-
53 lic safety are covered by the provisions of the state wage
54 and hour law, article five-c, chapter twenty-one of this
55 code. The Legislature further finds and declares that be-
56 cause of the unique duties of members of the department,
57 it is not appropriate to apply said wage and hour provi-
58 sions to them. Accordingly, members of the department
59 of public safety are hereby excluded from the provisions

60 of said wage and hour law. The express exclusion hereby
61 enacted shall not be construed as any indication that such
62 members were or were not heretofore covered by said
63 wage and hour law.

64 In lieu of any overtime pay they might otherwise have
65 received under the wage and hour law, and in addition to
66 their salaries and increases for length of service, members
67 who have completed basic training may receive supple-
68 mental pay as hereinafter provided.

69 The superintendent shall, within thirty days after the
70 effective date hereof, promulgate a rule or regulation to
71 establish the number of hours per month which shall
72 constitute the standard work month for the members of
73 the department. Such rule or regulation shall further
74 establish, on a graduated hourly basis, the criteria for
75 receipt of a portion or all of such supplemental payment
76 when hours are worked in excess of said standard work
77 month. Such rule or regulation shall be promulgated pur-
78 suant to the provisions of chapter twenty-nine-a of this
79 code. The superintendent shall certify monthly to the
80 department's payroll officer the names of those members
81 who have worked in excess of the standard work month
82 and the amount of their entitlement to supplemental
83 payment.

84 The supplemental payment shall be in an amount equal
85 to one and one-half percent of the annual salary of a trooper
86 during his second year of service, not to exceed two hundred
87 twenty-five dollars monthly. The superintendent and civilian
88 employees of the department shall not be eligible for any
89 such supplemental payments.

90 Each member of the department, except the superin-
91 tendent and civilian employees, shall execute, before
92 entering upon the discharge of his duties, a bond with
93 security in the sum of five thousand dollars payable to
94 the state of West Virginia, conditioned upon the faithful
95 performance of his duties, and such bond shall be ap-
96 proved as to form by the attorney general and to suffi-
97 ciency by the governor.

98 Any member of the department who is called to per-
99 form active duty for training or inactive duty training in

100 the national guard or any reserve component of the armed
101 forces of the United States annually, shall be granted
102 upon request leave time not to exceed thirty calendar
103 days for the purpose of performing such active duty for
104 training or inactive duty training, and the time so granted
105 shall not be deducted from any leave accumulated as a
106 member of the department.

CHAPTER 147

(H. B. 1800—By Delegate Damron)

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

AN ACT to amend and reenact section seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing an increase in the age limit for persons with prior military experience applying for positions as state police helicopter pilots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in department; civilian employees.

1 (a) The superintendent shall establish within the department
2 of public safety a cadet selection board which shall be
3 representative of commissioned and noncommissioned officers
4 within the department.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on the
7 current list of eligible applicants established by the cadet
8 selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of the

11 armed forces of the United States and to residents of West
12 Virginia. Each applicant for appointment shall be a person not
13 less than twenty-one nor more than thirty years of age, of
14 sound constitution and good moral character; shall be required
15 to pass such mental examination and meet other requirements
16 as may be provided for in regulations promulgated by the
17 cadet selection board; and shall be required to pass such
18 physical examination as may be provided for in regulations
19 promulgated by the retirement board: *Provided*, That a former
20 member may, at the discretion of the superintendent, be
21 reenlisted if the period of his former service subtracted from
22 his age does not exceed thirty years: *Provided, however*, That
23 the age limit requirement may be modified for persons over
24 the age of thirty with active duty military experience who are
25 applying for positions as helicopter pilots in the department.
26 For each full year of active military service, the age limit
27 requirement shall be raised by one year to a maximum age
28 of thirty-five years for helicopter pilot applicants.

29 (d) No person may be barred from becoming a member of
30 the department because of his religious or political convictions.

31 (e) The superintendent shall adhere to the principles of
32 equal employment opportunity set forth in article eleven,
33 chapter five of this code, and shall take positive steps to
34 encourage applications for department membership from
35 females and minority groups within the state.

36 (f) Except for the superintendent, no person may be
37 appointed or enlisted to membership in the department at a
38 grade or rank above the grade of trooper.

39 (g) The superintendent shall appoint such civilian employees
40 as may be necessary, and all such employees may be included
41 in the classified service of the civil service system except those
42 in positions exempt under the provisions of article six, chapter
43 twenty-nine of this code.

CHAPTER 148

(Com. Sub. for S. B. 523—By Senator White and Mr. Tonkovich, Mr. President)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-seven, twenty-nine, thirty, thirty-three, thirty-four and thirty-five, ar-

ticle two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing retirement and disability benefits for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-27. Retirement; awards and benefits.

§15-2-29. Awards and benefits for disability—Incurred in performance of duty.

§15-2-30. Same—Due to other causes.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-34. Same—When member dies from nonservice—connected causes.

§15-2-35. Same—When member dies after retirement or after serving twenty years.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of
2 the department of public safety when the member has
3 both attained the age of fifty-five years and completed
4 twenty-five years of service as a member of the depart-
5 ment, including military service credit granted under the
6 provisions of section twenty-eight of this article.

7 (b) The retirement board shall retire any member of
8 the department of public safety who has lodged with the
9 secretary of the retirement board his voluntary petition
10 in writing for retirement, and:

11 (1) Has or shall have completed twenty-five years of
12 service as a member of the department (including mili-
13 tary service credit granted under the provisions of section
14 twenty-eight of this article);

15 (2) Has or shall have attained the age of fifty years
16 and has or shall have completed twenty years of service
17 as a member of the department (excluding military ser-
18 vice credit granted under section twenty-eight of this
19 article); or

20 (3) Being under the age of fifty years has or shall have

21 completed twenty years of service as a member of the
22 department (excluding military service credit granted
23 under section twenty-eight of this article).

24 (c) When the retirement board retires any member
25 under any of the provisions of this section, the board
26 shall, by order in writing, make an award directing that
27 the member shall be entitled to receive annually and that
28 there shall be paid to the member from the death, disa-
29 bility and retirement fund in equal monthly installments
30 during the natural lifetime of the member while in status
31 of retirement one or the other of two amounts, whichever
32 is the greater:

33 (1) An amount equal to five percent of the aggregate
34 of salary paid to the member during the whole period of
35 service as a member of the department of public safety;
36 or

37 (2) The sum of five thousand five hundred dollars.

38 When a member has or shall have served twenty years
39 or longer but less than twenty-five years as a member of
40 the department and shall be retired under any of the pro-
41 visions of this section before he shall have attained the
42 age of fifty years, payment of monthly installments of the
43 amount of retirement award to such member shall com-
44 mence on the date he attains the age of fifty years.

**§15-2-29. Awards and benefits for disability—Incurred in per-
formance of duty.**

1 Any member of said department who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services re-
5 quired of members of said department and incurred pur-
6 suant to or while such member was or shall be engaged
7 in the performance of his duties as a member of said
8 department shall, if, in the opinion of the retirement
9 board, he is by reason of such cause unable to perform
10 adequately the duties required of him as a member of
11 said department, be retired from active service by the
12 retirement board and thereafter such member shall be en-
13 titled to receive annually and there shall be paid to such

14 member from the death, disability and retirement fund
15 in equal monthly installments during the natural lifetime
16 of such member or until such disability shall sooner ter-
17minate, one or the other of two amounts, whichever is
18 greater:

19 (1) An amount equal to five and one-half percent of
20 the total salary which would have been earned during
21 twenty-five years or actual service if more than twenty-
22 five years in said department based on the average earn-
23 ings of such member while employed as a member of
24 said department; or

25 (2) The sum of five thousand five hundred dollars.

26 If such disability shall be permanent and total to the
27 extent that such member is or shall be incapacitated ever
28 to engage in any gainful employment, such member shall
29 be entitled to receive annually and there shall be paid to
30 such member from the death, disability and retirement
31 fund in equal monthly installments during the natural
32 lifetime of such member or until such disability shall
33 sooner terminate, an amount equal to eight and one-half
34 percent of the total salary which would have been earned
35 by such member during twenty-five years or actual ser-
36 vice if more than twenty-five years of service in said
37 department based on the average earnings of such mem-
38 ber while employed as a member of said department.

39 The superintendent is authorized to expend moneys
40 from funds appropriated for the department in payment
41 of medical, surgical, laboratory, X-ray, hospital, ambu-
42 lance and dental expenses and fees, and reasonable costs
43 and expenses incurred in purchase of artificial limbs and
44 other approved appliances which may be reasonably
45 necessary for any member of said department who has
46 or shall become temporarily, permanently or totally dis-
47 abled by injury, illness or disease resulting from any
48 occupational risk or hazard inherent in or peculiar to the
49 service required of members of said department and in-
50 curred pursuant to or while such member was or shall be
51 engaged in the performance of duties as a member of
52 said department. Whenever the superintendent shall de-
53 termine that any disabled member is ineligible to receive

54 any of the aforesaid benefits at public expense the super-
55 intendent shall, at the request of such disabled member,
56 refer such matter to the retirement board for hearing and
57 final decision.

§15-2-30. Same—Due to other causes.

1 If any member while in active service of said depart-
2 ment has or shall, in the opinion of the retirement board,
3 become permanently disabled to the extent that such
4 member cannot adequately perform the duties required of
5 a member of the department from any cause other than
6 those set forth in the next preceding section and not
7 due to vicious habits, intemperance or willful misconduct
8 on his part, such member shall be retired by the retire-
9 ment board and, if such member at the time of such re-
10 tirement under this section, shall have served less than
11 twenty years as a member of said department, such mem-
12 ber shall be entitled to receive annually and there shall
13 be paid to such member while in status of retirement,
14 from the death, disability and retirement fund in equal
15 monthly installments during a period equal to one half
16 the time such member has served as a member of said
17 department, a sum equal to five and one-half percent of
18 the total salary which would have been earned during
19 twenty-five years of service in said department based on
20 the average earnings of such member while employed
21 as a member of said department, but if such member, at
22 the time of such retirement under the terms of this sec-
23 tion, shall have served twenty years or longer as a mem-
24 ber of said department, such member shall be entitled to
25 receive annually and there shall be paid to such member
26 from the death, disability and retirement fund in equal
27 monthly installments, commencing on the date such mem-
28 ber shall be retired and continuing during the natural
29 lifetime of such member while in status of retirement.
30 one or the other of the two amounts, based upon either
31 the aggregate of salary paid to such member during the
32 whole period of service of such member or the period of
33 twenty years or longer during which such member at
34 the time of such retirement has, or shall have served as

35 a member of said department, whichever shall be the
36 greater, to be determined in the manner provided by sub-
37 divisions (1) and (2), subsection (c), section twenty-seven
38 of this article.

**§15-2-33. Awards and benefits to dependents of member—
When member dies in performance of duty, etc.**

1 The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has
3 lost or shall lose his life by reason of injury, illness or
4 disease resulting from an occupational risk or hazard
5 inherent in or peculiar to the service required of mem-
6 bers while such member was or shall be engaged in the
7 performance of his duties as a member of said depart-
8 ment or if said member shall die from any cause after
9 having been retired pursuant to the provisions of sec-
10 tion twenty-nine of this article, shall be entitled to receive
11 and shall be paid from the death, disability and retire-
12 ment fund benefits as follows: To the surviving spouse
13 annually, in equal monthly installments during his or her
14 lifetime or until his or her remarriage one or the other
15 of two amounts, whichever shall be the greater, namely:

16 (1) An amount equal to five and one-half percent of
17 the total salary which would have been earned by said
18 deceased member during twenty-five years of service in
19 said department based on the average earnings of such
20 member while employed as a member of said depart-
21 ment; or

22 (2) The sum of five thousand five hundred dollars.

23 In addition thereto such surviving spouse shall be
24 entitled to receive and there shall be paid to such person
25 one hundred dollars monthly for each dependent child or
26 children. If such surviving spouse shall die or remarry or
27 if there be no surviving spouse there shall be paid monthly
28 to such dependent child or children from the death, dis-
29 ability and retirement fund the sum of one hundred dol-
30 lars each. If there be no surviving spouse and no de-
31 pendent child or children, there shall be paid annually in
32 equal monthly installments from said death, disability

33 and retirement fund to the dependent parents of said
34 deceased member during their joint lifetimes a sum
35 equal to the amount which a surviving spouse, without
36 children, would have received: *Provided*, That when there
37 shall be but one dependent parent surviving, such parent
38 shall be entitled to receive during his or her lifetime one
39 half the amount which both parents, if living, would
40 have been entitled to receive.

**§15-2-34. Same—When member dies from nonservice-connect-
ed causes.**

1 In any case where a member while in active service of
2 said department, before having completed twenty years
3 of service as a member of said department, has died or
4 shall die from any cause other than those specified in this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his part, there shall be paid an-
7 nually in equal monthly installments from said death,
8 disability and retirement fund to the surviving spouse of
9 such member during his or her natural lifetime or until
10 such time said surviving spouse remarries, a sum equal
11 to two and three-quarters percent of the total salary
12 which would have been earned by said member during
13 twenty-five years of service in said department based on
14 his or her average earnings while employed as a member
15 of said department. If there be no surviving spouse there
16 shall be paid from said fund to each dependent child or
17 children of said deceased member the sum of one hundred
18 dollars monthly. If there be no surviving spouse and no
19 dependent child or children there shall be paid annually
20 in equal monthly installments from said fund to the de-
21 pendent parents of said deceased member during their
22 joint lifetimes a sum equal to the amount which a surviv-
23 ing spouse would have been entitled to receive: *Provided*,
24 That when there shall be but one dependent parent sur-
25 viving then such dependent parent shall be entitled to
26 receive during his or her lifetime one half the amount
27 which both parents, if living, would have been entitled
28 to receive.

§15-2-35. Same—When member dies after retirement or after serving twenty years.

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of
3 service or longer as a member of said department and has
4 died or shall die from any cause or causes other than
5 those specified in this article before having been retired
6 by the retirement board, and when a member in retire-
7 ment status has died or shall die after having been re-
8 tired by the retirement board under the provisions of this
9 article, there shall be paid annually in equal monthly
10 installments from said fund to the surviving spouse of
11 said member, commencing on the date of the death of
12 said member and continuing during the lifetime or until
13 remarriage of said surviving spouse an amount equal to
14 three fourths the retirement benefits said deceased mem-
15 ber was receiving while in status of retirement, or would
16 have been entitled to receive to the same effect as if such
17 member had been retired under the provisions of this
18 article immediately prior to the time of his death; and in
19 addition thereto said surviving spouse shall be entitled
20 to receive and there shall be paid to such surviving spouse
21 from said fund the sum of one hundred dollars monthly
22 for each dependent child or children. If such surviving
23 spouse die or remarry, or if there be no surviving spouse
24 there shall be paid monthly from said fund to each de-
25 pendent child or children of said deceased member the
26 sum of one hundred dollars. If there be no surviving
27 spouse or no surviving spouse eligible to receive benefits
28 and no dependent child or children there shall be paid
29 annually in equal monthly installments from said fund to
30 the dependent parents of said deceased member during
31 their joint lifetimes a sum equal to the amount which
32 a surviving spouse without children would have been
33 entitled to receive: *Provided*, That when there shall be
34 but one dependent parent surviving, such parent shall be
35 entitled to receive during his or her lifetime one half
36 the amount which both parents, if living, would have been
37 entitled to receive.

CHAPTER 149

(H. B. 2132—By Delegate Starcher)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public service commission; commission continued; membership; chairman; compensation; and increasing the salaries of commissioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
 2 heretofore established, is continued and directed as provided
 3 by this chapter, chapter twenty-four-a and chapter twenty-
 4 four-b. The public service commission may sue and be sued
 5 by that name. Such public service commission shall consist of
 6 three members who shall be appointed by the governor with
 7 the advice and consent of the Senate. The commissioners shall
 8 be citizens and residents of this state and at least one of them
 9 shall be duly licensed to practice law in West Virginia, of not
 10 less than ten years' actual experience at the bar. No more than
 11 two of said commissioners shall be members of the same
 12 political party. Each commissioner shall, before entering upon
 13 the duties of his office, take and subscribe to the oath provided
 14 by section five, article IV of the constitution, which oath shall
 15 be filed in the office of the secretary of state. The governor
 16 shall designate one of the commissioners to serve as chairman
 17 at the governor's will and pleasure. The chairman shall be the
 18 chief administrative officer of the commission. The governor
 19 may remove any commissioner only for incompetency, neglect
 20 of duty, gross immorality, malfeasance in office or violation
 21 of subsection (c) of this section.

22 (b) The unexpired term of members of the public service
23 commission at the time this subsection becomes effective are
24 continued through the thirtieth day of June, one thousand nine
25 hundred seventy-nine. In accordance with the provisions of
26 subsection (a) of this section, the governor shall appoint three
27 commissioners, one for a term of two years, one for a term
28 of four years and one for a term of six years, all the terms
29 beginning on the first day of July, one thousand nine hundred
30 seventy-nine. All future appointments are for terms of six
31 years, except that an appointment to fill a vacancy is for the
32 unexpired term only. The commissioners whose terms are
33 terminated by the provisions of this subsection are eligible for
34 reappointment.

35 (c) No person while in the employ of, or holding any official
36 relation to, any public utility subject to the provisions of this
37 chapter, or holding any stocks or bonds thereof, or who is
38 pecuniarily interested therein, may serve as a member of the
39 commission or as an employee thereof. Nor may any such
40 commissioner be a candidate for or hold public office, or be
41 a member of any political committee, while acting as such
42 commissioner; nor may any commissioner or employee of said
43 commission receive any pass, free transportation or other thing
44 of value, either directly or indirectly, from any public utility
45 or motor carrier subject to the provisions of this chapter. In
46 case any of the commissioners becomes a candidate for any
47 public office or a member of any political committee, the
48 governor shall remove him from office and shall appoint a new
49 commissioner to fill the vacancy created.

50 (d) Effective the first day of July, one thousand nine
51 hundred eighty-four, and in light of the assignment of new,
52 substantial duties embracing new areas and fields of activity
53 under certain legislative enactments, each commissioner shall
54 receive a salary of thirty-nine thousand two hundred forty
55 dollars a year to be paid in monthly installments from the
56 special funds in such amounts as follows:

57 (1) From the public service commission fund collected
58 under the provisions of section six, article three of this chapter,
59 thirty thousand two hundred ten dollars;

60 (2) From the public service commission motor carrier fund
61 collected under the provisions of section six, article six,

62 chapter twenty-four-a of this code, seven thousand five
63 hundred twenty-five dollars; and

64 (3) From the public service commission gas pipeline safety
65 fund collected under the provisions of section three, article
66 five, chapter twenty-four-b of this code, one thousand five
67 hundred five dollars.

68 In addition to this salary provided for all commissioners,
69 the chairman of the commission shall receive three thousand
70 five hundred dollars a year to be paid in monthly installments
71 from the public service commission fund collected under the
72 provisions of section six, article three of this chapter, on and
73 after the first day of July, one thousand nine hundred eighty-
74 four.

75 (e) Effective the first day of July, one thousand nine
76 hundred eighty-five, and in light of the assignment of new,
77 substantial additional duties embracing new areas and fields
78 of activity under certain legislative enactments, each commis-
79 sioner shall receive a salary of forty-one thousand dollars a
80 year to be paid in monthly installments from the special funds
81 in such amounts as follows:

82 (1) From the public service commission fund collected
83 under the provisions of section six, article three of this chapter,
84 thirty-one thousand six hundred dollars;

85 (2) From the public service commission motor carrier fund
86 collected under the provisions of section six, article six,
87 chapter twenty-four-a of this code, seven thousand nine
88 hundred dollars; and

89 (3) From the public service commission gas pipeline safety
90 fund collected under the provisions of section three, article
91 five, chapter twenty-four-b of this code, one thousand five
92 hundred dollars.

93 In addition to this salary provided for all commissioners,
94 the chairman of the commission shall receive three thousand
95 six hundred seventy-five dollars a year to be paid in monthly
96 installments from the public service commission fund collected
97 under the provisions of section six, article three of this chapter,
98 on and after the first day of July, one thousand nine hundred
99 eighty-five.

CHAPTER 150

(Com. Sub. for S. B. 232—By Senators Craigo, Boettner and Chafin)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter thirty-one of said code by adding thereto a new article, designated article twenty; to amend and reenact sections one, two and four, article three, chapter fifty of said code; and to further amend said article three by adding thereto a new section, designated section four-a; to amend and reenact sections eleven, twenty-eight and thirty-one, article one, chapter fifty-nine of said code; and to further amend said article one by adding thereto a new section, designated section twenty-eight-a, all relating generally to the West Virginia regional jail and prison authority and funding therefor; excepting certain costs and fees from net proceeds accounted for and sent to the treasury of the state by the sheriff; requiring certain proceeds of costs and fines to be transmitted to the regional jail and prison development fund upon completion of regional jail facilities; providing for certain expenses related to local holding facilities; creating the West Virginia regional jail and prison authority; enacting the West Virginia regional jail and prison authority act; definitions; the authority to be a body corporate and a government instrumentality; governing board; commissioner of corrections to be chairman; commissioner of finance and administration to be treasurer; members; appointment; terms; vacancies; members bond; board to be governing body and exercise powers of authority; meetings; officers; quorum; bylaws; rules regarding business of authority; executive director; personnel, consultants, technicians and legal staff; expenses from regional jail and prison development fund; comprehensive study of prison, work farm and jail facilities; deadline; requirements of study; plan to specify groups of counties; bidding procedures; notice thereof; contracts for lease not to be bid; bond of contractors; what authority to consider when creating the plan establishing regions; public hearings and

notice thereof; hearings on sites; procedures to be promulgated; requirements; powers of authority; regional jail commissions; composition; appointment; terms; vacancies; compensation and expenses; regional jail commission powers and duties; jail, work farm and prison standards commission; members; appointment; compensation and expenses; secretarial and other expenses; vacancies; quorum; purpose; standards and procedures for prisons, work farms, regional jails and local jail facilities used as temporary holding facilities; requirements of standards; promulgation of standards by legislative rule making; review and update of standards; reports to authority; regional jail and prison development fund created; special account in state treasury; revolving fund; revenues to secure bonds, security interests or notes; investments; interest to be credited to the fund; excess to general fund; what fund shall consist of; how amounts deposited to be accounted for and expended; counties to use regional jail facilities; costs per day to be paid; borrowing of money; authorization by resolution of board; not to exceed twenty-five years; provisions of resolution; notes, security interests and bonds to be general obligations and negotiable instruments; provisions of resolutions authorizing notes, security interests or bonds or any issue thereof may contain to be a part of the contract with holders; authority for purchase and redemption of notes, security interests or bonds; the state of West Virginia not to be liable on notes, security interests or bonds or other evidences of indebtedness of the authority; disclaimer thereof to be noted thereon; twenty-five percent of holders authorized to appoint a trustee in the event of default in payment, default in any agreement or failure or refusal to comply with law on the part of the authority; procedures; powers of trustee upon request of twenty-five percent of holders; incidental powers; notice before declaration that obligations due and payable; notes, security interests and bonds to be securities; who may invest therein; duties of state board of investments prior to investing therein; requirements and limits for purchase by state board of investments; tax exemption of authority; obligations, and interest and income thereon to be exempt from taxation by this state or its subdivisions or instrumentalities except inheritance taxes; limit on

principal amount of obligations; computation thereof; purchase by state board of investments limited; validity of any pledge, mortgage, deed of trust or security instrument; money of authority to be collected and received by the treasurer of the authority and paid into the state treasury; exceptions; conflicts of interest prohibited; such contracts or agreements to be void; acts of authority not to conflict with performance due by agreement with federal agency; authority not to alter or limit rights and powers inconsistent therewith; civil filing fees in magistrate courts raised; costs in criminal proceedings in magistrate courts raised; disposition of additional fees and costs to regional jail and prison development fund in the state treasury; civil filing fees in circuit court raised; fees for services in circuit court misdemeanor and felony cases raised; disposition of additional filing fees and fees for services in criminal cases to the state treasury; fees for enforcement of a judgment raised; duties of clerks; additional costs, fees, fees for services in criminal cases exempt from certain handling; authority to exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate prisons after first providing for regional jail facilities.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

- 7. County Commissions and Officers.**
- 31. Corporations.**
- 50. Magistrate Courts.**
- 59. Fees, Allowance and Costs; Newspapers; Legal Advertisements.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**ARTICLE 5. FISCAL AFFAIRS.****§7-5-15. Annual statement of sheriff of fines and costs received from magistrates; payment into state treasury.**

1 The sheriff shall annually, during the month of January,
2 render under oath to the auditor a true statement of the
3 account of all fines and costs collected by magistrates and
4 transmitted to him and pay into the treasury of the state, the
5 net proceeds of such fines and costs as exhibited by such
6 account, to be appropriated as directed by the fifth section
7 of article twelve of the constitution of this state. Failure to
8 do so shall be deemed a breach of his official duty. For the
9 purposes of this section, the net proceeds of such fines and
10 costs shall be deemed to be the proceeds remaining after
11 deducting therefrom: (1) The cost of auditing the accounts
12 of magistrates by the chief inspector's office; (2) the
13 amounts of costs and fees paid into the regional jail and
14 prison development fund of the state treasury by the clerk
15 in the manner provided by section four-a, article three,
16 chapter fifty of this code; (3) until a regional facility is
17 provided pursuant to article twenty, chapter thirty-one of
18 this code, the expenses and costs of operation and
19 maintenance of the county jail or a regional correctional
20 facility, other than a facility provided pursuant to article
21 twenty, chapter thirty-one of this code, operated jointly
22 with one or more other county or counties, and of
23 constructing, reconstructing and renovating any jail
24 facility used for county prisoners and of periodic payments,
25 if any, for the establishment of a jail improvement fund in
26 the manner provided by section nine, article one of this
27 chapter for constructing, reconstructing or renovating any
28 jail facility used for county prisoners; and (4) after a
29 regional facility is made available to the county pursuant to
30 article twenty, chapter thirty-one of this code, the expenses
31 and costs of operation of the jail for the county in the form of
32 the per day costs required to be paid into the regional jail
33 and prison development fund pursuant to subsection (h),
34 section ten, article twenty, chapter thirty-one of this code,
35 the periodic payments, if any, for the establishment of a jail
36 improvement fund in the manner provided by section nine,

37 article one of this chapter, which shall thereafter be
 38 transmitted to the state treasurer and deposited in the
 39 regional jail and prison development fund, and the funds
 40 expended by the respective counties, if any, for expenses
 41 incurred in housing prisoners in local jail facilities used as
 42 holding facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

- §31-20-1. Short title.
- §31-20-2. Definitions.
- §31-20-3. West Virginia regional jail and prison authority; composition; appointment; terms; compensation and expenses.
- §31-20-4. Governing body; organization and meetings; quorum; administrative expenses.
- §31-20-5. Powers and duties of the authority; bidding procedures.
- §31-20-5a. Bidding procedures.
- §31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.
- §31-20-7. General powers of the commission.
- §31-20-8. Jail and prison standards commission; appointments; compensation; vacancies; quorum.
- §31-20-9. Purpose; powers and duties.
- §31-20-10. Regional jail and prison development fund.
- §31-20-11. Borrowing of money.
- §31-20-12. Notes, security interests and bonds as general obligations of authority.
- §31-20-13. Notes, security interests and bonds as negotiable instruments.
- §31-20-14. Authorizing resolutions.
- §31-20-15. Redemption of notes, security interests or bonds.
- §31-20-16. Disclaimer of any liability of state of West Virginia.
- §31-20-17. Default in payment of principal or interest.
- §31-20-18. Investment in notes, security interests and bonds.
- §31-20-19. Tax exemption.
- §31-20-20. Authorized limit on borrowing.
- §31-20-21. Validity of any pledge, mortgage, deed of trust or security instrument.
- §31-20-22. Money of the authority.
- §31-20-23. Conflict of interest; when contracts void.
- §31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

§31-20-1. Short title.

- 1 This article shall be known and may be cited as "The West
- 2 Virginia Regional Jail and Prison Authority Act."

§31-20-2. Definitions.

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

3 (a) "Authority" or "West Virginia regional jail
4 authority" means the West Virginia regional jail and prison
5 authority created by this article.

6 (b) "Board" means the governing body of the authority.

7 (c) "Bonds" means bonds of the authority issued under
8 this article.

9 (d) "Cost of construction or renovation of a local jail
10 facility or regional jail facility" means the cost of all lands,
11 water areas, property rights and easements, financing
12 charges, interest prior to and during construction and for a
13 period not exceeding six months following the completion
14 of construction, equipment, engineering and legal services,
15 plans, specifications and surveys, estimates of costs and
16 other expenses necessary or incidental to determining the
17 feasibility or practicability of any such project, together
18 with such other expenses as may be necessary or incidental
19 to the financing and the construction or renovation of such
20 facilities and the placing of same in operation.

21 (e) "County" means any county of this state.

22 (f) "Federal agency" means the United States of
23 America and any department, corporation, agency or
24 instrumentality created, designated or established by the
25 United States of America.

26 (g) "Fund" means the regional jail development fund
27 provided in section ten of this article.

28 (h) "Government" means state and federal government,
29 and any political subdivision, agency or instrumentality
30 thereof, corporate or otherwise.

31 (i) "Inmate" means any person properly committed to a
32 local or regional jail facility or a prison.

33 (j) "Local jail facility" means any county facility for the
34 confinement, custody, supervision or control of persons
35 convicted of misdemeanors, awaiting trial or awaiting
36 transportation to a state correctional facility.

37 (k) "Municipality" means any city, town or village in
38 this state.

39 (l) "Notes" means any notes as defined in section one

40 hundred four, article three, chapter forty-six of this code
41 issued under this article by the authority.

42 (m) "Prison" means any prison, penitentiary, detention
43 center or other correctional institution operated by the
44 department of corrections.

45 (n) "Regional jail facility" or "regional jail" means any
46 facility operated by the authority and used jointly by two or
47 more counties for the confinement, custody, supervision or
48 control of persons convicted of misdemeanors or awaiting
49 trial or awaiting transportation to a state correctional
50 facility.

51 (o) "Regional jail commission" means the commission
52 established in section eight of this article.

53 (p) "Revenues" means all fees, charges, moneys, profits,
54 payments of principal of, or interest on, loans and other
55 investments, grants, contributions and all other income
56 received by the authority.

57 (q) "Security interest" means an interest in the loan
58 portfolio of the authority which interest is secured by an
59 underlying loan or loans and is evidenced by a note issued
60 by the authority.

61 (r) "Work farm" shall have the same meaning as that
62 term is used in section twelve, article eight, chapter seven of
63 this code authorizing work farms for individual counties.

**§31-20-3. West Virginia regional jail and prison authority;
composition; appointment; terms; compensation
and expenses.**

1 There is hereby created the West Virginia regional jail
2 and prison authority which shall be a body corporate and a
3 government instrumentality.

4 The authority shall be governed by a board, consisting of
5 a chairman, who shall be the commissioner of the
6 department of corrections; a treasurer, who shall be the
7 commissioner of the department of finance and
8 administration or his designated representative; three
9 members appointed by the governor, who are
10 representative of the areas of law, medicine and county
11 government; the state superintendent of schools or his
12 designated representative; the state fire marshal or his
13 designated representative; the director of the department of
14 health or his designated representative; and a

15 representative from the juvenile facilities review panel.
16 Upon the establishment of the regional jail commissions, as
17 provided for in section five of this article, one member of
18 each commission shall become a member of the board, such
19 member to be appointed by the regional jail commission.
20 Members of the Legislature are not eligible to serve on the
21 board.

22 The governor shall nominate and, by and with the advice
23 and consent of the Senate, appoint three members of the
24 authority for staggered terms of four years beginning the
25 first day of July, one thousand nine hundred eighty-five. Of
26 the members of the board first appointed, one shall be
27 appointed for a term ending the thirtieth day of June, one
28 thousand nine hundred eighty-six, and one each for terms
29 ending one and two years thereafter. As these original
30 appointments expire, each subsequent appointment shall
31 be for a full four-year term.

32 Any appointed member whose term has expired shall
33 serve until his successor has been duly appointed and
34 qualified. Any person appointed to fill a vacancy shall serve
35 only for the unexpired term. Any appointed member is
36 eligible for reappointment. Members of the authority are
37 not entitled to compensation for services performed as
38 members but are entitled to reimbursement for all
39 reasonable and necessary expenses actually incurred in the
40 performance of their duties.

41 All members of the board of the authority shall execute an
42 official bond in a penalty of ten thousand dollars,
43 conditioned as required by law. Premiums on such bond
44 shall be paid from funds accruing to the authority. Such
45 bond shall be approved as to form by the attorney general
46 and as to sufficiency by the governor and, when fully
47 executed and approved, shall be filed in the office of the
48 secretary of state.

**§31-20-4. Governing body; organization and meetings;
quorum; administrative expenses.**

1 The governing body of the authority shall consist of the
2 members of the board as provided in section three of this
3 article and shall exercise all the powers given to the
4 authority in this article. The commissioner of the
5 department of corrections shall be chairman of the board

6 and its chief executive officer. On the second Monday of
7 July of each year, the board shall meet to elect a secretary
8 from among its own members.

9 A majority of the members of the board constitute a
10 quorum, and a quorum must be present for the board to
11 conduct business. Unless the bylaws require a larger
12 number, action may be taken by majority vote of the
13 members present.

14 The board shall manage the property and business of the
15 authority and prescribe, amend and repeal bylaws and rules
16 governing the manner in which the business of the authority
17 is conducted.

18 The authority shall employ an executive director and any
19 other personnel it determines necessary and may appoint its
20 own counsel and legal staff and retain such temporary
21 engineering, financial and other consultants or technicians
22 as may be required for any special study or survey
23 consistent with the provisions of this article.

24 All costs incidental to the administration of the authority
25 including office expense, personal services expense and
26 current expense, shall be paid from the regional jail and
27 prison development fund in accordance with guidelines
28 issued by the board of the authority.

**§31-20-5. Powers and duties of the authority; bidding
procedures.**

1 The regional jail and prison authority shall complete a
2 comprehensive study of all prison and jail facilities in the
3 state of West Virginia no later than the first day of July, one
4 thousand nine hundred eighty-six. This study shall include
5 an assessment of the physical conditions of confinement
6 within the institutions and the relative need for the
7 institutions when considering other available institutions
8 of confinement located within the state.

9 After completing this study, the authority shall submit a
10 plan to the governor on the establishment of regional jails in
11 this state and the acquisition, construction or renovation of
12 facilities for prisons. The authority shall specify groups of
13 counties within the state to be formed into regions for the
14 establishment of such regional jails. Within each region a
15 local jail commission shall be established and have the
16 powers and duties as set forth in section six of this article.

17 The authority shall consider, but not be limited to, the
18 following when creating the plan establishing regions:

19 (1) The relative physical condition of the prisons and
20 jail facilities located within the state;

21 (2) The transportation costs associated with the
22 establishment of centralized jail services including, but not
23 limited to, the costs of transporting persons incarcerated in
24 regional jails to court appearances, to interviews with their
25 attorneys, and to have visitation with their families and
26 friends all in any county seat of a county served by the
27 regional facility;

28 (3) The availability of medical services and educational
29 and recreational opportunities;

30 (4) Information received from public hearings;

31 (5) The relative efficiency in the cost of jail services
32 caused by establishment of regional jail facilities;

33 (6) Available facilities which may be used as regional
34 jails or prisons including, but not limited to, existing county
35 and state owned properties;

36 (7) The cost of acquiring, constructing, renovating,
37 operating and maintaining local jail facilities for use as
38 local holding facilities in each county and regional jail
39 facilities for each county and the financing provided by this
40 article;

41 (8) The leasing of any available portion of any regional
42 jail space and the leasing of available facilities of any
43 regional jail to the West Virginia department of corrections
44 for the keeping and detaining of prisoners sentenced to
45 serve terms of incarceration under the custody of the West
46 Virginia department of corrections for nonviolent crimes
47 and to contract with the department of corrections for the
48 providing of food, clothing, shelter and any and all
49 incidental costs in the care, control and maintenance of
50 such prisoners: *Provided*, That such leasing does not
51 restrict space or facilities needed for the detention of county
52 prisoners;

53 (9) The advisability and cost effectiveness of acquiring,
54 constructing, renovating, operating and maintaining work
55 farms serving one or more counties or regions; and

56 (10) The proximity of possible sites for the regional jail
57 facilities to residential areas, schools, churches and other
58 public buildings and facilities.

59 Public hearings pursuant to this section shall be held by
60 the authority in convenient locations throughout the state.
61 No less than ten public hearings shall be held for public
62 comment on the establishment of regional jails. The
63 authority shall cause to be published at least two weeks in
64 advance of a hearing a Class II-O legal advertisement, as
65 provided in section two, article three, chapter fifty-nine of
66 this code, setting forth the reason for the hearing and the
67 time, place and date thereof, the publication area shall be
68 each county which may be included in a region for the
69 purposes of a regional jail with the county in which the
70 public hearing is held.

71 In addition to the hearing requirements above, before
72 beginning construction of a new facility for use as a regional
73 jail or prison facility or before beginning renovation or
74 acquisition of an existing facility for use as a regional jail
75 facility which existing facility is not already a jail, prison or
76 secure facility for the detention of juveniles or persons
77 otherwise involuntarily committed or confined, the
78 authority shall hold a hearing for comment by all members
79 of the public on all aspects relating to the advisability of the
80 use of the site for that regional jail facility. The authority
81 shall promulgate rules and regulations pursuant to chapter
82 twenty-nine-a of this code for the requirements for notice
83 and other procedures of said public hearings which
84 requirements shall be as similar as practicable to those
85 hearings conducted regarding the construction of bridges
86 by the West Virginia department of highways.

87 The authority, as a public corporation and governmental
88 instrumentality exercising public powers of the state, may
89 exercise all powers necessary or appropriate to carry out
90 the purposes of this article, including, but not limited to, the
91 power:

- 92 (a) To acquire, own, hold and dispose of property, real
93 and personal, tangible and intangible.
- 94 (b) To lease property, whether as lessee or lessor.
- 95 (c) To mortgage or otherwise grant security interests in
96 its property.
- 97 (d) To conduct examinations and investigations and to
98 hear testimony and take proof, under oath or affirmation at
99 public or private hearings, on any matter relevant to this
100 article and necessary for information on the construction or

101 renovation of any correctional facility or the establishment
102 of any prison industries project.

103 (e) To issue subpoenas requiring the attendance of
104 witnesses and the production of books and papers relevant
105 to any hearing before such authority or one or more
106 members appointed by it to conduct any hearing.

107 (f) To apply to the circuit court having venue of such
108 offense to have punished for contempt any witness who
109 refuses to obey a subpoena, to be sworn or affirmed or to
110 testify or who commits any contempt after being summoned
111 to appear.

112 (g) To sue and be sued, implead and be impleaded, and
113 complain and defend in any court.

114 (h) To adopt, use and alter at will a corporate seal.

115 (i) To make bylaws for the management and regulation
116 of its affairs pursuant to article three, chapter twenty-nine-
117 a of this code.

118 (j) To appoint officers, agents and employees.

119 (k) To make contracts of every kind and nature and to
120 execute all instruments necessary or convenient for
121 carrying on its business.

122 (l) Without in any way limiting any other subdivision of
123 this section, to accept grants from and enter into contracts
124 and other transactions with any federal agency.

125 (m) To borrow money and to issue its negotiable bonds,
126 security interests or notes and to provide for and secure the
127 payment thereof, and to provide for the rights of the holders
128 thereof, and to purchase, hold and dispose of any of its
129 bonds, security interests or notes: *Provided*, That no bond
130 or other obligation may be issued or incurred unless and
131 until the Legislature by concurrent resolution has approved
132 the purpose and amount of each project for which proceeds
133 from the issuance of such bond or other obligation will be
134 used.

135 (n) To sell, at public or private sale, any bond or other
136 negotiable instrument, security interest or obligation of the
137 authority in such manner and upon such terms as the
138 authority considers would best serve the purposes of this
139 article.

140 (o) To issue its bonds, security interests and notes
141 payable solely from the revenues or other funds available to
142 the authority therefor; and the authority may issue its

143 bonds, security interests or notes in such principal amounts
144 as it considers necessary to provide funds for any purposes
145 under this article, including:

146 (1) The payment, funding or refunding of the principal
147 of, interest on or redemption premiums on, any bonds,
148 security interests or notes issued by it whether the bonds,
149 security interests, notes or interest to be funded or refunded
150 have or have not become due.

151 (2) The establishment or increase of reserves to secure or
152 to pay bonds, security interests, notes or the interest
153 thereon and all other costs or expenses of the authority
154 incident to and necessary or convenient to carry out its
155 corporate purposes and powers. Any bonds, security
156 interests or notes may be additionally secured by a pledge of
157 any revenues, funds, assets or moneys of the authority from
158 any source whatsoever.

159 (p) To issue renewal notes or security interests, to issue
160 bonds to pay notes or security interests and, whenever it
161 considers refunding expedient, to refund any bonds by the
162 issuance of new bonds, whether the bonds to be refunded
163 have or have not matured except that no such renewal notes
164 shall be issued to mature more than ten years from date of
165 issuance of the notes renewed and no such refunding bonds
166 may be issued to mature more than twenty-five years from
167 the date of issuance.

168 (q) To apply the proceeds from the sale of renewal notes,
169 security interests or refunding bonds to the purchase,
170 redemption or payment of the notes, security interests or
171 bonds to be refunded.

172 (r) To accept gifts or grants of property, funds, security
173 interests, money, materials, labor, supplies or services from
174 the United States of America or from any governmental
175 unit or any person, firm or corporation, and to carry out the
176 terms or provisions of, or make agreements with respect to,
177 or pledge, any gifts or grants, and to do any and all things
178 necessary, useful, desirable or convenient in connection
179 with the procuring, acceptance or disposition of gifts or
180 grants.

181 (s) To the extent permitted under its contracts with the
182 holders of bonds, security interests or notes of the authority,
183 to consent to any modification of the rate of interest, time of
184 payment of any installment of principal or interest, security

185 or any other term of any bond, security interest, note or
186 contract or agreement of any kind to which the authority is
187 a party.

188 (t) To sell security interests in the loan portfolio of the
189 authority. Such security interests shall be evidenced by
190 instruments issued by the authority. Proceeds from the sale
191 of security interests may be issued in the same manner and
192 for the same purposes as bond and note revenues.

193 (u) To promulgate rules, in accordance with the
194 provisions of chapter twenty-nine-a of this code, to
195 implement and make effective the powers, duties and
196 responsibilities invested in the authority by the provisions
197 of this article and otherwise by law.

198 (v) To assume the responsibility for operation and
199 management of regional jail facilities under the jurisdiction
200 of the state regional jail and prison authority including the
201 transportation of persons incarcerated therein for all
202 required purposes including, but not limited to, court
203 appearances and reasonable interviews with their
204 attorney or visitation with their family and friends all in the
205 county seat of any county served by the regional facility.

206 (w) To exercise all power and authority provided in this
207 article necessary and convenient to plan, finance, construct,
208 renovate, maintain and operate prisons after first providing
209 for regional jail facilities.

§31-20-5a. Bidding procedures.

1 When the cost under any contract or agreement entered
2 into by the authority other than compensation for personal
3 services, involves an expenditure of more than two
4 thousand dollars, the authority shall make a written
5 contract with the lowest responsible bidder after public
6 notice published as a Class II legal advertisement in
7 compliance with the provisions of article three, chapter
8 fifty-nine of this code, the publication area for such
9 publication to be the county or counties wherein the work is
10 to be performed or which is affected by the contract, which
11 notice shall state the general character of the work and
12 general character of the materials to be furnished, the place
13 where plans and specifications therefor may be examined
14 and the time and place of receiving bids, but a contract for

15 lease of a prison or regional or county jail project
16 constructed and owned by the authority is not subject to the
17 foregoing requirements and the authority may enter into
18 such contract for lease pursuant to negotiation upon such
19 terms and conditions and for such period as it finds to be
20 reasonable and proper under the circumstances and in the
21 best interests of proper operation or efficient acquisition or
22 construction of such projects. The authority may reject any
23 and all bids. A bond with good and sufficient surety,
24 approved by the authority, shall be required of all
25 contractors in an amount equal to at least fifty percent of
26 the contract price, conditioned upon faithful performance
27 of the contract.

**§31-20-6. Regional jail commissions; composition;
appointment; terms; compensation and ex-
penses.**

1 Upon the formation of specific regions by the regional jail
2 and prison authority for the establishment of regional jails
3 as provided in section five of this article, there shall be
4 created in each region a regional jail commission composed
5 of the following members: The sheriff from each county in
6 the region or his designated representative; a member of the
7 county commission from each county in the region chosen
8 by the commission or a designated representative; one
9 mayor from each county in the region to be appointed by the
10 regional jail and prison authority from a list of names
11 submitted by the West Virginia municipal league, or his
12 designated representative; and three persons from the
13 region who are representative of the areas of law, medicine
14 and education to be appointed by the regional jail and
15 prison authority and who shall serve for a term of three
16 years: *Provided*, That any local regional jail authority or
17 commission established prior to the effective date of this
18 article shall be recognized as meeting the requirements of
19 this section, at the option of the local regional jail authority
20 or commission.

21 Any appointed member whose term has expired shall
22 serve until his successor has been duly appointed and
23 qualified. Any person appointed to fill a vacancy shall serve
24 only for the unexpired term. Any appointed member is

25 eligible for reappointment. Members of the authority are
26 not entitled to compensation for services performed as
27 members but are entitled to reimbursement for all
28 reasonable and necessary expenses actually incurred in the
29 performance of their duties. The county commission from
30 each county in the region shall provide the commission with
31 secretarial and other necessary services.

§31-20-7. General powers of the commission.

1 Each regional jail commission shall prepare and submit
2 such plans, suggestions and recommendations to the
3 regional jail and prison authority which will define the
4 needs for its region as to the construction, renovation and
5 general operation of a regional jail facility. The report may
6 include, but is not limited to, recommendations for
7 conforming its jail facility to the jail standards
8 promulgated by the jail and prison standards commission,
9 upgrading the recreational and educational opportunities
10 for inmates confined in the region's facility, development of
11 programs in cooperation with community medical and
12 mental health centers in the region to provide adequate
13 medical and drug and alcohol addiction services within the
14 facility and information concerning the costs incurred in
15 the operation of the facility.

**§31-20-8. Jail and prison standards commission;
appointments; compensation; vacancies;
quorum.**

1 A jail and prison standards commission of eleven
2 members is hereby created. The governor shall appoint two
3 county sheriffs, to be chosen from a list of three names
4 provided by the president of the West Virginia sheriff's
5 association, and three county commissioners, to be chosen
6 from a list of five names provided by the president of the
7 West Virginia county commissioner's association. The chief
8 justice of the state supreme court of appeals shall appoint a
9 representative from the juvenile facilities review panel.
10 Each of the members so appointed shall serve for a term of
11 three years and be eligible for reappointment. The
12 commissioner of the department of corrections, the director
13 of the department of health, the state fire marshal, the
14 commissioner of the department of human services and the

15 director of the division of vocational education of the state
16 department of education or their designees, shall be
17 members ex officio in an advisory capacity.

18 Members of the commission shall serve without
19 compensation, but may be reimbursed for reasonable and
20 necessary expenses incurred in the performance of their
21 duties. The governor shall provide the commission with
22 secretarial and other necessary services.

23 A vacancy among the appointed members of the
24 commission shall be filled, within thirty days, in the same
25 manner as the original appointment. A quorum consists of
26 five members. Members of the commission shall select a
27 chairman.

§31-20-9. Purpose; powers and duties.

1 The purpose of the commission is to assure that proper
2 minimum standards and procedures are developed for jail,
3 work farm and prison operation, maintenance and
4 management of inmates for prisons, regional jails and local
5 jail facilities used as temporary holding facilities. In order
6 to accomplish this purpose, the commission shall:

7 (1) Prescribe standards for the maintenance and
8 operation of prisons, county and regional jails. Such
9 standards shall include, but not be limited to, requirements
10 assuring adequate space, lighting and ventilation; fire
11 protection equipment and procedures; provision of specific
12 personal hygiene articles; bedding, furnishings and
13 clothing; food services; appropriate staffing and training;
14 sanitation, safety and hygiene; isolation and suicide
15 prevention; appropriate medical, dental and other health
16 services; indoor and outdoor exercise; appropriate
17 vocational and educational opportunities; classification;
18 inmate rules and discipline; inmate money and property;
19 religious services; inmate work programs; library services;
20 visitation, mail and telephone privileges; and other
21 standards necessary to assure proper operation.

22 (2) Promulgate such rules pursuant to the provisions of
23 chapter twenty-nine-a of this code as are necessary to
24 implement the provisions of this article, including, without
25 limitation, minimum jail, work farm and prison standards
26 which shall be promulgated on or before the first day of
27 July, one thousand nine hundred eighty-six.

28 (3) Develop a process for reviewing and updating the
29 jail, work farm and prison standards pursuant to the
30 provisions of chapter twenty-nine-a of this code as may be
31 necessary to assure that they conform to current law.

32 (4) Report periodically to the authority to advise and
33 recommend actions to be taken by the authority to
34 implement proper minimum jail, work farm and prison
35 standards.

§31-20-10. Regional jail and prison development fund.

1 (a) The regional jail and prison development fund is
2 hereby created and shall be a special account in the state
3 treasury. The fund shall operate as a revolving fund
4 whereby all appropriations and payments thereto may be
5 applied and reapplied by the authority for the purposes of
6 this article. Separate accounts may be established within
7 the special account for the purpose of identification of
8 various revenue resources and payment of specific
9 obligations.

10 (b) Revenues deposited into the fund may be used to
11 make payments of interest and may be pledged as security
12 for bonds, security interests or notes issued by the authority
13 pursuant to this article.

14 (c) Whenever the authority determines that the balance
15 in the fund is in excess of the immediate requirements of
16 this article, it may request that such excess be invested until
17 needed. In such case such excess shall be invested in a
18 manner consistent with the investment of the temporary
19 state funds. Interest earned on any money invested
20 pursuant to this section shall be credited to the fund.

21 (d) If the authority determines that funds held in the
22 fund are in excess of the amount needed to carry out the
23 purposes of this article, it shall take such action as is
24 necessary to release such excess and transfer it to the
25 general fund of the state treasury.

26 (e) The fund shall consist of the following:

27 (1) Amounts raised by the authority by the sale of bonds
28 or other borrowing authorized by this article;

29 (2) Moneys collected and deposited in the state treasury
30 which are specifically designated by acts of the Legislature
31 for inclusion into the fund;

32 (3) Contributions, grants and gifts from any source,
33 both public and private, which may be used by the authority
34 for any project or projects;

35 (4) All sums paid by the counties pursuant to subsection
36 (h) of this section; and

37 (5) All interest earned on investments made by the state
38 from moneys deposited in this fund.

39 (f) The amounts deposited in the fund shall be
40 accounted for and expended in the following manner:

41 (1) Amounts raised by the sale of bonds or other
42 borrowing authorized by this article shall be deposited in a
43 separate account within the fund and expended for the
44 purpose of construction and renovation of regional jails for
45 which need has been determined by the authority;

46 (2) Amounts deposited from all other sources shall be
47 pledged first to the debt service on any bonded
48 indebtedness or other obligation incurred by borrowing of
49 the authority;

50 (3) After any requirements of debt service have been
51 satisfied, the authority shall requisition from the fund such
52 amounts as are necessary to provide for payment of the
53 administrative expenses of this article;

54 (4) The authority shall requisition from the fund after
55 any requirements of debt service have been satisfied such
56 amounts as are necessary for the maintenance and
57 operation of the regional jails that are constructed pursuant
58 to the plan required by this article and shall expend such
59 amounts for such purpose. The fund shall make an
60 accounting of all amounts received from each county by
61 virtue of any filing fees, court costs or fines required by law
62 to be deposited in the fund and amounts from the jail
63 improvement funds of the various counties. After the
64 expenses of administration have been deducted the
65 amounts expended in the respective regions from such
66 sources shall be in proportion to the percentage the amount
67 contributed to the fund by the counties in each region bears
68 to the total amount received by the fund from such sources;

69 (5) Notwithstanding any other provisions of this article,
70 sums paid into the fund by each county pursuant to
71 subsection (h) of this section for each inmate shall be placed
72 in a separate account and shall be requisitioned from the

73 fund to pay for the costs specified in that subsection
74 incurred at the regional jail facility at which each such
75 inmate was incarcerated; and

76 (6) Any amounts deposited in the fund from other
77 sources permitted by this article shall be expended in the
78 respective regions based on particular needs to be
79 determined by the authority.

80 (g) After a regional jail facility becomes available
81 pursuant to this article for the incarceration of inmates,
82 each county within the region shall incarcerate all persons
83 whom the county would have incarcerated in any jail prior
84 to the availability of the regional jail facility in the regional
85 jail facility except those whose incarceration in a local jail
86 facility used as a local holding facility is specified as
87 appropriate under the standards and procedures developed
88 pursuant to section nine of this article and who the sheriff
89 or the circuit court elects to incarcerate therein.

90 (h) When inmates are placed in a regional jail facility
91 pursuant to subsection (g) of this section the county shall
92 pay into the regional jail and prison development fund a
93 cost per day for each inmate so incarcerated to be
94 determined by the regional jail and prison authority
95 according to criteria and by procedures established by
96 regulations pursuant to article three, chapter twenty-
97 nine-a of this code to cover the costs of operating such
98 regional jail facility to maintain each such inmate which
99 costs shall not include the cost of construction, acquisition
100 or renovation of said regional jail facility.

§31-20-11. Borrowing of money.

1 The borrowing of money and the notes, bonds and
2 security interests evidencing any such borrowing shall be
3 authorized by resolution approved by the board, shall bear
4 such date or dates and shall mature at such time or times, in
5 the case of any such bonds, not exceeding twenty-five years
6 from the date of issue, as such resolution or resolutions may
7 provide. The notes, bonds and security interests shall bear
8 interest at such rate or rates, be in such denominations, be
9 in such form, either coupon or registered, carry such
10 registration privileges, be executed in such manner, be
11 payable in such medium of payment and at such place or

12 places, and be subject to such terms or conditions of
13 redemption as such resolution or resolutions may provide.

§31-20-12. Notes, security interests and bonds as general obligations of authority.

1 Except as may otherwise be provided by the authority
2 every issue of its notes, security interests and bonds shall be
3 general obligations of the authority payable out of any
4 revenues or moneys of the authority, subject only to any
5 agreements with the holders of particular notes, security
6 interests or bonds pledging any particular revenues.

§31-20-13. Notes, security interests and bonds as negotiable instruments.

1 The notes, security interests and bonds issued by the
2 authority shall be and hereby are made negotiable
3 instruments under the provisions of article eight, chapter
4 forty-six of this code, subject only to the provisions of the
5 notes, security interests or bonds for registration.

§31-20-14. Authorizing resolutions.

1 Any resolution or resolutions authorizing any notes,
2 security interests or bonds or any issue thereof, may contain
3 provisions, which shall be a part of the contract with
4 holders, as to:

5 (1) Pledging all or part of the revenues of the authority
6 to secure the payment of the notes, security interests or
7 bonds or any issue thereof, subject to such agreements with
8 noteholders, holders of security interests or bondholders as
9 may then exist;

10 (2) Pledging all or any part of the assets of the authority
11 to secure the payment of the notes, security interests or
12 bonds or any issue thereof, subject to such agreements with
13 noteholders, holders of security interests or bondholders as
14 may then exist;

15 (3) The setting aside of reserves or sinking funds and the
16 regulation and disposition thereof;

17 (4) Limitations on the purposes to which proceeds of
18 sale of notes, security interests or bonds may be applied and
19 pledging such proceeds to secure the payment on the notes,
20 security interests or bonds or of any issue thereof;

21 (5) Limitations on the issuance of additional notes,
22 security interests or bonds; the terms upon which
23 additional notes, security interests or bonds may be issued
24 and secured; and the refunding of outstanding or other
25 notes, security interests or bonds;

26 (6) The procedure, if any, by which the terms of any
27 contract with noteholders, holders of security interests or
28 bondholders may be amended or abrogated, the amount of
29 notes, security interests or bonds the holders of which must
30 consent thereto, and the manner in which such consent may
31 be given;

32 (7) Limitations on the amount of moneys to be expended
33 by the authority for operating, administrative or other
34 expenses of the authority;

35 (8) Vesting in a trustee or trustees the property, rights,
36 powers and duties of a trustee appointed by the
37 bondholders pursuant to section thirteen of this article, and
38 limiting or abrogating the right of the bondholders to
39 appoint a trustee under section thirteen of this article or
40 limiting the rights, powers and duties of such trustees; and

41 (9) Any other matters, of like or different character,
42 which in any way affect the security or protection of the
43 notes, security interests or bonds.

§31-20-15. Redemption of notes, security interests or bonds.

1 The authority, subject to such agreements with
2 noteholders, holders of security interests or bondholders as
3 may then exist, may, out of any funds available therefor,
4 purchase notes, security interests or bonds of the authority.

5 If the notes, security interests or bonds are then
6 redeemable, the price of such purchase shall not exceed the
7 redemption price then applicable plus accrued interest to
8 the next interest payment date thereon. If the notes,
9 security interests or bonds are not then redeemable, the
10 price of such purchase shall not exceed the redemption
11 price applicable on the first date after such purchase upon
12 which the notes, security interests or bonds become subject
13 to redemption plus accrued interest to such date. Upon such
14 purchase, such notes, security interests or bonds shall be
15 cancelled.

§31-20-16. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of
3 indebtedness of the authority and such notes, security
4 interests or bonds or other evidences of indebtedness shall
5 not be a debt of the state of West Virginia, and such notes,
6 security interests or bonds or other evidences of
7 indebtedness shall contain on the face thereof a statement
8 to such effect.

§31-20-17. Default in payment of principal or interest.

1 In the event the authority shall default in the payment of
2 principal of or interest on any issue of its notes, security
3 interests or bonds after they become due, whether at
4 maturity or upon call for redemption, and such default
5 continues for a period of thirty days, or in the event the
6 authority fails or refuses to comply with the provisions of
7 this article or defaults in any agreement made with the
8 holders of any issue of notes, security interests or bonds, the
9 holders of twenty-five percent in aggregate principal
10 amount of the notes, security interests or bonds of such
11 issue then outstanding, by instrument or instruments filed
12 in the office of the clerk of the county commission of any
13 county in which the authority operates and has an office
14 and acknowledged in the same manner as a deed to be
15 recorded, may appoint a trustee to represent the holders of
16 such notes, security interests or bonds for the purposes
17 herein provided:

18 (a) Any such trustee, upon the written request of the
19 holders of twenty-five percent in the principal amount of
20 such notes, security interests or bonds of the authority then
21 outstanding, shall, in his or its own name, do any one or
22 more of the following:

23 (1) By civil action or other proceeding, enforce all rights
24 of the noteholders, holders of security interests or
25 bondholders, including the right to require the authority to
26 perform its duties under this article;

27 (2) Bring a civil action upon such notes, security
28 interests or bonds;

29 (3) By civil action or other proceeding, require the
30 authority to account as if it were the trustee of an express

31 trust for the holders of such notes, security interests or
32 bonds;

33 (4) By civil action or other proceeding, enjoin any acts or
34 things which may be unlawful or in violation of the rights of
35 the holders of such notes, security interests or bonds; or

36 (5) Declare all such notes, security interests or bonds
37 due and payable, and, if all defaults are made good, then
38 annul such declaration and its consequences.

39 (b) In addition to the foregoing, such trustee shall have
40 and possess all of the powers necessary or appropriate for
41 the exercise of any functions specifically set forth herein or
42 incident to the general representation of holders of notes,
43 security interests or bonds of the authority in the
44 enforcement and protection of their rights.

45 (c) Before declaring the principal of any notes, security
46 interests or bonds due and payable, the trustee shall first
47 give thirty days' notice in writing to the authority.

§31-20-18. Investment in notes, security interests and bonds.

1 The notes, security interests and bonds of the authority
2 are hereby made securities in which the state board of
3 investments, all insurance companies and associations and
4 other persons carrying on an insurance business, all
5 banking institutions, trust companies, building and loan
6 associations, savings and loan associations, investment
7 companies and other persons carrying on a banking
8 business and other persons, except administrators,
9 guardians, executors, trustees and fiduciaries, who are now
10 or who may hereafter be authorized to invest in bonds or
11 other obligations of the state, may properly and legally
12 invest funds, including capital in their control or belonging
13 to them. The state board of investments, prior to investing
14 funds, including capital in such notes, security interests or
15 bonds of the authority shall first inquire fully into the
16 integrity and sufficiency of the collateral securing such
17 investment and shall be fully satisfied as to the sufficiency
18 and integrity thereof; and may only so invest if the yield
19 therefrom is at least equal to or greater than the prevailing
20 market yield from similar United States twenty-six-week
21 treasury bills. The state board of investments shall not
22 purchase evidences of indebtedness having terms in excess
23 of eighteen months from date of purchase to date of
24 maturity.

§31-20-19. Tax exemption.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state for the improvement of their safety, convenience
4 and welfare. Since the operation and maintenance of
5 correctional facilities and prison industries projects will
6 constitute the performance of essential governmental
7 functions, the authority is not required to pay any taxes or
8 assessments upon any such facilities or projects or upon any
9 property acquired or used by the authority or upon the
10 income therefrom. Such bonds, security interests and notes
11 and all interest and income thereon are exempt from all
12 taxation by this state, or any county, municipality, political
13 subdivision or agency thereof, except inheritance taxes.

§31-20-20. Authorized limit on borrowing.

1 The aggregate principal amount of notes, security
2 interests and bonds issued by the authority may not exceed
3 one hundred million dollars outstanding at any one time. In
4 computing the total amount of notes, security interests and
5 bonds which may be outstanding at any one time, the
6 principal amount of any outstanding notes, security
7 interests and bonds refunded or to be refunded either by
8 application of the proceeds of the sale of any refunding
9 notes, security interests or refunding bonds of the authority
10 or by exchange for any such notes, security interests or
11 refunding bonds shall be excluded. The state board of
12 investments may have invested no more than a total
13 aggregate principal amount of fifteen million dollars at any
14 one time in such notes, security interests or bonds.

§31-20-21. Validity of any pledge, mortgage, deed of trust or security instrument.

1 It is the intention hereof that any pledge, mortgage, deed
2 of trust or security instrument made by or for the benefit of
3 the authority shall be valid and binding between the parties
4 from the time the pledge, mortgage, deed of trust or security
5 instrument is made; and that the moneys or property so
6 pledged, encumbered, mortgaged or entrusted shall
7 immediately be subject to the lien of such pledge, mortgage,
8 deed of trust or security instrument without any physical
9 delivery thereof or further act.

§31-20-22. Money of the authority.

1 All money accruing to the authority from whatever
 2 source derived, except legislative appropriations, and
 3 except that authorized to be deposited directly into the
 4 regional jail and prison development fund shall be collected
 5 and received by the treasurer of the authority, who shall pay
 6 it into the state treasury in the manner required by section
 7 two, article two, chapter twelve of this code, to be credited
 8 to the fund.

§31-20-23. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority may be
 2 interested, either directly or indirectly, in any manner in
 3 any contract or agreement of any person with the authority.
 4 Any contract or agreement made in violation of the
 5 provisions of this section is void and no action thereon may
 6 be maintained against the authority.

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each federal
 2 agency that, if such agency constructs or loans or
 3 contributes any funds for the acquisition, construction,
 4 extension, improvement or enlargement of any correctional
 5 facility or prison industries project, the state will not alter
 6 or limit the rights and powers of the authority in any
 7 manner which would be inconsistent with the due
 8 performance of any agreement between the authority and
 9 such federal agency and that the authority shall continue to
 10 have and exercise all powers granted for carrying out the
 11 purposes of this article for so long as necessary.

CHAPTER 50. MAGISTRATE COURTS.**ARTICLE 3. COSTS, FINES AND RECORDS.**

§50-3-1. Costs in civil actions.

§50-3-2. Costs in criminal proceedings.

§50-3-4. Disposition of costs; magistrate court fund.

§50-3-4a. Disposition of criminal costs and civil filing fees.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts
 2 in civil actions and shall be collected in advance:

- 3 (a) For filing and trying any civil action and for all
 4 services connected therewith but excluding services
 5 regarding enforcement of judgment. \$20.00
 6 (b) For each service regarding enforcement of a
 7 judgment including execution, suggestion, garnishment
 8 and suggestee execution \$5.00
 9 (c) For each bond filed in a case \$1.00
 10 (d) For taking deposition of witness for each hour or
 11 portion thereof \$1.00
 12 (e) For taking and certifying acknowledgment of a deed
 13 or other writing or taking oath upon an affidavit. . . \$.50
 14 (f) For mailing any matter required or provided by law
 15 to be mailed by certified or registered mail with return
 16 receipt. \$1.00
 17 Costs incurred in a civil action shall be reflected in any
 18 judgment rendered thereon. The provisions of section one,
 19 article two, chapter fifty-nine of this code, relating to the
 20 payment of costs by poor persons, shall be applicable to all
 21 costs in civil actions.

§50-3-2. Costs in criminal proceedings.

- 1 In each criminal case tried in a magistrate court in which
 2 the defendant is convicted there shall be imposed, in
 3 addition to such other costs, fines, forfeitures or penalties as
 4 may be allowed by law, costs in the amount of thirty dollars.
 5 No such costs shall be collected in advance.
 6 A magistrate shall assess costs in the amount of two
 7 dollars and fifty cents for issuing a sheep warrant,
 8 appointment and swearing appraisers and docketing the
 9 same.
 10 In each criminal case which must be tried by the circuit
 11 court but in which a magistrate renders some service, costs
 12 in the amount of ten dollars shall be imposed by the
 13 magistrate court and shall be certified to the clerk of the
 14 circuit court in accordance with the provisions of section
 15 six, article five, chapter sixty-two of this code.

§50-3-4. Disposition of costs; magistrate court fund.

- 1 Except for the funds specified in section four-a, all costs
 2 collected in magistrate courts in a civil or criminal
 3 proceeding shall be submitted on or before the tenth day of
 4 the month following the month of their collection to the

5 magistrate court clerk or, if there is no magistrate court
6 clerk, to the clerk of the circuit court along with such
7 information as may be required by the rules of the supreme
8 court and by the rules of the chief inspector of public
9 offices. Such clerk shall pay such costs into the special
10 county fund hereafter created during each fiscal year until
11 there shall have been paid a sum equal to twelve thousand
12 five hundred dollars multiplied by the number of
13 magistrates authorized for such county. All costs collected
14 in excess of such sum during a fiscal year shall be paid to the
15 state. All costs and fees collected by magistrates on or after
16 the first day of July, one thousand nine hundred seventy-
17 six, shall be paid into said special county fund hereafter
18 created.

19 There is hereby created in each county a special county
20 fund designated as the magistrate court fund. No moneys
21 shall be appropriated from the fund except for the purposes
22 provided for in this section. Any money remaining in the
23 magistrate court fund on the thirtieth day of June, one
24 thousand nine hundred seventy-nine, and on the thirtieth
25 day of June of each year thereafter, shall be paid to the state.

26 A county may appropriate and spend from such fund such
27 sums as shall be necessary to defray the expenses of
28 providing bailiff and service of process services by the
29 sheriff, to defray the cost of acquiring or renting magistrate
30 court offices and providing utilities and telephones therefor
31 and to defray the expenses of such other services which by
32 the terms of this chapter are to be provided to magistrate
33 court by the county.

§50-3-4a. Disposition of criminal costs and civil filing fees into state treasury account for regional jail and prison development fund.

1 The clerk of each magistrate court shall at the end of each
2 month pay into the regional jail and prison development
3 fund in the state treasury an amount equal to twenty dollars
4 of the costs collected in each criminal proceeding and ten
5 dollars of the costs collected for the filing of each civil
6 action.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28. Use and disposition of fees of sheriffs, clerks and prosecuting attorneys.

§59-1-28a. Disposition of filing fees and fees for services in criminal cases.

§59-1-31. Monthly payments; how credited; report required.

§59-1-11. Fees to be charged by clerk of circuit court.

1 The clerk of a circuit court shall charge and collect for
2 services rendered as such clerk the following fees, and such
3 fees shall be paid in advance by the parties for whom such
4 services are to be rendered:

5 For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals, or any
8 other action, cause, suit or proceeding, twenty dollars.

9 In addition to the foregoing fees, the following fees shall
10 likewise be charged and collected:

11 For any transcript, copy or paper made by the clerk for
12 use in any other court or otherwise to go out of the office, for
13 each page, twenty-five cents;

14 For action on suggestion, five dollars;

15 For issuing an execution, two dollars;

16 For issuing or renewing a suggestee execution, including
17 copies, postage, registered or certified mail fees and the fee
18 provided by section four, article five-a, chapter thirty-eight
19 of this code, three dollars;

20 For vacation or modification of a suggestee execution,
21 one dollar;

22 For docketing and issuing an execution on a transcript of
23 judgment from magistrate's court, three dollars;

24 For arranging the papers in a certified question, writ of
25 error, appeal or removal to any other court, five dollars;

26 For postage and express and for sending or receiving
27 decrees, orders or records, by mail or express, three times
28 the amount of the postage or express charges;

29 For each witness summons over and above five, on the
30 part of either plaintiff or defendant, to be paid by the party
31 requesting the same, twenty-five cents;

32 For additional services (plaintiff or appellant) where any
33 case remains on the docket longer than three years, for each
34 additional year or part year, five dollars.

35 The clerk shall tax the following fees for services in any

36 criminal case against any defendant convicted in such
37 court:

38 In the case of any misdemeanor, thirty dollars;

39 In the case of any felony, forty dollars;

40 No such clerk shall be required to handle or accept for
41 disbursement any fees, costs or accounts, of any other
42 officer or party not payable into the county treasury, except
43 it be on order of the court or in compliance with the
44 provisions of law governing such fees, costs or accounts.

**§59-1-28. Use and disposition of fees of sheriffs, clerks and
prosecuting attorneys.**

1 Except for the funds designated in section twenty-eight-a
2 of this article, all fees, costs, percentages, penalties,
3 commissions, allowances, compensation, income and all
4 other perquisites of whatever kind which by law may now
5 or hereafter be collected or received as compensation for
6 services by any clerk of the county commission, sheriff,
7 clerk of the circuit court or of any court of limited
8 jurisdiction and prosecuting attorney shall be collected
9 and received by such officer for the sole use of the treasury
10 of the county in which he is an officer, and shall be held as
11 public moneys belonging to the county fund, and shall be
12 accounted for and paid over as such in the manner
13 hereinafter provided. Nothing in this article shall be
14 construed to require any county officer to pay into the
15 county treasury any fees earned prior to the twenty-first
16 day of May, one thousand nine hundred fifteen. Fees are
17 held to be earned at the time the service is rendered and not
18 at the time the matter is finally adjudicated.

19 Notwithstanding any provision of law to the contrary, all
20 fees collected by a sheriff for service of all manner of
21 process from magistrate court, in addition to such other
22 funds as may be provided by the county commissions, shall
23 be dedicated by the county commission to the office of
24 sheriff for providing bailiff and service of process services
25 for magistrate court.

**§59-1-28a. Disposition of filing fees and fees for services in
criminal cases.**

1 (a) The clerk of each circuit court shall at the end of each

2 month pay into the regional jail and prison development
3 fund in the state treasury an amount equal to ten dollars of
4 every filing fee received for instituting any civil action
5 under the rules of civil procedure, any statutory summary
6 proceeding, any extraordinary remedy, the docketing of
7 civil appeals, or any other action, cause, suit or proceeding
8 in the circuit court.

9 (b) The clerk of each circuit court shall at the end of each
10 month pay into the regional jail and prison development
11 fund in the state treasury an amount equal to twenty dollars
12 of every fee for service received in any criminal case against
13 any defendant convicted in such court.

§59-1-31. Monthly payments; how credited; report required.

1 Except for the funds designated in section twenty-eight-a
2 of this article, each of the officers named in section twenty-
3 nine of this article shall at the end of each month pay into
4 the county treasury all fees, costs, percentages, penalties,
5 commissions, compensation, income and all other
6 perquisites of whatever kind collected by his office
7 during such month, which money shall be credited to the
8 general county fund. All such officers shall cause to be made
9 a quarterly report to the administrative director of the
10 supreme court of appeals, which shall indicate the money
11 received by them during such quarter and the source and
12 nature of such money. Such report shall be made within
13 thirty days following the close of each quarter.

CHAPTER 151

(H. B. 2024—By Delegate Burke and Delegate Seacrist)

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

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating generally to creation of the West Virginia toll road commission; providing for certain legislative findings and purposes with respect thereto; providing for the composition of the commission, its chairman and the manner of appointment of

its members; providing for the compensation and reimbursement of expenses; the funds from which such reimbursed expenses and other expenses of the commission are to be paid; the powers, duties and authority of the commission; the duty of other governmental agencies to cooperate with and assist the commission; providing for meetings of the commission and defining a quorum with respect to such meetings; the interpretation of said article; and the termination of the existence of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. TOLL ROAD STUDY COMMISSION.

§17-2B-1. Legislative findings and purposes.

§17-2B-2. Toll road study commission created; composition; appointment of members; chairman.

§17-2B-3. Compensation and expenses of commission members; expenses of commission.

§17-2B-4. Powers and duties of the commission.

§17-2B-5. Meetings of the commission; quorum.

§17-2B-6. Interpretation of article; termination of commission.

§17-2B-1. Legislative findings and purposes.

1 (a) The Legislature hereby finds and declares:

2 (1) That modern, well-constructed and properly maintained
3 roads and highways are of great importance to the economic
4 and industrial growth and development and well-being of the
5 state and to the health, education, welfare and prosperity of
6 its citizens;

7 (2) That due to budgetary and economic constraints, it is
8 frequently not feasible, desirable nor prudent to meet the costs
9 of construction and maintenance of a modern highways system
10 sufficient to meet current or future needs of the state, of its
11 citizens and of its industrial and commercial communities
12 through the utilization of current revenues, increased or
13 expanded taxation or general obligation bonds;

14 (3) That there is opinion that alternative methods of
15 financing the construction and maintenance of an efficient and
16 modern road and highway system could be desirable; that
17 these alternative methods may include, but not necessarily be

18 limited to, the utilization of tolls to be paid by the users of
19 such highways and other methods of financing or a combi-
20 nation of various methods, including tolls; and

21 (4) That the purpose of this article is to create a commis-
22 sion, as hereinafter constituted and appointed, to study various
23 and alternative methods of financing road and highway
24 construction and maintenance, with particular emphasis upon
25 the feasibility and desirability of adopting a system of tolls to
26 be paid by the users of such roads and highways either alone
27 or in combination with other methods of financing.

28 (b) The Legislature further declares that it recognizes that
29 the provisions of section 1, article V of the Constitution of
30 West Virginia prohibit any person from exercising the powers
31 of more than one branch or department of government at the
32 same time; however, it is the express purpose, intent and
33 finding of the Legislature that those members of the
34 commission who are members of the Legislature are acting as
35 such while serving on the commission and in the furtherance
36 of the Legislature's inherent right and power to investigate and
37 inquire into and report on those matters which are legitimately
38 within its powers, and that since the commission's role and
39 duties are investigative and reportive in nature, the service
40 upon the commission by its legislative members is not violative
41 of nor inimical to the constitutional mandate with respect to
42 the separation of governmental powers.

**§17-2B-2. Toll road study commission created; composition;
appointment of members; chairman.**

1 The West Virginia toll road study commission is hereby
2 created. The commission shall consist of eleven members, who
3 are designated or to be appointed as follows:

4 (a) The West Virginia commissioner of highways shall serve
5 as a voting member of the commission by virtue of that
6 person's office and shall serve as chairman of the commission;

7 (b) The chairman of the West Virginia turnpike commission
8 shall serve as a voting member of the commission by virtue
9 of that person's office;

10 (c) Three members shall be appointed by the governor who
11 shall be representative private citizens and who shall have been
12 residents of this state for a period of at least one year

13 immediately next preceding such persons' appointment no
14 more than two of whom shall be members of the same political
15 party; and

16 (d) Three members of the commission shall be members of
17 the Senate, to be appointed by the president thereof; no more
18 than two of whom shall be members of the same political
19 party; and

20 (e) Three members of the commission shall be members of
21 the House of Delegates, to be appointed by the speaker
22 thereof; no more than two of whom shall be members of the
23 same political party.

**§17-2B-3. Compensation and expenses of commission members;
expenses of commission.**

1 (a) Members of the commission shall be reimbursed for
2 their reasonable and necessary travel and other expenses
3 actually incurred in connection with the performance of their
4 duties as members of the commission, including, but not
5 limited to, their attendance at meetings thereof.

6 (b) Except as to those members of the commission who are
7 members of the Legislature, the reimbursement of expenses
8 provided for in subsection (a) of this section shall be paid from
9 legislative appropriations to the state department of highways,
10 account number 6700, line item number 7, "Toll Road
11 Examination."

12 (c) As to those members of the commission who are
13 members of the Legislature, the reimbursement of expenses
14 provided for in subsection (a) of this section shall be paid from
15 legislative appropriations to the joint committee on govern-
16 ment and finance, under "Account No. 103—Joint Expenses."

17 (d) Members of the commission shall receive no other
18 compensation for their services on or with the commission
19 other than the reimbursement of expenses as provided in this
20 section.

21 (e) All other expenses and costs incurred by the commis-
22 sion, which are not otherwise provided for in this section shall
23 be paid from legislative appropriations to the state department
24 of highways, account number 6700, line item number 7, "Toll
25 Road Examination."

§17-2B-4. Powers and duties of the commission.

1 The commission shall have the following powers, duties and
2 responsibilities:

3 (a) To conduct a thorough and comprehensive study into
4 the various ways and means of financing the construction and
5 maintenance of a modern and efficient system of roads and
6 highways which would be in addition to or in augmentation
7 of or in conjunction with already existing roads and highways,
8 with particular, but not exclusive, emphasis upon the
9 feasibility, desirability and prudence of utilizing the imposition
10 of tolls upon the users of such roads and highways, either
11 alone or together with other means and methods of financing
12 the construction and maintenance of the same;

13 (b) Special attention shall be given to planning, financing
14 and construction of a modern highway connecting the
15 Appalachian Corridor "G" highway at Chapmanville with
16 Interstate Highway 64 at Huntington;

17 (c) To file an interim report as to its progress and tentative
18 conclusions with the governor, the president of the Senate and
19 the speaker of the House of Delegates not later than the
20 second Wednesday in January, in the year one thousand nine
21 hundred eighty-six;

22 (d) To file its final report with respect to its findings and
23 conclusions, together with any legislation it deems appropriate
24 to recommend and as it deems necessary to carry its findings
25 and conclusions into effect with the governor, the president
26 of the Senate and the speaker of the House of Delegates not
27 later than the second Wednesday in January in the year one
28 thousand nine hundred eighty-seven;

29 (e) To employ such legal, technical, investigative, clerical,
30 stenographic, advisory and other personnel as it deems
31 necessary and needful and to fix the reasonable compensation
32 of such persons as may be so employed;

33 (f) To request such information and data from any state
34 officer or agency or from any political subdivision of the state
35 as the commission may deem necessary to assist it in the
36 performance of its duties and it shall be the duty of all such
37 officers and agencies to cooperate with and assist the
38 commission in and about the completion of its studies and
39 deliberations;

40 (g) To confer with representative citizens and groups of the
41 private, business and industrial sectors with respect to all
42 matters deemed relevant to the study program of the
43 commission; and

44 (h) To perform every other act necessary or desirable to
45 carry out any of the other powers, duties or responsibilities
46 enumerated in this article.

§17-2B-5. Meetings of the commission; quorum.

1 The commission shall meet at such times and places as its
2 chairman shall deem to be proper and expedient. Such
3 meetings shall be coordinated with and be in conjunction with
4 the monthly meeting of the joint committee on government
5 and finance insofar as the same may be practicable. Nothing
6 herein shall preclude the commission from meeting with such
7 frequency or at such times and places as it may determine.
8 The presence of no less than six members of the commission
9 shall constitute a quorum for the conducting of any business
10 by the commission.

§17-2B-6. Interpretation of article; termination of commission.

1 (a) The provisions of this article shall be liberally construed
2 in order to permit the commission sufficient latitude for the
3 orderly completion of its studies and duties.

4 (b) The commission shall cease its existence upon the sine
5 die adjournment of the Legislature at its regular session held
6 in the year one thousand nine hundred eighty-seven.

CHAPTER 152

(H. B. 1508—By Mr. Speaker, Mr. Albright, and Delegate Swann)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal section eight, article seventeen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and two, article seventeen-a, chapter seventeen of

the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the issuance and sale of notes as special obligations of the state of West Virginia to finance the construction of surface transportation improvements; setting forth the purpose and scope thereof; definition of terms.

Be it enacted by the Legislature of West Virginia:

That section eight, article seventeen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one and two, article seventeen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

§17-17A-1. Purpose and scope.

§17-17A-2. Definitions.

§17-17A-1. Purpose and scope.

1 This article is intended to facilitate the acquisition of right-
2 of-way for, the construction of, the reconstruction of and the
3 improvement or repair of any interstate or other highway,
4 secondary road, bridge and toll road to be funded wholly or
5 in part by amounts to be made available pursuant to the
6 Federal Surface Transportation Assistance Act of one
7 thousand nine hundred eighty-two, or from amounts to be
8 made available pursuant to any other federal legislation, or
9 from amounts specifically appropriated or dedicated therefor
10 by the state, or from amounts which may be properly
11 expended from the state road fund under article three, chapter
12 seventeen of this code. This article authorizes notes, in an
13 aggregate amount of outstanding notes not to exceed two
14 hundred million dollars, to be issued to provide financing for
15 such projects in anticipation of reimbursement from such
16 sources, but such notes will be special obligations of the state
17 only, and will not be general obligations of the state or secured
18 by any claim on the general credit or taxing powers of the
19 state.

§17-17A-2. Definitions.

1 As used in this article, the following words and terms shall
2 have the following meaning:

3 "Commissioner" means the West Virginia commissioner of
4 highways.

5 "Cost," when used with respect to any surface transportation
6 improvement, means any and all costs of acquiring, construct-
7 ing, reconstructing, replacing, completing or repairing any
8 surface transportation improvement, including without
9 limiting the generality of the foregoing, land, property, rights,
10 franchises, materials, labor and services, contractors' fees,
11 planning and engineering expenses, financing costs, legal fees,
12 trustees' or paying agents' fees and interest on obligations
13 issued under this article.

14 "Note" means any note or other obligation issued pursuant
15 to this article.

16 "Outstanding note" means a note which has been issued
17 pursuant to this article and has not been repaid, but does not
18 include notes which are to be paid from designated moneys
19 or securities which are irrevocably held in trust solely for such
20 purpose.

21 "Surface transportation improvement" means any interstate
22 or other highway, secondary road, bridge and toll road
23 construction, reconstruction, improvement or repair, as to
24 which all or a portion of the cost thereof is to be reimbursed
25 to the state under federal legislation.

CHAPTER 153

(Com. Sub. for H. B. 1868—By Delegate Casey)

[Passed April 13, 1965; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to administrative procedures; rule making; emergency rules; and changing effective period of emergency rules.

Be it enacted by the Legislature of West Virginia:

That sections eight and fifteen, article three, chapter twenty-nine-

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

ARTICLE 3. RULE MAKING.

§29A-3-8. Adoption of procedural and interpretive rules.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

§29A-3-8. Adoption of procedural and interpretive rules.

1 A procedural and interpretive rule shall be considered by
2 the agency for adoption not later than six months after the
3 close of public comment and a notice of withdrawal or
4 adoption shall be filed in the state register within that period.
5 Failure to file such notice shall constitute withdrawal and the
6 secretary of state shall note such failure in the state register
7 immediately upon the expiration of the six-month period.

8 A procedural or interpretive rule may be amended by the
9 agency prior to final adoption without further hearing or
10 public comment. No such amendment may change the main
11 purpose of the rule. If the fiscal implications have changed
12 since the rule was proposed, a new fiscal note shall be attached
13 to the notice of filing. Upon adoption of the rule (including
14 any such amendment) the agency shall file the text of the
15 adopted procedural or interpretive rule with its notice of
16 adoption in the state register and the same shall be effective
17 on the date specified in the rule or thirty days after such filing,
18 whichever is later.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative rules
2 may, without hearing, find that an emergency exists requiring
3 that emergency rules be promulgated and promulgate the same
4 in accordance with this section. Such emergency rules, together
5 with a statement of the facts and circumstances constituting
6 the emergency, shall be filed in the state register and shall
7 become effective immediately upon such filing. Such emer-
8 gency rules may adopt, amend or repeal any legislative rule
9 but the circumstances constituting the emergency requiring
10 such adoption, amendment or repeal shall be stated with
11 particularity and be subject to de novo review by any court
12 having original jurisdiction of an action challenging their

13 validity. Fifteen copies of the rules and of the required
14 statement shall be filed forthwith with the legislative rule-
15 making review committee.

16 An emergency rule shall be effective for not more than
17 fifteen months and shall expire earlier if any of the following
18 occurs:

19 (1) The agency has not previously filed and fails to file a
20 notice of public hearing on the proposed rule within sixty days
21 of the date the proposed rule was filed as an emergency rule;
22 in which case the emergency rule expires on the sixty-first day.

23 (2) The agency has not previously filed and fails to file the
24 proposed rule with the legislative rule-making review
25 committee within one hundred eighty days of the date the
26 proposed rule was filed as an emergency rule; in which case
27 the emergency rule expires on the one hundred eighty-first day.

28 (3) The Legislature has authorized or directed promulgation
29 of an authorized legislative rule dealing with substantially the
30 same subject matter since such emergency rule was first
31 promulgated, and in which case the emergency rule expires on
32 the date the authorized rule is made effective.

33 (4) The Legislature has, by law, disapproved of such
34 emergency rule; in which case the emergency rule expires on
35 the date the law becomes effective.

36 (b) Any amendments to an emergency rule made by the
37 agency shall be filed in the state register and does not
38 constitute a new emergency rule for the purpose of acquiring
39 additional time or avoiding the expiration dates in subdivision
40 (1), (2), (3) or (4), subsection (a) of this section.

41 (c) Once an emergency rule expires due to the conclusion
42 of fifteen months or due to the effect of subdivision (1), (2),
43 (3) or (4), subsection (a) of this section, the agency may not
44 refile the same or similar rule as an emergency rule.

45 (d) Emergency legislative rules currently in effect under the
46 prior provisions of this section may be refiled under the
47 provisions of this section.

48 (e) The provisions of this section shall not be used to avoid
49 or evade any provision of this article or any other provisions
50 of this code, including any provisions for legislative review and

51 approval of proposed rules. Any emergency rule promulgated
52 for any such purpose may be contested in a judicial proceeding
53 before a court of competent jurisdiction.

54 (f) The legislative rule-making review committee may review
55 any emergency rule to determine (1) whether the agency has
56 exceeded the scope of its statutory authority in promulgating
57 the emergency rule; (2) whether there exists an emergency
58 justifying the promulgation of such rule; and (3) whether the
59 rule was promulgated in compliance with the requirements and
60 prohibitions contained in this section. The committee may
61 recommend to the agency or the Legislature such action as it
62 may deem proper.

63 (g) For the purposes of this section, an emergency exists
64 when the promulgation of a rule is necessary for the immediate
65 preservation of the public peace, health, safety or welfare or
66 is necessary to comply with a time limitation established by
67 this code or by a federal statute or regulation or to prevent
68 substantial harm to the public interest.

CHAPTER 154

(S. B. 399—By Senator R. Williams)

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

AN ACT to amend and reenact sections five (sixteen) (eighteen),
fifteen (two) (twenty-five), sixteen (one) (seven), sixteen
(twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-
d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-
a) (three), twenty (five-e) (six), twenty (five-e) (seven),
twenty (six) (two) and thirty-two (four) (four hundred
twelve), article two, chapter sixty-four of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend said article two by adding
thereto twenty-nine new sections, designated sections five
(sixteen) (five), eleven (one-a) (one), eleven (ten) (five),
sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-
three), seventeen (two-a) (eight), seventeen (four) (nineteen),
nineteen (one) (four), nineteen (two) (two), nineteen (nine)
(two), nineteen (nine-a) (seven), nineteen (twelve-d) (four),

nineteen (sixteen-b) (four), nineteen (twenty) (four), twenty (one) (seven), twenty (two) (forty-b), twenty (five-c) (six), twenty (six) (seven), twenty (six) (forty-three), twenty-one (five) (five-c), twenty-three (one) (thirteen), twenty-three (one) (fifteen), twenty-nine (one) (six), twenty-nine (five-a) (twenty-four), thirty (five) (nineteen), thirty (six) (three), thirty (twenty-one) (six), forty-six-a (six-a) (eight) and sixty-one (eleven-a) (six), all relating generally to the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five; authorizing the public employees insurance board to promulgate certain legislative rules relating to late enrollment in the public employees insurance program, with certain amendments thereto and relating generally to the public employees insurance plan, with certain amendments thereto; directing the state tax commissioner to promulgate certain legislative rules which were filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five, relating to the identification and appraisal of farmland subsequent to the base year of statewide reappraisal for ad valorem tax purposes as amended by the Legislature; authorizing the state tax commissioner to promulgate certain legislative rules relating to estimated personal income tax, with certain amendments and certain rules relating to estimated corporation net income tax, with certain amendments; authorizing the department of public safety to promulgate certain legislative rules relating to general orders, with certain amendments; authorizing the state board of health to promulgate certain legislative rules relating to trauma center or facility designation, to promulgate certain

legislative rules relating to reportable diseases, to promulgate certain legislative rules relating to retail food store sanitation and to promulgate certain legislative rules relating to the licensure of medical adult day care centers; authorizing the health care cost review authority to promulgate certain legislative rules relating to hospital cost containment methodology and to promulgate certain legislative rules relating to the implementation of the utilization review and quality assurance program; authorizing the commissioner of highways to promulgate certain legislative rules relating to construction and reconstruction of state roads, with certain amendments, to promulgate certain legislative rules relating to disqualification and suspension of prequalified contractors and to promulgate certain legislative rules relating to the transportation of hazardous waste by highway transporters, with certain amendments; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to titling of vehicles and to promulgate certain legislative rules relating to compulsory motor vehicle liability insurance; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to conducting of beef industry self-improvement assessment program referendum, to promulgate certain legislative rules relating to public markets, to promulgate certain legislative rules relating to animal disease control, to promulgate certain legislative rules relating to feeding untreated garbage to swine, to promulgate certain legislative rules relating to noxious weeds, to promulgate certain legislative rules relating to the use of certain picloram products and to promulgate certain legislative rules relating to registration, taxation and control of dogs; authorizing the West Virginia racing commission to promulgate certain legislative rules relating to greyhound racing and to promulgate certain legislative rules relating to thoroughbred racing; authorizing the department of natural resources to promulgate certain legislative rules relating to the public use of state parks, forests, hunting and fishing areas, to promulgate certain legislative rules relating to small arms hunting, to promulgate certain legislative rules relating to hazardous waste management, to promulgate certain legislative rules relating to surface mining reclamation, to

promulgate certain legislative rules relating to coal refuse disposal, to promulgate certain legislative rules relating to the transfer of the state national discharge elimination system program, with certain amendments; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards; authorizing the water development authority to promulgate certain legislative rules relating to hardship grant funds; authorizing the department of labor to promulgate certain legislative rules relating to polygraph examination; authorizing the workers' compensation commissioner to promulgate certain legislative rules relating to time limits for the administrative proceedings of adjudications and awards, to promulgate certain legislative rules relating to self-insured employers and to promulgate certain legislative rules relating to the payment of attorney's fees; authorizing the archives and history commission to promulgate certain legislative rules relating to locally created historic landmark commissions and certified local government programs with respect thereto, with certain amendments; authorizing the state athletic commission to promulgate certain legislative rules relating to professional and amateur boxing; authorizing the board of pharmacy to promulgate certain legislative rules relating to parenteral/enteral compounding; authorizing the board of embalmers and funeral directors to promulgate certain legislative rules relating generally to apprenticeships; authorizing the board of examiners of psychologists to promulgate certain legislative rules relating to examination fees; authorizing the state auditor as securities commissioner to promulgate certain legislative rules relating to filing fees; and authorizing the attorney general to promulgate certain legislative rules relating generally to new motor vehicle warranties and to third party dispute mechanisms with respect thereto and to promulgate certain legislative rules relating to the fair treatment of crime victims and witnesses.

Be it enacted by the Legislature of West Virginia:

That sections five (sixteen) (eighteen), fifteen (two) (twenty-five), sixteen (one) (seven), sixteen (twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-a) (three), twenty (five-e) (six),

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

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-5(16)(5).	Public employees insurance board.
§64-2-5(16)(18).	Public employees insurance board.
§64-2-11(1a)(1).	State tax commissioner.
§64-2-11(10)(5).	State tax commissioner.
§64-2-15(2)(25).	Department of public safety.
§64-2-16(1)(7).	State board of health.
§64-2-16(5b)(1).	State board of health.
§64-2-16(29b)(8).	Health care cost review authority.
§64-2-16(29b)(23).	Health care cost review authority.
§64-2-17(2a)(8).	Commissioner of highways.
§64-2-17(4)(19).	Commissioner of highways.
§64-2-17a(2)(9).	Commissioner of motor vehicles.
§64-2-17d(2a)(8).	Commissioner of motor vehicles.
§64-2-19(1)(4).	Commissioner of agriculture.
§64-2-19(2)(2).	Commissioner of agriculture.
§64-2-19(9)(2).	Commissioner of agriculture.
§64-2-19(9a)(7).	Commissioner of agriculture.
§64-2-19(12d)(4).	Commissioner of agriculture.
§64-2-19(16b)(4).	Commissioner of agriculture.
§64-2-19(20)(4).	Commissioner of agriculture.
§64-2-19(23)(6).	West Virginia racing commission.
§64-2-20(1)(7).	Department of natural resources.
§64-2-20(2)(40b).	Department of natural resources.
§64-2-20(5a)(3).	Water resources board.
§64-2-20(5c)(6).	Water development authority.

§64-2-20(5e)(6).	Department of natural resources.
§64-2-20(5e)(7).	Commissioner of highways.
§64-2-20(6)(2).	Department of natural resources.
§64-2-20(6)(7).	Department of natural resources.
§64-2-20(6)(43).	Department of natural resources.
§64-2-21(5)(5c).	Department of labor.
§64-2-23(1)(13).	Workers' compensation commissioner.
§64-2-23(1)(15).	Workers' compensation commissioner.
§64-2-29(1)(6).	Archives and history commission.
§64-2-29(5a)(24).	State athletic commission.
§64-2-30(5)(19).	Board of pharmacy.
§64-2-30(6)(3).	Board of embalmers and funeral directors.
§64-2-30(21)(6).	Board of examiners of psychologists.
§64-2-32(4)(412).	State auditor, securities commissioner.
§64-2-46a(6a)(8).	Attorney general.
§64-2-61(11a)(6).	Attorney general.

§64-2-5(16)(5). Public employees insurance board.

1 The legislative rules filed in the state register on the
 2 twelfth day of September, one thousand nine hundred
 3 eighty-four, relating to the public employees insurance
 4 board (late enrollment in the public employees insurance
 5 program) are authorized with the amendments set forth
 6 below:

7 §2.01(b) shall read as follows:

8 “(b) ‘children’ shall mean unmarried children between
 9 birth and age nineteen and shall include: (1) The employee’s
 10 natural children, (2) legally adopted children, including
 11 children living with the employee during the period of
 12 probation, (3) stepchildren residing in the employee’s
 13 household and (4) other children fully dependent upon the
 14 employee for support and maintenance and residing in the
 15 household of which the employee is head and actually being
 16 supported by the employee. Children may be included after
 17 the attainment of age nineteen, but not beyond the
 18 attainment of age twenty-five, if they are enrolled as full-
 19 time students, are unmarried, and are dependent upon the
 20 employee for support. Children may also be included after
 21 the attainment of age nineteen while incapable of self-
 22 support because of mental illness, mental retardation or a
 23 permanent physical disability, if the child was dependent
 24 upon the employee for support and maintenance at the
 25 onset of the mental illness, mental retardation or
 26 permanent physical disability. For the purpose of this

27 section, mental illness includes addiction as defined in Code
28 27-1-11 as is defined as a manifestation in a person of
29 significantly impaired capacity to maintain acceptable
30 levels of functioning in the areas of intellect, emotion and
31 physical well-being, only if such impairment renders the
32 person dangerous to himself or others or such person is
33 substantially unable to protect himself from significant
34 hazard: *Provided*, That children included because of
35 addiction as hereinbefore defined shall not be included
36 beyond the attainment of age twenty-five."

37 On page six, at 4.01(g) (2) shall read as follows:

38 The end of any 12 month period after enrollment during
39 which no diagnosis or treatment is received, and no
40 expenses are incurred for care of the injury, illness or
41 related conditions.

42 Also, insert a new section, designated section 5.07, to read
43 as follows:

44 "5.07.—Coverage for dependents shall terminate at the
45 end of the month in which they no longer meet the definition
46 of 'dependent' as set forth in section 2.01 of these rules."

§64-2-5(16)(18). Public employees insurance board.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of May, one thousand nine hundred eighty-
3 three, relating to the public employees insurance board
4 (public employees insurance plan) are authorized with the
5 amendments set forth below:

6 §6.03.—In the second sentence delete the words
7 "Executive Secretary" and insert the word "Board."

8 (b) The legislative rules filed in the state register on the
9 twenty-seventh day of September, one thousand nine
10 hundred eighty-four, modified by the public employees
11 insurance board to meet the objections of the legislative
12 rule-making review committee and refiled in the state
13 register on the fourth day of March, one thousand nine
14 hundred eighty-five, relating to the public employees
15 insurance board (credit for accrued sick/annual leave and
16 optional life insurance) are authorized.

§64-2-11(1a)(1). State tax commissioner.

1 The legislative rules filed in the state register on the
2 twelfth day of March, one thousand nine hundred eighty-

3 five, relating to the state tax commissioner (identification
4 and appraisal of farmland subsequent to the base year of
5 statewide reappraisal) are authorized and directed to be
6 promulgated with the following amendments:

7 Title page, Subject; following the word "Farmland,"
8 insert the words "and of Structures Situated Thereon".

9 Page i, Subject; following the word "Farmland," insert
10 the words "and of Structures Situated Thereon".

11 Page i, TABLE OF CONTENTS, Section 10; following the
12 words "Valuation of Farmland" add the words "and of
13 Structures Situated Thereon."

14 Page 10.1, Title; following the word "FARMLAND" insert
15 the words "AND STRUCTURES SITUATED THEREON."

16 Page 10.1, Section 10, Title; following the word
17 "Farmland" add the words "and Structures Situated
18 Thereon."

19 Page 10.1, Section 10.01(b); following the word
20 "farmland" insert the words "and structures situated
21 thereon."

22 Page 10.2, Section 10.02(a), first sentence; following the
23 word "farmland" insert the words "and structures situated
24 thereon."

25 Page 10.3, Section 10.02(b), first sentence; following the
26 word "farmland" insert the words "and structures situated
27 thereon." Delete the words "for purposes of the statewide
28 reappraisal."

29 Page 10.3, Section 10.02(b), last sentence; following the
30 word "farmland" insert the words "and structures situated
31 thereon."

32 Page 10.8, Section 10.04(5)(B), last sentence; delete the
33 period and add "or the incapability to be adapted to
34 alternative uses."

35 Page 10.9, Section 10.04(6), first sentence; following the
36 words "land currently being used" insert the words "as part
37 of a farming operation,".

38 Page 10.9, Section 10.04(6), following the last sentence;
39 add the sentence "For the purposes of this definition,
40 'contiguous tracts' are farmlands which are in close
41 proximity, but not necessarily adjacent: *Provided*, That all
42 such contiguous tracts are operated as part of the same farm
43 management plan."

44 Page 10.10, Section 10.04(8) is amended to read in its
45 entirety as follows:

46 (8) *Farm Buildings*.—The term “farm buildings” shall
47 mean structures which directly contribute to the operation
48 of the farm, and shall include tenant houses and quarters
49 furnished farm employees without rent as a part of the
50 terms of their employment.

51 Page 10.11, Section 10.04; delete the word “November”
52 and insert in lieu thereof the word “September.” Delete the
53 period following the word “valuation” and add the words
54 “for the assessment year beginning July 1st of each year.”

55 Page 10.11, Section 10.04, insert the following
56 subdivision; “(12) Application Form: The application form
57 required to be filed with the assessor on or before
58 September 1st of each year shall require certification that
59 the farm complies with criteria set forth in Section 10.05(c)
60 of these regulations, and renewal applications from year to
61 year shall be sufficient upon statement certifying that no
62 change has been made in the use of farm property which
63 would disqualify ‘farm use’ classification for assessment
64 purposes.” Renumber the subdivisions of Section 10.04
65 following the new 10.04(12), formerly 10.04(12) through
66 10.04(28), to 10.04(13) through 10.04(29) respectively.

67 Page 10.14, Section 10.04(28) (formerly 10.04(27));
68 following the words “woodland products” insert a comma
69 and the words “such as nuts or fruits harvested” and add a
70 comma following the words “human consumption” on Page
71 10.15.

72 Page 10.16, Section 10.05, subsection (a) following the
73 words “land is used for farm purposes” by striking the
74 period and inserting in lieu thereof a colon and the
75 following: “*Provided*, That the true and actual value of all
76 farms used, occupied and cultivated by their owners or
77 bona fide tenants shall be arrived at according to the fair
78 and reasonable value of the property for the purpose for
79 which it is actually used regardless of what the value of the
80 property would be if used for some other purpose; and that
81 the true and actual value shall be arrived at by giving
82 consideration to the fair and reasonable income which the
83 same might be expected to earn under normal conditions in
84 the locality wherein situated, if rented: *Provided, however*,
85 That nothing herein shall alter the method of assessment of

86 lands or minerals owned by domestic or foreign
87 corporations.”

88 Page 10.16, Section 10.05 (b), first clause; following the
89 words “following factors shall be” insert the words
90 “indicative of but not conclusive” and delete the word
91 “considered.”

92 Page 10.16, Section 10.05 (b) (2); delete the period and add
93 the words “such as soil conservation, farmland
94 preservation or federal farm lending agencies.”

95 Page 10.17, Section 10.05 (b) (7); delete the section and
96 insert in lieu thereof the words “(7) Whether or not the
97 farmer practices ‘custom farming’ on the land in question.”

98 Page 10.17, Section 10.05 (b) (9); following the word
99 “type” add a comma and insert the word “utility.”

100 Page 10.17, Section 10.05 (b) (11), first sentence;
101 following the word “sales” insert the words “for nonfarm
102 uses.”

103 Page 10.17, Section 10.05 (b) (12) (A); following the words
104 “part of” insert the words “or appurtenant to.”

105 Page 10.17, Section 10.05 (b) (12) (B); following the words
106 “contiguous to” insert the words “or operated in common
107 with.”

108 Page 10.18, Section 10.05, subsection (c), the first
109 sentence of which is amended in its entirety to read as
110 follows: “Qualifying farmland and the structures situate
111 thereon shall be subject to farm use valuation, with primary
112 consideration being given to the income which the property
113 might be expected to earn, in the locality wherein situated,
114 if rented.”

115 Page 10.18, Section 10.05 (b) (12) (B); delete the
116 semicolons and the words “it was purchased at the same
117 time as the tract so used.” Delete the period following the
118 word “purposes” and add the words “or any nonfarm use.”

119 Page 10.19, Section 10.05 (c) (2); following the words
120 “*Provided*, That no” delete the word “reason” and insert in
121 lieu thereof the words “individual event.”

122 Page 10.20, Section 10.05 (c) (4) (C); following the words
123 “(1,000) minimum production value” insert the words “or
124 the small farm five hundred dollars (\$500) minimum
125 production and sale.”

126 Page 10.23, Section 10.05 (d) (3) (B), third sentence;
127 following the word “If” insert the words “timber from”.

128 Delete the period following the word "purpose" and add the
129 words "or is being converted to farm production uses."

130 Page 10.26, Section 10.05 (f) (2) is amended in its entirety
131 to read as follows:

132 "(2) *Farm Buildings*.—Rental value of farm buildings
133 and other improvements on the farmland shall be valued by
134 determining the replacement cost of the building or
135 structure by usual farm construction practices, and farm
136 labor standards and subtracting therefrom depreciation.¹
137 Both of these determinations shall be made in accordance
138 with the Tax Department's real property appraisal manual²
139 as filed in the State Register in accordance with Chapter
140 29A of the Code of West Virginia, 1931, as amended, and
141 as it relates to agricultural buildings and structures. One (1)
142 acre of land shall be assigned to all buildings as a unit
143 situate on the property, regardless of the actual acreage
144 occupied by such buildings and shall be appraised at its
145 farm-use valuation bases on the highest class of farmland
146 present on the farm.

147 Page 10.28, Section 10.05 (f)(3)(B)(1); following the words
148 "or more of the" insert the word "usual".

149 Page 10.28, Section 10.05 (f)(3)(B)(2); following the words
150 "(50%) of the" insert the word "usual".

151 Page 10.29, Section 10.05 (f)(3)(C)(1)(a); following the
152 words "(50%) or more of the" insert the word "usual".

153 Page 10.29, Section 10.05 (f)(3)(C)(1)(b); following the
154 words "(50%) of the" insert the word "usual".

155 Page 10.31, Section 10.05 (f)(3)(C)(2)(b); following the last
156 sentence insert the sentence "An individual employed other
157 than in farming is not an unincorporated business."

158 Page 10.35, Section 10.07, Title; following the word
159 "Farmland" insert the words "and Structures Situated
160 Thereon."

161 Page 10.35, Section 10.07 (a), first sentence; following the
162 word "farmland" insert the words "and structures situated
163 thereon."

164 Page 10.46, Subject; following the word "Farmland"
165 insert the words "and Structures Situated Thereon."

§64-2-11 (10) (5). State tax commissioner.

- 1 (a) The legislative rules filed in the state register on the
- 2 twenty-eighth day of September, one thousand nine
- 3 hundred eighty-four, relating to the state tax commissioner

4 (estimated personal income tax) are authorized with the
5 amendments set forth below:

6 55.02 (a) (2) (on page 182.2) line 18, after the word
7 "profession" strike the words "on his own account" and the
8 comma (,).

9 55.12 (b) (1) (page 182.35) at end of the section, change the
10 period to a comma, and add the following language: and in
11 the case of a court appointed agent, a copy of the court order
12 of appointment is sufficient.

13 55.12 (c) (page 182.36) after the word "for", strike the
14 word "erroneous".

15 (b) The legislative rules filed in the state register on the
16 twenty-eighth day of September, one thousand nine
17 hundred eighty-four, modified by the state tax
18 commissioner to meet the objections of the legislative rule-
19 making review committee and refiled in the state register on
20 the fourteenth day of November, one thousand nine
21 hundred eighty-four, and on the twenty-first day of March,
22 one thousand nine hundred eighty-five, relating to the state
23 tax commissioner (estimated corporation net income tax are
24 authorized.

§64-2-15(2)(25). Department of public safety.

1 (a) The legislative rules filed in the state register on the
2 twenty-third day of September, one thousand nine hundred
3 eighty-three, relating to the department of public safety
4 (general orders) are authorized with the amendment set
5 forth below:

6 Page 23, §9.10 remove the period at the end of the
7 sentence and add the words "or municipalities."

8 (b) The legislative rules filed in the state register on the
9 twenty-second day of June, one thousand nine hundred
10 eighty-four, modified by the department of public safety to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the fifth day of
13 December, one thousand nine hundred eighty-four, relating
14 to the department of public safety (commission on drunk
15 driving) are authorized.

§64-2-16(1)(7). State board of health.

1 (a) The legislative rules filed in the state register on the
2 second day of June, one thousand nine hundred eighty-two,
3 relating to the state board of health (waste water treatment
4 works operations) are authorized.

5 (b) The legislative rules filed in the state register on the
6 second day of June, one thousand nine hundred eighty-two,
7 relating to the state board of health (laboratory reporting of
8 syphilis and gonorrhoea) are authorized.

9 (c) The legislative rules filed in the state register on the
10 second day of June, one thousand nine hundred eighty-two,
11 relating to the state board of health (public water supply
12 operators) with the modification of §11.02 as presented to
13 the legislative rule-making review committee on the ninth
14 day of November, one thousand nine hundred eighty-two,
15 are authorized.

16 (d) The legislative rules filed in the state register on the
17 twenty-second day of October, one thousand nine hundred
18 eighty-two, relating to the state board of health (sewage
19 systems) with the modification presented to the legislative
20 rule-making review committee on the sixth day of
21 December, one thousand nine hundred eighty-two, are
22 authorized except lines ten through seventeen, page eight of
23 the rules shall be stricken in their entirety and the
24 remaining paragraphs renumbered. These rules were
25 proposed by the state board of health pursuant to sections
26 seven and nine, article one, chapter sixteen of this code.

27 (e) The legislative rules filed in the state register on the
28 second day of June, one thousand nine hundred eighty-two,
29 relating to the state board of health (approval of
30 laboratories) are authorized. These rules were proposed by
31 the state board of health pursuant to section one, article
32 seven, chapter sixteen and section six-a, article one,
33 chapter forty-eight of this code.

34 (f) The legislative rules filed in the state register on the
35 thirteenth day of August, one thousand nine hundred
36 eighty-two, and filed with amendments on the eleventh day
37 of January, one thousand nine hundred eighty-three,
38 relating to the state board of health (nursing home
39 licensure) are authorized with the amendment of §5.15.02 of
40 those rules as set forth below:

41 By striking the word "and" at the end of subdivision (f),
42 by changing the period at the end of subdivision (g) to a
43 semicolon, and by adding the following after subdivision
44 (g): "(h) one (1) member who represents social work
45 services."

46 These rules were proposed by the state board of health

47 pursuant to section seven, article one, chapter sixteen and
48 section three, article five-c, chapter sixteen of this code.

49 (g) The legislative rules filed in the state register on the
50 third day of October, one thousand nine hundred eighty-
51 four, relating to the state board of health (trauma center or
52 facility designation) are authorized.

53 (h) The legislative rules filed in the state register on the
54 seventh day of September, one thousand nine hundred
55 eighty-three, relating to the state board of health (well
56 water regulations) are authorized with the amendments set
57 forth below:

58 §4.1. In the first sentence delete the word "obtaining"
59 and insert in lieu thereof the words "applying for." In the
60 second sentence after "4.3" add "and 4.5."

61 §4.2. At the end of the second sentence, strike the period
62 and add the words "unless emergency conditions prevail as
63 noted under §4.3."

64 With the balance of §4.2 and create a new §4.3 with the
65 following changes: In the first sentence delete the word
66 "deadline" and insert in lieu thereof the word
67 "requirements." Add after the first sentence the sentence,
68 "Emergency conditions and unavoidable circumstances are
69 those conditions involving acts of God, water outages or
70 disruption of water service, unsatisfactory water quality or
71 quantity or public health threats." In the third sentence
72 delete the word "exceed" and insert in lieu thereof the
73 words "be made in excess of."

74 Renumber §4.3 as §4.4 and add the following two
75 sentences at the end of the section: "Such standards shall
76 constitute the minimum standards for the installation, the
77 alteration or the deepening of water wells. Any plans
78 approved by the director pursuant to these regulations shall
79 be in substantial compliance with the heretofore mentioned
80 standards."

81 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as
82 §4.8 and §4.8 as §4.9.

83 §5.2. Delete the words "four (4)" and insert in lieu thereof
84 the words "two (2)" and delete the words "active,
85 continuous."

86 (i) The legislative rules filed in the state register on the
87 nineteenth day of December, one thousand nine hundred
88 eighty-three, relating to the state board of health

89 (procedures for recovery of corneal tissue for transplant)
90 are authorized.

91 (j) The legislative rules filed in the state register on the
92 twenty-first day of December, one thousand nine hundred
93 eighty-four, relating to the state board of health (reportable
94 diseases) are authorized.

95 (k) The legislative rules filed in the state register on the
96 third day of October, one thousand nine hundred eighty-
97 four, relating to the state board of health (retail food store
98 sanitation) are authorized.

§64-2-16(5b)(1). State board of health.

1 The legislative rules filed in the state register on the
2 twenty-first day of December, one thousand nine hundred
3 eighty-four, relating to the state board of health (licensure
4 of medical adult day care centers) are authorized.

§64-2-16(29b)(8). Health care cost review authority.

1 (a) The legislative rules filed in the state register on the
2 twenty-first day of October, one thousand nine hundred
3 eighty-three, relating to the health care cost review
4 authority (limitation on hospital gross patient revenue) are
5 authorized.

6 (b) The legislative rules filed in the state register on the
7 nineteenth day of December, one thousand nine hundred
8 eighty-three, relating to the health care cost review
9 authority (freeze on hospital rates and granting temporary
10 rate increases) are authorized.

11 (c) The legislative rules filed in the state register on the
12 fifteenth day of August, one thousand nine hundred eighty-
13 four, relating to the health care cost review authority
14 (hospital cost containment methodology), are authorized.

§64-2-16(29b)(23). Health care cost review authority.

1 The legislative rules filed in the state register on the
2 twenty-first day of December, one thousand nine hundred
3 eighty-four, relating to the health care cost review
4 authority (implementation of the utilization review and
5 quality assurance program) are authorized.

§64-2-17(2a)(8). Commissioner of highways.

1 The legislative rules filed in the state register on the tenth
2 day of August, one thousand nine hundred eighty-four,
3 relating to the commissioner of highways (construction and

4 reconstruction of state roads), are authorized with the
5 amendments set forth below:

6 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
7 after the word "all" the following language: "reasonable
8 and necessary" and after the word "project" inserting the
9 following language: "by the Railroad".

10 Page 16, Sec. 8.08, line 22, (unnumbered), after the word
11 "the" by striking the words "Railroad's Chief".

12 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
13 "Railroad's Chief" and adding the following new
14 language:

15 Any approval by the Department of any activity by the
16 Contractor upon the right-of-way or premises of any
17 Railroad which is provided for in this Section (8.08)
18 (including, but not limited to, approval of work, methods, or
19 procedures of work to be done, and the condition of
20 premises after completion of work by the Contractor) shall
21 in no way create any liability by the Department to the
22 Railroad except to the extent provided otherwise by law
23 and the Contractor shall, during all periods of construction
24 and thereafter, indemnify and save harmless the department
25 from any and all liability to the Railroad or any third parties
26 for any damages as a result of the work of the Contractor,
27 the methods and procedures for performing work, the
28 failure of the Contractor to properly remove equipment,
29 surplus material and other debris upon the Railroad
30 premises, or the condition of the premises of the Railroad
31 during construction or after completion of construction by
32 the Contractor as approved by the Department or
33 otherwise.

34 Page 18, Sec. 8.08, Subdivision (a), line 22, (unnumbered),
35 by striking the words "single limit" and inserting in lieu
36 thereof the following language: "per occurrence".

37 Page 19, Sec. 8.08, Subdivision (b), line 8, (unnumbered),
38 by striking the words "single limit" and inserting in lieu
39 thereof the following language: "per occurrence".

40 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting
41 after the word "occurrence" the following language: "of";
42 and after the word "injury" insert a comma and strike the
43 word "or".

§64-2-17(4)(19). Commissioner of highways.

1 The legislative rules filed in the state register on the

2 fourteenth day of August, one thousand nine hundred
3 eighty-four, modified by the commissioner of highways to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the fifth day of
6 October, one thousand nine hundred eighty-four, relating
7 to the commissioner of highways (disqualification and
8 suspension of prequalified contractors) are authorized.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor vehicles
4 (denial of driving privileges), are authorized with the
5 amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by striking
9 out the words "licensed vision specialist" and inserting in
10 lieu thereof the words "an optometrist or ophthalmologist
11 licensed in the United States," on page five, line three, and
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant
14 to section nine, article two, chapter seventeen-a and section
15 six, article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on the
17 twentieth day of November, one thousand nine hundred
18 eighty-four, relating to the commissioner of motor vehicles
19 (titling a vehicle) are authorized.

§64-2-17d(2a)(8). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of June, one thousand nine hundred eighty-
3 three, relating to the commissioner of motor vehicles
4 (compulsory insurance) are authorized.

5 (b) The legislative rules filed in the state register on the
6 tenth day of September, one thousand nine hundred eighty-
7 four, modified by the commissioner of motor vehicles to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the fifth day of
10 October, one thousand nine hundred eighty-four, relating
11 to the commissioner of motor vehicles (compulsory motor
12 vehicle liability insurance) are authorized.

§64-2-19(1)(4). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 eighth day of February, one thousand nine hundred eighty-
3 four, relating to the commissioner of agriculture (conduct of
4 beef industry self-improvement assessment program
5 referendum) are authorized.

§64-2-19(2)(2). Commissioner of agriculture.

1 The legislative rules filed in the state register on the first
2 day of November, one thousand nine hundred eighty-four,
3 relating to the commissioner of agriculture (public markets)
4 are authorized.

§64-2-19(9)(2). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 fourth day of June, one thousand nine hundred eighty-four,
3 relating to the commissioner of agriculture (animal disease
4 control) are authorized.

§64-2-19(9a)(7). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 fourth day of June, one thousand nine hundred eighty-four,
3 relating to the commissioner of agriculture (feeding
4 untreated garbage to swine) are authorized.

§64-2-19(12d)(4). Commissioner of agriculture.

1 The legislative rules filed in the state register on the tenth
2 day of September, one thousand nine hundred eighty-four,
3 relating to the commissioner of agriculture (noxious weed
4 rules) are authorized.

§64-2-19(16b)(4). Commissioner of agriculture.

1 The legislative rules filed in the state register on the fifth
2 day of January, one thousand nine hundred eighty-four,
3 relating to the commissioner of agriculture (use of certain
4 picloram products) are authorized.

§64-2-19(20)(4). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 fourth day of June, one thousand nine hundred eighty-four,

- 3 relating to the commissioner of agriculture (registration,
4 taxation and control of dogs) are authorized.

§64-2-19(23)(6). West Virginia racing commission.

1 (a) The legislative rules filed in the state register on the
2 twenty-third day of April, one thousand nine hundred
3 eighty-two, relating to the West Virginia racing commission
4 (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on the
6 twenty-third day of April, one thousand nine hundred
7 eighty-two, relating to the West Virginia racing commission
8 (Rule 107), are authorized.

9 (c) The legislative rules filed with the legislative rule-
10 making review committee on the tenth day of January, one
11 thousand nine hundred eighty-three, relating to the West
12 Virginia racing commission (Rule 471), are authorized.

13 (d) The legislative rules filed in the state register on the
14 tenth day of January, one thousand nine hundred eighty-
15 three, relating to the West Virginia racing commission (Rule
16 526), are authorized.

17 (e) The legislative rules filed in the state register on the
18 twenty-third day of April, one thousand nine hundred
19 eighty-two, relating to the West Virginia racing commission
20 (Rule 819), are authorized.

21 (f) The legislative rules filed in the state register on the
22 twentieth day of September, one thousand nine hundred
23 eighty-three, relating to the West Virginia racing
24 commission (Rule 107) greyhound racing, are authorized.

25 (g) The legislative rules filed in the state register on the
26 twentieth day of September, one thousand nine hundred
27 eighty-three, relating to the West Virginia racing
28 commission (Rule 108) greyhound racing are authorized
29 with the amendment set forth below:

30 Following the word "Association" insert a period and
31 strike the remainder of the sentence.

32 (h) The legislative rules filed in the state register on the
33 twentieth day of September, one thousand nine hundred
34 eighty-three, relating to the West Virginia racing
35 commission (Rule 108) thoroughbred racing are authorized
36 with the amendment set forth below:

37 Following the word "Association" insert a period and
38 strike the remainder of the sentence.

39 (i) The legislative rules filed in the state register on the
40 twentieth day of September, one thousand nine hundred
41 eighty-three, relating to the West Virginia racing
42 commission (Rule 392) greyhound racing, are authorized.

43 (j) The legislative rules filed in the state register on the
44 twentieth day of September, one thousand nine hundred
45 eighty-three, relating to the West Virginia racing
46 commission (Rule 455) greyhound racing are authorized.

47 (k) The legislative rules filed in the state register on the
48 twentieth day of September, one thousand nine hundred
49 eighty-three, relating to the West Virginia racing
50 commission (Rule 609A) greyhound racing are authorized.

51 (l) The legislative rules filed in the state register on the
52 twentieth day of September, one thousand nine hundred
53 eighty-three, relating to the West Virginia racing
54 commission (Rule 627) greyhound racing are authorized.

55 (m) The legislative rules filed in the state register on the
56 twentieth day of September, one thousand nine hundred
57 eighty-three, relating to the West Virginia racing
58 commission (Rule 845) thoroughbred racing are authorized.

59 (n) The legislative rules filed in the state register on the
60 ninth day of November, one thousand nine hundred eighty-
61 four, relating to the West Virginia racing commission
62 (greyhound racing — Rule 628), are authorized.

63 (o) The legislative rules filed in the state register on the
64 twenty-fifth day of September, one thousand nine hundred
65 eighty-four, relating to the West Virginia racing
66 commission (greyhound racing — Rule 672) are authorized.

67 (p) The legislative rules filed in the state register on the
68 ninth day of November, one thousand nine hundred eighty-
69 four, relating to the West Virginia racing commission
70 (thoroughbred racing — Rule 808), are authorized.

71 (q) The legislative rules filed in the state register on the
72 twenty-fifth day of September, one thousand nine hundred
73 eighty-four, relating to the West Virginia racing
74 commission (thoroughbred racing — Rule 843), are
75 authorized.

76 (r) The legislative rules filed in the state register on the
77 sixth day of August, one thousand nine hundred eighty-
78 four, relating to the West Virginia racing commission
79 (greyhound racing — Rule 845-1) are authorized.

§64-2-20(1)(7). Department of natural resources.

- 1 The legislative rules filed in the state register on the
- 2 twenty-sixth day of September, one thousand nine hundred
- 3 eighty-four, relating to the department of natural resources
- 4 (public use of state parks, forests, hunting and fishing
- 5 areas) are authorized.

§64-2-20(2)(40b). Department of natural resources.

- 1 The legislative rules filed in the state register on the
- 2 twenty-eighth day of August, one thousand nine hundred
- 3 eighty-four, relating to the department of natural resources
- 4 (small arms hunting) are authorized.

§64-2-20(5a)(3). Water resources board.

- 1 (a) The legislative rules filed in the state register on the
- 2 sixth day of January, one thousand nine hundred eighty-
- 3 three, relating to the state water resources board
- 4 (underground injection control program), are authorized.
- 5 (b) The legislative rules filed in the state register on the
- 6 fifteenth day of November, one thousand nine hundred
- 7 eighty-three, relating to the state water resources board
- 8 (special regulations), are authorized.
- 9 (c) The legislative rules filed in the state register on the
- 10 third day of August, one thousand nine hundred eighty-
- 11 three, relating to the state water resources board
- 12 (groundwater protection standards), are authorized.
- 13 (d) The legislative rules filed in the state register on the
- 14 fifteenth day of November, one thousand nine hundred
- 15 eighty-three, relating to the state water resources board
- 16 (state national pollutant discharge elimination system
- 17 (NPDES) program), are authorized.
- 18 (e) The Legislature hereby authorizes and directs the
- 19 water resources board to promulgate rules relating to water
- 20 quality standards in exact conformity with the rules
- 21 relating to water quality standards tendered to the
- 22 secretary of state on the seventh day of March, one thousand
- 23 nine hundred eighty-four, by the executive secretary of the
- 24 state water resources board, to be received and filed for
- 25 inclusion in the state register by the secretary of state.
- 26 (f) The legislative rules filed in the state register on the
- 27 seventh day of January, one thousand nine hundred eighty-

28 five, modified by the water resources board to meet the
29 objections of the legislative rule-making review committee
30 and refiled in the state register on the thirteenth day of
31 February, one thousand nine hundred eighty-five, relating
32 to the water resources board (water quality standards), are
33 authorized.

§64-2-20(5c)(6). Water development authority.

1 The legislative rules filed in the state register on the
2 thirtieth day of August, one thousand nine hundred eighty-
3 four, relating to the water development authority (hardship
4 grant funds) are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on the
2 sixth day of January, one thousand nine hundred eighty-
3 four, relating to the department of natural resources
4 (hazardous waste management) are authorized.

5 (b) The legislative rules filed in the state register on the
6 sixth day of January, one thousand nine hundred eighty-
7 four, relating to the air pollution control commission (to
8 prevent and control air pollution from hazardous waste
9 treatment, storage or disposal facilities) (series XXV) are
10 authorized with the amendments set forth below:

11 Page 3, §1.06, change the §title from "Enforcement" to
12 "Procedure"; place an "(a)" in front of the existing
13 paragraph and add the following:

14 "(b) Permit applications filed pursuant to this
15 regulation shall be processed in accordance with the
16 permitting procedures as set forth in code §20-5E of this
17 regulation. Permit procedures set forth in code §16-20 and
18 any other regulation of this commission are not applicable
19 to any permit application filed pursuant to this regulation."

20 Such rules shall also include a section which shall read as
21 follows:

22 "The commission shall report to the legislative rule-
23 making review committee as required by that committee,
24 but in no event later than the first day of the regular session
25 of the Legislature in the year one thousand nine hundred
26 eighty-five. Such report shall include information
27 regarding the commission's data gathering efforts, the
28 development of compliance programs, the progress in

29 implementation, and such other matters as the committee
30 may require, pertaining to the regulations hereby
31 authorized."

32 (c) The legislative rules filed in the state register on the
33 third day of December, one thousand nine hundred eighty-
34 four, modified by the department of natural resources to
35 meet the objections of the legislative rule-making review
36 committee and refiled in the state register on the thirteenth
37 day of February, one thousand nine hundred eighty-five,
38 relating to the department of natural resources (hazardous
39 waste management), are authorized.

§64-2-20 (5e) (7). Commissioner of highways.

1 (a) The legislative rules filed in the state register on the
2 twenty-first day of October, one thousand nine hundred
3 eighty-three, relating to the commissioner of highways
4 (transportation of hazardous waste by highway
5 transporters) are authorized with the amendments set forth
6 below:

7 Pages 3 and 7, after "40CFR part 262" add the words "as
8 amended through February 20, 1984,"

9 Page 7, after "49CFR parts 171-179" add the words "as
10 amended through February 20, 1984," and

11 Page 11, after "49CFR part 171.16" add the words "as
12 amended through February 20, 1984."

13 (b) The legislative rules filed in the state register on the
14 seventh day of September, one thousand nine hundred
15 eighty-four, modified by the commissioner of highways to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the fifth day of
18 October, one thousand nine hundred eighty-four, relating
19 to the commissioner of highways (transportation of
20 hazardous waste) are authorized with the amendment set
21 forth below:

22 Page 5, by amending §3.01 by adding thereto a new
23 subsection, designated subsection (4), to read as follows:
24 "(4) Before accepting hazardous waste from a rail
25 transporter, a highway transporter must sign and date the
26 manifest and provide a copy to the rail transporter."

§64-2-20 (6) (2). Department of natural resources.

1 (a) The legislative rules filed in the state register on the

2 eighth day of December, one thousand nine hundred eighty-
3 three, relating to the department of natural resources
4 (surface mining) are authorized with the amendments set
5 forth below:

6 Page 3-4, section 3E.01 by adding after the word
7 "engineer" the words "or licensed land surveyor."

8 Page 3-5, section 3E.02, subsection (a), by adding after
9 the word "mining" the words "or civil."

10 Page 3-5, section 3E.02, subsection (b), by adding after
11 the first sentence—"Those persons who have been approved
12 to date need not make said demonstration."

13 (b) The legislative rules filed in the state register on the
14 seventh day of November, one thousand nine hundred
15 eighty-four, relating to the department of natural resources
16 (surface mining reclamation) are authorized.

§64-2-20 (6) (7). Department of natural resources.

1 The legislative rules filed in the state register on the
2 seventh day of November, one thousand nine hundred
3 eighty-four, relating to the department of natural resources
4 (coal refuse disposal) are authorized.

§64-2-20 (6) (43). Department of natural resources.

1 The legislative rules filed in the state register on the ninth
2 day of November, one thousand nine hundred eighty-four,
3 relating to the department of natural resources (transfer of
4 the state national pollutant discharge elimination system
5 program), are authorized with the amendments set forth
6 below:

7 Page 10-5, by striking §10B.19 and inserting in lieu
8 thereof a new §10B.19, to read as follows: " 'Effluent
9 limitations guidelines' means a regulation published by the
10 Administrator under Section 304(b) or Section 301 (b) (1)
11 (B) of the CWA to adopt or revise effluent limitations or
12 levels of effluent quality attainable through the application
13 of secondary or equivalent treatment. For the coal industry
14 these regulations are published at 40 C.F.R. Parts 434 and
15 133. (See: Appendix G and H)"

§64-2-21 (5) (5c). Department of labor.

1 The legislative rules filed in the state register on the
2 second day of February, one thousand nine hundred eighty-

3 four, relating to the department of labor (polygraph
4 examinations) are authorized.

§64-2-23 (1) (13). Workers' compensation commissioner.

1 The legislative rules filed in the state register on the
2 twenty-fifth day of October, one thousand nine hundred
3 eighty-four, relating to the workers' compensation commis-
4 sioner (time limits for the administrative proceedings of
5 adjudications and awards) are authorized.

§64-2-23 (1) (15). Workers' compensation commissioner.

1 (a) The legislative rules filed in the state register on the
2 twenty-fifth day of October, one thousand nine hundred
3 eighty-four, modified by the workers' compensation
4 commissioner to meet the objections of the legislative rule-
5 making review committee and refiled in the state register on
6 the ninth day of January, one thousand nine hundred
7 eighty-five, relating to the workers' compensation
8 commissioner (self-insured employers) are authorized.

9 (b) The legislative rules filed in the state register on the
10 twenty-fifth day of October, one thousand nine hundred
11 eighty-four, modified by the workers' compensation
12 commissioner to meet the objections of the legislative rule-
13 making review committee and refiled in the state register on
14 the fifth day of December, one thousand nine hundred
15 eighty-four, relating to the workers' compensation
16 commissioner (payment of attorney's fees) are authorized.

§64-2-29 (1) (6). Archives and history commission.

1 The legislative rules filed in the state register on the
2 fourteenth day of September, one thousand nine hundred
3 eighty-four, relating to the archives and history commission
4 (certified local government program) are authorized with the
5 following amendments;

6 §4.02, subsections a, b, c, d, e and i are amended in their
7 entirety to read as follows:

8 "a. The local government shall have created a historic
9 landmark commission or commission, consisting of five (5)
10 members, to carry out the provisions of the ordinance or
11 order."

12 "b. HLC or commission membership shall be drawn
13 from among persons with demonstrated interest,

14 competence, or knowledge in historic preservation and
15 local history. To the extent available in the community,
16 members of the HLC shall be preservation-related
17 professionals (including the professions of history,
18 architecture, architectural history, planning, real estate,
19 American studies, geography, landscape architecture, law,
20 engineering, or archaeology).”

21 “c. The local government, be certified without the
22 minimum number or types of professional disciplines, must
23 report to the SHPO’s satisfaction that it has made a
24 reasonable effort to fill those positions.”

25 “d. Commission meetings shall be held at regular
26 intervals at least four times each year, advertised in
27 advance, and open to the public. The Commission shall
28 establish rules of procedure or bylaws including a code of
29 conduct.”

30 “e. The Commission shall transmit an annual report of
31 its activities to the State Historic Preservation Officer.
32 Such reports shall include, at a minimum, new designations
33 made, progress on survey activities, and attendance
34 records. Reports shall be submitted within sixty days after
35 the end of the fiscal year for the local government or portion
36 of the fiscal year in the first year of the establishment of the
37 commission. These reports will be reviewed and evaluated
38 by the SHPO to ensure that the Commission’s activities are
39 consistent with the State Historic Preservation Plan.”

40 “i. Commission responsibilities must be
41 complementary to and carried out in coordination with
42 those of the State Historic Preservation Office as outlined in
43 36 CFR 61.4 (b).”

44 §5.01, subsections a and d are amended to read in their
45 entirety as follows:

46 “a. A written assurance by the chief elected official that
47 the local government does fulfill all the standards for
48 certification outlined above.”

49 “d. Resumes of each of the members of the historic
50 landmark commission including credentials of member
51 expertise in fields related to historic preservation. Where no
52 professional members have been appointed an explanation
53 and information demonstrating good faith efforts to obtain
54 such members shall be included.”

55 §5.03 is amended in its entirety to read as follows:

56 “5.03—*Determination that Local Government Fulfills*
57 *Requirements for Certification*—if the State Historic
58 Preservation Officer determines that the local government
59 fulfills the requirements for certification, the State Historic
60 Preservation Officer will prepare a written certification
61 agreement with the local government that lists the specific
62 responsibilities of the local government where certified.
63 These responsibilities will include those powers and duties
64 as stated in 4.02. The SHPO will notify the United States
65 Secretary of the Interior, or designee and furnish a copy of
66 the approved request and the certification agreement and
67 shall respond to the local government within fifteen days of
68 the Secretary’s response.”

69 The fourth line of §5.04 is amended to read as follows:
70 “Secretary of the Interior within 15 working days. The
71 certification”

72 The last line of Section 6 is amended to read as follows:
73 “(National Historic Preservation Act, Section 101(c)(2)”

74 The section heading to §6.01 is amended in its entirety to
75 read as follows: “6.01 Notification of Commission by SHPO
76 of National Register Nomination of Property Within Local
77 Government Jurisdiction—”

78 The last three lines of §6.01 are amended in their entirety
79 to read as follows: “101(a) of the National Historic
80 Preservation Act, as amended. The State may expedite such
81 process with the concurrence of the certified local
82 government.”

83 The first line after the section heading of §6.02 is
84 amended to read as follows: “(National Historic
85 Preservation Act, Sec. 101(c)(2)(b). If” and the third
86 sentence of said §6.02 is amended in its entirety to read as
87 follows: “If such an appeal is filed, the State shall follow the
88 procedures for making a nomination pursuant to
89 established procedures (section 101(a) of the Act).”

90 The second sentence of §6.03 is amended in its entirety to
91 read as follows: “If an HLC or commission does not have a
92 professional member with the necessary federal
93 qualifications in the area, the HLC can obtain the opinion of
94 a qualified professional in the area and consider their
95 opinion in their recommendation.”

96 §6.04 is amended in its entirety to read as follows:

97 “6.04—*Commission Qualifications for Federal Pass*

98 *Through Funds*—Federal regulations also require that
99 commissions possess certain qualifications in order to
100 receive federal pass through funds. These are explained in
101 Section 4.02.”

102 §7.01 is amended in its entirety to read as follows:

103 “7.01—*Performance Review of Certified Local Gov-*
104 *ernment by SHPO*—The SHPO will review the
105 commission’s annual report to ensure that the performance
106 of the local government is consistent with the State Historic
107 Preservation Plan. If the SHPO determines that the
108 performance of a certified local government is not in
109 conformance with the certification agreement and the State
110 Historic Preservation Plan the State Historic Preservation
111 Officer shall document that determination and recommend
112 to the certified local government steps which may be taken
113 to improve their performance.”

114 The last sentence of §7.03 is amended in its entirety to
115 read as follows: “This closeout will follow procedures
116 specified in National Register Programs Guidelines.”

117 The first sentence of §8.01 is amended in its entirety to
118 read as follows: “A minimum of 10% of the state’s annual
119 apportionment from the Historic Preservation Fund of the
120 Department of the Interior will be set aside for transfer to
121 qualified CLG’s in accordance with the National Historic
122 Preservation Act as amended.”

123 The third line of the first sentence of §8.04 is amended in
124 its entirety to read as follows: “consistent with 35(FR 61.7(f)
125 (1), which states that the amount awarded to”.

126 §8.05 is amended in its entirety to read as follows:

127 “8.05—*Application and Selection Criteria*—Project
128 application forms and selection criteria will be made
129 available through individual notification and public
130 advertisement from the SHPO of the West Virginia
131 Department of Culture and History in June of each year.
132 The criteria will be coordinated with those used to select
133 survey and planning grants during that fiscal year. Funds
134 must be applied for by August 30 of each year. Funding in
135 any prior year does not guarantee continued funding. The
136 project schedule and deadlines may vary from year to year
137 and is dependent upon the time frame in which the
138 Secretary of the Interior notifies the state of its

139 apportionment from the annual Historic Preservation
140 Fund.”

141 The third sentence of §8.06 is amended in its entirety to
142 read as follows: “The SHPO is responsible for proper
143 accounting of Historic Preservation Fund grants to CLG’s
144 in accordance with Office Management and Budget
145 Circular A-102, Attachment P Audit Requirements.”

§64-2-29(5a)(24). State athletic commission.

1 The legislative rules filed in the state register on the
2 twentieth day of February, one thousand nine hundred
3 eighty-five, relating to the state athletic commission
4 (professional and amateur boxing) are authorized.

§64-2-30(5)(19). Board of pharmacy.

1 The legislative rules filed in the state register on the
2 second day of October, one thousand nine hundred eighty-
3 four, modified by the board of pharmacy to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the ninth day of January,
6 one thousand nine hundred eighty-five, relating to the
7 board of pharmacy (parenteral/enteral compounding) are
8 authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

1 The legislative rules filed in the state register on the
2 twenty-seventh day of July, one thousand nine hundred
3 eighty-four, modified by the board of embalmers and
4 funeral directors to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the ninth day of January, one thousand nine
7 hundred eighty-five, relating to the board of embalmers
8 and funeral directors (apprenticeship), are authorized.

§64-2-30(21)(6). Board of examiners of psychologists.

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hundred
3 eighty-four, relating to the board of examiners of
4 psychologists (examination fee) are authorized.

§64-2-32(4)(412). State auditor, securities commissioner.

1 (a) The legislative rules authorized by the Legislature in

2 section thirty-two (four) (four hundred two) of this article
3 were also proposed by the state auditor, securities
4 commissioner pursuant to section four hundred twelve,
5 article four, chapter thirty-two of this code.

6 (b) The legislative rules filed in the state register on the
7 eighteenth day of January, one thousand nine hundred
8 eighty-five, relating to the state auditor, securities
9 commissioner (filing fee) are authorized.

§64-2-46a(6a)(8). Attorney general.

1 The legislative rules filed in the state register on the sixth
2 day of December, one thousand nine hundred eighty-four,
3 relating to the attorney general (third party dispute
4 mechanisms) are authorized.

§64-2-61(11a)(6). Attorney general.

1 The legislative rules filed in the state register on the ninth
2 day of January, one thousand nine hundred eighty-five,
3 relating to the attorney general (fair treatment of crime
4 victims and witnesses) are authorized.

CHAPTER 155

(Com. Sub. for H. B. 1588—By Delegate Mastrantoni and Delegate Blatnik)

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

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-bb, relating to the authority of county commissions to levy for, to erect, maintain and operate sheltered workshops in the county and to render financial aid to sheltered workshops in the county; definitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**§7-1-3bb. Levy for, establishment and operation of sheltered workshops; financial aid.**

1 (a) The county commission in any county is authorized,
2 without limiting any other levying authority the counties may
3 have, to levy for and may erect, maintain and operate sheltered
4 workshops in the county and may render financial aid to any
5 one or more sheltered workshop facilities operating in the
6 county.

7 (b) As used in this section:

8 (1) "Sheltered workshop" means a particular type of
9 vocational rehabilitation facility where any manufacture or
10 handiwork is carried on and which is operated by a public
11 agency or by a private corporation or association, no part of
12 the net earnings of which inures or may lawfully inure to the
13 benefit of any private shareholder or individual, or by a
14 cooperative, for the primary purpose of providing remunera-
15 tive employment to disabled persons (a) as an interim step in
16 the rehabilitation process for those who cannot be readily
17 absorbed in the competitive labor market; or (b) during such
18 time as employment opportunities for them in the competitive
19 labor market do not exist; or (c) for providing vocational
20 evaluation and work adjustment services for disadvantaged
21 persons.

22 (2) "Vocational rehabilitation facility" means a facility
23 which is operated for the primary purpose of providing
24 vocational rehabilitation services to, or gainful employment
25 for, handicapped individuals, or, for providing evaluation and
26 work adjustment services for disadvantaged individuals, and
27 which provides singly or in combination one or more of the
28 following services for handicapped individuals: (a) Compre-
29 hensive rehabilitation services which shall include, under one
30 management, medical, psychological, social and vocational
31 services; (b) testing, fitting or training in the use of prosthetic
32 and orthopedic devices; (c) prevocational conditioning or
33 recreational therapy; (d) physical and occupational therapy; (e)
34 therapy for speech and hearing pathology; (f) psychological
35 and social services; (g) evaluation; (h) personal and work
36 adjustment; (i) vocational training (in combination with other
37 rehabilitation services); (j) evaluation or control of special

38 disabilities; and (k) extended employment for the severely
39 handicapped who cannot be readily absorbed in the compet-
40 itive labor market; but all medical and related health services
41 must be prescribed by, or under the formal supervision of,
42 persons licensed to practice medicine or surgery in the state.

CHAPTER 156

(S. B. 349—By Senator Stacy)

[Passed April 10, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to advance payments to sheltered workshops; and providing certain restrictions and requirements in regard to such payments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. VOCATIONAL REHABILITATION FACILITIES.

§18-10B-2a. Advance payment to facilities.

1 Notwithstanding section ten, article three, chapter
2 twelve of this code, the director of the division of voca-
3 tional rehabilitation is authorized to make advance
4 payments to public and private nonprofit sheltered work-
5 shops when it has been determined by the director after
6 serious consideration to be necessary for the initiation or
7 continuation of such workshops. Such advance payments
8 shall be for a period no greater than ninety days in
9 advance of rendition or continuation of rehabilitation
10 services provided by the public or private nonprofit
11 sheltered workshop.

CHAPTER 157

(Com. Sub. for H. B. 1102—By Delegate Knight and Delegate Faircloth)

[Passed April 8, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rescheduling the termination date of certain governmental entities or programs; changing certain names.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be
2 terminated on the date indicated but no governmental entity
3 or program shall be terminated under this article unless a
4 performance audit has been conducted of such entity or
5 program, except as authorized under section fourteen of this
6 article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; geological and
9 economic survey commission; motor vehicle certificate appeal
10 board; child welfare licensing board.

11 (2) On the first day of July, one thousand nine hundred
12 eighty-two: Ohio River basin commission; commission on
13 postmortem examination; state commission on manpower,
14 training and technology.

15 (3) On the first day of July, one thousand nine hundred
16 eighty-three: Anatomical board; economic opportunity
17 advisory committee; community development authority board.

18 (4) On the first day of July, one thousand nine hundred
19 eighty-four: The following programs of the department of
20 natural resources: Rabies control, work incentive program;

21 West Virginia alcoholic beverage control licensing advisory
22 board.

23 (5) On the first day of July, one thousand nine hundred
24 eighty-five; beautification commission; labor management
25 advisory council.

26 (6) On the first day of July, one thousand nine hundred
27 eighty-six: Board of regents; water resources board; water
28 resources division of the department of natural resources;
29 division of archives and history; state board of risk and
30 insurance management; interstate commission on the Potomac
31 River basin; health resources advisory council; welfare
32 advisory council; board of banking and financial institutions;
33 public service commission: *Provided*, That in the case of the
34 public service commission, the study by the committee
35 required by this article shall be completed on or before the
36 first day of July, one thousand nine hundred eighty-five, and
37 shall be by such date transmitted to the joint committee on
38 government and finance for review by the joint committee or
39 its subcommittee designated pursuant to section one, article
40 one, chapter twenty-four of this code for review, examination
41 and study of the operations of the public service commission;
42 state building commission; capitol building commission; public
43 employees insurance board.

44 (7) On the first day of July, one thousand nine hundred
45 eighty-seven: The geological and economic survey; the
46 commission on uniform state laws; department of labor; civil
47 service commission advisory board; council of finance and
48 administration; motorcycle safety standards and specifications
49 board; oil and gas inspectors' examining board.

50 (8) On the first day of July, one thousand nine hundred
51 eighty-eight: Information system advisory commission;
52 veteran's council; labor management relations board; board of
53 investments; records management and preservation advisory
54 committee; minimum wage rate board; Ohio River valley water
55 sanitation commission; southern regional education board;
56 department of corrections.

57 (9) On the first day of July, one thousand nine hundred
58 eighty-nine: Mental retardation advisory committee; intera-
59 gency committee on pesticides; commission on charitable
60 organizations; board of school finance; veteran's affairs

61 advisory council; emergency medical services advisory council;
62 pesticides board of review; reclamation commission; West
63 Virginia health care cost review authority.

64 (10) On the first day of July, one thousand nine hundred
65 ninety: Consumer affairs advisory council; savings and loan
66 association; forest industries industrial foundation; U.S.
67 geological survey program within the department of natural
68 resources; drivers' license advisory board; the following
69 divisions or programs of the department of agriculture: Soil
70 conservation committee, rural resource division, meat
71 inspection program; women's commission; office of workers'
72 compensation commissioner.

73 (11) On the first day of July, one thousand nine hundred
74 ninety-one: State advisory council of the department of
75 employment security; department of human services; oil and
76 gas conservation commission.

CHAPTER 158

(Com. Sub. for S. B. 609—By Senators Tucker and Spears)

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

AN ACT to amend and reenact sections nine and twenty-seven, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property exempt from taxation; allowing a taxpayer to obtain relief from overpayment of taxes due to a clerical error or other mistake within one year after the mistake is discovered; notice to taxpayer; providing that such relief from overpayment discovered after one year be in the form of a credit against tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exemption from taxation.

§11-3-27. Relief in county commission from erroneous assessments.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this sec-
2 tion, and to the extent herein limited, shall be exempt
3 from taxation, that is to say: Property belonging to the
4 United States, other than property permitted by the
5 United States to be taxed under state law; property be-
6 longing exclusively to the state; property belonging exclu-
7 sively to any county, district, city, village or town in this
8 state, and used for public purposes; property located in this
9 state, belonging to any city, town, village, county or any
10 other political subdivision of another state, and used for
11 public purposes; property used exclusively for divine wor-
12 ship; parsonages, and the household goods and furni-
13 ture pertaining thereto; mortgages, bonds and other evi-
14 dence of indebtedness in the hands of bona fide owners
15 and holders hereafter issued and sold by churches and
16 religious societies for the purposes of securing money to
17 be used in the erection of church buildings used exclu-
18 sively for divine worship, or for the purpose of paying
19 indebtedness thereon; cemeteries; property belonging to,
20 or held in trust for, colleges, seminaries, academies and
21 free schools, if used for educational, literary or scientific
22 purposes, including books, apparatus, annuities and furni-
23 ture; public and family libraries; property used for
24 charitable purposes, and not held or leased out for profit;
25 property used for the public purposes of distributing
26 water or providing sewer service by a duly chartered
27 nonprofit corporation when such property is not held,
28 leased out or used for profit; property used for area
29 economic development purposes by nonprofit corporations
30 when such property is not leased out for profit; all real
31 estate not exceeding one-half acre in extent, and the
32 buildings thereon, and used exclusively by any college or
33 university society as a literary hall, or as a dormitory or
34 clubroom, if not leased or otherwise used with a view to
35 profit; all property belonging to benevolent associations,
36 not conducted for private profit; property belonging to

37 any public institution for the education of the deaf, dumb
38 or blind, or any hospital not held or leased out for profit;
39 house of refuge, lunatic or orphan asylum; homes for
40 children or for the aged, friendless or infirm, not conduct-
41 ed for private profit; fire engines and implements for
42 extinguishing fires, and property used exclusively for the
43 safekeeping thereof, and for the meeting of fire com-
44 panies; and all property on hand to be used in the sub-
45 sistence of livestock on hand at the commencement of the
46 assessment year; household goods to the value of two
47 hundred dollars, whether or not held or used for profit;
48 bank deposits and money; household goods (which term
49 is deemed for purposes of this section to mean only
50 personal property and household goods commonly found
51 within the house and items used to care for the house and
52 its surrounding property) when not held or used for
53 profit, and personal effects (which term is deemed for
54 purposes of this section to mean only articles and items
55 of personal property commonly worn on or about the
56 human body, or carried by a person and normally thought
57 to be associated with the person) when not held or used
58 for profit; dead victuals laid away for family use and any
59 other property or security exempted by any other provi-
60 sion of law; but no property shall be exempt from taxa-
61 tion which shall have been purchased or procured for the
62 purpose of evading taxation, whether temporarily holding
63 the same over the first day of the assessment year or
64 otherwise: *Provided*, That real property which is exempt
65 from taxation by this section shall be entered upon the
66 assessor's books, together with the true and actual value
67 thereof, but no taxes shall be levied upon the same or
68 extended upon the assessor's books.

69 Notwithstanding any other provisions of this section,
70 however, no language herein shall be construed to exempt
71 from taxation any property owned by, or held in trust
72 for, educational, literary, scientific, religious or other
73 charitable corporations or organizations, unless such
74 property is used primarily and immediately for the pur-
75 poses of such corporations or organizations.

76 The tax commissioner shall, by issuance of regulations,

77 provide each assessor with guidelines to ensure uniform
78 assessment practices statewide to effect the intent of this
79 section.

§11-3-27. Relief in county commission from erroneous assessments.

1 Any taxpayer, or the prosecuting attorney or tax com-
2 missioner, upon behalf of the state, county and districts,
3 claiming to be aggrieved by any entry in the property
4 books of the county, including entries with respect to
5 classification and taxability of property, resulting from a
6 clerical error, or a mistake occasioned by an uninten-
7 tional or inadvertent act as distinguished from a mistake
8 growing out of negligence or the exercise of poor judg-
9 ment, may, within one year from the time the property
10 books are delivered to the sheriff or within one year from
11 the time such clerical error or mistake is discovered or
12 reasonably could have been discovered, apply for relief
13 to the county commission of the county in which such
14 books are made out: *Provided*, That upon the discovery
15 of any such clerical error or mistake by the sheriff or the
16 assessor, or either officer having knowledge thereof, the
17 sheriff or assessor shall cause notice to be sent to any
18 taxpayer affected by the clerical error or mistake by first-
19 class United States mail advising the taxpayer of the
20 right to make application from relief from the erroneous
21 assessment. Before the application is heard, the taxpayer
22 shall give notice to the prosecuting attorney of the
23 county, or the state shall give notice to the taxpayer, as
24 the case may be. The application, whether by the tax-
25 payer or the state, shall have precedence over all other
26 business before the court; but any order or judgment
27 shall show that either the prosecuting attorney or the tax
28 commissioner was present defending the interests of the
29 state, county and districts: *Provided, however*, That the
30 provisions of this section shall not be construed as giving
31 county commissions jurisdiction to consider any question
32 involving the classification or taxability of property which
33 has been the subject matter of an appeal under the pro-
34 visions of section twenty-four-a of this article; and any

35 other such clerical error or mistake involving the classi-
36 fication or taxability of property, may be corrected by
37 the county commission under the provisions of this sec-
38 tion only when approved, in writing, by the county
39 assessor.

40 In the event it is ascertained that the applicant is
41 entitled to relief, any excess taxes already paid shall be
42 refunded and, if charged but not paid, the applicant shall
43 be released from the payment of such excess: *Provided,*
44 That in the event a mistake or error is discovered more
45 than one year after the property books for the year or
46 years in question are delivered to the sheriff, any relief
47 granted to the applicant shall be in the form of a credit
48 against taxes owing for the following year or years
49 until the debt is paid. Whenever any correction is made
50 by the county commission, the clerk shall certify copies
51 of the order to the auditor, to the sheriff and to the
52 assessor, and in the case of real estate, the assessor shall
53 thereupon make a correction in accordance with the order
54 in his landbook for the next year. Any such order deliv-
55 ered to the sheriff or other collecting officer shall restrain
56 him from collecting so much as is erroneously charged
57 against the taxpayer, and, if already collected, shall com-
58 pel him to refund the money if such officer has not
59 already paid it into the treasury. In either case, when
60 indorsed by the person exonerated, it shall be sufficient
61 voucher to entitle the officer to a credit for so much in
62 his settlement which he is required to make. If the appli-
63 cant be the state, the order certified to the sheriff shall
64 show the correct amount of taxes due the state, county
65 and districts and shall be sufficient to authorize collection
66 in the same manner as for other state, county and district
67 taxes.

CHAPTER 159

(S. B. 538—By Senators Spears and R. Williams)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, five,

seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, all relating generally to assessment of public service businesses for ad valorem property taxes; changing title of article; transferring to tax commissioner duty of making such assessments; providing form and manner of making return of property; imposing criminal penalty for failure to make such return; permitting tax commissioner to compel furnishing of information by public service business by issuance of subpoena or subpoena duces tecum; providing for service and enforcement of subpoena and subpoena duces tecum; requiring issuance of tentative assessments; providing for administrative hearing if petition for reassessment is timely filed; making tentative assessment prima facie evidence of assessed value; providing for service of notice of tentative assessments and assessments; providing rules for timely filing of returns and other documents; providing for issuance of assessments; permitting appeal of assessment where tentative assessment was protested and administrative hearing held; providing procedures for administrative hearing and appeals to court; specifying time periods within which petitions for reassessment and petitions for appeal must be filed; providing for assessment to be prima facie evidence of assessed value; providing for apportionment of value among counties, school districts and municipalities by tax commissioner; and providing for auditor to enter assessments against public service business.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-

e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

- §11-6-1. Returns of property to tax commissioner.
- §11-6-3. Same—Toll bridges.
- §11-6-4. Same—Car line companies.
- §11-6-5. Same—Pipeline companies.
- §11-6-7. Same—Telegraph and telephone companies.
- §11-6-8. Form and manner of making return; failure to make return; criminal penalty.
- §11-6-9. Compelling such return; procuring information and tentative assessment by tax commissioner.
- §11-6-10. Failure to give information required by tax commissioner; criminal penalty.
- §11-6-11. Valuation of property by tax commissioner.
- §11-6-11a. Notice of tentative assessment; petition for reassessment.
- §11-6-11b. Administrative hearing; procedures.
- §11-6-11c. Service of notice.
- §11-6-11d. Timely filing.
- §11-6-11e. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.
- §11-6-12. Appeal from valuation by tax commissioner.
- §11-6-13. Apportionment of value among counties, districts and municipalities.
- §11-6-13a. Bridge companies; apportionment of assessed valuation.
- §11-6-13b. Bus companies; apportionment of assessed valuation.
- §11-6-13c. Express companies; apportionment of assessed valuation.
- §11-6-13d. Light, heat or power companies; apportionment of assessed valuation.
- §11-6-13e. Pipeline companies; apportionment of assessed valuation.
- §11-6-13f. Railroad companies; apportionment of assessed valuation.
- §11-6-13g. Railroad car companies; apportionment of assessed valuation.
- §11-6-13h. Telephone and telegraph companies; apportionment of assessed valuation.
- §11-6-13i. Water distribution companies; apportionment of assessed valuation.
- §11-6-13j. Other companies; apportionment of assessed valuation.
- §11-6-16. Entry of assessment by auditor of property of such public service businesses.

§11-6-1. Returns of property to tax commissioner.

- 1 (a) On or before the first day of May in each year a return
- 2 in writing shall be filed with the tax commissioner: (1) By
- 3 the owner or operator of every railroad, wholly or in part
- 4 within this state; (2) by the owner or operator of every
- 5 railroad bridge upon which a separate toll or fare is
- 6 charged; (3) by the owner or operator of every car or line of
- 7 cars used upon any railroad within the state for
- 8 transportation or accommodation of freight or passengers,
- 9 other than such owners or operators as may own or operate
- 10 a railroad within the state; (4) by the owner or operator of

11 every express company or express line, wholly or in part
12 within this state, used for the transportation by steam or
13 otherwise of freight and other articles of commerce; (5) by
14 the owner or operator of every pipeline, wholly or in part
15 within this state, used for the transportation of oil or gas or
16 water, whether such oil or gas or water be owned by such
17 owner or operator or not, or for the transmission of
18 electrical or other power, or the transmission of steam or
19 heat and power or of articles by pneumatic or other power;
20 (6) by the owner or operator of every telegraph or telephone
21 line, wholly or in part within this state, except private lines
22 not operated for compensation; (7) by the owner and
23 operator of every gas company and electric lighting
24 company furnishing gas or electricity for lighting, heating
25 or power purposes; (8) by the owner or operator of
26 hydroelectric companies for the generation and
27 transmission of light, heat or power; (9) by the owner or
28 operator of water companies furnishing or distributing
29 water; and (10) by the owner or operator of all other public
30 service corporations or persons engaged in public service
31 business whose property is located wholly or in part within
32 this state.

33 (b) The words "owner or operator," as applied herein to
34 railroad companies, shall include every railroad company
35 incorporated by or under the laws of this state for the
36 purpose of constructing and operating a railroad, or of
37 operating part of a railroad within this state, whether such
38 railroad or any part of it be in operation or not; and shall
39 also include every other railroad company, or persons or
40 associations of persons, owning or operating a railroad or
41 part of a railroad in this state on which freight or
42 passengers, or both, are carried for compensation. The word
43 "railroad," as used herein includes every street, city,
44 suburban or electric or other railroad or railway.

45 (c) The words "owner or operator," as applied herein to
46 express companies, shall include every express company
47 incorporated by or under the laws of this state, or doing
48 business in this state, whether incorporated or not, and any
49 person or association of persons, owning or operating any
50 express company or express line upon any railroad or
51 otherwise, doing business partly or wholly within this state.

52 (d) Such return shall be signed and sworn to by such

53 owner or operator if a natural person, or, if such owner or
54 operator shall be a corporation, shall be signed and sworn to
55 by its president, vice president, secretary or principal
56 accounting officer.

57 (e) The return required by this section of every such
58 owner or operator shall cover the year ending on the thirty-
59 first day of December, next preceding, and shall be made on
60 forms prescribed by the tax commissioner, who is hereby
61 invested with full power and authority and it is hereby
62 made his duty to prescribe such forms as will require from
63 any owner or operator herein mentioned such information
64 as in the judgment of the tax commissioner may be of use to
65 him in determining the true and actual value of the
66 properties of such owners or operators.

§11-6-3. Same—Toll bridges.

1 In the case of any bridge upon which a separate toll or fare
2 is charged, such return shall show: (a) The location of the
3 same; (b) for what used; and, if used by a railroad, what
4 railroad uses it; (c) the length of such bridge; and, if used by
5 a railroad, the number of tracks on it; (d) all other property
6 owned by such owner or operator and used in connection
7 with such bridge; (e) the capital actually invested; the
8 amount of capital stock authorized and issued, the par
9 value and the market value of the shares into which the
10 capital stock is divided, and the amount of dividends
11 declared on the capital stock within the twelve months
12 preceding the first day of the current assessment year; the
13 total amount of bonded indebtedness and of indebtedness
14 not bonded; gross earnings for the year from all sources; (f)
15 gross expenditures for the year, giving a detailed statement
16 thereof under each class or head of expenditure; and (g) any
17 other information requested by the tax commissioner which
18 the tax commissioner deems may be of use to him in
19 determining the actual value of such bridge or bridges.

§11-6-4. Same—Car line companies.

1 In the case of car lines used for the transportation or
2 accommodation of passengers or freight by owners or
3 operators, other than railroad companies making their
4 return under this law, such return shall show for every such
5 owner or operator: (a) All cars and other rolling stock,
6 giving a detailed statement of the number of cars, including

7 passenger, mail, express, baggage, freight, sleeping, dining,
8 parlor, refrigerator, stock or other cars of every description,
9 and the true and actual value of all such cars used wholly or
10 in part in this state, distinguishing between those used
11 wholly in this state and those used partly within and partly
12 without the state, and the true and actual value of those
13 used wholly within the state and those used partly within
14 and partly without the state, and the proportional value of
15 such cars used partly within and partly without the state,
16 according to the time used and the number of miles run by
17 such cars in and out of the state, the railroad over which
18 they were run, and the proportional value in each county
19 within this state within which such cars were run; but in
20 any case where it may appear to the tax commissioner that
21 from the nature of the employment of such cars, or
22 otherwise, it is not practicable to show the matters
23 hereinbefore required in this section as to the cars used in
24 this state, and the proportional value of the cars used partly
25 within and partly without this state and each county
26 thereof, the tax commissioner may, as to such matters,
27 accept such other information as it may be practicable to
28 obtain, or in its discretion the tax commissioner may
29 dispense with such showing as to any such matter; (b) real
30 and personal property of every kind, whatever, including
31 money, credits and investments and the amount thereof,
32 wholly held or used in this state, showing the amount and
33 the true and actual value in each county; and (c) the actual
34 capital employed in the business of such owner or operator,
35 the total amount of bonded indebtedness with respect to
36 such line, and of indebtedness not bonded; the whole length
37 of the several lines of railroad over which such cars run,
38 including branches and connecting lines in and out of the
39 state; and, if such owner or operator be a corporation, its
40 actual capital stock and the number, character, amount and
41 market value of the shares thereof, and the amount of
42 capital stock actually paid in; its bonded indebtedness and
43 its indebtedness not bonded. The tax commissioner shall
44 have the right to require any such owner or operator to
45 furnish such other and further information as, in the
46 judgment of the tax commissioner, may be of use to him in
47 determining the true and actual value of the property to be
48 assessed to such owner or operator.

§11-6-5. Same — Pipeline companies.

1 In the case of a pipeline, such return shall show for each
2 owner or operator: (a) The number of miles of pipeline
3 owned, leased or operated within this state, the size or sizes
4 of the pipe composing such line, and the material of which
5 such pipe is made; (b) if such pipeline be partly within and
6 partly without this state, the whole number of miles thereof
7 within this state and the whole number of miles without this
8 state, including all branches and connecting lines in and out
9 of the state; (c) the length, size and true and actual value of
10 such pipelines in each county of this state, including in such
11 valuation the main line, branches and connecting lines, and
12 stating the different values of the pipe separately; (d) its
13 pumping stations, machine and repair shops and machinery
14 therein, tanks, storage tanks and all other buildings,
15 structures and appendages connected or used therewith,
16 together with all real estate, other than its pipeline, owned
17 or used by it in connection with its pipeline, including
18 telegraph and telephone lines, and the true and actual value
19 of all such buildings, structures, machinery and
20 appendages and of each parcel of such real estate, including
21 such telegraph and telephone lines, and the true and actual
22 value thereof in each county in this state in which it is
23 located; and the number and value of all tank cars, tanks,
24 barges, boats and barrels; (e) its personal property of every
25 kind whatsoever, including money, credits and
26 investments, and the amount thereof wholly held or used in
27 this state, showing the amount and value thereof in each
28 county; (f) an itemized list of all other real property within
29 this state, with the location thereof; and (g) the actual
30 capital employed in the business of such owner or operator,
31 the total amount of the bonded indebtedness of such owner
32 or operator with respect to such line, and of indebtedness
33 not bonded; and, if such owner or operator be a corporation,
34 its capital stock, the character, number and amount and the
35 market value of the shares thereof, and the amount of
36 capital stock actually paid in; its bonded indebtedness and
37 its indebtedness not bonded. The tax commissioner shall
38 have the right to require such owner or operator to furnish
39 such other and further information as, in the judgment of
40 the tax commissioner may be of use in determining the true

41 and actual value of the property to be assessed to such
42 owner or operator.

§11-6-7. Same — Telegraph and telephone companies.

1 In the case of a telegraph or telephone line, such report
2 shall show for every such owner or operator: (a) The number
3 of miles of lines owned, leased or operated within this state,
4 the gauge of the wire, the number of strands of wire, the
5 material of which it is made, and, as accurately as may be,
6 the time when the line or any material part thereof was
7 constructed or last replaced; (b) if such lines be partly
8 within and partly without the state, the whole number of
9 miles thereof within this state and the whole number of
10 miles without this state, including all branches and
11 connecting lines in and out of the state; (c) the true and
12 actual value per mile of such line in each county of this
13 state; (d) its stations, shops and machinery therein, and all
14 buildings, structures and appendages connected or used
15 therewith, together with all real estate, other than its
16 telegraph or telephone line, owned or used by it in
17 connection with its line, and of each parcel of such real
18 estate and the true and actual value thereof in each county
19 in this state in which it is located; (e) its personal property of
20 every kind whatsoever, including money, credits and
21 investments, and the amounts thereof wholly held or used in
22 this state, showing the amount and value thereof in each
23 county; (f) an itemized list of all other real property within
24 this state, with the location thereof; and (g) the actual
25 capital employed in the business of such owner or operator,
26 the total amount of the bonded indebtedness of such owner
27 or operator, with respect to such line, and of all
28 indebtedness not bonded; and, if such owner or operator be
29 a corporation, its capital stock, the character, number,
30 amount and the market value of the shares thereof, and the
31 amount of capital stock actually paid in; its bonded
32 indebtedness and its indebtedness not bonded. The tax
33 commissioner shall have the right to require any such owner
34 or operator to furnish such other and further information
35 as, in the judgment of the tax commissioner, may be of use to
36 him in determining the true and actual value of the property
37 to be assessed to such owner or operator.

§11-6-8. Form and manner of making return; failure to make return; criminal penalty.

1 All returns to be made to the tax commissioner, under this
2 chapter, shall be made in conformity with any reasonable
3 requirement of the tax commissioner of which the person
4 making the return shall have had notice, and shall be made
5 upon forms which may be furnished by the tax
6 commissioner, and according to instructions which the tax
7 commissioner may give relating thereto, and to the
8 description and itemizing of the property. Such owner or
9 operator, whether a natural person, or a corporation or
10 company, failing to make such return as herein required
11 shall be guilty of a misdemeanor, and fined one thousand
12 dollars for each month such failure continues.

§11-6-9. Compelling such return; procuring information and tentative assessments by tax commissioner.

1 (a) If any owner or operator fails to make such return
2 within the time required by section one of this article, it
3 shall be the duty of the tax commissioner to take such steps
4 as may be necessary to compel such compliance, and to
5 enforce any and all penalties imposed by law for such
6 failure.

7 (b) The return delivered to the tax commissioner shall
8 be examined by him, and if it be found insufficient in form
9 or in any respect defective, imperfect or not in compliance
10 with law, he shall compel the person required to make it to
11 do so in proper and sufficient form, and in all respects as
12 required by law.

13 (c) If any such owner or operator fails to make such
14 return, the tax commissioner shall proceed, in such manner
15 as to him may seem best, to obtain the facts and information
16 required to be furnished by such returns.

17 (d) The tax commissioner may send for persons and
18 papers, and may compel the attendance of any person and
19 the production of any paper necessary, in the opinion of said
20 tax commissioner, to enable him to obtain the information
21 required for the proper discharge of his duties under this
22 section. Service of a subpoena or subpoena duces tecum,
23 and enforcement of compliance with such subpoena or
24 subpoena duces tecum, shall be in conformity with the

25 provisions of section one, article five, chapter twenty-nine-
26 a of this code.

27 (e) The tax commissioner shall arrange, collate and
28 tabulate such returns and all pertinent information and
29 data contained therein, such further evidence or
30 information as may be required by the tax commissioner of
31 such owner or operator, and all other pertinent evidence,
32 information and data he has been able to procure, upon
33 suitable work sheets, so that they may be conveniently
34 considered. The tax commissioner shall retain in his office
35 true copies of such work sheets which shall be available for
36 inspection by any such owner or operator or his duly
37 authorized representative.

38 (f) On or before the first day of September in each year
39 beginning with the current calendar year, the tax
40 commissioner shall make a tentative assessment of the true
41 and actual value of all property owned or operated by each
42 public service business whose property is located in whole
43 or in part within this state.

**§11-6-10. Failure to give information required by tax
commissioner; criminal penalty.**

1 If any person shall refuse to appear before the tax
2 commissioner when required to do so, as aforesaid, or shall
3 refuse to testify before the tax commissioner in regard to
4 any matter as to which the tax commissioner may require
5 him to testify, or if any person shall refuse to produce any
6 paper in his possession or under his control, which the tax
7 commissioner may require him to produce, every such
8 person shall be guilty of a misdemeanor and fined five
9 hundred dollars, and may be imprisoned not less than one
10 nor more than six months, at the discretion of the court.

§11-6-11. Valuation of property by tax commissioner.

1 (a) In ascertaining the true and actual value of all
2 property of such owner or operator hereinbefore required to
3 be returned, the tax commissioner shall consider the return,
4 if any, made by the owner or operator, and any return which
5 may have been previously made by such owner or operator,
6 the work sheets prepared by the tax commissioner, such
7 evidence or information as may be offered by such owner or
8 operator, such further evidence or information as may be

9 required by the tax commissioner of such owner or
10 operator, and any other pertinent evidence, information
11 and data. Any and all evidence, information and data
12 considered by the tax commissioner shall be available for
13 inspection by any such owner or operator or his duly
14 authorized representative, and an opportunity given to be
15 heard thereon as provided in this section.

16 (b) Nothing in this chapter contained shall be construed
17 to require the assessment by the tax commissioner of any
18 part of a railroad, telegraph, telephone or pipeline until
19 such part is so far completed as to be fit for use. But material
20 held by any railroad, telegraph, telephone or pipeline
21 company shall be returned to the tax commissioner for
22 assessment as personal property.

23 (c) The proportionate share of the value of the
24 intangible property of such public service businesses as do
25 business in this and other states, growing out of the use of
26 their tangible property in this state under their franchises,
27 privileges and contracts, shall have its situs in this state and
28 in the several counties and municipalities thereof in which
29 they exercise their rights: *Provided*, That property of any
30 such owner located outside of this state which is not directly
31 used in the business to which the property in this state is
32 devoted, shall not enter into the value of the property within
33 this state to be assessed.

**§11-6-11a. Notice of tentative assessment; petition for
reassessment.**

1 (a) The tax commissioner shall give the owner or
2 operator of the public service business written notice of the
3 amount of any tentative assessment made pursuant to this
4 article.

5 (b) Unless the owner or operator to whom a notice of
6 assessment is given files, within thirty days after date of
7 issuance thereof, either personally or by certified mail, with
8 the tax commissioner a petition in writing, verified under
9 oath by the owner or operator, or his duly authorized agent
10 having knowledge of the facts, setting forth with
11 particularity: (1) The items of the tentative assessment
12 objected to, together with (2) the reasons for the objections,
13 the tentative assessment shall become final and not subject
14 to administrative or judicial review.

§11-6-11b. Administrative hearing; procedures.

1 (a) When a petition for reassessment is filed in the form
2 and within the time prescribed in section eleven-a of this
3 article, the tax commissioner shall assign a time and place
4 for a hearing upon the same. Written notice of the hearing
5 shall be given to the petitioner at least ten days in advance
6 thereof. At the same time that notice is given to the
7 petitioner, notice of the hearing shall also be filed in the
8 state register created in the office of the secretary of state by
9 section two, article two, chapter twenty-nine-a of this code.

10 (b) Any hearing may be continued by the tax
11 commissioner upon his own motion, agreement of the
12 parties, or motion of the petitioner setting forth good cause.
13 Notice of such continuance shall promptly be given to all
14 parties and filed in the state register.

15 (c) A hearing on a petition for reassessment shall be a
16 contested case, as defined in section two, article one,
17 chapter twenty-nine-a of this code, and shall be conducted
18 in accordance with the provisions of article five, chapter
19 twenty-nine-a of this code, that are not inconsistent with
20 this article, notwithstanding the provisions of section five,
21 article five of chapter twenty-nine-a, which exempts the
22 state tax commissioner from the provisions of said article
23 five. A copy of the notice of tentative assessment shall be
24 admissible and shall constitute prima facie evidence of the
25 assessed value of the property of the public service business
26 under the provisions of this article.

§11-6-11c. Service of notice.

1 (a) Notices of tentative assessments and assessments
2 shall be served upon the owner or operator of a public
3 service business, or his designated agent, by personal
4 service, or by regular or certified mail.

5 (b) If served by regular or certified mail, the notice shall
6 be deposited in the United States mail, postage prepaid, in
7 an envelope addressed to such owner or operator, or his
8 designated agent, at the principal office or place of business
9 of such owner or operator, or his designated agent. Service
10 shall be complete upon deposit of the notice in the United
11 States mail in conformity with this subsection.

12 (c) Proof of the giving of notice in conformity with this

13 section may be made by the affidavit of any person over
14 eighteen years of age, naming the owner or operator, or his
15 designated agent, to whom such notice was given and
16 specifying the time, place and manner of the giving thereof.
17 If service was by certified mail, proof of service may be made
18 by affidavit as aforesaid, or by the certified mail return
19 receipt card. The affidavit or certified mail return receipt
20 card shall be prima facie evidence of service under this
21 section.

§11-6-11d. Timely filing.

1 (a) *Delivery in person.*—If any return, claim, statement
2 or other document required to be filed, within a prescribed
3 period or on or before a prescribed date, is delivered in
4 person on or before such date to the tax commissioner, or
5 the appropriate division or officer of the tax department, at
6 Charleston, West Virginia, during normal business hours of
7 the tax department, it shall be timely filed.

8 (b) *Timely mailing.*—If any return, claim, statement or
9 other document required to be filed, within a prescribed
10 period or on or before a prescribed date under authority of
11 any provision of this article, is after such period or such
12 date, delivered by United States mail to the tax
13 commissioner or the state tax department, the date of the
14 United States postmark stamped on the cover in which such
15 return, claim, statement or other document or payment is
16 mailed shall be deemed to be the date of delivery or the date
17 of payment, as the case may be, provided the following
18 mailing requirements are met:

19 (1) The postmark date falls within the prescribed period
20 or on or before the prescribed date for filing (including any
21 extension granted for such filing), of the return, claim,
22 statement or other document or for making the payment
23 (including any extension granted for such payment), and

24 (2) The return, claim, statement, other document or
25 payment was, within the time prescribed in subsection (a) of
26 this section, deposited in the mail in the United States in an
27 envelope or other appropriate wrapper, postage prepaid,
28 properly addressed to the tax commissioner or the state tax
29 department.

30 (c) *Postmarks.*—This section applies in the case of
31 postmarks not made by the United States post office only if

32 and to the extent provided by rules or regulations
33 prescribed by the tax commissioner.

34 (d) *Registered and certified mailing.*—For purposes of
35 this section, if any return, claim, statement or other
36 document or payment is sent by United States registered or
37 certified mail, the date of registration or certification shall
38 be deemed the postmark date.

39 (e) *Last date for filing or payment.*—The last date for
40 timely filing or timely making payment shall include any
41 extension of time authorized by law or regulation and any
42 extension of time granted in writing by the tax
43 commissioner.

**§11-6-11e. Time for performance of acts where last day falls on
Saturday, Sunday or legal holiday.**

1 When the last day prescribed under authority of any
2 article of this chapter imposing any tax administered under
3 this article for performing any act falls on Saturday,
4 Sunday or a legal holiday, the performance of such act shall
5 be considered timely if it is performed on the next
6 succeeding day which is not a Saturday, Sunday or a legal
7 holiday. For purposes of this section, the last day for the
8 performance of any act shall be determined by including
9 any authorized extension of time; and the term “legal
10 holiday” means a legal holiday in this state.

§11-6-12. Appeal from valuation by tax commissioner.

1 (a) If the owner or operator of a public service business
2 does not file a petition for reassessment with the tax
3 commissioner within the time prescribed in section eleven-
4 a of this article, the amount of the tentative assessment shall
5 be assessed, and notice of the assessment given to the owner
6 or operator, or his designated agent.

7 (b) If the owner or operator of a public service business
8 timely files a petition for reassessment under section
9 eleven-a of this article, the tax commissioner shall review
10 the petition and any evidence or information as may be
11 offered by the owner or operator, or his duly authorized
12 agent, along with the return, if any, made by the owner or
13 operator, any return which may have been previously made
14 by such owner or operator, the tentative assessment and the
15 work sheets. If after his review the tax commissioner

16 determines that his tentative assessment is too high or low,
17 he shall, if the petitioner be in agreement, correct his
18 tentative assessment and issue an assessment.

19 (1) This agreement shall be in writing, and shall be
20 signed by the tax commissioner and the petitioner. Such
21 agreement shall be final and conclusive of the assessed
22 value of the property, and except upon a showing of fraud or
23 malfeasance, or misrepresentation of a material fact, shall
24 not be subject to administrative or judicial review.

25 (2) Whenever an agreement is made under this
26 subsection, there shall be placed on file in the office of the
27 tax commissioner, the amount of the tentative assessment,
28 the amount of the assessment and the reason or reasons for
29 the difference.

30 (c) If the owner or operator of a public service business
31 timely files a petition for reassessment under section
32 eleven-a of this article, and if an agreement cannot be
33 reached under subsection (b) of this section, an
34 administrative hearing shall be held as provided in section
35 eleven-b of this article, and a final order or decision issued.
36 An assessment shall be made for the amount of the final
37 order or decision and notice of this assessment shall be
38 served on the petitioner along with a copy of the final order
39 or decision. Such decision and assessment shall become
40 final and not subject to judicial or administrative review
41 unless a petition for appeal is filed within thirty days after
42 date the decision and assessment are issued.

43 (d) Any owner or operator claiming to be aggrieved by
44 any such decision may, within the time aforesaid, apply by
45 petition in writing, duly verified, to the circuit court of the
46 county in which the property so assessed is situated, or if
47 such property be situated in more than one county then in
48 the county in which the largest assessment of such owner or
49 operator was made in the next preceding year, for an appeal
50 from the assessment and valuation so made of all such
51 property, and jurisdiction is hereby conferred upon and
52 declared to exist in the court, in which such application is
53 filed, to grant, docket and hear such appeal; and such
54 appeal, as to all of the property so assessed, as well as that
55 situated in the county of the court so applied to, as that
56 situated in the several other counties, shall forthwith be
57 allowed by such court so applied to, and be heard by such

58 court as to all of such property as soon as possible after the
59 appeal is docketed. Except as specifically provided in this
60 subsection (d), judicial review of the final order or decision
61 shall be in accordance with the provisions of section four,
62 article five, chapter twenty-nine-a of this code. A certified
63 copy of the assessment and administrative decision of the
64 tax commissioner shall be admissible and shall constitute
65 prima facie evidence of the assessed value of the property of
66 the public service business under the provisions of this
67 article. An appeal may be taken by either party to the
68 supreme court of appeals, as provided in section one, article
69 six, chapter twenty-nine-a of this code, if the assessed value
70 of the property be fifty thousand dollars or more.

71 (e) Assessments under this section must be made on or
72 before the fifteenth day of January succeeding the date of
73 the tentative assessment.

**§11-6-13. Apportionment of value among counties, districts
and municipalities.**

1 (a) Upon assessment of the property of such owner or
2 operator as aforesaid, the tax commissioner shall
3 immediately apportion to each county, both as to the fixed
4 situs property and the nonfixed but distributable and
5 apportionable operating property, the relative value of such
6 operating property within each county to the value of the
7 total operating property within the state, to be determined
8 upon such factors as the tax commissioner shall deem
9 proper and in respect to the value of property of every such
10 owner or operator as valued or assessed as aforesaid; and
11 further shall apportion such value as aforesaid among the
12 several districts, school districts and independent school
13 districts therein, according to the value thereof, as near as
14 may be and forthwith shall certify to the auditor and to the
15 county commission of such county the values so
16 apportioned. The clerk of the county commission shall
17 forthwith certify such values to the school district and to
18 the several municipalities, respectively, in such county.

19 (b) The assessed value of operating property owned,
20 leased or used by the various public service businesses shall
21 be apportioned to each tax district as provided in sections
22 thirteen-a through thirteen-j of this article: *Provided*, That
23 the tax commissioner may also consider any other factors

24 that will help determine the fair apportionment of
25 indefinite-situs distributable operating property to each
26 tax district. For purposes of apportionment, operating
27 property is classified as definite-situs distributable
28 operating property or as indefinite-situs distributable
29 operating property. Definite-situs distributable operating
30 property as defined in sections thirteen-a through thirteen-
31 j of this article shall be apportioned to the tax district
32 wherein such property is located. Indefinite-situs
33 distributable operating property is any operating property
34 that is not definite-situs distributable operating property,
35 and its assessed value shall be apportioned among the
36 several tax districts as provided in sections thirteen-a
37 through thirteen-j of this article. For purposes of
38 apportionment, the term tax district means and includes
39 the state and local levying bodies, including the county
40 commission, school districts and municipalities of this state.

§11-6-13a. Bridge companies; apportionment of assessed valuation.

1 (a) A bridge company's definite-situs distributable
2 operating property consists of: (1) Bridges; (2) land on
3 which bridge heads are located; and (3) the company's
4 rights-of-way.

5 (b) A bridge company's operating property which is not
6 described in subsection (a) of this section is indefinite-situs
7 distributable operating property. The tax commissioner
8 shall apportion and distribute the assessed valuation of this
9 property among the taxing districts in which the company
10 has property that is described in subsection (a) of this
11 section. The amount which shall be distributed to a taxing
12 district equals the product of (1) the total assessed valuation
13 of the bridge company's indefinite-situs distributable
14 operating property, multiplied by (2) a fraction, the
15 numerator of which is the book value of the company's
16 operating property which is located in the taxing district
17 and which is described in subsection (a) of this section, and
18 the denominator of which is the book value of the
19 company's operating property which is located in this state
20 and which is described in subsection (a) of this section.

§11-6-13b. Bus companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a bus company consists of real property and tangible
3 personal property which is located within or on the real
4 property.

5 (b) A bus company's operating property which is not
6 described in subsection (b) of this section is indefinite-situs
7 distributable operating property. This property includes,
8 but is not limited to, buses and other mobile equipment. The
9 tax commissioner shall apportion and distribute the
10 assessed valuation of this property among the taxing
11 districts in or through which the company operates its
12 system. The amount which shall be distributed to a taxing
13 district equals the product of (1) the total assessed valuation
14 of the bus company's indefinite-situs distributable
15 operating property, multiplied by (2) a fraction, the
16 numerator of which is the company's average daily
17 regularly scheduled passenger vehicle route miles in the
18 taxing district, and the denominator of which is the
19 company's average daily regularly scheduled passenger
20 vehicle route miles in this state.

§11-6-13c. Express companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of an express company consists of real property and
3 tangible personal property which has a definite-situs. The
4 remainder of the express company's property is indefinite-
5 situs distributable operating property.

6 (b) The tax commissioner shall apportion and distribute
7 the assessed valuation of an express company's indefinite-
8 situs distributable operating property among the taxing
9 districts in which the definite-situs distributable operating
10 property of the company is located. The amount which shall
11 be distributed to a taxing district equals the product of (1)
12 the total assessed valuation of the express company's
13 indefinite-situs distributable operating property,
14 multiplied by (2) a fraction, the numerator of which is the
15 book value of the company's definite-situs distributable
16 operating property which is located in the taxing district,

17 and the denominator of which is the book value of the
18 company's definite-situs distributable operating property
19 which is located in this state.

§11-6-13d. Light, heat or power companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a light, heat or power company consists of: (1) Office
3 furniture and fixtures; (2) other tangible personal property
4 which is not used as part of the company's production plant,
5 transmission system or distribution system; and (3) real
6 property which is not part of the company's rights-of-way,
7 transmission system or distribution system.

8 (b) A light, heat or power company's property which is
9 not described as definite-situs distributable operating
10 property in subsection (a) of this section is indefinite-situs
11 distributable operating property. This property includes,
12 but is not limited to, turbogenerators, boilers, transformers,
13 transmission lines, distribution lines and pipelines. The tax
14 commissioner shall apportion and distribute the assessed
15 valuation of this property among the taxing districts in
16 which the company's transmission lines, distribution lines
17 and pipelines are located. The amount which shall be
18 distributed to a taxing district equals the product of (1) the
19 total assessed valuation of the company's indefinite-situs
20 distributable operating property multiplied by (2) a
21 fraction, the numerator of which is the length of the
22 company's transmission lines, distribution lines and
23 pipelines, weighted by the capacity of such lines which are
24 located in the taxing district, and the denominator of which
25 is the length of the company's lines weighted by the
26 capacity of such lines which are located in this state.

§11-6-13e. Pipeline companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a pipeline company consists of: (1) Real property which is
3 not part of a pipeline or right-of-way of the company; and
4 (2) tangible personal property which is not part of the
5 company's transmission system.

6 (b) A pipeline company's property which is not
7 described in subsection (a) of this section is indefinite-situs

8 distributable operating property. The tax commissioner
9 shall apportion and distribute the assessed valuation of this
10 property among the taxing districts in which the company's
11 pipelines are located. The amount which shall be
12 distributed to a taxing district equals the product of (1) the
13 total assessed valuation of the pipeline company's
14 indefinite-situs distributable operating property,
15 multiplied by (2) a fraction, the numerator of which is the
16 length of the company's pipelines weighted by the capacity
17 of such lines in the taxing district, and the denominator of
18 which is the length of the company's pipelines weighted by
19 the capacity of such lines in this state.

§11-6-13f. Railroad companies; apportionment of assessed valuation.

1 (a) A railroad company's definite-situs distributable
2 operating property consists of the company's: (1) Rights-of-
3 way and road beds; (2) station and depot grounds; (3) yards,
4 yard sites, superstructures, turntables and turnouts; (4)
5 tracks; (5) telegraph poles, wires, instruments and other
6 appliances, which are located on the rights-of-way; and (6)
7 any other buildings or definite-situs personal property used
8 in the operation of the railroad.

9 (b) A railroad company's operating property which is
10 not described in subsection (a) of this section is indefinite-
11 situs distributable operating property. This property
12 includes, but is not limited to, rolling stock. The tax
13 commissioner shall apportion and distribute the assessed
14 valuation of this property among the taxing districts in
15 which the railroad company operates its system. The
16 amount which the tax commissioner shall distribute to a
17 taxing district equals the product of (1) the total assessed
18 valuation of the railroad company's indefinite-situs
19 distributable operating property, multiplied by (2) a
20 fraction, the numerator of which is the main line and second
21 main line track mileage, including such lines and tracks as
22 are leased, which are located in the taxing district, and the
23 denominator of which is the main line and second main line
24 track mileage including such lines and tracks, as are leased,
25 which are located in this state.

§11-6-13g. Railroad car companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a railroad car company consists of real property and
3 tangible personal property which has a definite-situs. The
4 remainder of the railroad car company's operating property
5 is indefinite-situs distributable property.

6 (b) The tax commissioner shall apportion and distribute
7 a railroad car company's indefinite-situs distributable
8 operating property apportioned to this state on the basis of
9 the number of miles traveled on each railroad company's
10 trackage located in the state weighted by the number of
11 main line and second main line track miles of such railroad
12 in each taxing district. The amount distributable to each
13 taxing district equals the product of: (1) The total assessed
14 valuation of the railroad carline company's indefinite-situs
15 distributable operating property multiplied by (2) a
16 fraction, the numerator of which is the number of miles
17 traveled on each railroad operating in the state, and the
18 denominator of which is the quotient of the number of main
19 line and second main line track miles of the railroad located
20 in each taxing district divided by the number of main line
21 and second main line track miles of railroad located in the
22 state.

§11-6-13h. Telephone and telegraph companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a telephone or telegraph company consists of: (1)
3 Tangible personal property which is not used as part of the
4 distribution system of the company; and (2) real property
5 which is not part of the company's rights-of-way or
6 distribution system.

7 (b) A telephone or telegraph company's property which
8 is not described under subsection (a) of this section is
9 indefinite-situs distributable operating property. The tax
10 commissioner shall apportion and distribute the assessed
11 valuation of this property among the taxing districts in
12 which the company's lines or cables, including laterals, are
13 located. The amount which the tax commissioner shall
14 distribute to a taxing district equals the product of: (1) The

15 total assessed valuation of the telephone or telegraph
16 company's indefinite-situs distributable operating
17 property, multiplied by (2) a fraction, the numerator of
18 which is the length of the company's lines and cables,
19 (including lateral lines and cables), weighted by the
20 capacity of such lines and cables, which are located in the
21 taxing district, and the denominator of which is the length
22 of the company's lines and cables, (including lateral lines
23 and cables), weighted by the capacity of such lines and
24 cables, which are located in this state.

§11-6-13i. Water distribution companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a water distribution company consists of: (1) Tangible
3 personal property which is not used as part of the
4 company's distribution system; and (2) real property which
5 is not part of the company's rights-of-way or distribution
6 system. A well, settling basin or reservoir (except an
7 impounding reservoir) is not definite-situs distributable
8 operating property of a water distribution company if it is
9 used to store treated water or water in the process of
10 treatment.

11 (b) A water distribution company's property which is
12 not described as definite-situs distributable operating
13 property under subsection (a) of this section is indefinite-
14 situs distributable operating property. The tax
15 commissioner shall apportion and distribute the assessed
16 valuation of this property among the taxing districts in
17 which the company's water mains, including feeder and
18 distribution mains, are located. The amount which the tax
19 commissioner shall distribute to a taxing district equals the
20 product of: (1) The total assessed valuation of the water
21 distribution company's indefinite-situs distributable
22 operating property, multiplied by (2) a fraction, the
23 numerator of which is the length of the company's water
24 mains, including feeder and distribution mains, weighted
25 by the capacity of all such mains, which are located in the
26 taxing district, and the denominator of which is the length
27 of the company's water mains, including feeder and
28 distribution mains, weighted by the capacity of all such
29 mains, which are located in this state.

§11-6-13j. Other companies; apportionment of assessed valuation.

1 For a public service business which is not within one of
2 the classes of business companies whose property is
3 described in section thirteen-a through thirteen-i of this
4 article, the definite-situs distributable operating property
5 of the company consists of real property and tangible
6 personal property which has a permanent situs. The
7 remainder of the company's property is indefinite-situs
8 distributable operating property. The tax commissioner
9 shall, in a manner which he considers fair, apportion and
10 distribute the assessed valuation of the company's
11 indefinite-situs distributable operating property among
12 the taxing districts in which the public service business
13 operates.

§11-6-16. Entry of assessment by auditor of property of such public service businesses.

1 As soon as possible after the valuation of the property of
2 such owner or operator is fixed by the tax commissioner or
3 by the circuit court on appeal as aforesaid, and after he shall
4 have obtained the information herein provided for to enable
5 him to do so, the auditor shall assess and charge each class
6 of property of every such owner or operator with the taxes
7 properly chargeable thereon, in a book to be kept by him for
8 that purpose, as follows: (a) With the whole amount of taxes
9 upon such property for state and state school purposes, if
10 any such taxes are levied; (b) with the whole amount of
11 taxes on such property in each county for county purposes;
12 (c) with the whole amount of taxes on such property in each
13 school district for free school and building purposes; and (d)
14 with the whole amount of taxes on such property in each
15 municipal corporation for each and all of the purposes for
16 which a levy therein was made by the municipal authorities
17 of such corporation.

CHAPTER 160

(H. B. 1018—By Delegate Phillips and Delegate Hutchinson)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal article ten-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the multistate tax compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. MULTISTATE TAX COMPACT.

§1. Repeal of article ratifying multistate tax compact.

- 1 Article ten-a, chapter eleven of the code of West Virginia,
- 2 one thousand nine hundred thirty-one, as amended, is hereby
- 3 repealed.

CHAPTER 161

(Com. Sub. for S. B. 73—By Senator Loehr and Mr. Tonkovich, Mr. President)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine, and section three, article ten, both of said chapter eleven; to amend said chapter eleven by adding thereto a new article, designated article eleven; and to amend and reenact section one, article eleven-a of said chapter, all relating generally to death taxes imposed by this state; abolishing inheritance and transfer taxes for persons dying after June thirtieth, one thousand nine hundred eighty-five, but fully preserving such taxes for persons dying on or before such date; imposing estate taxes for persons dying after June thirtieth, one thousand nine hundred eighty-five; limiting amount of such estate tax to that for which full credit is allowed against federal estate taxes; permitting proration of such federal credit when property of decedent located in and taxed by two or more states; exempting from tax estates not required to file federal estate tax return; providing short title; defining terms; tying definitions of certain terms to definitions for federal estate tax purposes when terms used in similar context, and exceptions thereto; providing procedures for administration and collection of tax; incorporating provisions of West Virginia tax procedure and

administration act, except as specifically provided; providing for criminal penalties and adopting provisions of West Virginia tax crimes and penalties act; providing for termination of tax if credit against federal estate taxes for state taxes abolished; providing rules of construction and interpretation and for severability of provisions; and authorizing compromise of estate taxes under Uniform Act on Interstate Compromise of Death Taxes.

Be it enacted by the Legislature of West Virginia:

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

Article

- 9. Crimes and Penalties.
- 10. Procedure and Administration.
- 11. Estate Taxes.
- 11A. Interstate Compromise of Inheritance and Death Taxes.

ARTICLE 9. CRIMES AND PENALTIES.

***§11-9-2. Application of this article.**

1 (a) The provisions of this article shall apply to the
2 following taxes imposed by chapter eleven: (1) The
3 inheritance and transfer taxes and estate taxes imposed by
4 article eleven; (2) the business franchise registration tax
5 imposed by article twelve; (3) the annual tax on incomes of
6 certain carriers imposed by article twelve-a; (4) the
7 business and occupation tax imposed by article thirteen; (5)
8 the gasoline and special fuels excise tax imposed by article
9 fourteen; (6) the motor carrier road tax imposed by article
10 fourteen-a; (7) the consumers sales and service tax imposed
11 by article fifteen; (8) the use tax imposed by article fifteen-
12 a; (9) the cigarette tax imposed by article seventeen; (10) the
13 soft drinks tax imposed by article nineteen; (11) the
14 personal income tax imposed by article twenty-one; and

* Clerk's Note: This section was also amended by H. B. 1693, which passed prior to this act.

15 (12) the corporation net income tax imposed by article
16 twenty-four.

17 (b) The provisions of this article shall also apply to the
18 West Virginia tax procedures and administration act in
19 article ten of chapter eleven, and to any other articles of this
20 chapter when such application is expressly provided for by
21 the Legislature.

22 (c) Each and every provision of this article shall apply to
23 the articles of this chapter listed in subsections (a) and (b),
24 with like effect, as if the provisions of this article were
25 applicable only to such tax and were set forth in extenso in
26 such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

***§11-10-3. Application of this article.**

1 (a) The provisions of this article shall apply to the
2 inheritance and transfer taxes, the estate tax, interstate
3 compromise and arbitration of inheritance and death taxes,
4 the business franchise registration certificate tax, the
5 annual tax on incomes of certain carriers, the business and
6 occupation tax, the consumers sales and service tax, the use
7 tax, the cigarette tax, the soft drinks tax, the personal
8 income tax, the corporation net income tax, the gasoline
9 and special fuels excise tax, the motor carrier road tax and
10 the tax relief for elderly homeowners and renters
11 administered by the state tax commissioner. This article
12 shall not apply to ad valorem taxes on real and personal
13 property, the corporate license tax or any other tax not
14 listed hereinabove.

15 (b) The provisions of this article shall also apply to any
16 other article of this chapter when such application is
17 expressly provided for by the Legislature.

ARTICLE 11. ESTATE TAXES.

§11-11-1. Short title; arrangement and classification.

§11-11-2. Definitions.

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* Clerk's Note: This section was also amended by H. B. 1693, which passed prior to this act.

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ARTICLE 11. ESTATE TAXES.

§11-11-1. Short title; arrangement and classification.

- 1 This article shall be known as the "West Virginia Estate
- 2 Tax Act."

§11-11-2. Definitions.

- 1 (a) *General.*—When used in this article, or in the
- 2 administration of this article, terms defined in subsection
- 3 (b) shall have the meanings ascribed to them by this section,
- 4 unless a different meaning is clearly required by either the
- 5 context in which the term is used, or by specific definition.

6 (b) *Terms defined.*

7 (1) *Alien.*—The term “alien” means a decedent who at
8 the time of his or her death, was not domiciled in this state
9 or any other state of the United States, and was not a citizen
10 of the United States.

11 (2) *Decedent or transferor.*—The terms “decedent” or
12 “transferor” are used herein interchangeably and mean a
13 deceased natural person by or from whom a transfer is
14 made; and include any testator, intestate grantor,
15 bargainor, vendor, assignor, donor, joint tenant or insured.

16 (3) *Delegate.*—The term “delegate” in the phrase “or his
17 delegate,” when used in reference to the tax commissioner,
18 means any officer or employee of the state tax department
19 duly authorized by the tax commissioner directly, or
20 indirectly by one or more redelegations of authority, to
21 perform the function or functions mentioned or described
22 in the context.

23 (4) *Estate or property.*—The terms “estate” or
24 “property” mean the real or personal property or interest
25 therein of a decedent or transferor, and includes all the
26 following:

27 (A) All intangible personal property of a resident
28 decedent within or without this state or subject to the
29 jurisdiction of this state.

30 (B) All intangible personal property in this state
31 belonging to a deceased nonresident of the United States,
32 including all stock of a corporation organized under the
33 laws of this state, or which has its principal place of
34 business or does the major part of its business in this state,
35 or of a federal corporation or national bank which has its
36 principal place of business or does the major part of its
37 business in this state, excluding, however, savings accounts
38 and savings and loan associations operating under the
39 authority of the state banking commissioner or the federal
40 home loan bank board, and bank deposits, unless those
41 deposits are held and used in connection with a business
42 conducted or operated, in whole or in part, in this state.

43 (5) *Federal credit.*—The term “federal credit” means
44 the maximum amount of the credit for state death taxes
45 allowable by Section 2011, credit against federal estate tax
46 (or Section 2102 in the case of an alien) and Section 2602,

47 credit against the federal tax on generation-skipping
48 transfers of the United States Internal Revenue Code of
49 1954, as amended or renumbered, or in successor provisions
50 of the laws of the United States, in respect to a decedent's
51 taxable estate. The term "maximum amount" shall be
52 construed so as to take full advantage of such credit as the
53 laws of the United States may allow: *Provided*, That in no
54 event shall such amount be less than the federal credit
55 allowable by Sections 2011, 2102 and 2602 of the Internal
56 Revenue Code, as it existed on January one, one thousand
57 nine hundred eighty-five.

58 (6) *Gross estate*.—The term "gross estate" means the
59 gross estate of the decedent as defined in Section 2031 (or
60 Section 2103 in the case of an alien) of the United States
61 Internal Revenue Code of 1954, as amended or renumbered,
62 or in successor provisions of the laws of the United States.

63 (7) *Includes and including*.—The words "includes" and
64 "including" when used in a definition contained in this
65 article shall not be deemed to exclude other things
66 otherwise within the meaning of the term being defined.

67 (8) *Intangible personal property*.—The term "intangible
68 personal property" means incorporeal personal property
69 including deposits in banks, negotiable instruments,
70 mortgages, debts, receivables, shares of stock, bonds, notes,
71 credits, evidences of an interest in personal property,
72 evidences of debt and choses in action generally.

73 (9) *Internal Revenue Code*.—The term "Internal
74 Revenue Code" means the United States Internal Revenue
75 Code of 1954, as amended and in effect on the first day of
76 January, one thousand nine hundred eighty-five, including
77 all changes to such code enacted subsequent to such date,
78 that are similar to or a replacement of the section cited or
79 referred to.

80 (10) *Net estate*.—The term "net estate" means the net
81 estate of the decedent as defined in Section 2051 of the
82 United States Internal Revenue Code of 1954, as amended
83 or renumbered, or in successor provisions of the laws of the
84 United States.

85 (11) *Nonresident*.—The term "nonresident" means a
86 decedent who was a citizen of the United States, but was
87 domiciled outside the state of West Virginia at the time of
88 his or her death.

89 (12) *Notice*.—The term “notice” means a written notice
90 sent to the last known address of the addressee and shall be
91 effective upon mailing.

92 (13) *Other state*.—The term “other state” means any
93 state of the fifty states in the United States (other than this
94 state) and includes the District of Columbia and any
95 possession or territory of the United States.

96 (14) *Person*.—The term “person” includes natural
97 person, corporation, society, association, partnership, joint
98 venture, syndicate, estate, trust or other entity under which
99 business or other activities may be conducted.

100 (15) *Person required to file*.—The phrase “person
101 required to file” means any person, including a personal
102 representative, qualified heir, distributee or trustee
103 required or permitted to file a federal estate tax return, or a
104 West Virginia estate tax return, pursuant to the provisions
105 of the Internal Revenue Code or this article.

106 (16) *Personal representative*.—The terms “personal
107 representative” and “fiduciary” are used interchangeably
108 and mean:

109 (A) The personal representative of the estate of the
110 decedent, appointed, qualified and acting within this state;
111 or

112 (B) If there is no personal representative appointed,
113 qualified and acting within this state, then any person in
114 actual or constructive possession of the West Virginia gross
115 estate of the decedent. The term “personal representative”
116 includes the executor of a will, the administrator of the
117 estate of a deceased person, the administrator of such estate
118 with the will annexed, the administrator de bonis non of
119 such estate, whether there be a will or not, the sheriff or
120 other officer lawfully charged with the administration of
121 the estate of a deceased person, and every other curator or
122 committee of a decedent’s estate for or against whom suits
123 may be brought for causes of action which accrued to or
124 against such decedent.

125 (17) *Real property situated in this state*.—The phrase
126 “real property situated in this state” means any and all
127 interests in real property located in this state, including
128 leasehold interests, royalty interests, production payments
129 and working interests in coal, oil, gas and other natural
130 resources.

131 (18) *Resident*.—The term “resident” means a decedent
132 who was domiciled in the state of West Virginia at the time
133 of his or her death.

134 (19) *State*.—The term “state” means any state, territory
135 or possession of the United States and the District of
136 Columbia.

137 (20) *Tangible personal property*.—The term “tangible
138 personal property” means corporeal personal property
139 including money.

140 (21) *Tax*.—The term “tax” means the tax imposed by
141 this article, and includes any additions to tax, penalties and
142 interest imposed by this article or article ten of this chapter.

143 (22) *Tax commissioner*.—The term “tax commissioner”
144 means the tax commissioner of the state of West Virginia or
145 his delegate.

146 (23) *Taxable estate*.—The term “taxable estate” means
147 the taxable estate of the decedent as defined in Section 2051
148 (or Section 2106 in the case of an alien) of the United States
149 Internal Revenue Code of 1954, as amended or renumbered,
150 or in successor provisions of the laws of the United States.

151 (24) *Taxpayer*.—The term “taxpayer” means any
152 person required to file a return for the tax imposed by this
153 article and any person liable for payment of the tax imposed
154 by this article.

155 (25) *This code*.—The term “this code” means the code of
156 West Virginia, one thousand nine hundred thirty-one, as
157 amended.

158 (26) *This state*.—The term “this state” means the state
159 of West Virginia.

160 (27) *Transfer*.—The term “transfer” means “transfer”
161 as defined in Sections 2001, 2101, 2601 of the United States
162 Internal Revenue Code of 1954, as amended or renumbered,
163 or in successor provisions of the laws of the United States. It
164 includes the passage of any property, or any interest
165 therein, or income therefrom, in possession or enjoyment,
166 present or future, in trust or otherwise, whether by
167 inheritance, descent, devise, succession, bequest, grant,
168 deed, bargain, sale, gift or appointment.

169 (28) *Transferee*.—The term “transferee” means any
170 person to whom a transfer is made and includes any legatee,
171 devisee, heir, next of kin, grantee, donee, vendee, assignee,
172 successor, survivor or beneficiary.

173 (29) *United States*.—The term “United States,” when
174 used in a geographical sense, includes only the fifty states
175 and the District of Columbia.

176 (30) *Value*.—The term “value” means the value of
177 property, the value of the gross estate or the value of the
178 taxable estate as finally determined for federal estate tax
179 purposes under the laws of the United States relating to
180 federal estate taxes.

181 (c) Any term used in this article shall have the same
182 meaning as when used in a comparable context in the laws
183 of the United States relative to estate taxes, unless a
184 different meaning is clearly required by the provisions of
185 this article. Any reference in this article to the laws of the
186 United States relating to federal estate taxes shall mean the
187 provisions of the Internal Revenue Code of 1954, and
188 amendments thereto, and other provisions of the laws of the
189 United States relating to federal estate taxes, as the same
190 may be or become effective at any time or from time to time.

§11-11-3. Imposition of tax.

1 Whenever a federal estate tax is payable to the United
2 States, there is hereby imposed a West Virginia estate tax
3 equal to the portion, if any, of the maximum allowable
4 amount of federal credit for state death taxes which is
5 attributable to property located in this state, or within its
6 taxing jurisdiction. In no event, however, shall the estate
7 tax hereby imposed result in a total death tax liability to
8 this state and the United States in excess of the death tax
9 liability to the United States which would result if this
10 article were not in effect.

§11-11-4. Tax on transfer of estate of residents; credit; property of residents defined.

1 (a) *Imposition of tax*.—A tax in the amount of the
2 federal credit is imposed on the transfer of the taxable
3 estate of every resident decedent, subject, where applicable,
4 to the credit provided for in subsection (b).

5 (b) *Credit*.—If property of a resident is subject to a
6 death tax imposed by another state for which a federal
7 credit is allowed, the amount due under this section shall be
8 credited with the lesser of:

9 (1) The amount of the death tax paid to the other state,

10 or states, and credited against the federal estate tax and
11 federal tax on generation-skipping transfers; and

12 (2) The amount computed by multiplying the amount of
13 the federal credit by a fraction, the numerator of which is
14 the value of that part of the gross estate over which another
15 state (or states) has (or have) jurisdiction to the same extent
16 to which West Virginia would exert jurisdiction under this
17 article with respect to residents of such other state (or
18 states). The denominator of the fraction shall be the value of
19 the decedent's gross estate.

20 (c) *Property of resident.*—The property of a resident
21 includes:

22 (1) Real property situated in this state;

23 (2) Tangible personal property having its actual situs in
24 this state; and

25 (3) Intangible personal property owned by the resident,
26 regardless of where it is located.

**§11-11-5. Tax on transfer of estate of nonresidents; property of
nonresidents defined; exemption.**

1 (a) *Imposition of tax.*—A tax in an amount computed as
2 provided in this section is imposed on the transfer of the
3 taxable estate located in West Virginia of every nonresident
4 decedent.

5 (b) *Amount of tax.*—The tax shall be an amount
6 computed by multiplying the federal credit by a fraction,
7 the numerator of which is the value of that part of the gross
8 estate over which West Virginia has jurisdiction for estate
9 tax purposes. The denominator shall be the value of the
10 decedent's gross estate.

11 (c) *Property of nonresident.*—For purposes of this
12 section, property included in the gross estate of a
13 nonresident which is taxable under this section shall
14 include:

15 (1) Real property and real property interests located in
16 this state, including (but not limited to) mineral interests,
17 royalties, production payments, leasehold interests or
18 working interests in coal, oil, gas or any other natural
19 resource.

20 (2) Tangible personal property having an actual situs in
21 this state.

§11-11-6. Tax on transfer of estate of aliens.

1 (a) *Imposition of tax.*—A tax in the amount computed as
2 provided in this section is imposed on the transfer of the
3 taxable estate located in West Virginia of every alien.

4 Taxable transfers include:

5 (1) Real property situated in this state;

6 (2) Tangible personal property having an actual situs in
7 this state; and

8 (3) Intangible personal property physically present
9 within this state of every decedent who, at the time of his or
10 her death, was not a citizen of the United States.

11 (b) *Amount of tax.*—The tax shall be an amount
12 computed by multiplying the federal credit by a fraction,
13 the numerator of which shall be the value of that part of the
14 gross estate over which this state has jurisdiction for estate
15 tax purposes. The denominator shall be the value of the
16 decedent's gross, wherever situate, that is taxable by the
17 United States.

18 (c) *Stock of West Virginia corporations.*—For purposes
19 of this section, stock in a corporation organized under the
20 laws of this state shall be deemed to be physically present
21 within this state.

§11-11-7. Notice of death to tax commissioner.

1 The personal representative, within two months after the
2 decedent's death, or within a like period after qualifying as
3 such, shall give written notice of the decedent's death to the
4 tax commissioner on the form prepared and published by
5 the tax department known as the preliminary notice and
6 report. If a federal estate tax return is required by the
7 applicable provisions of the federal Internal Revenue Code,
8 then a copy of the preliminary notice filed with the federal
9 government may be filed with the tax commissioner in lieu
10 of such preliminary notice and report.

§11-11-8. Estate tax returns.

1 (a) *When no return required.*—No West Virginia estate
2 tax return needs to be filed if the estate of the decedent is
3 not subject to the tax imposed by this article.

4 (b) *Returns by personal representative.*—The personal
5 representative of every estate subject to the tax imposed by
6 this article, who is required by the laws of the United States

7 to file a federal estate tax return, shall file with the tax
8 commissioner, on or before the date the federal estate tax
9 return is required to be filed:

- 10 (1) A return for the tax due under this article; and
- 11 (2) An executed copy of the federal estate tax return.
- 12 (c) *Returns by beneficiaries.*

13 (1) If the personal representative fails to make a
14 complete return as to any part of the gross estate of the
15 decedent, he shall include in his return a description of such
16 part and the name of every person holding a legal or
17 beneficial interest therein. The providing of such
18 information shall not, in and of itself, exonerate the
19 personal representative from any additions to tax or
20 penalties prescribed by law for failure to file a complete
21 return.

22 (2) Upon notice from the tax commissioner, a
23 beneficiary of the estate, or other person holding a legal or
24 beneficial interest therein, shall file a return under this
25 article providing such information as the tax commissioner
26 may request pertaining to the interest of the beneficiary, or
27 other person, in the estate of the decedent.

28 (d) *Returns due.*—Returns made under this article shall
29 be filed within nine months after the date of the decedent's
30 death.

31 (e) *Place of filing.*—Estate tax returns shall be filed with
32 the tax commissioner at his office in Charleston, West
33 Virginia.

§11-11-9. Extension of time for filing return.

1 (a) *Extension of time.*—If the personal representative
2 has obtained an extension of time for filing the federal
3 estate tax return, the filing required by section eight shall
4 be extended until the end of the time period granted in the
5 extension of time for filing the federal estate tax return.

6 (b) *Copy of federal extension.*—Upon obtaining an
7 extension of time for filing the federal estate tax return, the
8 personal representative shall provide the tax commissioner
9 with a true copy of the instrument providing for this
10 extension within thirty days after receipt of it.

11 (c) *Payment of tax.*—An extension of the time for filing
12 a return shall not operate to extend the time for payment of
13 the tax.

§11-11-10. Amended returns.

1 (a) *When required.*—If the personal representative files
2 an amended federal estate tax return, he shall, within sixty
3 days thereafter, file an amended return under this article,
4 and give such information as the tax commissioner may
5 require. Such amended return shall include a copy of the
6 amended federal estate tax return.

7 (b) *Payment of additional tax.*—Any additional tax due
8 under this article shall be remitted when the amended
9 return is filed.

§11-11-11. Returns executed by tax commissioner.

1 (a) *Authority of tax commissioner to execute return.*—If
2 any person fails to file a return at the time prescribed by
3 law, or files (willfully or otherwise) a false or fraudulent
4 return, the tax commissioner shall make the return from his
5 own knowledge and from such information as he can obtain
6 through testimony or otherwise.

7 (b) *Status of returns.*—A return so made and subscribed
8 by the tax commissioner shall be prima facie good and
9 sufficient for all legal purposes.

§11-11-12. Report of change in federal estate tax.

1 (a) *Report of federal change.*—If the amount of the
2 federal taxable estate reported on federal estate tax return
3 is changed or corrected by the United States Internal
4 Revenue Service, or other competent authority, the
5 personal representative shall report the change or
6 correction within ninety days after the final determination
7 of the change, or correction, or as otherwise required by the
8 tax commissioner. Such report shall concede the accuracy
9 of the change, or correction, or state whether and wherein
10 the determination is believed to be erroneous. The
11 imposition of an additional federal estate tax under Section
12 2032A of the Internal Revenue Code shall constitute a
13 change. The tax commissioner may by regulation prescribe
14 exceptions to the requirements of this section as he deems
15 appropriate.

16 (b) *Payment of deficiency.*—If, based upon any
17 deficiency in federal estate tax and the ground therefore, it
18 shall appear that the amount of tax previously paid under
19 this article is less than the amount of tax due and owing, the

20 difference together with interest at the rate of one percent
21 per month from the date the tax became delinquent under
22 this article shall be remitted at the time the notice required
23 by this section is filed.

24 (c) *Failure to give notice.*—In the event the personal
25 representative required to file the return and pay the tax
26 required by this article shall fail to give the notice required
27 by this section, any additional tax which may be due and
28 owing may be assessed by the tax commissioner at any time
29 notwithstanding the provisions of section fifteen, article
30 ten of this chapter.

§11-11-13. Payment of tax.

1 (a) *Payment by personal representative.*—The tax
2 imposed by this article shall be paid by the personal
3 representative. Liability for payment of the tax continues
4 until the tax is paid.

5 (b) *Due date.*—The tax imposed by this article is due
6 and payable at the date of the decedent's death.

7 (c) *Delinquent date.*—The tax imposed by this article
8 becomes delinquent upon the expiration of nine months
9 after the date on which it becomes due and payable, if not
10 paid within that time.

§11-11-14. Extension of time for payment.

1 (a) *General.*—If an extension of time for payment of
2 federal estate tax has been granted and the tax
3 commissioner finds that payment by the due date of the tax
4 imposed by this article, or any part thereof, would impose
5 undue hardship upon the estate, the tax commissioner may
6 extend the time for payment of any such part, but no
7 extension shall be for more than one year at a time. The
8 aggregate of extensions with respect to any estate shall not
9 exceed ten years from the due date.

10 (b) *Payment of tax where extension granted.*—If an
11 extension of time for payment has been granted under this
12 section, the amount in respect of which the extension is
13 granted shall be paid on or before the date of the expiration
14 of the period of the extension, unless a further extension is
15 granted. If the time for payment is thus extended, there
16 shall be collected, as part of such amount, interest at the
17 rate of twelve percent per annum of the amount due, from

18 the date which is nine months after the date of death of the
19 decedent until the date the tax is paid.

§11-11-15. Interest.

1 (a) *Rate.*—The tax imposed by this article does not bear
2 interest if it is paid before the expiration of nine months
3 after the date of death of the decedent. If that tax is paid
4 after that date, the tax bears interest at the rate of twelve
5 percent per annum from the date by which it should have
6 been paid (determined without regard to any extension of
7 time for payment) until the date it is paid.

8 (b) *Application of payment.*—Every payment of
9 delinquent tax shall be applied, first, to any interest due on
10 that tax, secondly, to any additions to tax or penalty
11 imposed by article ten of this chapter, and then, if there is
12 any balance, to the tax itself.

§11-11-16. Receipts for taxes.

1 (a) *Receipts in triplicate.*—The tax commissioner shall
2 issue to the personal representative, upon payment of the
3 tax imposed by this article, receipts in triplicate, any of
4 which shall be sufficient evidence of such payment, and
5 shall entitle the personal representative to be credited and
6 allowed the amount thereof by any county commission or
7 court having jurisdiction to audit or settle his accounts.

8 (b) *Application of personal representative for*
9 *receipt.*—If the personal representative files a complete and
10 correct return under this article, and there has been a final
11 determination of the federal estate tax liability, he may
12 make written application to the tax commissioner for
13 determination of the amount of the tax and discharge from
14 personal liability therefor. The tax commissioner, as soon as
15 possible, and in any event within one year after receipt of
16 such application, shall notify the personal representative of
17 the amount of the tax; and upon payment thereof the
18 personal representative shall be discharged from personal
19 liability for any additional tax thereafter found to be due,
20 and shall be entitled to receive from the tax commissioner a
21 receipt in writing showing such discharge: *Provided*, That
22 such discharge shall not operate to release the gross estate
23 of the lien of any additional tax that may thereafter be
24 found to be due nor release the personal representative if
25 there has been negligence or fraud.

§11-11-17. Lien for nonpayment of tax; releases.

1 (a) *Lien created.*—Unless the tax imposed by this article
2 is sooner paid in full, it shall be a lien for ten years after the
3 death of the decedent upon all property, real or personal, of
4 such decedent located in this state, except as provided in
5 subsection (b).

6 (b) *Exceptions.*

7 (1) Such part of the property of the decedent as may at
8 the time be subject to the lien provided for under subsection
9 (a) shall be divested of such lien to the extent used for
10 payment of charges against the estate or expenses of its
11 administration allowed by the county commission or court
12 having jurisdiction thereof.

13 (2) Such part of the personal property of the decedent as
14 may at the time be subject to the lien provided for under
15 subsection (a) shall be divested of such lien upon the
16 conveyance or transfer of such property to a bona fide
17 purchaser or holder of a security interest for an adequate
18 and full consideration in money or money's worth. Such
19 liens shall then attach to the consideration received for such
20 property from such purchaser or holder of a security
21 interest.

22 (c) *Real property.*—Real property shall not be divested
23 of such lien, except as provided in subdivision (1),
24 subsection (b) and subsection (d) of this section.

25 (d) *Release of lien.*—When any lien under this section
26 has attached and the tax commissioner is satisfied that no
27 tax liability exists, or that the tax liability of the estate has
28 been fully discharged, the tax commissioner shall issue a
29 certificate releasing all property of such estate from the lien
30 herein imposed. If the tax commissioner is satisfied that the
31 tax liability of the estate has been provided for, he shall
32 issue a certificate releasing any surplus property of such
33 estate from the lien imposed by this section.

§11-11-18. Discharge of estate; notice of lien; limitation on lien; etc.

1 (a) Where no receipt for payment of the taxes, or no
2 receipt of nonliability for taxes has been issued or recorded
3 as provided for in this article, the property constituting the
4 estate of the decedent in this state shall be deemed fully
5 acquitted and discharged of all liability for estate taxes

6 under this article after a lapse of ten years from the date of
7 the filing with the tax commissioner of notice of the
8 decedent's death, or after a lapse of ten years from the date
9 of the filing with the tax commissioner of an estate tax
10 return, whichever date shall be earlier, unless the tax
11 commissioner shall make out and file and have recorded in
12 the office of the clerk of the county wherein any part of the
13 estate of the decedent may be situated in this state, a notice
14 of lien against the property of the estate, specifying the
15 amount or approximate amount of taxes claimed to be due
16 to the state under this article, which notice of lien shall
17 continue said lien in force for an additional period of five
18 years, or until payment is made.

19 (b) Notwithstanding anything to the contrary in this
20 section or this article, no lien for estate taxes under this
21 article shall continue for more than twenty years from the
22 date of death of the decedent, whether the decedent be a
23 resident or a nonresident of this state.

**§11-11-19. Final accounting delayed until liability for tax
determined.**

1 (a) No final account of a personal representative in any
2 probate proceeding, who is required to file a federal estate
3 tax return, shall be allowed and approved by the county
4 commission, or the clerk thereof, before whom such
5 proceeding is pending, unless the commission finds that the
6 tax imposed on the transfer of property by this article has
7 been paid in full, or that no such tax is due.

8 (b) No final account of a personal representative of an
9 estate shall be allowed by any county commission, or clerk
10 thereof, unless such account shows and the county
11 commission, or clerk thereof, finds that all taxes imposed
12 by this article upon such personal representative, which
13 have become payable, have been paid.

14 (c) The certificate of waiver and/or acquittance of the
15 tax commissioner of nonliability for taxes, or his receipt for
16 the amount of the tax herein certified, shall be conclusive in
17 such proceedings as to the liability or the payment of the
18 tax, to the extent of said certificate or waiver and/or
19 acquittance.

§11-11-20. Liability of personal representatives, etc.

1 (a) *Personal representative.*—Any personal

2 representative who distributes any property without first
3 paying, securing another's payment of, or furnishing
4 security for payment of the taxes due under this article, is
5 personally liable for the taxes due to the extent of the value
6 of any property that may come or that may have come into
7 the possession of the personal representative. Security for
8 payment of taxes due under this article shall be in an
9 amount equal to or greater than the value of all property
10 that is or has come into the possession of the personal
11 representative, as of the time the security is furnished.

12 (b) *Other person.*—Any person who has the control,
13 custody or possession of any property and who delivers any
14 of the property to the personal representative or legal
15 representative of the decedent outside this state without
16 first paying, securing another's payment of, or furnishing
17 security for payment of the taxes due under this article, is
18 liable for the taxes due under this article to the extent of the
19 value of the property delivered. Security for payment of the
20 taxes due under this article shall be in an amount equal to or
21 greater than the value of all property delivered to the
22 personal representative or legal representative of the
23 decedent outside this state by such a person.

24 (c) *Persons not having control.*—For the purpose of this
25 section, persons do not have control, custody or possession
26 of a decedent's property, if they are not responsible for
27 paying the tax due under this section, such as transferees,
28 which term includes, but is not limited to, stockbrokers or
29 stock transfer agents, banks and other depositories of
30 checking and savings accounts, safe deposit companies and
31 life insurance companies.

32 (d) *Reliance upon release.*—For the purposes of this
33 section, any person who has the control, custody or
34 possession of any property and who delivers any of the
35 property to the personal representative or legal
36 representative of the decedent may rely upon the release
37 furnished by the tax commissioner to the personal
38 representative as evidence of compliance with the
39 requirements of this article, and make such deliveries and
40 transfers as the personal representative may direct without
41 being liable for any taxes due under this article.

42 (e) *Discharge of personal liability for federal estate*
43 *taxes.*—If a personal representative receives a discharge

44 from personal liability for federal estate taxes pursuant to
45 Section 2204 of the Internal Revenue Code, and if the
46 personal representative makes written application to the
47 tax commissioner for determination of the amount of the
48 tax due under this article and discharged from personal
49 liability, the tax commissioner, within two months after
50 receiving satisfactory evidence of the Section 2204
51 discharge, but not after the expiration of the period for
52 issuance of a deficiency assessment, shall notify the
53 personal representative of the amount of the tax. The
54 personal representative, upon payment of the amount of
55 which he is notified (other than any portion for which an
56 extension of time for payment has been granted), and upon
57 furnishing any bond which may be required for any amount
58 for which the time for payment has been extended, shall be
59 discharged from personal liability for any deficiency in tax
60 thereafter found to be due and shall be entitled to a receipt
61 or writing showing the discharge.

**§11-11-21. Duty of resident personal representative of
nonresident decedent.**

1 (a) *General.*—A resident personal representative,
2 holding personal property (tangible or intangible) of a
3 deceased nonresident subject to tax under this article, shall
4 not deliver such property to the personal representative of
5 the domiciliary estate, or to any other person, until after the
6 resident personal representative shall have deducted the
7 tax therefrom, or collected it from the personal
8 representative of the domiciliary estate and remitted it to
9 the tax commissioner.

10 (b) *Failure of domiciliary personal representative to pay*
11 *tax.*—When the transfer of personal property of a
12 nonresident decedent is taxable under this article and the
13 personal representative of the domiciliary estate neglects or
14 refuses to pay the tax upon demand of a resident personal
15 representative, or if for any reason the tax is not paid within
16 nine months after the decedent's death, the resident
17 personal representative may, upon such notice as the
18 circuit court of Kanawha County may direct, be
19 authorized to sell such property, or if the same can be
20 divided, such portion thereof as may be necessary, and shall

21 deduct the tax from the proceeds of such sale and shall
22 account for the balance, if any, in lieu of such property.

§11-11-22. Duties and powers of corporate personal representatives of nonresident decedents.

1 If the personal representative of the estate of a
2 nonresident is a corporation duly authorized, qualified and
3 acting as such personal representative in the jurisdiction of
4 the domicile of the decedent, it shall be under the duties and
5 obligations as to the giving of notices and filing of returns
6 required by this article, and may bring and defend actions
7 and suits as may be authorized or permitted by this article,
8 and articles nine and ten of this chapter, to the same extent
9 as an individual personal representative, notwithstanding
10 that such corporation may be prohibited from exercising in
11 this state any powers as personal representative. Nothing
12 herein contained shall be taken or construed as authorizing
13 corporations not authorized to do business in this state to
14 qualify or act as personal representative, administrator or
15 in any other fiduciary capacity, if otherwise prohibited by
16 the laws of this state, except to the extent herein expressly
17 provided.

§11-11-23. Proof of payment of death taxes to state of domicile.

1 (a) *General.*—At any time before the expiration of
2 eighteen months after the qualification in this state of any
3 executor of the will of, or administrator of the estate of, any
4 nonresident decedent, such executor or administrator shall
5 file with the clerk of the county commission of the county in
6 which he qualified proof that all death taxes which are due
7 to the state of domicile of such decedent, or to any political
8 subdivision thereof, have been paid, or secured, or that no
9 such taxes are due, as the case may be, unless it appears that
10 letters of probate or administration have been issued in the
11 state of domicile.

12 (b) *Form of proof.*—The proof required by subsection (a)
13 may be in the form of a certificate issued by the official or
14 body charged with the administration of the death tax laws
15 of the domiciliary state.

16 (c) *Notice to domiciliary state if proof not filed.*—If such
17 proof is not filed within eighteen months after the
18 qualification in this state of any personal representative of

19 a nonresident decedent, then the clerk of the county
20 commission shall forthwith notify by mail the official or
21 body of the domiciliary state charged with the
22 administration of the death tax laws thereof with respect to
23 such estate and shall state in such notice, so far as it is
24 known to him:

25 (1) The name, date of death and last domicile of such
26 decedent;

27 (2) The name and address of each executor or
28 administrator;

29 (3) A summary of the values of the real estate, tangible
30 personal property and intangible personal property,
31 wherever situated, belonging to such decedent at the time of
32 his death; and

33 (4) The fact that such executor or administrator has not
34 filed, within the time prescribed by law, proof of payment of
35 death taxes to the state of domicile of the nonresident
36 decedent.

37 To such notice the clerk of the county commission shall
38 attach a plain copy of the will and codicils of such decedent,
39 if he died testate, or, if he died intestate, a list of his heirs
40 and next of kin, so far as is known to such clerk.

41 (d) *Petition of domiciliary state.*—Within sixty days
42 after the mailing of the notice provided in the preceding
43 subsection, the official or body charged with the
44 administration of the death tax laws of the domiciliary state
45 may file with the county clerk in this state a petition for an
46 accounting in such estate. Such official body of the
47 domiciliary state shall, for the purpose of this article, be a
48 party interested for the purpose of petitioning such county
49 clerk for such an accounting. If such petition be filed within
50 the period of sixty days, such county clerk shall order such
51 accounting and upon such accounting being filed and
52 approved, shall decree the remission of the fiduciary
53 appointed by the domiciliary probate court of the balance
54 of the intangible personal property after payment of
55 creditors and expenses of administration in this state.

56 (e) *Final accounting not granted without*
57 *compliance.*—Unless the provisions of either subsection (c)
58 or (d) of this section shall have been complied with, no such
59 executor or administrator shall be entitled to a final
60 accounting or discharge by any county commission of this
61 state.

§11-11-24. Domicile of decedent.

1 (a) *General.*—For purposes of this article, every person
2 shall be presumed to have died a resident and not a
3 nonresident of this state:

4 (1) If such person has dwelled or lodged in this state
5 during and for the greater part of any period of twelve
6 consecutive months in the twenty-four months next
7 preceding the decedent's death, notwithstanding the fact
8 that from time to time during such twenty-four months
9 such person may have sojourned outside of this state, and
10 without regard to whether or not such person:

11 (A) May have voted in this state;

12 (B) May have been entitled to vote in this state; or

13 (C) May have been assessed for taxes in this state.

14 (2) If such person has been a resident of this state,
15 sojourning outside this state.

16 (b) *Proof of domicile.*—The burden of proof in an estate
17 tax proceeding shall be upon any person claiming
18 exemption by reason of alleged nonresidency. Domicile
19 shall be determined exclusively in the proceedings provided
20 in this chapter, and orders relating to domicile previously
21 entered in any probate proceedings shall not be conclusive
22 for purposes of the tax imposed by this article.

§11-11-25. Tax due and payable from entire estate; third persons.

1 If the tax, or any part thereof, is paid or collected out of
2 that part of the estate passing to, or in possession of, any
3 person other than the personal representative in his
4 capacity as such, such person shall be entitled to a
5 reimbursement out of any part of the estate still
6 undistributed, or by a just and equitable contribution by
7 the person whose interest in the estate of the decedent
8 would have been reduced if the tax had been paid before
9 distribution of the estate, or whose interest in the estate is
10 subject to an equal or prior liability for the payment of tax,
11 debts or other charges against the estate. It is the purpose
12 and intent of this section that, so far as is practical and
13 unless otherwise directed by the will of the decedent, the
14 tax shall be paid out of the estate before its distribution; but
15 the tax commissioner shall not be charged with enforcing
16 contribution from any person.

§11-11-26. Sale of real estate by personal representative to pay tax.

1 Every personal representative shall have the same right
2 and power to take possession of or sell, convey and dispose
3 of real estate as assets of the estate for the payment of the
4 tax imposed by this article, as he may have for the payment
5 of the debts of the decedent.

§11-11-27. Prima facie liability for tax.

1 (a) The estate of each decedent whose property shall be
2 subject to the laws of this state shall be deemed prima facie
3 liable for estate taxes under this article and shall be subject
4 to a lien therefor in such amount as may be later determined
5 to be due and payable on such estate as provided in this
6 article.

7 (b) This presumption of liability shall begin on the date
8 of the death of the decedent and shall continue until the full
9 settlement of all taxes which may be found to be due under
10 this article, the settlement to be shown by receipts for all
11 taxes due to be issued by the tax commissioner as provided
12 for in this article.

13 (c) Whenever it shall be made to appear to the tax
14 commissioner that an estate is not subject to tax under this
15 article, the tax commissioner shall issue to the personal
16 representative a certificate in writing to that effect,
17 showing such nonliability to tax, which certificate of
18 nonliability shall have the same force and effect as a receipt
19 showing payment. This certificate of nonliability shall be
20 subject to record and admissible in evidence in like manner
21 as receipts showing payment of taxes.

§11-11-28. Person paying tax entitled to reimbursement.

1 If the tax or any part thereof is paid or collected out of
2 that part of the estate passing to or in possession of any
3 person other than the personal representative in his
4 capacity as such, such person shall be entitled to a
5 reimbursement out of any part of the estate still
6 undistributed, or by a just and equitable contribution by
7 the person whose interest in the estate of the decedent
8 would have been reduced if the tax had been before the
9 distribution of the estate, or whose interest in the estate is
10 subject to an equal or prior liability for the payment of the

11 tax, debts or other charges against the estate, it being the
12 purpose and intent of this section that insofar as is
13 practical, and unless otherwise directed by the will of the
14 decedent, the tax shall be paid out of the estate before its
15 distribution: *Provided*, That the tax commissioner shall not
16 be charged with enforcing contribution from any person or
17 persons.

§11-11-29. Time for assessment of tax.

1 (a) *General*.—The amount of estate tax due under this
2 article shall be assessed on or before whichever of the
3 following dates occurs last:

4 (1) The period specified in section fifteen, article ten of
5 this chapter, during which an assessment may generally be
6 issued;

7 (2) Within a period expiring ninety days after the last
8 day on which the assessment of a deficiency in federal estate
9 tax may lawfully be made under applicable provisions of
10 the Internal Revenue Code; or

11 (3) Within ninety days after receipt of notice from a
12 personal representative that the federal estate tax liability
13 of an estate has been changed.

14 (b) *Exceptions*.—In the case of a false or fraudulent
15 return, or failure to file a return on or before the last day
16 prescribed for filing, or failure of the personal
17 representative to give the tax commissioner notice of a
18 change in the federal estate tax liability of an estate, the tax
19 may be assessed at any time.

§11-11-30. Refund of excess tax due to overpayment of federal estate tax.

1 (a) *Claim for refund*.—Notwithstanding the provisions
2 of section fourteen, article ten of this chapter, in the event of
3 a final determination by the United States Internal Revenue
4 Service, or other competent authority, of an overpayment of
5 the estate's federal estate tax liability, the period of
6 limitation upon claiming a refund reflecting such final
7 determination in the taxes due under this article shall not
8 expire until six months after such determination is made by
9 the United States Internal Revenue Service or other
10 competent authority.

11 (b) *When determination becomes final*.—For purposes

12 of this section, an administrative determination shall be
13 deemed to have become final on the date of receipt by the
14 personal representative, or other interested party, of the
15 final payment to be made refunding federal estate tax or
16 upon the last date on which the personal representative, or
17 any other interested party, shall receive notice from the
18 United States that an overpayment of federal estate tax has
19 been credited by the United States against any liability
20 other than the federal estate tax of said estate. A final
21 judicial determination shall be deemed to have occurred on
22 the date on which any judgment entered by a court of
23 competent jurisdiction, determining that there has been an
24 overpayment of federal estate tax, becomes final.

§11-11-31. Agreements as to amount of tax due.

1 For the purpose of facilitating the settlement and
2 distribution of estates held by personal representatives, the
3 tax commissioner may, on behalf of the state, agree to the
4 amount of taxes due or to become due from such personal
5 representative under the provisions of this article. Payment
6 in accordance with such agreement shall be full satisfaction
7 of the taxes to which the agreement relates.

**§11-11-32. County commissions to furnish tax commissioner
with names of decedents, etc.**

1 The county commission of all counties of this state, or the
2 clerks thereof, shall, on or before the tenth day of January,
3 April, July and October of each calendar year, notify the tax
4 commissioner of the names of all decedents, the names and
5 addresses of the respective executors, administrators or
6 curators appointed and the amount of the bonds, if any,
7 with respect to all estates of decedents whose wills have
8 been probated or presented for probate before the county
9 clerk, or upon which letters testamentary or upon whose
10 estates letters of administration or curatorship have been
11 sought or granted, during the preceding quarter. Such
12 report shall contain any other information which the
13 county clerk may have concerning the estates of such
14 decedents. The county clerk shall also furnish forthwith
15 such further information, from the records and files of the
16 clerk's office in regard to such estates, as the tax
17 commissioner may from time to time require.

§11-11-33. Administration of article by tax commissioner.

1 (a) The tax commissioner shall administer and enforce
2 the tax imposed by this article. He is authorized to require
3 such facts and information to be reported as he deems
4 necessary to enforce the provisions of this article.

5 (b) Rules and regulations promulgated by the tax
6 commissioner shall follow as nearly as practicable the rules
7 and regulations of the secretary of the treasury of the
8 United States. The construction of this article shall further
9 its purpose to simplify the preparation of tax returns, aid in
10 its interpretations through use of federal precedents and
11 improve its enforcement.

12 (c) The tax commissioner may prescribe the form and
13 content of any return or other documents, including a copy
14 of part or all of a federal return, required to be filed under
15 the provisions of this article.

16 (d) Reports and returns required to be filed under this
17 article shall be preserved for four years and thereafter until
18 the tax commissioner orders them destroyed.

§11-11-34. Appointment of special appraisers.

1 The tax commissioner may employ special appraisers for
2 the purpose of determining the value of any property which
3 is, or is believed by the tax commissioner to be, subject to
4 the tax imposed by this article. Such special appraisers
5 shall be paid such compensation as the tax commissioner
6 deems proper.

§11-11-35. Secrecy of information.

1 Notwithstanding the provisions of article ten of this
2 chapter to the contrary, the tax return of an estate shall be
3 open to inspection by or disclosure to:

4 (1) The personal representative of the estate;

5 (2) Any heir at law, next of kin or beneficiary under the
6 will of the decedent, but only if the tax commissioner finds
7 that this heir at law, next of kin or beneficiary has a
8 material interest which will be affected by information
9 contained in the return; or

10 (3) The attorney for the estate or its personal
11 representative or the attorney-in-fact duly authorized by
12 any of the persons described in subdivision (1) or (2).

§11-11-36. Money penalty for failure to produce records.

1 If any person:

2 (1) Fails to comply with any duty imposed upon him by
3 this article; or

4 (2) Having in his possession or control any record, file or
5 paper containing or supposed to contain any information
6 concerning the estate of the decedent, or, having in his
7 possession or control any property comprising part of the
8 gross estate of the decedent, fails to exhibit the same upon
9 request to the tax commissioner or any examiner, appraiser
10 or attorney appointed pursuant to this article, who desires
11 to examine the same in the performance of his duties under
12 the article, such person shall be liable to a money penalty of
13 not less than ten nor more than five hundred dollars to be
14 recovered, with costs of suit, in a civil action in the name of
15 the state.

§11-11-37. Interpretation and construction.

1 (a) No inference, implication or presumption of
2 legislative construction or intent shall be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision or portion of this article; and no legal effect shall
5 be given to any descriptive matter or heading relating to any
6 section, subsection or paragraph of this article.

7 (b) When not otherwise provided for in this article, the
8 rules of interpretation and construction applicable to the
9 estate tax laws of the United States shall apply to, and be
10 followed in, the interpretation of this article.

11 (c) The provisions of this article shall be liberally
12 construed in order to ensure that the state of domicile of any
13 decedent shall receive any death taxes, together with
14 interest and penalties thereon, due it.

§11-11-38. Estates to which article applies; former law preserved.

1 (a) *Persons dying after June 30, 1985.*—Except as
2 otherwise specifically provided, the provisions of this
3 article shall apply to the estate of every person dying on or
4 after the first day of July, one thousand nine hundred
5 eighty-five.

6 (b) *Persons dying before July 1, 1985.*—With respect to
7 persons dying prior to the first day of July, one thousand

8 nine hundred eighty-five, the provisions of article eleven,
9 chapter eleven of this code, in effect on the first day of
10 January, one thousand nine hundred eighty-five, are hereby
11 continued in force, and fully preserved, until their objects
12 have been fully accomplished.

§11-11-39. Effectiveness of this article.

1 This article shall remain in force and effect until either
2 one of the following events occurs:
3 (1) This article is repealed by the Legislature; or
4 (2) The government of the United States ceases to allow
5 credit against its estate tax for payment of state death taxes.

§11-11-40. General procedure and administration.

1 The provisions of the "West Virginia Tax Procedure and
2 Administration Act" set forth in article ten of this chapter,
3 shall apply to the tax imposed by this article with like effect
4 as if said act were set forth in extenso in this article, except
5 where it is expressly and specifically provided in this article
6 that a particular provision of this article shall govern and
7 control.

§11-11-41. Criminal penalties.

1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of this
3 chapter, shall apply to the tax imposed by this article with
4 like effect as if said act were applicable only to the tax
5 imposed by this article and were set forth in extenso in this
6 article.

§11-11-42. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applications
5 of the article, and to this end the provisions of this article
6 are declared to be severable.

**ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE AND
DEATH TAXES.**

§11-11A-1. Procedure and authority.

1 When the state tax commissioner claims that a decedent

2 was domiciled in this state at the time of his death and the
3 taxing authorities of another state or states make a like
4 claim on behalf of their state or states, the state tax
5 commissioner may make a written agreement of
6 compromise with the other taxing authorities and the
7 executor or administrator that a certain sum shall be
8 accepted in full satisfaction of any and all death taxes
9 imposed by this state, including any additions to tax,
10 interest or penalties to the date of filing the agreement. The
11 agreement shall also fix the amount to be accepted by the
12 other states in full satisfaction of death taxes. The executor
13 or administrator is hereby authorized to make such
14 agreement. Either the state tax commissioner or the
15 executor or administrator shall file the agreement, or a
16 duplicate, with the authority that would be empowered to
17 assess inheritance taxes for this state if there had been no
18 agreement; and thereupon the tax shall be deemed
19 conclusively fixed as therein provided. Unless the tax is
20 paid within thirty days after filing the agreement, additions
21 to tax, interest and penalties shall thereafter accrue upon
22 the amount fixed in the agreement but the time between the
23 decedent's death and the filing shall not be included in
24 computing the same.

CHAPTER 162

(Com. Sub. for H. B. 1693—By Mr. Speaker, Mr. Albright, and Delegate Farley)

[Passed April 8, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twelve-a, of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section seventeen-a, article twenty-four of said chapter eleven; to amend and reenact section five, article thirteen, chapter eight of said code; to amend and reenact section two, article nine, chapter eleven of said code; to amend and reenact section three, article ten, of said chapter eleven; to further amend said article ten by adding thereto a new section, designated section eighteen-a; to amend article twelve-a of said chapter eleven, by adding thereto a new section, designated section twenty-four; to amend and reenact sections

two, two-d, two-m and nine, article thirteen of said chapter eleven; to further amend said article thirteen by adding thereto two new sections, designated section twenty-eight and section twenty-nine; to amend and reenact section eight, article twenty-one of said chapter eleven; to amend and reenact sections three, four, five, six, seven, nine, thirteen and nineteen, article twenty-four of said chapter eleven; to further amend said article twenty-four by adding thereto a new section, designated section nine-a; to further amend said article twenty-four by redesignating section thirteen-a as section thirteen-b, and reenacting the same; and by adding a new section thereto, designated section thirteen-a; to further amend said chapter eleven by adding thereto three new articles, designated articles thirteen-a, thirteen-b and twenty-three, all relating generally to state tax reform of state taxes imposed on businesses; preserving the power of municipalities to continue imposing business and occupation or privilege taxes on business activity engaged in within the municipality and as to such: Prohibiting multiple taxation of the same gross income under the same classification by two or more municipalities; authorizing the tax commissioner to prescribe regulations for apportionment of gross receipts, and requiring administrative procedures for assessment and collection of tax; making "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" applicable to the taxes imposed by articles thirteen-a, thirteen-b and twenty-three, chapter eleven of this code; imposing additions to tax for underpayment of estimated tax and prescribing when additions are not applicable; imposing annual business and occupation privilege tax against persons engaging in businesses and other activities in this state until the first day of July, one thousand nine hundred eighty-seven and thereafter, only on the privilege of providing public utility service and generating electric power, with certain rate changes and effective dates therefor; requiring tax commissioner to prepare certain comparative study reports in relation to the new tax structure, dates for submission thereof to governor and legislature; requiring tax year and method of accounting for purposes of business and occupation taxes conforming with methods for federal income tax purposes; providing transition rules and effective dates for changes in business and occupation tax and surtax; imposing severance tax act and as to such act, providing for: Short title, definitions, determination of tax

base, imposition of tax, rates of tax, procedures for computation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into severance tax act, effective dates and transition rules; and requiring filing of information return, with civil penalty for failure to file; providing for tax credit for such tax against personal income tax and effective date thereof; imposing the telecommunications tax act, and as to such act, providing for: Short title, definitions, imposition of tax, rate of tax, procedures for computation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into telecommunications tax act, effective dates and transition rules; requiring filing of information return, with civil penalty for failure to file; imposing a business franchise tax act, and as to such act, providing for: Legislative finding, short title, definitions; determination of tax base; use of four-factor apportionment formula, double-weighting the sales factor; imposition of tax; rate of tax; procedures for computation, assessment and collection of tax; incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into business franchise tax, effective dates and transition rules; providing for credits against franchise tax; requiring filing of information return with civil penalty for failure to file; defining terms in "West Virginia Corporation Net Income Tax Act" and as to such act providing for: Nine and three-quarters percent tax rate, phasing-down in equal steps over five-year period to nine percent tax rate; taxation of banks and other financial organizations; adjustments to federal taxable income to determine West Virginia income allocation and apportionment of income of multi-state taxpayers; use of four-factor formula for apportionment, double-weighting the sales factor; and procedures for computation, assessment and collection of tax, with effective dates.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seventeen-a, article twenty-four of said chapter eleven be repealed; that section five, article thirteen, chapter eight of said code

be amended and reenacted; that section two, article nine, chapter eleven of said code be amended and reenacted; that section three, article ten of said chapter eleven be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section eighteen-a; that said article twelve-a of said chapter eleven, be amended by adding thereto a new section, designated section twenty-four; that sections two, two-d, two-m and nine, article thirteen of said chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto two new sections, designated section twenty-eight and section twenty-nine; that section eight, article twenty-one of said chapter eleven be amended and reenacted; that sections three, four, five, six, seven, nine, thirteen and nineteen, article twenty-four of said chapter eleven be amended and reenacted; that said article twenty-four be further amended by adding thereto a new section, designated section nine-a; that said article twenty-four be further amended by redesignating section thirteen-a as thirteen-b and reenacting the same, and by adding thereto a new section, designated section thirteen-a; and that said chapter eleven be further amended by adding thereto three new articles, designated articles thirteen-a, thirteen-b and twenty-three, all to read as follows:

Chapter

8. Municipal Corporations.

11. Taxation.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) *Authorization to impose tax.*—Whenever any business activity or occupation for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(b) *Maximum tax rates.*—In no case shall the rate of such municipal business and occupation or privilege tax on a particular

activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen.

(c) *Effective date of local tax.*—Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect.

(d) *Exemptions.*—A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein.

(e) *Activity in two or more municipalities.*—Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the tax commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the

taxpayer is located. Nothing in this subsection (e) shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.*—The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

CHAPTER 11. TAXATION.

Article

- 9. Crimes and Penalties.
- 10. Procedure and Administration.
- 12A. Annual Tax on Incomes of Certain Carriers.
- 13. Business and Occupation Tax.
- 13A. Severance Taxes.
- 13B. Telecommunications Tax.
- 23. Business Franchise Tax.
- 24. Corporation Net Income Tax.

ARTICLE 9. CRIMES AND PENALTIES.

*§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by chapter eleven:

- (1) The inheritance and transfer taxes imposed by article eleven;
- (2) The business franchise registration tax imposed by article twelve;
- (3) The annual tax on incomes of certain carriers imposed by article twelve-a;
- (4) The business and occupation tax imposed by article thirteen;

* Clerk's Note: This section was also amended by S. B. 73, which passed subsequent to this act.

- (5) The gasoline and special fuels excise tax imposed by article fourteen;
- (6) The motor carrier road tax imposed by article fourteen-a;
- (7) The consumers sales and service tax imposed by article fifteen;
- (8) The use tax imposed by article fifteen-a;
- (9) The cigarette tax imposed by article seventeen;
- (10) The soft drinks tax imposed by article nineteen;
- (11) The personal income tax imposed by article twenty-one; and
- (12) The corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

§11-10-18a. Additions to tax for failure to pay estimated tax.

***§11-10-3. Application of this article.**

(a) The provisions of this article shall apply to the inheritance and transfer taxes, and interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor carrier road tax and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinabove.

(b) The provision of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

* Clerk's Note: This section was also amended by S. B. 73, which passed subsequent to this act.

§11-10-18a. Additions to tax for failure to pay estimated tax.

(a) *Addition to tax.*—Except as provided in subsections (d) and (e), in the case of any underpayment of estimated tax there shall be added to the tax due for the taxable year, under any article administered by this article, an amount determined at the rate established under section seventeen of this article, on the amount of the underpayment of estimated tax for the period of the underpayment.

(b) *Amount of underpayment.*—For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were an amount equal to eighty percent of the tax shown on the return for the taxable year, or if no return was filed, eighty percent of the tax for such year, over

(2) The amount, if any, of the installments paid on or before the last date prescribed for payment.

(c) *Period of underpayment.*—The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision (1), subsection (b) for such installment date.

(d) *Exception.*—Notwithstanding the provisions of the preceding subsections, the additions to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

(1) *Prior year's tax.*—The tax shown on the return of the taxpayer

for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

(2) *Prior year's facts.*—An amount equal to the tax computed at the rates applicable to the current taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

(3) *Annualized tax.*—

(A) An amount equal to eighty percent of the tax for the current taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(ii) For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(iii) For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month; and

(iv) For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

(B) For purposes of this subdivision (3), the taxable income shall be placed on an annualized basis by:

(i) Multiplying by twelve the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (A).

(e) *Short taxable year.*—The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-24. Repeal of article and date thereof; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.

(a) Each and every provision of article twelve-A of this chapter

is repealed for all tax periods beginning on and after the first day of July, one thousand nine hundred eighty-seven: *Provided*, That tax liabilities, if any, arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

(b) Persons who are calendar year taxpayers under this article shall file their annual return for calendar year one thousand nine hundred eighty-seven, on or before the fifteenth day of September, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before the fifteenth day of September, one thousand nine hundred eighty-seven, for their short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income was under-reported on such annual return, or that any allowable deductions were over-reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: *Provided*, That such a taxpayer shall file a supplemental return for such year within one month after the close of each calendar quarter during which he received gross income for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is

to minimize the advantage or disadvantage associated with the different methods of accounting when the carrier income tax is repealed.

ARTICLE 13. BUSINESS AND OCCUPATION TAX .

§11-13-2. Imposition of privilege tax; reduction of rates and elimination of surtax on July 1, 1985, and exceptions thereto; elimination of certain classifications effective July 1, 1987, with retention thereafter of only classifications for public service utility businesses and electric power generation businesses.

§11-13-2d. Public service or utility business.

§11-13-2m. Business of generating or producing electric power; exception; rate.

§11-13-9. Tax year.

§11-13-28. Effective date; transition rules.

§11-13-29. Tax commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

***§11-13-2. Imposition of privilege tax; reduction of rates and elimination of surtax on July 1, 1985, and exceptions thereto; elimination of certain classifications effective July 1, 1987, with retention thereafter of only classifications for public service utility businesses and electric power generation businesses.**

(a) *Periods before July 1, 1987.*—For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k until expiration of such surtax on the first day of July, one thousand nine hundred eighty-five. On and after the first day of July, one thousand nine hundred eighty-five, the rates set forth in sections two-b through two-m, inclusive, shall be reduced by five percent through reduction of the rates applicable and in effect on the thirtieth day of June, one thousand nine hundred eighty-five, except that taxpayers exercising privileges in respect of severance, extraction and production of natural resource products and taxable at the rates set forth under section two-a of this article, shall not receive such rate reduction: *Provided*, That there shall be no such reduction of the tax imposed in section two-l for the use and benefit of counties and municipalities; *Provided, further*, That the additional, temporary surtax set forth in section two-k of this article shall, on and after

* Clerk's Note: This section was also amended by S. B. 705, which passed subsequent to this act.

the first day of July, one thousand nine hundred eighty-five, be nullified and of no further force or effect whatsoever.

(b) *Periods after June 30, 1987.*—For taxable years or months thereof beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: *Provided*, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five.

(c) If any person liable for any tax under sections two-a, two-b, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(e) Gross income included in the measure of the tax under sections two-a, two-b, two-l and two-m of this article shall neither be added nor deducted in computing the tax levied under the other sections of this article.

(f) A person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business

of selling his natural resources, manufactured products or electricity at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article.

(g) Persons exercising any privilege taxable under section two-b or two-m of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

(h) A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products, the production of which is taxable under sections two-a and two-l, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

§11-13-2d. Public service or utility business.

Upon any person engaging or continuing within this State in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise

hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one and four-tenths percent; water companies, four and four-tenths percent, except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: *Provided*, That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: *Provided, however*, That the sale of electric power under this section shall be taxed at the rate of two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: *Provided*, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five, and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

§11-13-2m. Business of generating or producing electric power; exception; rates.

(1) Upon every person engaging or continuing within this State in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d [§11-13-2d] of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: *Provided*, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five, and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

(2) The measure of this tax shall be the value of all electric power generated or produced in this State for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this State: *Provided*, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.

§11-13-9. Tax year.

(a) *Taxable year.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Method of accounting.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(c) *Adjustments.*—In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the tax commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§11-13-28. Effective date; transition rules.

(a) The provisions of sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article are inoperative as of the first day of July, one thousand nine hundred eighty-seven. Persons who are fiscal year taxpayers having a fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-seven, shall file their annual return for fiscal year one thousand nine hundred eighty-seven on or before the thirty-first day of July, one thousand nine hundred eighty-seven and remit the amount of any taxes shown thereon to be due.

(b) Persons who are calendar year taxpayers and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, and persons who are fiscal year taxpayers having a fiscal year ending on any date other than the thirtieth day of June, one thousand nine hundred eighty-seven, and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, shall file their annual returns on or before the thirty-first day of July, one thousand nine hundred eighty-seven for the short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due. Persons required to file an annual return for a short taxable year may claim

a portion of the annual exemption allowed under section three of this article, determined in accordance with the amount of the exemption allowable for each month in the short taxable year. The five thousand dollar annual exemption allowed to producers of natural gas shall similarly be calculated and allowed on a monthly basis at the rate of four hundred sixteen dollars and sixty-six cents for each month of the short taxable year ending on the thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Persons engaged in activities taxable under sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article prior to the first day of July, one thousand nine hundred eighty-seven, are taxable under either article thirteen-a or twenty-three of this chapter, or both, on and after such date.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income, gross proceeds of sale or gross value were under reported on such annual return, or that any allowable deductions were over reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: *Provided*, That such a taxpayer shall file a supplemental return for such year within one month after the close of each quarter during which he received gross income or gross proceeds of sale for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the business and occupation tax no longer applies to the taxpayer's ongoing business activity.

(f) Tax liabilities, if any arising for taxable years ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and

two-l of this article had not been effectively repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

§11-13-29. Tax Commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

The state tax commissioner, who will be recipient of informational reports and tax returns from taxpayers in respect of the revised state tax structure on business, beginning on the first day of July, one thousand nine hundred eighty-seven, shall furnish a comparative study report in respect of the data concerning businesses and their changed tax liabilities, entitlement to tax credits, and general categories wherein tax liability is substantially increased or lessened. Such report shall be furnished to the governor and to the Legislature at its regular sessions of the year one thousand nine hundred eighty-six and one thousand nine hundred eighty-seven, with particular emphasis on the elements of equity and adequacy that the acquired data may reflect in respect of the state's major industries and taxpayers, on the basis of their being subjected to taxation under the revised state tax structure.

ARTICLE 13A. SEVERANCE TAXES.

- §11-13A-1. Short title; arrangement and classification.
- §11-13A-2. Definitions.
- §11-13A-3. Imposition of privilege tax, phase-in of modified rates and effective dates therefor.
- §11-13A-4. Treatment processes as production.
- §11-13A-5. Oil and gas operating units.
- §11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditures of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.
- §11-13A-7. Accounting periods and methods of accounting.
- §11-13A-8. Annual return.
- §11-13A-9. Periodic installment payments of tax.
- §11-13A-10. Time for filing returns and paying tax; credit.
- §11-13A-11. Extension of time for filing returns.
- §11-13A-12. Extension of time for paying tax.
- §11-13A-13. Place for filing returns or other documents.

- §11-13A-14. Time and place for paying tax shown on returns.
 §11-13A-15. Signing of returns and other documents.
 §11-13A-16. Bond of taxpayer may be required.
 §11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.
 §11-13A-18. Records.
 §11-13A-19. General procedure and administration.
 §11-13A-20. Criminal penalties.
 §11-13A-21. Severability.
 §11-13A-22. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the "Severance Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-13A-2. Definitions.

(a) *General.*—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) *Terms defined.*—

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(3) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: *Provided*, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(4) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the amount received or receivable by the taxpayer.

(B) For natural resources severed or processed (or both severed and processed) but not sold during a reporting period, gross value shall be determined as follows:

(i) If the natural resource is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value.

(ii) If there is no existing contract, the fair market value for that grade and quality of the natural resource shall be used in computing gross value.

(C) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(D) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(E) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the coal of similar grade and quality and in the same

condition immediately preceding the processing of the coal in this state.

(F) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the coal of similar grade and quality and in the same condition immediately preceding the processing of the coal.

(G) In all instances, the gross value shall not be reduced by any state or federal taxes, royalties, sales commissions, or any other expense.

(H) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(7) "Mining" includes not merely the extraction of ores or minerals from the ground but also those treatment processes considered as mining under this article, and those treatment processes necessary or incidental thereto.

(8) "Natural resource" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(9) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which natural resources are severed, extracted, reduced to possession and produced or prepared in this state for sale, profit or commercial use. "Partner" includes a member of such a syndicate, group, pool, joint venture or organization.

(10) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(11) "Processed" or "processing" as applied to oil and natural gas shall not include any conversion or refining activities.

(12) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: *Provided*, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth, *Provided, further*, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) "Stock" includes shares in an association, joint-stock company or corporation.

(16) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.

(17) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind

engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) "This state" means the state of West Virginia.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

(a) Upon every person exercising the privilege of engaging or continuing within this state in severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource product or products there is hereby imposed a tax in the amount to be determined by the application of rates against the gross value of the articles produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the rates, in the classifications and according to the effective dates in subsection (b) of this section.

(b) *Tax rates; classifications; effective dates.*—Beginning on and after the first day of July, one thousand nine hundred eighty-seven and for each first day of July thereafter, as specified below, the rates of tax on each respective classification and for each respective year are as follows:

(1) On coal, and including the thirty-five one hundredths (.35) of one percent additional severance tax on such coal for the benefit of counties and municipalities, as provided in section six of this article, on

July 1, 1987—three and eighty-five one hundredths (3.85) percent;

July 1, 1988—three and eighty-eighths one hundredths (3.88) percent;

July 1, 1989—three and ninety-one hundredths (3.91) percent;

July 1, 1990—three and ninety-four one hundredths (3.94) percent;

July 1, 1991—three and ninety-seven one hundredths (3.97) percent; and

July 1, 1992 and thereafter—four (4.0) percent.

(2) On limestone or sandstone quarried or mined, on

July 1, 1987—two and two-tenths (2.2) percent;

July 1, 1988—two and fifty-six one hundredths (2.56) percent;

July 1, 1989—two and ninety-two one hundredths (2.92) percent;

July 1, 1990—three and twenty-eight one hundredths (3.28) percent;

July 1, 1991—three and sixty-four one hundredths (3.64) percent;
and

July 1, 1992—and thereafter—four (4.0) percent.

(3) On oil, on

July 1, 1987—four and thirty-four one hundredths (4.34) percent;

July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;

July 1, 1989—four and two hundred four one thousandths (4.204) percent;

July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;

July 1, 1991—four and sixty-eight one thousandths (4.068) percent;
and

July 1, 1992—and thereafter—four (4.0) percent.

(4) (a) On natural gas, on

July 1, 1987—six and five-tenths (6.5) percent;

July 1, 1988—six (6.0) percent;

July 1, 1989—five and five-tenths (5.5) percent;

July 1, 1990—five (5.0) percent;

July 1, 1991—four and five-tenths (4.5) percent; and

July 1, 1992—and thereafter—four (4.0) percent.

(4) (b) On natural gas produced from new wells drilled and placed in service on and after July 1, 1987 — four (4.0) percent.

(5) On sand, gravel or other mineral product not quarried or mined, on

July 1, 1987—four and thirty-four one hundredths (4.34) percent;

July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;

July 1, 1989—four and two hundred four one thousandths (4.204) percent;

July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;

July 1, 1991—four and sixty-eight one thousandths (4.068) percent; and

July 1, 1992—and thereafter (4.0) percent.

(6) On timber, on and after July 1, 1987—two and five-tenths (2.5) percent.

(7) On other natural resources, on

July 1, 1987—two and eighty-six one hundredths (2.86) percent;

July 1, 1988—three and eighty-eight one thousandths (3.088) percent;

July 1, 1989—three and three hundred sixteen one thousandths (3.316) percent;

July 1, 1990—three and five hundred forty-four one thousandths (3.544) percent;

July 1, 1991—three and seven hundred seventy-two one thousandths (3.772) percent

and

January 1, 1992—and thereafter four (4.0) percent.

(c) *Tax in addition to other taxes.*—The taxes imposed by this article shall apply to all persons severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) *Statement of purpose; relationship to existing contracts.*—It is the intent of the Legislature in enacting this article thirteen-a to continue the imposition of the tax upon exercising the privilege of engaging or continuing within this state the business of severing,

extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act. The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven.

§11-13A-4. Treatment processes as production.

(a) *Treatment processes considered as mining.*—The following treatment processes (and the treatment processes necessary or incidental thereto) when applied by the mine owner or operator to natural resources mined in this state shall be considered as mining and part of the privilege taxed under this article.

(1) *Coal.*—In the case of coal: Cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment.

(2) *Minerals customarily sold in crude form.*—In the case of other minerals which are customarily sold in crude form: Sorting, concentrating, sintering and substantially equivalent processes to bring them to shipping grade and form, and loading for shipment.

(3) *Minerals not customarily sold in crude form.*—In the case of other minerals which are not customarily sold in the form of the crude mineral products: Crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit.

(4) *Oil shale.*—In the case of oil shale: Extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining, or any other process subsequent to retorting; and

(5) *Other.*—Any other treatment process provided for in a legislative rule prescribed by the tax commissioner which, with respect to the particular ore or mineral, is not inconsistent with the preceding subdivisions of this subsection (a).

(b) *Treatment processes not considered as mining.* —Unless such processes are otherwise provided for in subsection (a), or are necessary or incidental to processes provided for in subsection (a), the following treatment processes shall not be considered as “mining”: Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping.

(c) *Treatment processes considered part of production of oil, natural gas and natural gas liquids.*—The privileges of severing and producing oil and natural gas shall not include any conversion or refining process.

(d) *Timber production privilege.*—The privilege of severing and producing timber shall end once the tree is severed and delimbed.

§11-13A-5. Oil and gas operating unit.

(a) For purposes of the production of oil classification and the production of natural gas classification, as set forth in this article, multiple co-owners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after its severance, extraction, reduction to possession and production (except royalty recipients in kind) shall be deemed to be a “group or combination acting as a unit” and one “person” as defined in section two of this article, if not otherwise defined therein, whenever engaged in the producing of oil or natural gas through common use (by joint or separately executed contracts) of the same independent contract driller or operator’s services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members’ accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

(b) Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) *Additional coal severance tax.*—Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of the article is measured as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection (a) shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the “additional tax on coal.”

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West Virginia Constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are hereinafter in this section referred to as the “coal-producing counties.” The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section three of this article, and all of the enforcement and

other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-two, article two, chapter twenty-two of this code, the tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules and regulations requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax on coal to such coal-producing counties, there is hereby created in the state treasurer's office a special fund to be known as the "county coal revenue fund;" and in order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the "all counties and municipalities revenue fund."

Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited in the "county coal revenue fund" and twenty-five percent of such net proceeds shall be deposited in the "all counties and municipalities revenue fund," from time to time, as such proceeds are received by the tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and

municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined by (1) dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter, and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

(g) The amount to which each county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" shall mean the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county shall be the county's "base share."

(2) Each county's "base share" shall then be subdivided into two portions. One portion shall be determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion shall be determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share." The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the

percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal severance tax revenue fund" which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such "coal severance tax revenue funds," in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: *Provided*, That in counties with population in excess of two hundred thousand at least fifty percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal producing area or areas of the county, said coal producing areas of each county to be determined generally by the state tax commissioner: *Provided, however*, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: *Provided further*, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before March twenty-eighth, one thousand nine hundred eighty-six, and each March twenty-eighth thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before July fifteenth of the current budget year.

(j) On or before December fifteenth, one thousand nine hundred eighty-six, and each December fifteenth thereafter, the tax commissioner shall deliver to the Clerk of the Senate and the Clerk

of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July fifteenth of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.

§11-13A-7. Accounting periods and methods of accounting.

(a) *General rule.* — For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.* — If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.* — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.* — If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-13A-8. Annual return.

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

§11-13A-9. Periodic installment payments of tax.

(a) *General rule.* — Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) *Tax of more than \$1,000 per month.* — For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner of the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) *Tax of \$1,000 per month or less.* — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) *Exception.* — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

§11-13A-10. Time for filing returns and paying tax; credit.

(a) *Calendar year taxpayers.* — Returns made on the basis of the calendar year shall be filed with the tax commissioner on or before the expiration of one month after the end of the taxable year.

(b) *Fiscal year taxpayers.* — Returns made on the basis of a fiscal year shall be filed with the tax commissioner on or before the expiration of one month after the end of the fiscal year.

(c) *Payment of tax.* — A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the tax commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).

(d) *Credit.* — Every taxpayer under this article shall be allowed an annual credit of five hundred dollars against the taxes due under this article to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state exercising a privilege taxable under this article.

§11-13A-11. Extension of time for filing returns.

The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.

§11-13A-12. Extension of time for paying tax.

(a) *Amount determined on return.* — The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.* — Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof

will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.* — No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13A-13. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-13A-14. Time and place for paying tax shown on returns.

(a) *General rule.* — The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return.)

(b) *Date fixed for payment of tax.* — The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) *Terms of extension.* — Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may, by regulation, prescribe or by contract require.

§11-13A-15. Signing of returns and other documents.

(a) *General.* — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) *Signing of corporation returns.* — The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on

behalf of the corporation.

(c) *Signing of partnership returns.* — The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) *Signature presumed authentic.* — The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) *Verification of returns.* — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13A-16. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the tax commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than five hundred dollars.

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section.

(e) The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

§11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.

(a) *General.* — In the case of natural resources, other than natural gas, where the tax commissioner finds that it would facilitate and expedite the collection of the taxes imposed under this article, the tax commissioner may authorize the taxpayer processing the natural resource to report and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in such form as the tax commissioner may prescribe. The agreement must be signed: By the owners, if the taxpayers are natural persons; in the case of a partnership or association, by a partner or member; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The agreement may be terminated by any party to the agreement upon giving thirty days' written notice to the other parties to the agreement: *Provided*, That the tax commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) *Natural gas.* —

(1) In the case of natural gas, except for those cases:

(A) Where the person severing (or both severing and processing) the natural gas will sell the gas to the ultimate consumer, or

(B) Where the tax commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes; the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase the natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. He shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and he shall remit the taxes to the tax commissioner. In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article. In those cases where the tax commissioner determines that the collection of the taxes due under this article from the

severance (or severance and processing) of natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the tax commissioner shall set out his determination in writing, stating his reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which such action would be effective.

(2) On or before the last day of the month following each taxable calendar month, each person first purchasing natural gas as described in subdivision (1) above, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased, the price paid, the date of purchase, and any other information deemed necessary by the tax commissioner for the administration of the tax imposed by this article, and shall pay the amount of tax due, on forms prescribed by the tax commissioner.

(3) On or before the last day of the month following each taxable calendar month, each person severing (or severing and processing) natural gas, shall report the sales of natural gas, showing the name and address of the person to whom sold, the quantity of gas sold, the date of sale, and the sales price on forms prescribed by the tax commissioner.

§11-13A-18. Records.

(a) Every taxpayer liable for reporting or paying tax under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

§11-13A-19. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13A-20. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13A-21. 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.

§11-13A-22. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven, were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

- §11-13B-1. Short title; arrangement and classification.
- §11-13B-2. Definitions.
- §11-13B-3. Tax imposed on telecommunications businesses; effective date.
- §11-13B-4. Accounting periods and methods of accounting.
- §11-13B-5. Annual return.
- §11-13B-6. Periodic installment payments of tax.
- §11-13B-7. Extension of time for filing returns.
- §11-13B-8. Extensions of time for paying tax.
- §11-13B-9. Place for filing returns or other documents.
- §11-13B-10. Time and place for paying tax shown on returns.
- §11-13B-11. Signing of returns and other documents.
- §11-13B-12. Records.
- §11-13B-13. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.
- §11-13B-14. Preservation of rights and the liabilities of taxpayers.
- §11-13B-15. General procedure and administration.
- §11-13B-16. Criminal penalties.
- §11-13B-17. Severability.

§11-13B-1. Short title; arrangement and classification.

This article may be cited as the "Telecommunications Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-13B-2. Definitions.

(a) *General.*—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) *Terms defined.*

(1) *Business.*—The term "business" shall include all activities engaged in or caused to be engaged in with the object of gain or

economic benefit, either direct or indirect.

(2) *Communications channel*.—The term “communications channel” or “channel” means the smallest discrete circuit or other means whereby a message, conversation, data set or signal may be communicated, which cannot be subdivided without destroying or diminishing its capacity to carry such communications.

(3) *Communications pathway*.—The term “communications pathway” means any conduit, wire, cable, microwave signal path, radio signal path or other pathway over which telecommunications can be carried. The length of the communications pathway of satellite repeater facilities or other satellite communications facilities is deemed to be the shortest distance over the surface of the earth between the point on the earth from which signals are sent to the satellite and the point on the earth where such signals are received from the satellite.

(4) *Delegate*.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(5) *Gross income*.—The term “gross income” of a telephone company or communications carrier shall be defined as all gross income received from the provision of local exchange or long distance voice or data communications services but shall not include gross income from the provision of network access, billing or similar services provided to end users, other telephone companies, or communications carriers.

(6) *Person*.—The term “person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(7) *Sale*.—The term “sale” includes any transfer of the ownership or title to property or any provision of a service, whether for money or in exchange for other property or services, or a combination thereof.

(8) *Tax commissioner*.—The term “tax commissioner” means the

tax commissioner of the state of West Virginia, or his delegate.

(9) *Taxable year.*—The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of the article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(10) *Taxpayer.*—The term “taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in telecommunications business activity.

(11) *Telecommunications.*—The term “telecommunications” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication, or means of communication, whether used for voice communication, computer data transmission, or other encoded symbolic information transfers. The term shall not include commercial broadcast radio or television, cable television or amateur or citizen’s band radio.

§11-13B-3. Tax imposed on telecommunications businesses; effective date.

(a) *Tax imposed.*—Upon every telecommunications business selling or furnishing telegraph, telephone or other telecommunications service, there is hereby imposed an annual privilege tax on account of the business, or other activities, of the taxpayer engaged in or carried on within this state, during the taxable year. The amount of taxes due shall be determined by application of rates against gross income, as specified in subsection (b) for telecommunications business effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) *Tax rate.*—The liability of a taxpayer under this article shall be four percent of the sum of:

(A) Its gross income from all telecommunications business beginning and ending within this state, and

(B) Its gross income apportioned to this state from all telecommunications business that either begins or ends in this state.

(c) *Exemptions.*—This section shall not apply to telecommunications services provided by municipalities, or by any other political subdivisions of this state.

(d) *Apportionment of certain income of telecommunications companies.*—Gross revenues of telecommunications companies derived from one point business in this state shall be apportioned to the state of West Virginia in the same proportion that the length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, in West Virginia bears to the total length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, located everywhere in the United States, its territories, and possessions.

§11-13B-4. Accounting periods and methods of accounting .

(a) *Taxable year.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.*—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.*—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-13B-5. Annual return.

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year

showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

§11-13B-6. Periodic installment payments of tax.

(a) *General rule.*—Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) *Tax of more than \$1,000 per month.*—For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner and the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) *Tax of \$1,000 per month or less.*—For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) *Exception.*—Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment

under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

§11-13B-7. Extension of time for filing returns.

The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.

§11-13B-8. Extensions of time for paying tax.

(a) *Amount determined on return.*—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or for any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.*—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.*—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13B-9. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-13B-10. Time and place for paying tax shown on returns.

(a) *General rule.*—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Date fixed for payment of tax.*—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) *Terms of extension.*—Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may by regulation prescribe, or by contract require.

§11-13B-11. Signing of returns and other documents.

(a) *General.*—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) *Signing of corporation returns.*—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) *Signing of partnership returns.*—The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) *Signature presumed authentic.*—The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) *Verification of returns.*—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13B-12. Records.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

§11-13B-13. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current

fiscal year for federal income tax purposes.

§11-13B-14. Preservation of rights and the liabilities of taxpayers.

Tax liabilities, if any arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

§11-13B-15. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13B-16. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13B-17. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three [§11-21-3] of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this Code: *Provided*, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed

by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen chapter eleven of this Code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) *Carrier income tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-A, chapter eleven of this Code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-A was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-A shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(c) *Severance tax credit.*—On and after the first day of July, one thousand nine hundred eighty-seven, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-A, chapter eleven of this code: *Provided*, That the amount of such severance tax credit shall not exceed the portion of the tax imposed by this article which is

attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-A was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

ARTICLE 23. BUSINESS FRANCHISE TAX.

- §11-23-1. Legislative finding.
- §11-23-2. Short title; arrangement of sections or portions thereof.
- §11-23-3. Definitions.
- §11-23-4. Tax base determined.
- §11-23-5. Apportionment of tax.
- §11-23-6. Imposition of tax.
- §11-23-7. Persons and organizations exempt from tax.
- §11-23-8. Accounting periods and methods of accounting.
- §11-23-9. Annual returns.
- §11-23-10. Extension of time for filing returns.
- §11-23-11. Time and place for paying tax shown on returns.
- §11-23-12. Extensions of time for paying tax.
- §11-23-13. Declaration and payment of estimated tax.
- §11-23-14. Requirements concerning returns, notices, records and statements.
- §11-23-15. Signing of returns and other documents.
- §11-23-16. Place for filing returns or other documents.
- §11-23-17. Credits against tax.
- §11-23-18. Tax under this article in addition to all other taxes.
- §11-23-19. Records.
- §11-23-20. Criminal penalties.
- §11-23-21. General procedure and administration.
- §11-23-22. Severability.
- §11-23-23. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

§11-23-1. Legislative finding.

This business franchise tax on corporations and partnerships is enacted pursuant to the provision of article X, section one of the constitution of this state, granting to the Legislature the authority to tax privileges, franchises and incomes of persons and corporations. The Legislature finds and declares that this franchise tax is imposed on the privilege of doing business in this state, and that

this tax is not an ad valorem property tax imposed on the property of corporations and partnerships doing business in this state.

§11-23-2. Short title; arrangement of sections or portions thereof.

This article shall be known and may be cited as the "Business Franchise Tax Act." No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any part, section, subsection or paragraph of this article.

§11-23-3. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

(b) *Terms defined.*

(1) *Business income.* — The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) *Capital.* — The term "Capital" of a taxpayer shall mean:

(A) In the case of a corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) Less the cost of treasury stock.

(B) In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, as filed by the taxpayer with the

Internal Revenue Service for the taxable year.

(C) *Additional items in capital.* — The term “Capital” for purposes of this article shall include such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(D) Allowance for certain government obligations and obligations secured by residential property. As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(a) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(b) Obligations of this state and any political subdivision of this state;

(c) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(d) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the beginning and ending year balances of the total assets of the taxpayer as shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) *Commercial domicile.* — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) *Commissioner or tax commissioner.* — The terms “commissioner” or “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) *Compensation.* — the term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) *Corporation.* — The term “corporation” includes any corporation, S corporation, joint-stock company, and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) *Delegate.* — The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

(8) *Doing business.* — The term “doing business” means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity), by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apairy, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) *Domestic corporation.* — The term “domestic corporation” means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-

three. Every other corporation is a foreign corporation.

(10) *Federal Form 1120.* — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) *Federal Form 1065.* — The term “Federal Form 1065” means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the Federal Internal Revenue Service.

(12) *Fiduciary.* — The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(13) *Financial organization.* — The term “financial organization” includes any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consist of intangible personal property and at least ninety percent of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.

(14) *Fiscal year.* — The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) *Includes and including.* — The term “includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning

of the term being defined.

(16) *Parent and subsidiary corporations.* — A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the “parent corporation” and the corporation which is so owned by the parent is defined to be a “subsidiary corporation.”

(17) *Partnership and partner.* — The term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not, a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or organization.

(18) *Person.* — The term “person” includes any corporation or partnership.

(19) *Pro forma return.* — The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) *Sales.* — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(21) *State.* — The term “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(22) *Stock.* — The term “stock” includes shares in a corporation, association or joint stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. “Stock owned by a corporation” shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) *Taxable year.* — The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(24) *Taxable in another state.* — The term “taxable in another

state" for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) *Taxpayer.* — The term "taxpayer" means any person (as defined in this section) subject to the tax imposed by this article.

(26) *This code.* — The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(27) *This state.* — The term "this state" means the state of West Virginia.

(28) *Treasury stock.* — The term "treasury stock" means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been cancelled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

(c) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States, or to the Internal Revenue Code, or to the federal income tax law shall mean the provisions of the laws of the United States as related to the determination of income for federal income tax purposes as in effect on the first day of January, one thousand nine hundred eighty-five.

§11-23-4. Tax base determined.

The tax base of a taxpayer, for purposes of this article, shall be its capital, as defined and adjusted in section three of this article. If the taxpayer is also taxable in another state, then the tax base of the taxpayer shall be its capital, as defined in section three of this article, multiplied by its apportionment factor determined under section five of this article.

§11-23-5. Apportionment of tax base.

(a) A taxpayer subject to the tax imposed by this article and also

taxable in another state shall, for the purposes of this tax, apportion its tax base to this state by multiplying its tax base by a fraction, the numerator of which is the sum of the property factor, plus the payroll factor, plus two times the sales factor, all of which shall be determined as hereinafter provided in this section, and the denominator of which is four.

(b) *Property factor.* — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year, and the denominator of which is the average value of all real and tangible personal property owned or rented by the taxpayer and used by it during the taxable year, which is reported on Schedule L of Federal Form 1120 (or 1065 for partnerships), plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(c) *Value of property.* — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(d) *Leasehold improvements.* — Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the lessee regardless of whether the lessee is entitled to remove

the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(e) *Average value of property.* — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(f) *Payroll factor.* — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid by the taxpayer during the taxable year as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(g) *Compensation.* — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only the amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly to employees include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(h) *Employee.* — The term "employee" means:

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(i) *Compensation paid in this state.* — Compensation is paid in this state if:

(1) The employee's service is performed entirely within the state;

(2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(3) Some of the service is performed in the state and:

(A) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(j) *Sales factor.* — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 or 1065, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(k) *Allocation of sales of tangible personal property.* — Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser

is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(l) *Allocation of other sales.* — Sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(m) *Other methods of allocation.* —

(1) *General.* — If the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's tax base.

(2) *Burden of Proof.* — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§11-23-6. Imposition of tax.

(a) *General.* — An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect

of the benefits and protections conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation leasing property located in this state or doing business in this state and from every partnership owning or leasing property located in this state or doing business in this state, effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) *Amount of tax and rate; effective date.* — On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: *Provided*, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated bases upon the ratio which the number of months in such short taxable year bears to twelve.

§11-23-7. Persons and organizations exempt from tax.

The following organizations and persons shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Such persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons.

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: *Provided*, That this exemption shall not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization if the unrelated business income is subject to federal income tax.

(c) Insurance companies which pay this state a tax upon premiums.

(d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": *Provided*, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five.

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: *Provided*, That this exemption shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code.

§11-23-8. Accounting periods and methods of accounting.

(a) *General rule.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.*—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.*—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its return for the taxable year filed under this article.

§11-23-9. Annual returns.

(a) *In general.*—Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year on or before the fifteenth day of the third month of the next succeeding taxable year. The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) *Consolidated returns.*—Any corporation that files as part of an affiliated group for purposes of the tax imposed by article twenty-four of this chapter, shall file a consolidated return under this article.

(c) The tax commissioner may, at his discretion, require an affiliated group of corporations to file a consolidated tax return under this article in order to accurately determine the taxes due under this article.

§11-23-10. Extension of time for filing returns.

The tax commissioner may grant a reasonable extension of time for filing any returns or other document required by this article upon such terms as he may by regulations prescribe. An extension of time for filing Federal Form 1120, Federal Form 990T or Federal Form 1065 shall automatically extend the time for filing any return or other document required by this article for the same period as the extension for filing such federal form. An extension of time for filing a return shall not extend the time for payment of the tax.

§11-23-11. Time and place for paying tax shown on returns.

(a) *In general.*—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Date fixed for payment of tax.*—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§11-23-12. Extensions of time for paying tax.

(a) *Amount determined on return.*—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any

periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.*—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.*—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations or to fraud with intent to evade tax.

§11-23-13. Declaration and payment of estimated tax.

(a) *Requirement of declaration.*—Every taxpayer subject to tax under this article shall file a declaration of estimated tax for the taxable year if the taxpayer's liability for tax under this article can reasonably be expected to exceed twelve thousand dollars for the taxable year. A taxpayer not required by this section to file a declaration and pay estimated tax may elect to so file and pay.

(b) *Definition of estimated tax.*—The term "estimated tax" means the amount which a taxpayer estimates to be his liability under this article for the taxable year.

(c) *Contents of declaration.*—The declaration shall contain such information as the tax commissioner may, by rules or regulations, require, including, but not limited to, such detailed information as may be necessary to estimate the taxpayer's liability under sections two and three of this article.

(d) *Time for filing declaration.*—A declaration of estimated tax shall be filed on or before the fifteenth day of the fourth month of the taxable year, for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

(e) *Amendment of declaration.*—A taxpayer may amend his declaration at any time during the taxable year in accordance with regulations prescribed by the tax commissioner. If any amendment

of a declaration is filed by a taxpayer, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(f) *Payment of estimated tax.*—The estimated tax shall be paid in four equal installments. At the time the declaration of estimated payment is filed, the taxpayer shall pay one fourth of the estimated tax liability for the taxable year. The second, third and fourth installments shall be paid on the following fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively.

(g) *Application to short taxable year.*—This section shall apply to a taxable year of less than twelve months in accordance with regulations of the tax commissioner.

(h) *Installment paid in advance.*—Any taxpayer may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

§11-23-14. Requirements concerning returns, notices, records and statements.

(a) *General.*—The tax commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such person is liable for tax under this article.

(b) As a part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income

statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

(c) *Notice of qualification as receiver, etc.*

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

§11-23-15. Signing of returns and other documents.

(a) *General.*—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) *Signing of corporation returns.*—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) *Signature presumed authentic.*—The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(d) *Verification of returns.*—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-23-16. Place for filing returns or other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivering it, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements or other documents, or copies thereof.

§11-23-17. Credits against tax.

(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, (determined before application of credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen-a, of this chapter and the denominator of which is the total amount of gross income derived by the taxpayer from all activity in West Virginia.

(b) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer's liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: *Provided*, That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent's ownership of the subsidiary corporation or partnership. In the case of corporations, this percentage shall be equal to the percentage of stock of all classes owned by the parent. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(c) A credit shall be allowed against the tax imposed by this article equal to the amount of liability of the taxpayer for the taxable year of the full amount of any tax imposed under sections fourteen and fourteen-a, article three of this chapter.

§11-23-18. Tax under this article in addition to all other taxes.

The returns, requirements and taxes set forth and imposed under this article shall be in addition to all other reports, requirements, taxes and duties set forth and imposed by this state.

§11-23-19. Records.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

§11-23-20. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-23-21. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-23-22. 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.

§11-23-23. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for the tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of

July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 24. CORPORATION NET INCOME TAX.

- §11-24-3. Meaning of terms.
- §11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.
- §11-24-5. Corporations exempt from tax.
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***§11-24-3. Meaning of terms.**

(a) *General*. — Any term used in this article shall have the same

*Clerk's Note: This section was also amended by S. B. 622, which passed prior to this act.

meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-five, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-four, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred eighty-five, shall be given effect.

(b) *Certain terms defined.* — For purposes of this article:

(1) *Business income.* — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

(2) *Commercial domicile.* — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) *Compensation.* — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) *Corporation.* — The term “corporation” includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(5) *Delegate.* — The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly, by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulation promulgated thereunder.

(6) *Domestic corporation.* — The term “domestic corporation” means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight

hundred sixty-three. Every other corporation is a foreign corporation.

(7) *Engaging in business.* — The term “engaging in business” or “doing business” means any activity of a corporation which enjoys the benefits and protection of government and laws of this state.

(8) *Federal Form 1120.* — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(9) *Fiduciary.* — The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(10) *Fiscal year.* — The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(11) *Includes and including.* — The terms “includes and including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(12) *Nonbusiness income.* — The term “nonbusiness income” means all income other than business income.

(13) *Person.* — The term “person” is to be deemed interchangeable with the term “corporation” in this section.

(14) *Pro forma return.* — The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(15) *Public utility.* — The term “public utility” means any business

activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(16) *Sales*. — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(17) *State*. — The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(18) *Taxable year*. — The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(19) *Tax*. — The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(20) *Tax commissioner*. — The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(21) *Taxpayer*. — The term “taxpayer” means a corporation subject to the tax imposed by this article.

(22) *This code*. — The term “this code” means the code of West Virginia.

(23) *This state*. — The term “this state” means the state of West Virginia.

(24) *West Virginia taxable income*. — The term “West Virginia taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in section six of this article: *Provided*, That in the case of a corporation having income from business activity which is taxable without this state, its “West Virginia taxable income” shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven of this article.

§11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.

(a) *Primary tax*.

(1) In the case of taxable periods beginning after the thirtieth day of June, one thousand nine hundred sixty-seven, and ending prior to the first day of January, one thousand nine hundred eighty-three, a tax is hereby imposed for each taxable year at the rate of six percent per annum on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

(2) In the case of taxable periods beginning on or after the first day of January, one thousand nine hundred eighty-three, and ending prior to the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five, and any banks, banking associations or corporations, trust companies, building and loan associations, and savings and loan associations, at the rates which follow:

(A) On taxable income not in excess of fifty thousand dollars, the rate of six percent; and

(B) On taxable income in excess of fifty thousand dollars, the rate of seven percent.

(3) In the case of taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property activity or other sources in this state, except corporations exempt under section five, at the rate of nine and three quarters percent. Beginning the first day of July, one thousand nine hundred eighty-eight, the rate shall be reduced by fifteen one hundredths (.15) of one percent per year for five successive years, with such rate to be nine percent (9.0) on and after the first day of July, one thousand nine hundred ninety-two.

(b) *Temporary surtax.* — In addition to the primary tax imposed, determinable and with exemptions, as aforesaid, there is hereby imposed an additional tax, a temporary surtax, of fifteen percent of the determined primary tax liability (as determined prior to application of any credits allowable under section nine of this article), and with such additional, temporary surtax being hereby made effective and applicable to taxable years or portions thereof

beginning on and after the first day of January, one thousand nine hundred eighty-three, with such additional temporary surtax to expire, be nullified and be of no further force or effect whatsoever after the thirtieth day of June, one thousand nine hundred eighty-five. Section four-a of this article, applicable to the effect of any rate changes during a taxable year, shall be construed to include and also be applicable to this surtax or any change of such surtax hereafter occurring during a taxable year. Corporations exempt under section five of this article from the primary tax, as imposed, are hereby made exempt from the additional temporary surtax as imposed.

§11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: *Provided*, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) Insurance companies which pay this state a tax upon premiums.

(c) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": *Provided*, That the exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(d) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended: *Provided*, That said corporations shall file the information return required by section thirteen-b of this article.

(e) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) *General.* — In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax

purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) *Adjustments increasing federal taxable income.* — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items except that adjustment (5) shall be required only with respect to tax periods ending after the thirty-first day of December, one thousand nine hundred eighty-one:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine;

(4) Interest charges directly incurred in the carrying of securities whose income is not taxable under this article, to the extent deductible in determining federal taxable income; and

(5) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property; three-year property — no modifications; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-year or eighteen-year real property — thirty-five percent: *Provided*, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method, or to any taxable year beginning after the first day of July, one thousand nine hundred eighty-seven.

(c) *Adjustments decreasing federal taxable income.* — There shall

be subtracted from federal taxable income:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: *Provided*, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis;

(2) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount of dividends received, to the extent included in federal taxable income: *Provided*, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven; and

(4) Thirty-seven and one-half percent of the excess of net long-term capital gain over net short-term capital loss as defined in the laws of the United States: *Provided*, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven.

(d) *Adjustment resulting from recomputation of net operating loss deduction.* — In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

(e) *Special adjustments for expenditures for water and air pollution control facilities.*

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in

section 48 (h)(12)(B) and (C) of the Internal Revenue Code, and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(f) *Allowance for certain government obligations and obligations secured by residential property.*—The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with parts (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by parts (b), (c), (d) and (e) by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any

agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(B) Obligations or securities of this state and any political subdivision or authority thereof;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the beginning and ending year balances of the total assets of the taxpayer as shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service.

§11-24-7. Allocation and apportionment.

(a) *General.* — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer’s federal taxable income adjusted as provided in section six.

(b) *“Taxable in another state” defined.* — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) *Business activities entirely within West Virginia.* — If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, entire net income of such taxpayer is subject to the tax imposed by this article.

(d) *Business activities partially within and partially without West*

Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and such taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4).

(1) *Net rents and royalties.*

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state, or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) *Capital gains.*

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale, or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1954, as amended, shall be considered business income for purposes of this article.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) *Patent and copyright royalties.*

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(e) *Business activities partially within and partially without this state; apportionment of business income.* — All net income, after deducting those items specifically allocated under subsection (d), shall be apportioned to this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(1) *Property factor.* — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and

tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) *Value of property.* — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) *Leasehold improvements.* — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(4) *Average value of property.* — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the

taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(5) *Payroll factor.* — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(6) *Compensation.* — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(7) *Employee.* — The term "employee" means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(8) *Compensation.* — Compensation is paid in this state if:

(A) The employee's service is performed entirely within this state;
or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and

(i) The employee's base of operations or, if there is no base of

operations, the place from which the service is directed or controlled is in the state, or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(9) *Sales factor.* — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(10) *Allocation of sales of tangible personal property.* — Sales of tangible personal property are in this state if:

(A) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(B) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and

(i) The purchaser is the United States government; or

(ii) The taxpayer is not taxable in the state of the purchaser.

(11) *Allocation of other sales.* — Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and

outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(f) *Income producing activity.* — The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service,

(2) The sale, rental, leasing, licensing or other use of real property,

(3) The rental, leasing, licensing or other use of tangible personal property,

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income producing activity.

(g) *Cost of performance.* — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment.

(1) *General.* — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer’s income.

(2) *Alternative method for public utilities.* — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) *Burden of proof.* — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) or (2) of this subsection is sought on the ground that the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§11-24-9. Credits against primary tax; election of taxpayer; expiration of credit.

(a) *Credit for primary taxes imposed under article thirteen, chapter eleven of this code.* — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided*, That the amount of such business and occupation tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: *Provided, however*, That the entire amount of the business and occupation tax liability of the taxpayer, which was

taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: *Provided further*, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its business and occupation tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) *Credit for taxes imposed under article twelve-a, chapter eleven of this code.* — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided*, That the amount of such credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: *Provided, however*, That the entire amount of the carrier income tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: *Provided further*, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its carrier income tax liability for the taxable year, which was taken as a deduction on its federal return for the taxable year.

(c) *Expiration of credits.* — The credits authorized in subsections (a) and (b) of this section shall expire and not be authorized or allowed for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

§11-24-9a. Credits against primary tax; election of taxpayer.

Credit for primary taxes imposed under article thirteen-A, chapter eleven of this code. — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for the severance tax imposed under article thirteen-a, chapter eleven of this code: *Provided*, That the amount of such severance tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: *Provided, however*, That the entire amount of the severance tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: *Provided further*, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its severance tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen-a, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen-a computed without reduction for the tax credit for coal loading facilities or for industrial expansion or revitalization allowed for such year.

§11-24-13. Returns; time for filing.

On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article.

§11-24-13a. Method of filing for business taxes.

(a). *Privilege to file.* — An “affiliated group” of corporations (as defined for purposes of filing a consolidated federal income tax return), shall subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner,

have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group and which are included in such return consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) *Election binding.* — If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after June thirtieth, one thousand nine hundred eighty-seven, such elections once made shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) *Method of filing under this article deemed controlling for filing under other business taxes articles.* — The taxpayer shall file on the same basis under articles thirteen-a, thirteen-b, and twenty-three of this chapter as such taxpayer has filed pursuant to this article. Such filing method may not be changed in respect of this article or articles thirteen-a, thirteen-b or twenty-three of this chapter without the written consent of the tax commissioner.

(d) *Regulations.* — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(e) *Computation and payment of tax.* — In any case in which a consolidated return is filed, or is required to be filed, the tax due under this article from the affiliated group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by law for the filing of such return, and such affiliated group shall be treated as the taxpayer.

(f) *Consolidated return required.* — If any affiliated group of corporations has not elected to file a consolidated return, the tax commissioner may require such corporations to make a consolidated return in order to clearly reflect the taxable income of such corporations.

§11-24-13b. Information return for corporations electing to be taxed under subchapter S.

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, shall on or before the fifteenth day of the third month following the close of the taxable year file an information return for each tax year, stating specifically the items of its gross income and the deductions allowable, the names and addresses of all persons owning stock in the corporation at any time during the tax year, the number of shares of stock owned by each shareholder at all times during the tax year, the amount of money and other property distributed by the corporation during the tax year to each shareholder, the date of each such distribution, and such other information as the tax commissioner may prescribe. Corporations failing to file information returns by the due date as prescribed in this section shall be subject to a penalty of fifty dollars for each failure to file, with such penalty being collected as other penalties are collected by the tax commissioner. This section shall take effect for tax years beginning on or after the first day of July, one thousand nine hundred seventy-two.

§11-24-19. Requirements concerning returns, notices, records and statements.

(a) *General.* — The tax commissioner may prescribe regulations as to the keeping of records, the contents and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any corporation, by regulation or notice served upon such corporation, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

(b) *Information at source.* — The tax commissioner may prescribe regulations and instructions requiring returns of information to be made by any person, including lessees or mortgagers of real or personal property, fiduciaries, employers, and all officers and

employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(c) *Notice of qualifications as receiver, etc.* — Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

(d) *Federal return information.* — As part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal, consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

CHAPTER 163

(S. B. 705—Originating in the Committee on Finance)

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

AN ACT to amend and reenact sections two and two-b, article

thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to business and occupation tax liability of persons exercising the privilege of engaging or continuing within this state in any taxable activity; providing for certain tax rates to be reduced by five percent for taxable months beginning on and after the first day of July, one thousand nine hundred eighty-five; providing for all tax rates except those set forth in sections two-d and two-m, to expire on the first day of July, one thousand nine hundred eighty-seven, for taxable months beginning on and after such date; providing for the rates set forth in sections two-d and two-m, on the first day of July, one thousand nine hundred eighty-seven, increase to and revert back to those rates in effect on the first day of January, one thousand nine hundred eighty-five, for taxable months beginning on and after said first day of July; reducing rate of tax under section two-b to eight tenths of one percent upon the effective date of this bill or said first day of July, whichever is first, and for there to be no five percent reduction of said rate; requiring persons exercising the privilege of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use to pay tax imposed on privilege of selling such products at wholesale in this state on or after the effective date of this bill; and providing for persons exercising the privilege of dressing and processing of food for human consumption sold in this state to report gross proceeds of such sales under wholesale sales classification or retail sales classification and pay applicable rate of tax thereon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax; reduction and restoration of rates; expiration on July 1, 1987, of all tax on all privileges except public service utility businesses and electric power generation.

§11-13-2b. Manufacturing, compounding or preparing products; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; exemption of dressing and processing food for human consumption; valuation of timber products.

***§11-13-2. Imposition of privilege tax; reduction and restoration of rates; expiration on July 1, 1987, of all tax on all privileges except public service utility businesses and electric power generation.**

1 (a) *Periods before July 1, 1987.*—For taxable years or
2 months thereof ending prior to the first day of July, one
3 thousand nine hundred eighty-seven, there is hereby levied
4 and shall be collected annual privilege taxes against the
5 persons, on account of the business and other activities, and
6 in the amounts to be determined by the application of rates
7 against values or gross income as set forth in sections two-a
8 to two-m, both inclusive, of this article and the application
9 of the surtax rate against gross income as set forth in section
10 two-k: *Provided*, That on the first day of July, one thousand
11 nine hundred eighty-five, the taxes imposed by this section,
12 at the rates set forth in sections two-b through two-m, both
13 inclusive, of this article, and in effect on the first day of
14 January, one thousand nine hundred eighty-five, exclusive
15 of any surtaxes, shall be reduced by five percent for taxable
16 months beginning on and after said first day of July:
17 *Provided, however*, That on and after the first day of July,
18 one thousand nine hundred eighty-five, the rate of tax
19 under section two-b of this article shall not be less than
20 eight tenths of one percent: *Provided further*, That there
21 shall be no such reduction of the rates set forth in section
22 two-a or two-l of this article.

23 (b) *Periods after June 30, 1987.*—For taxable years or
24 months thereof beginning after the thirtieth day of June,
25 one thousand nine hundred eighty-seven, there is hereby
26 levied and shall be collected annual privilege taxes against
27 the persons, on account of the business and other activities,
28 and in the amount to be determined by the application of
29 rates against values or gross income as set forth in sections
30 two-d and two-m of this article: *Provided*, That on and after
31 the first day of July, one thousand nine hundred eighty-

* Clerks Note: This section was also amended by H. B. 1693, which passed prior to this act.

32 seven, the rates applicable to the privileges exercised in
33 sections two-d and two-m of this article shall be restored
34 and returned to those which were in effect as to such
35 privileges on the first day of January, one thousand nine
36 hundred eighty-five.

37 (c) If any person liable for any tax under section two-a,
38 two-b, two-l or two-m shall ship or transport his products
39 or any part thereof out of the state without making sale of
40 such products, the value of the products in the condition or
41 form in which they exist immediately before transportation
42 out of the state shall be the basis for the assessment of the
43 tax imposed in said sections, except in those instances in
44 which another measure of the tax is expressly provided. The
45 tax commissioner shall prescribe equitable and uniform
46 rules for ascertaining such value.

47 (d) In determining value, however, as regards sales from
48 one to another of affiliated companies or persons, or under
49 other circumstances where the relation between the buyer
50 and seller is such that the gross proceeds from the sale are
51 not indicative of the true value of the subject matter of the
52 sale, the tax commissioner shall prescribe uniform and
53 equitable rules for determining the value upon which such
54 privilege tax shall be levied, corresponding as nearly as
55 possible to the gross proceeds from the sale of similar
56 products of like quality or character where no common
57 interest exists between the buyer and seller but the
58 circumstances and conditions are otherwise similar.

59 (e) Gross income included in the measure of the tax
60 under sections two-a, two-b, two-l and two-m of this article
61 shall neither be added nor deducted in computing the tax
62 levied under the other sections of this article.

63 (f) A person exercising any privilege taxable under
64 section two-a, two-b, two-l or two-m of this article and
65 engaging in the business of selling his natural resources,
66 manufactured products or electricity at retail in this state
67 shall be required to make returns of the gross proceeds of
68 such retail sales and pay the tax imposed in section two-c of
69 this article for the privilege of engaging in the business of
70 selling such natural resources, manufactured products or
71 electricity at retail in this state. But any person exercising
72 any privilege taxable under section two-a, two-b, two-l or
73 two-m of this article and engaging in the business of selling

74 his natural resources, manufactured products or electricity
75 to producers of natural resources, manufacturers,
76 wholesalers, jobbers, retailers or commercial consumers for
77 use or consumption in the purchaser's business shall not be
78 required to pay the tax imposed in section two-c of this
79 article: *Provided*, That on and after the effective date of this
80 proviso, a person exercising any privilege taxable under
81 section two-b of this article, and engaging in the business of
82 selling his manufactured products in this state shall be
83 required to make returns of the gross proceeds of such
84 wholesale sales and pay the tax imposed by this section at
85 the rate set forth in section two-c of this article for the
86 privilege of engaging in the business of selling such
87 manufactured products in this state.

88 (g) Persons exercising any privilege taxable under
89 section two-b or two-m of this article shall not be required
90 to pay the tax imposed in section two-c of this article for the
91 privilege of selling their manufactured products or
92 electricity for delivery outside of this state, but the gross
93 income derived from the sale of such products or electricity
94 outside of this state shall be included in determining the
95 measure of the tax imposed on such person in section two-b
96 or two-m.

97 (h) A person exercising privileges taxable under the
98 other sections of this article, producing coal, oil, natural
99 gas, minerals, timber or other natural resource products,
100 the production of which is taxable under sections two-a and
101 two-l, and using or consuming the same in his business or
102 transferring or delivering the same as any royalty payment,
103 in kind, or the like, shall be deemed to be engaged in the
104 business of mining and producing coal, oil, natural gas,
105 minerals, timber or other natural resource products for sale,
106 profit or commercial use, and shall be required to make
107 returns on account of the production of the business
108 showing the gross proceeds or equivalent in accordance
109 with uniform and equitable rules for determining the value
110 upon which such privilege tax shall be levied,
111 corresponding as nearly as possible to the gross proceeds
112 from the sale of similar products of like quality or character
113 by other taxpayers, which rules the tax commissioner shall
114 prescribe.

§11-13-2b. Manufacturing, compounding or preparing products; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; exemption of dressing and processing food for human consumption; valuation of timber products.

1 (a) Upon every person engaging or continuing within
2 this state in the business of manufacturing, compounding or
3 preparing for sale, profit or commercial use, either directly
4 or through the activity of others in whole or in part, any
5 article or articles, substance or substances, commodity or
6 commodities, or newspaper publishing (including all gross
7 income or proceeds of sale from circulation and advertising)
8 except electric power produced by public utilities or others,
9 the amount of the tax to be equal to the value of the article,
10 substance, commodity or newspaper, manufactured,
11 compounded or prepared for sale, as shown by the gross
12 proceeds derived from the sale thereof by the manufacturer
13 or person compounding or preparing the same, except as
14 otherwise provided, multiplied by a rate of eight tenths of
15 one percent.

16 (b) The measure of this tax is the value of the entire
17 product manufactured, compounded or prepared in the
18 state for sale, profit or commercial use, regardless of the
19 place of sale or the fact that deliveries may be made to
20 points outside the state.

21 (c) The value of electricity generated by persons taxed
22 under the provisions of this section, which electricity is
23 directly used by such persons in the business of
24 manufacturing and not sold or otherwise transferred or
25 transmitted to others, shall be exempt from the imposition
26 of any tax under this article.

27 (d) With respect to the manufacturing, compounding or
28 preparing for sale of timber or timber products, the measure
29 of this tax is the value of the entire timber product
30 manufactured, compounded or prepared in the state for
31 sale, profit or commercial use, regardless of the place of sale
32 or the fact that deliveries may be made to points outside the
33 state but such value shall not include the value of any

34 timber or timber products used as ingredients, components
35 or elements of such timber products.

36 (e) The dressing and processing of food intended for
37 human consumption by a person, firm or corporation,
38 which food is to be sold in this state by such person, firm or
39 corporation shall not be considered as manufacturing or
40 compounding or preparing for sale, but the sale of these
41 products shall be reported under section two-c of this
42 article, as either a wholesale or retail sale, as the case may
43 be.

44 (f) It is further provided, however, that in those
45 instances in which the same person partially manufactures,
46 compounds or prepares products within this state and
47 partially manufactures, compounds or prepares such
48 products outside of this state the measure of this tax under
49 this section shall be that proportion of the sale price of the
50 product that the payroll cost of manufacturing within this
51 state bears to the entire payroll cost of manufacturing the
52 product; or, at the option of the taxpayer, the measure of his
53 tax under this section shall be the proportion of the sales
54 value of the articles that the cost of operations in West
55 Virginia bears to the full cost of manufacture of the articles.

CHAPTER 164

(Com. Sub. for S. B. 198—By Senators Loehr, Burdette, Karras and Mr.
Tonkovich, Mr. President)

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

AN ACT to repeal section three-c, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article thirteen-c of said chapter; to amend and reenact section three-d, article thirteen of said chapter; to further amend said article thirteen by adding thereto a new section, designated section three-c; to amend article thirteen-a of said chapter by adding thereto a new section, designated section ten-a; to amend article thirteen-b of said chapter by adding thereto a new section, designated section ten-a; to amend and reenact

sections one, two, three, four, five and six, article thirteen-d of said chapter; to further amend said article thirteen-d by adding thereto three new sections, designated sections seven, eight and nine; to amend and reenact sections two, three, five and six, article thirteen-e of said chapter; to further amend said article thirteen-e by adding thereto a new section, designated section seven; to amend article twenty-three of said chapter by adding thereto a new section, designated section seventeen-a; and to further amend chapter eleven by adding thereto a new article, designated article thirteen-c, all relating generally to providing tax credits for certain investment in new or expanded businesses, or eligible research and development projects, and for certain investment in coal loading facilities; providing the West Virginia business investment and jobs expansion tax credit act, and as to such act: Providing a short title; stating legislative purpose and findings; defining terms; allowing credit for qualified investment for business expansion based on the useful life of property and number of new jobs created; limiting application of credit to taxes directly attributable to qualified investment for business expansion; permitting credit to offset business and occupation taxes, carrier income taxes, severance taxes, telecommunications taxes, business franchise taxes, corporation net income taxes, or personal income taxes in case of electing small business corporations, partnerships and sole proprietorships, unemployment taxes and workers' compensation premiums; providing for credit to result in rebate of ad valorem property taxes directly attributable to the qualified investment by means of additional credit against state taxes; providing for transfer, forfeiture and recapture of unused credit under certain circumstances; providing administrative procedures; making credit available to qualified investment made on or after March one, one thousand nine hundred eighty-five; providing tax credits for industrial expansion and industrial revitalization and eligible research and development projects, and as to such credits: Stating legislative purpose and findings; defining terms; allowing credit for eligible investment in industrial expansion and revitalization and in eligible research and development projects; permitting such credit to offset up to

fifty percent of business and occupation taxes of eligible taxpayer for eligible investment made on or after the first day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; providing for transfer, forfeiture and recapture of unused credit under certain circumstances, and preserving legal rights under existing law; providing credit against certain taxes for eligible investment in new or expanded or revitalized coal loading facilities and as to such credit: Defining terms; allowing credit for qualified investment in coal loading facilities; permitting such credit to offset up to fifty percent of business and occupation taxes of eligible taxpayer for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; and providing for transfer, forfeiture and recapture of unused credit under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section three-c, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article thirteen-c of said chapter eleven be repealed; that section three-d, article thirteen, chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section three-c; that article thirteen-a of said chapter be amended by adding thereto a new section, designated section ten-a; that article thirteen-b of said chapter be amended by adding thereto a new section, designated section ten-a; that sections one, two, three, four, five and six, article thirteen-d of said chapter be amended and reenacted; that said article thirteen-d be further amended by adding thereto three new sections, designated sections seven, eight and nine; that sections two, three, five and six, article thirteen-e of said chapter be

amended and reenacted; that said article thirteen-e be further amended by adding thereto a new section, designated section seven; that article twenty-three of said chapter be amended by adding thereto a new section, designated section seventeen-a; and that chapter eleven be further amended by adding thereto a new article, designated article thirteen-c, all to read as follows:

Article.

13. Business and Occupation Tax.

13A. Severance Taxes.

13B. Telecommunications Tax.

13C. Business Investment and Jobs Expansion Tax Credit.

13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.

13E. Business and Occupation Tax Credit for Coal Loading Facilities.

23. Business Franchise Tax.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3c Tax credit for business investment and jobs expansion.

§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

§11-13-3c. Tax credit for business investment and jobs expansion.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article, the amount determined under
3 article thirteen-c of this chapter, relating to tax credit for
4 business investment and jobs expansion.

5 (b) The tax commissioner shall prescribe such
6 regulations as he deems necessary to carry out the purposes
7 of this section and article thirteen-c of this chapter.

§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article, the amount determined under
3 article thirteen-d of this chapter, relating to tax credit for
4 industrial expansion and industrial revitalization, and
5 eligible research and development projects.

6 (b) The tax commissioner shall prescribe such
7 regulations as he deems necessary to carry out the purposes
8 of this section and article thirteen-d of this chapter.

9 (c) Any tax credit to which an industrial taxpayer
10 became entitled under section three-c of this article, before
11 its repeal, shall be fully and completely preserved under the
12 provision of this section, as amended, as if this section were
13 in effect, at the time the qualifying investment was made.

ARTICLE 13A. SEVERANCE TAXES.

**§11-13A-10a. Tax credit for business investment and jobs
expansion; industrial expansion and
revitalization; eligible research and
development projects; coal loading facilities.**

- 1 (a) There shall be allowed as a credit against the tax
2 imposed by this article for the taxable year, the amount
3 determined under articles thirteen-c, thirteen-d and
4 thirteen-e of this chapter relating respectively to:
- 5 (1) The tax credit for business investment and jobs
6 expansion;
- 7 (2) The tax credit for industrial expansion and
8 revitalization and eligible research and development
9 projects; and
- 10 (3) The tax credit for coal loading facilities.
- 11 (b) The tax commissioner shall prescribe such
12 regulations as he deems necessary to carry out the purposes
13 of this section and articles thirteen-c, thirteen-d and thirteen-
14 e of this chapter.
- 15 (c) This provision shall take effect on the first day of
16 July, one thousand nine hundred eighty-seven.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

**§11-13B-10a. Tax credit for business investment and jobs
expansion; and for eligible research and
development projects.**

- 1 (a) There shall be allowed as a credit against the tax
2 imposed by this article for the taxable year, the amount
3 determined under articles thirteen-c and thirteen-d of this
4 chapter relating respectively to:
- 5 (1) Tax credit for business investment and jobs
6 expansion; and
- 7 (2) Tax credit for eligible research and development
8 projects; and
- 9 (3) Tax credit for coal loading facilities.

10 (b) The tax commissioner shall prescribe such
 11 regulations as he deems necessary to carry out the purposes
 12 of this section and articles thirteen-c and thirteen-d of this
 13 chapter.

14 (c) This provision shall take effect on the first day of
 15 July, one thousand nine hundred eighty-seven.

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX
 CREDIT.**

- §11-13C-1. Short title.
- §11-13C-2. Legislative finding and purpose.
- §11-13C-3. Definitions.
- §11-13C-4. Amount of credit allowed.
- §11-13C-5. Application of annual credit allowance.
- §11-13C-6. Qualified investment.
- §11-13C-7. New jobs percentage.
- §11-13C-8. Forfeiture of unused tax credits; redetermination of credit allowed.
- §11-13C-9. Transfer of qualified investment to successors.
- §11-13C-10. Identification of investment credit property.
- §11-13C-11. Failure to keep records of investment credit property.
- §11-13C-12. Interpretation and construction.
- §11-13C-13. Severability.

§11-13C-1. Short title.

- 1 This article may be cited as the "West Virginia Business
- 2 Investment and Jobs Expansion Tax Credit Act."

§11-13C-2. Legislative finding and purpose.

- 1 The Legislature finds that the encouragement of
- 2 economic growth and development in this state is in the
- 3 public interest and promotes the general welfare of the
- 4 people of this state. In order to encourage capital
- 5 investment in businesses in this state and thereby increase
- 6 employment and economic development, there is hereby
- 7 provided a business investment and jobs expansion tax
- 8 credit.

§11-13C-3. Definitions.

- 1 (a) *General.*—When used in this article, or in the
- 2 administration of this article, terms defined in subsection (b)
- 3 shall have the meanings ascribed to them by this section,
- 4 unless a different meaning is clearly required by either the
- 5 context in which the term is used, or by specific definition,
- 6 in this article.
- 7 (b) *Terms defined.*

8 (1) *Business*.—The term “business” means any activity
9 taxable under article twelve-a or thirteen (or both) of this
10 chapter, which is engaged in by any person in this state:
11 *Provided*, That on and after the first day of July, one
12 thousand nine hundred eighty-seven, the phrase “taxes
13 imposed by article twelve-a or thirteen, or both, of this
14 chapter” shall mean “taxes imposed by article thirteen,
15 thirteen-a, thirteen-b and twenty-three of this chapter (or
16 any one or combination of such articles of this chapter).”

17 (2) *Business expansion*.—The term “business
18 expansion” means capital investment in a new or expanded
19 business facility in this state.

20 (3) *Business facility*.—The term “business facility”
21 means any factory, mill, plant, refinery, warehouse,
22 building or complex of buildings located within this state,
23 including the land on which it is located, and all machinery,
24 equipment and other real and tangible personal property
25 located at or within such facility, used in connection with
26 the operation of such facility, in a business taxable under
27 article twelve-a or thirteen (or both) of this chapter:
28 *Provided*, That on and after the first day of July, one
29 thousand nine hundred eighty-seven, the phrase “taxes
30 imposed by article twelve-a or thirteen (or both) of this
31 chapter” shall mean “taxes imposed by articles thirteen,
32 thirteen-a, thirteen-b and twenty-three of this chapter (or
33 any one or combination of such articles of this chapter).”

34 (4) *Commissioner or tax commissioner*.—The terms
35 “commissioner” and “tax commissioner” are used
36 interchangeably herein and mean the tax commissioner of
37 the state of West Virginia, or his delegate.

38 (5) *Compensation*.—The term “compensation” means
39 wages, salaries, commissions and any other form of
40 remuneration paid to employees for personal services.

41 (6) *Controlled group*.—The term controlled group
42 means one or more chains of corporations connected
43 through stock ownership with a common parent
44 corporation if stock possessing at least fifty percent of the
45 voting power of all classes of stock of each of the
46 corporations is owned directly or indirectly by one or more
47 of the corporations; and the common parent owns directly
48 stock possessing at least fifty percent of the voting power of
49 all classes of stock of at least one of the other corporations.

50 (7) *Corporation*.—The term “corporation” means any
51 corporation, joint-stock company or association, and any
52 business conducted by a trustee or trustees wherein interest
53 or ownership is evidenced by a certificate of interest or
54 ownership or similar written instrument.

55 (8) *Delegate*.—The term “delegate” in the phrase “or his
56 delegate,” when used in reference to the tax commissioner,
57 means any officer or employee of the state tax department
58 duly authorized by the tax commissioner directly, or
59 indirectly by one or more redelegations of authority, to
60 perform the functions mentioned or described in this
61 article.

62 (9) *Eligible taxpayer*.—The term “eligible taxpayer”
63 means any person subject to the taxes imposed by article
64 twelve-a or thirteen (or both) of this chapter, who purchases
65 property that has the effect of business expansion and
66 creation of new jobs at a business facility located in this
67 state: *Provided*, That on and after the first day of July, one
68 thousand nine hundred eighty-seven, the phrase “taxes
69 imposed by article twelve-a or thirteen (or both) of this
70 chapter” shall mean “taxes imposed by articles thirteen,
71 thirteen-a, thirteen-b and twenty-three of this chapter (or
72 any one or combination of such articles of this chapter).”

73 (10) *Expanded facility*.—The term “expanded facility”
74 means any facility (other than a new or replacement
75 facility) resulting from the acquisition, construction,
76 reconstruction, installation or erection of improvements or
77 additions to existing property (not including any
78 improvement or addition resulting from a repair,
79 refurbishing, retooling, recycling or other similar process or
80 procedure that merely preserves or restores the value of an
81 existing facility, and not including any improvement or
82 addition that, in the determination of the tax commissioner,
83 does not constitute an integral part of a qualified activity),
84 if such improvements or additions are purchased on or after
85 March one, one thousand nine hundred eighty-five, but only
86 to the extent of the taxpayer’s qualified investment in such
87 improvements or additions.

88 (11) *Includes and including*.—The terms “includes” and
89 “including,” when used in a definition contained in this
90 article, shall not be deemed to exclude other things
91 otherwise within the meaning of the term defined.

92 (12) *New business facility*.—The term “new business
93 facility” means a facility which satisfies all the
94 requirements of subparagraphs (A), (B), (C) and (D) of this
95 paragraph.

96 (A) The facility is employed by the taxpayer in the
97 conduct of a business taxable under article twelve-a or
98 thirteen (or both) of this chapter. Such facility shall not be
99 considered a new business facility in the hands of the
100 taxpayer if the taxpayer’s only activity with respect to such
101 facility is to lease it to another person or persons.

102 (B) Such facility is acquired by, or leased to, the
103 taxpayer on or after March one, one thousand nine hundred
104 eighty-five.

105 (C) The facility was not acquired by the taxpayer from a
106 related person.

107 (D) If such facility was acquired by the taxpayer from
108 an unrelated person (or persons), such facility was not in
109 service or use during the ninety days immediately prior to
110 transfer of the title to such facility, or to the commencement
111 of the term of the lease of such facility, unless upon
112 application of the taxpayer, the tax commissioner consents
113 to waiving this ninety-day period.

114 (13) *New employee*.—The term “new employee” means
115 a person residing and domiciled in this state, hired by the
116 taxpayer to fill a position for a job in this state, which
117 previously did not exist in the business enterprise in this
118 state, prior to the date on which the taxpayer’s qualified
119 investment is placed in service or use in this state. In no case
120 shall the new employees allowed for purposes of this credit
121 exceed the total increase in the taxpayer’s employment in
122 this state. A person shall be deemed to be a “new employee”
123 if such person’s duties in connection with the operation of
124 the business enterprise are on:

125 (A) A regular, full-time and permanent basis.

126 (1) “Full-time employment” means employment for at
127 least one hundred twenty hours per month at a wage not less
128 than the prevailing state or federal minimum wage,
129 depending on which minimum wage provision is applicable
130 to the business.

131 (2) “Permanent employment” does not include
132 employment that is temporary or seasonal.

133 (B) A part-time basis, provided such person is

134 customarily performing such duties at least twenty hours
135 per week for at least six months during the taxable year.

136 (14) *New job.*—The term “new job” means a job which
137 did not exist in the business of the taxpayer in this state
138 prior to the taxpayer’s qualified investment being made,
139 and which is filled by a new employee.

140 (15) *New property.*—The term “new property” means:

141 (A) Property the construction, reconstruction or
142 erection of which is begun on or after March one, one
143 thousand nine hundred eighty-five; and

144 (B) Property acquired by the taxpayer on or after March
145 one, one thousand nine hundred eighty-five, if the original
146 use of such property commences with the taxpayer and
147 commences after such date.

148 (16) *Original use.*—The term “original use” means the
149 first use to which the property is put, whether or not such
150 use corresponds to the use of the property by the taxpayer.

151 (17) *Partnership and partner.*—The term “partnership”
152 includes a syndicate, group, pool, joint venture or other
153 unincorporated organization through or by means of which
154 any business, financial operation or venture is carried on,
155 and which is not, a trust or estate, a corporation or a sole
156 proprietorship. The term “partner” includes a member in
157 such a syndicate, group, pool, joint venture or organization.

158 (18) *Person.*—The term “person” includes any natural
159 person, corporation or partnership.

160 (19) *Property purchased for business expansion.*

161 (A) *Included property.*—Except as provided in
162 subparagraph (B), the term “property purchased for
163 business expansion” means real property, and
164 improvements thereto, and tangible personal property, but
165 only if such property was constructed, or purchased, on or
166 after the first day of March, one thousand nine hundred
167 eighty-five, for use as a component part of a new or
168 expanded business, as defined in this section, which
169 business is located within West Virginia. This term includes
170 only tangible personal property with respect to which
171 depreciation, or amortization in lieu of depreciation, is
172 allowable in determining the personal income tax or
173 corporation net income tax liability of the business
174 taxpayer under article twenty-one or twenty-four of this
175 chapter, and has a useful life, at the time such property is

176 placed in service or use in this state, of four years or more.
177 Property acquired by written lease, for a primary term of
178 ten years or longer, if used as a component part of a new or
179 expanded business facility, shall be included within this
180 definition.

181 (B) *Excluded property*.—The term “property purchased
182 for business expansion” shall not include:

183 (1) Property which qualifies or was qualified for credit
184 under article thirteen-c of this chapter prior to its repeal, or
185 under article thirteen-d or thirteen-e of this chapter;

186 (2) Repair costs, including materials used in the repair,
187 unless for federal income tax purposes, the cost of the repair
188 must be capitalized and not expensed;

189 (3) Motor vehicles licensed by the department of motor
190 vehicles;

191 (4) Airplanes;

192 (5) Off-premise transportation equipment;

193 (6) Property which is primarily used outside this state;
194 and

195 (7) Property which is acquired incident to the purchase
196 of the stock or assets of a taxpayer, which property was or
197 had been used by the seller in a business taxable under
198 article twelve-a or thirteen (or both) of this chapter, or
199 which property was previously designated qualified or
200 eligible investment for purposes of the tax credits
201 authorized by article thirteen-c of this chapter (prior to its
202 repeal), article thirteen-d or article thirteen-e of said
203 chapter eleven: *Provided*, That on and after the first day of
204 July, one thousand nine hundred eighty-seven, the phrase
205 “taxes imposed by article twelve-a or thirteen (or both) of
206 this chapter” shall mean “taxes imposed by article thirteen,
207 thirteen-a, thirteen-b and twenty-three of this chapter (or
208 any one or combination of such articles of this chapter).”

209 (c) *Purchase date*.—Property shall be deemed to have
210 been purchased prior to a specified date only if:

211 (1) The physical construction, reconstruction or
212 erection of the property was begun prior to the specified
213 date, or such property was constructed, reconstructed,
214 erected or acquired pursuant to a written contract as
215 existing and binding on the purchaser prior to the specified
216 date;

217 (2) The machinery or equipment was owned by the

218 taxpayer prior to the specified date or was acquired by the
219 taxpayer pursuant to a binding purchase contract which
220 was in effect prior to the specified date; or

221 (3) In the case of leased property, there was a binding
222 written lease or contract to lease identifiable property in
223 effect prior to the specified date.

224 (20) *Purchase*.—The term “purchase” means any
225 acquisition of property, but only if:

226 (A) The property is not acquired from a person whose
227 relationship to the person acquiring it would result in the
228 disallowance of deductions under Section 267 or 707 (b) of
229 the United States Internal Revenue Code of 1954, as
230 amended and in effect on the first day of January, one
231 thousand nine hundred eighty-five;

232 (B) The property is not acquired by one component
233 member of a controlled group from another component
234 member of the same controlled group; and

235 (C) The basis of the property for federal income tax
236 purposes, in the hands of the person acquiring it is not
237 determined:

238 (1) In whole or in part by reference to the federal
239 adjusted basis of such property in the hands of the person
240 from whom it was acquired; or

241 (2) Under Section 1014 (e) of the United States Internal
242 Revenue Code of 1954, as amended and in effect on the first
243 day of January, one thousand nine hundred eighty-five.

244 (21) *Qualified activity*.—The term “qualified activity”
245 means any business or other activity subject to the tax
246 imposed by article twelve-a or thirteen (or both) of this
247 chapter: *Provided*, That on and after the first day of July,
248 one thousand nine hundred eighty-seven, the phrase “taxes
249 imposed by article twelve-a or thirteen (or both) of this
250 chapter” shall mean “taxes imposed by articles thirteen,
251 thirteen-a, thirteen-b and twenty-three of this chapter (or
252 any one or combination of such articles of this chapter).”

253 (22) *Related person*.—The term “related person”
254 means:

255 (A) A corporation, partnership, association or trust
256 controlled by the taxpayer;

257 (B) An individual, corporation, partnership, association
258 or trust that is in control of the taxpayer;

259 (C) A corporation, partnership, association or trust

260 controlled by an individual, corporation, partnership,
261 association or trust that is in control of the taxpayer; or
262 (D) A member of the same controlled group as the
263 taxpayer.

264 For purposes of subdivisions (20) and (22) of this section,
265 "control," with respect to a corporation means ownership,
266 directly or indirectly, of stock possessing fifty percent or
267 more of the total combined voting power of all classes of the
268 stock of such corporation entitled to vote. "Control," with
269 respect to a trust, means ownership, directly or indirectly,
270 of fifty percent or more of the beneficial interest in the
271 principal or income of such trust. The ownership of stock in
272 a corporation, of a capital or profits interest in a
273 partnership or association or of a beneficial interest in a
274 trust shall be determined in accordance with the rules for
275 constructive ownership of stock provided in Section 267 (c)
276 of the United States Internal Revenue Code of 1954, as
277 amended, other than paragraph (3) of such section.

278 (23) *Replacement facility*.—The term "replacement
279 facility" means any property (other than an expanded
280 facility) that replaces or supersedes any other property
281 located within this state that:

282 (A) The taxpayer or a related person used in or in
283 connection with any activity for more than two years during
284 the period of five consecutive years ending on the date the
285 replacement or superseding property is placed in service by
286 the taxpayer.

287 (B) Is not used by the taxpayer or a related person in or
288 in connection with any qualified activity for a continuous
289 period of one year or more commencing with the date the
290 replacement or superseding property is placed in service by
291 the taxpayer.

292 (24) *Taxpayer*.—The term "taxpayer" means any
293 person subject to the tax imposed by article twelve-a or
294 thirteen (or both) of this chapter: *Provided*, That on and
295 after the first day of July, one thousand nine hundred
296 eighty-seven, the phrase "taxes imposed by article twelve-a
297 or thirteen (or both) of this chapter" shall mean "taxes
298 imposed by articles thirteen, thirteen-a, thirteen-b and
299 twenty-three of this chapter (or any one or combination of
300 such articles of this chapter)."

301 (25) *This code*.—The term "this code" means the code of

302 West Virginia, one thousand nine hundred thirty-one, as
303 amended.

304 (26) *This state.*—The term “this state” means the state
305 of West Virginia.

306 (27) *Used property.*—The term “used property” means
307 property acquired after the twenty-eighth day of February,
308 one thousand nine hundred eighty-five, that is not “new
309 property.”

§11-13C-4. Amount of credit allowed.

1 (a) *Credit allowed.*—Eligible taxpayers shall be allowed
2 a credit against the portion of taxes imposed by this state
3 that are attributable to and the consequence of the
4 taxpayer’s qualified investment in a new or expanded
5 business in this state, which results in the creation of new
6 jobs. The amount of this credit shall be determined and
7 applied as hereinafter provided in this article.

8 (b) *Amount of credit.*—The amount of credit allowable
9 is determined by multiplying the amount of the taxpayer’s
10 “qualified investment” (determined under section six) in
11 property purchased for business expansion on or after
12 March one, one thousand nine hundred eighty-five, by the
13 taxpayer’s new jobs percentage (determined under section
14 seven). The product of this calculation establishes the
15 maximum amount of credit allowable under this article,
16 due to the qualified investment.

17 (c) *Application of credit over ten years.*—The amount of
18 credit allowable must be taken over a ten-year period, at the
19 rate of one tenth of the amount thereof per taxable year,
20 beginning with the taxable year in which the taxpayer
21 places the qualified investment in service or use in this
22 state. The annual credit allowance shall be taken in the
23 manner prescribed in section four of this article.

24 (d) *Placed in service or use.*—For purposes of the credit
25 allowed by this section, property shall be considered placed
26 in service or use in the earlier of the following taxable years:

27 (1) The taxable year in which, under the taxpayer’s
28 depreciation practice, the period for depreciation with
29 respect to such property begins; or

30 (2) The taxable year in which the property is placed in a
31 condition or state of readiness and availability for a
32 specifically assigned function.

§11-13C-5. Application of annual credit allowance.

1 (a) *In general.*—The aggregate annual credit allowance
2 for the current taxable year is an amount equal to the sum
3 of:

4 (1) The one-tenth part allowed under section three, for
5 qualified investment placed into service or use during a
6 prior taxable year, plus

7 (2) The one-tenth part allowed under section three, for
8 qualified investment placed into service or use during the
9 current taxable year.

10 (b) *Application of current year annual credit*
11 *allowance.*—The amount determined under subsection (a)
12 shall be allowed as a credit against that portion of the
13 taxpayer's state tax liability which is attributable to and
14 the direct result of the taxpayer's qualified investment, and
15 shall be applied as provided in subsections (c) through (j),
16 both inclusive.

17 (c) *Business and occupation taxes.*

18 (1) That portion of the allowable credit attributable to
19 qualified investment in a business or other activity subject
20 to the taxes imposed by article thirteen of this chapter, shall
21 first be applied to reduce up to eighty percent of the taxes
22 imposed by article thirteen of this chapter for the taxable
23 year (determined before application of allowable credits
24 against tax and the annual exemption).

25 (2) If the taxes due under said article thirteen, are not
26 solely attributable to and the direct result of the taxpayer's
27 qualified investment in a business or other activity taxable
28 under article thirteen of this chapter, the amount of such
29 taxes, which are so attributable, shall be determined by
30 multiplying the amount of taxes due under said article
31 thirteen, for the taxable year (determined before
32 application of any allowable credits against tax and the
33 annual exemption), by a fraction, the numerator of which is
34 all wages, salaries and other compensation paid during the
35 taxable year to all employees of the taxpayer employed in
36 this state, whose positions are directly attributable to the
37 qualified investment in a business or other activity taxable
38 under article thirteen of this chapter. The denominator of
39 the fraction shall be the wages, salaries and other
40 compensation paid during the taxable year to all employees

41 of the taxpayer, employed in this state, whose positions are
42 directly attributable to the business or other activity of the
43 taxpayer, that is taxable under article thirteen of this
44 chapter.

45 (3) The annual exemption allowed by section three of
46 said article thirteen, plus any credits allowable under
47 articles thirteen-d and thirteen-e of this chapter, shall be
48 applied against and reduce only the portion of article
49 thirteen taxes not apportioned to the qualified investment
50 under this article: *Provided*, That any excess exemption or
51 credits may be applied against the amount of article
52 thirteen taxes apportioned to the qualified investment
53 under this article, that is not offset by the amount of annual
54 credit against such taxes allowed under this article for the
55 taxable year, unless their application is otherwise
56 prohibited by this chapter.

57 (d) *Carrier income taxes.*

58 (1) That portion of the allowable credit attributable to
59 qualified investment in a business or other activity subject
60 to the taxes imposed by article twelve-a of this chapter,
61 shall first be applied to reduce up to eighty percent of the
62 taxes imposed by article twelve-a of this chapter, for the
63 taxable year.

64 (2) If the taxes due under said article twelve-a are not
65 solely attributable to and the direct result of the taxpayer's
66 qualified investment in a business or other activity taxable
67 under article twelve-a of this chapter, the amount of such
68 taxes, which are so attributable, shall be determined by
69 multiplying the amount of taxes due under said article
70 twelve-a, for the taxable year, by a fraction, the numerator
71 of which is all wages, salaries and other compensation paid
72 during the taxable year to all employees of the taxpayer
73 employed in this state, whose positions are directly
74 attributable to the qualified investment in a business or
75 other activity taxable under article twelve-a of this chapter.
76 The denominator of the fraction shall be the wages, salaries
77 and other compensation paid during the taxable year to all
78 employees of the taxpayer, employed in this state, whose
79 positions are directly attributable to the business or other
80 activity of the taxpayer, that is taxable under article
81 twelve-a of this chapter.

82 (e) *Severance taxes.*

83 (1) On and after the first day of July, one thousand nine
84 hundred eighty-seven, that portion of the allowable credit
85 attributable to qualified investment in a business or other
86 activity subject to the tax imposed by article thirteen-a of
87 this chapter, and qualified investment in a business or
88 activity that was subject to the tax imposed by article
89 thirteen of this chapter prior to said first day of July, but on
90 and after said first day of July, is subject to the tax imposed
91 by article thirteen-a of this chapter, shall first be applied to
92 reduce up to eighty percent of the taxes imposed by article
93 thirteen-a of this chapter for the taxable year (determined
94 before application of any allowable credits against tax).

95 (2) If the taxes due under said article thirteen-a are not
96 solely attributable to and the direct result of the taxpayer's
97 qualified investment in a business or other activity taxable
98 under article thirteen-a of this chapter, the amount of such
99 taxes, which are so attributable, shall be determined by
100 multiplying the amount of taxes due under said article
101 thirteen-a, for the taxable year (determined before
102 application of any allowable credits against tax), by a
103 fraction, the numerator of which is all wages, salaries and
104 other compensation paid during the taxable year to all
105 employees of the taxpayer employed in this state, whose
106 positions are directly attributable to the qualified
107 investment in a business or other activity taxable under
108 article thirteen-a of this chapter. The denominator of the
109 fraction shall be the wages, salaries and other
110 compensation paid during the taxable year to all employees
111 of the taxpayer, employed in this state, whose positions are
112 directly attributable to the business or other activity of the
113 taxpayer, that is taxable under article thirteen-a of this
114 chapter.

115 (3) Any credits allowable under articles thirteen-d and
116 thirteen-e of this chapter, shall be applied against and
117 reduce only the portion of article thirteen-a taxes not
118 apportioned to the qualified investment under this article:
119 *Provided*, That any excess credits may be applied against
120 the amount of article thirteen taxes apportioned to the
121 qualified investment under this article, that is not offset by
122 the amount of annual credit against such taxes allowed
123 under this article for the taxable year, unless their
124 application is otherwise prohibited by this chapter.

125 (f) *Telecommunications taxes.*

126 (1) On and after the first day of July, one thousand nine
127 hundred eighty-seven, that portion of the allowable credit
128 attributable to qualified investment in a business or other
129 activity subject to the taxes imposed by article thirteen-b of
130 this chapter, shall first be applied to reduce up to eighty
131 percent of the taxes imposed by article thirteen-b of this
132 chapter for the taxable year (determined before application
133 of allowable credits against tax) and qualified investment
134 in a business or activity that was subject to the taxes
135 imposed by article twelve-a of this chapter prior to said first
136 day of July, but on and after said first day of July is subject
137 to the tax imposed by article thirteen-b of this chapter.

138 (2) If the taxes due under said article thirteen-b are not
139 solely attributable to and the direct result of the taxpayer's
140 qualified investment in a business or other activity taxable
141 under article thirteen-b of this chapter, the amount of such
142 taxes, which are so attributable, shall be determined by
143 multiplying the amount of taxes due under said article
144 thirteen-b, for the taxable year (determined before
145 application of any allowable credits against tax), by a
146 fraction, the numerator of which is all wages, salaries and
147 other compensation paid during the taxable year to all
148 employees of the taxpayer employed in this state, whose
149 positions are directly attributable to the qualified
150 investment in a business or other activity taxable under
151 article thirteen-b of this chapter. The denominator of the
152 fraction shall be the wages, salaries and other
153 compensation paid during the taxable year to all employees
154 of the taxpayer, employed in this state, whose positions are
155 directly attributable to the business or other activity of the
156 taxpayer, that is taxable under article thirteen-b of this
157 chapter.

158 (g) *Business franchise tax.*

159 (1) On and after the first day of July, one thousand nine
160 hundred eighty-seven, that portion of the allowable credit
161 attributable to qualified investment in a business or
162 activity subject to the taxes imposed by article twenty-
163 three of this chapter, and qualified investment in a business
164 or activity that was subject to the taxes imposed by article
165 thirteen of this chapter prior to said first day of July, but on
166 and after said first day of July, is subject to the tax imposed

167 by article twenty-three of this chapter, shall first be applied
168 to reduce up to eighty percent of the taxes imposed by
169 article twenty-three of this chapter for the taxable year
170 (determined after application of the credits against tax
171 provided in section seventeen of said article twenty-three,
172 but before application of any other allowable credits
173 against tax).

174 (2) If the taxes due under said article twenty-three are
175 not solely attributable to and the direct result of the
176 taxpayer's qualified investment in a business or other
177 activity taxable under article twenty-three of this chapter,
178 the amount of such taxes, which are so attributable, shall be
179 determined by multiplying the amount of taxes due under
180 said article twenty-three, for the taxable year (determined
181 after application of the credits against tax provided in
182 section seventeen of said article twenty-three, but before
183 application of any other allowable credits), by a fraction,
184 the numerator of which is all wages, salaries and other
185 compensation paid during the taxable year to all employees
186 of the taxpayer employed in this state, whose positions are
187 directly attributable to the qualified investment in a
188 business or other activity taxable under article twenty-
189 three of this chapter. The denominator of the fraction shall
190 be the wages, salaries and other compensation paid during
191 the taxable year to all employees of the taxpayer, employed
192 in this state, whose positions are directly attributable to the
193 business or other activity of the taxpayer, that is taxable
194 under article twenty-three of this chapter.

195 (3) Any credits allowable under articles thirteen-d and
196 thirteen-e of this chapter, shall be applied against and
197 reduce only the portion of article twenty-three taxes not
198 apportioned to the qualified investment under this article:
199 *Provided*, That any excess exemption or credits may be
200 applied against the amount of article twenty-three taxes
201 apportioned to the qualified investment under this article,
202 that is not offset by the amount of annual credit against
203 such taxes allowed under this article for the taxable year,
204 unless their application is otherwise prohibited by this
205 chapter.

206 (h) *Corporation net income taxes.*

207 (1) After application of subsections (c) through (g), both
208 inclusive, of this section, any unused credit shall next be

209 applied to reduce up to eighty percent of the taxes imposed
210 by article twenty-four of this chapter, for the taxable year
211 (determined before application of allowable credits against
212 tax).

213 (2) If the taxes due under said article twenty-four
214 (determined before application of allowable credits against
215 tax) are not solely attributable to and the direct result of the
216 taxpayer's qualified investment, the amount of such taxes
217 which are so attributable, shall be determined by
218 multiplying the amount of taxes due under said article
219 twenty-four for the taxable year (determined before
220 application of allowable credits against tax), by a fraction,
221 the numerator of which is all wages, salaries and other
222 compensation paid during the taxable year to all employees
223 of the taxpayer employed in this state, whose positions are
224 directly attributable to the qualified investment. The
225 denominator of the fraction shall be the wages, salaries and
226 other compensation paid during the taxable year to all
227 employees of the taxpayer, employed in this state.

228 (3) Any credits allowable under article twenty-four of
229 this chapter shall be applied against and reduce only the
230 amount of article twenty-four taxes not apportioned to the
231 qualified investment under this article: *Provided*, That any
232 excess credits may be applied against the amount of article
233 twenty-four taxes apportioned to the qualified investment
234 under this article, that is not offset by the amount of annual
235 credit against such taxes allowed under this article for the
236 taxable year, unless their application is otherwise
237 prohibited by this chapter.

238 (i) *Personal income taxes.*

239 (1) If the person making the qualified investment is an
240 electing small business corporation (as defined in Section
241 1361 of the United States Internal Revenue Code of 1954, as
242 amended), a partnership or a sole proprietorship, then any
243 unused credit (after application of subsections (c), (d), (e), (f)
244 and (g)) shall be allowed as a credit against up to eighty
245 percent of the taxes imposed by article twenty-one of this
246 chapter on net income from business or other activity
247 subject to tax under article twelve-a or thirteen (or both) of
248 this chapter.

249 (2) Electing small business corporations, partnerships
250 and other unincorporated organizations shall allocate the

251 credit allowed by this article among its members in the
252 same manner as profits and losses are allocated for the
253 taxable year.

254 (3) If the amount of taxes due under article twenty-one
255 of this chapter (determined before application of allowable
256 credits against tax), that is attributable to business, is not
257 solely attributable to and the direct result of the qualified
258 investment of the electing small business corporation,
259 partnership, other unincorporated organization or sole
260 proprietorship, the amount of such taxes which are so
261 attributable shall be determined by multiplying the amount
262 of taxes due under said article twenty-one (determined
263 before application of allowable credits against tax), that is
264 attributable to business by a fraction, the numerator of
265 which is all wages, salaries and other compensation paid
266 during the taxable year to all employees of the electing
267 small business corporation, partnership, other
268 unincorporated organization or sole proprietorship,
269 employed in this state, whose positions are directly
270 attributable to the qualified investment. The denominator
271 of the fraction shall be the wages, salaries and other
272 compensation paid during the taxable year to all employees
273 of the taxpayer.

274 (4) No credit shall be allowed under this section against
275 an employer withholding taxes imposed by article twenty-
276 one of this chapter.

277 (j) *Ad valorem property taxes.*

278 (1) After application of subsections (a) through (i), both
279 inclusive, of this section, any unused credit shall next be
280 applied as a rebate of up to eighty percent of the ad valorem
281 property taxes imposed pursuant to article eight of this
282 chapter for the taxable year, on property of the taxpayer
283 that is directly attributable to the qualified investment
284 (including property having a useful life of less than four
285 years) of the taxpayer, in the new or expanded business of
286 the taxpayer resulting in new jobs.

287 (2) A taxpayer eligible to claim this rebate for ad
288 valorem property taxes shall apply the rebate against the
289 remaining twenty percent of the taxes imposed by articles
290 twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one,
291 twenty-three and twenty-four of this chapter, attributable
292 to the qualified investment under this article.

293 (k) *Unemployment taxes.*

294 (1) After application of subsections (c) through (j), both
295 inclusive, of this section, any unused credit shall next be
296 applied to reduce up to eighty percent of the taxes imposed
297 by article five, chapter twenty-one-a of this code, for the
298 taxable year.

299 (2) If the taxes due under said article five are not solely
300 attributable to and the direct result of the taxpayer's
301 qualified investment, the amount of such taxes which are so
302 attributable shall be determined by multiplying the amount
303 of taxes due under article five, chapter twenty-one-a of this
304 code, by a fraction, the numerator of which is all wages,
305 salaries and other compensation paid during the taxable
306 year to employees of the taxpayer whose positions are
307 directly attributable to the qualified investment, and the
308 denominator of which is the wages, salaries and other
309 compensation paid during the taxable year to all employees
310 of the taxpayer in this state.

311 (l) *Workers' compensation premium.*

312 (1) After application of subsections (c) through (k), both
313 inclusive, of this section, any unused credit shall next be
314 applied to reduce up to twenty percent of the workers'
315 compensation premiums imposed by article two, chapter
316 twenty-three of this code, for the taxable year.

317 (2) If the premiums due under article two of said chapter
318 twenty-three, for the taxable year, are not solely
319 attributable to and the direct result of the taxpayer's
320 qualified investment, the amount of such premiums which
321 are so attributable shall be determined by multiplying the
322 amount of premiums due under article two, chapter twenty-
323 three of this code for the taxable year, by a fraction, the
324 numerator of which is all wages, salaries and compensation
325 paid during the taxable year to employees of the taxpayer
326 whose positions are directly attributable to the qualified
327 investment, and the denominator of which is the wages,
328 salaries and other compensation paid during the taxable
329 year to all employees of the taxpayer, in this state.

330 (m) *Unused credit forfeited.*—If any credit remains after
331 application of subsection (b), the amount thereof shall be
332 forfeited. No carryover to a subsequent taxable year or
333 carryback to a prior taxable year shall be allowed for the
334 amount of any unused portion of any annual credit
335 allowance.

§11-13C-6. Qualified investment.

1 (a) *General.*—The qualified investment in property
2 purchased for business expansion shall be the applicable
3 percentage of the cost of each property purchased for the
4 purpose of business expansion which is placed in service or
5 use in this state by the taxpayer during the taxable year.

6 (b) *Applicable percentage.*—For the purpose of
7 subsection (a), the applicable percentage of any property
8 shall be determined under the following table:

9 If useful life is:	The applicable percentage is:
10 4 years or more but less than 6 years	33⅓
11 6 years or more but less than 8 years	66⅔
12 8 years or more.	100

13 The useful life of any property, for purposes of this
14 section, shall be determined as of the date such property is
15 first placed in service or use in this state by the taxpayer,
16 determined in accordance with federal income tax law.

17 (c) *Cost.*—For purposes of subsection (a), the cost of
18 each property purchased for business expansion shall be
19 determined under the following rules:

20 (1) *Trade-ins.*—Cost shall not include the value of
21 property given in trade or exchange for the property
22 purchased for business expansion.

23 (2) *Damaged, destroyed or stolen property.*—If property
24 is damaged or destroyed by fire, flood, storm or other
25 casualty, or is stolen, then the cost of replacement property
26 shall not include any insurance proceeds received in
27 compensation for the loss.

28 (3) *Rental property.*—The cost of property acquired by
29 written lease for a primary term of ten years, or longer, shall
30 be one hundred percent of the rent reserved for the primary
31 term of the lease, not to exceed twenty years.

32 (4) *Property purchased for multiple use.*—In the case of
33 property purchased for use as a component part of a new or
34 expanded business taxable under article twelve-a of this
35 chapter, and use as a component part of a new or expanded
36 business taxable under article thirteen of this chapter, the
37 cost thereof shall be apportioned between such businesses.
38 The amount apportioned to each such new or expanded
39 business for which credit is allowed under this article, shall
40 be considered as a qualified investment subject to the
41 conditions and limitations of this article.

42 (5) *Self-constructed property*.—In the case of self-
 43 constructed property, the cost thereof shall be the amount
 44 properly charged to the capital account for depreciation in
 45 accordance with federal income tax law.

§11-13C-7. New jobs percentage.

1 (a) *In general*.—The new jobs percentage is based on the
 2 number of new jobs created in this state that are directly
 3 attributable to the qualified investment of the taxpayer.

4 (b) *Applicable percentage*.—For the purpose of
 5 subsection (a), the applicable new jobs percentage shall be
 6 determined under the following table:

7	If number of	The applicable
8	new jobs is:	percentage is:
9	1,000	90%
10	760	80%
11	520	70%
12	280	60%
13	50	50%

14 (c) *When a job is attributable*.—An employee's position
 15 is directly attributable to the qualified investment if:

16 (1) The employee's service is performed or his base of
 17 operations is at the new or expanded business facility;

18 (2) The position did not exist prior to the construction,
 19 renovation, expansion or acquisition of the business facility
 20 and the making of the qualified investment; and

21 (3) But for the qualified investment, the position would
 22 not have existed.

23 (d) *Certification of new jobs*.—With the annual return
 24 for the taxes imposed by article twelve-a or thirteen of this
 25 chapter, filed for the taxable year in which the qualified
 26 investment is first placed in service or use in this state, the
 27 taxpayer shall estimate and certify the number of new jobs
 28 reasonably projected to be created by it in this state within
 29 the period prescribed in subsection (f), that are, or will be,
 30 directly attributable to the qualified investment of the
 31 taxpayer: *Provided*, That on and after the first day of July,
 32 one thousand nine hundred eighty-seven, the phrase "taxes
 33 imposed by article twelve-a or thirteen (or both) of this
 34 chapter" shall mean "taxes imposed by articles thirteen,
 35 thirteen-a, thirteen-b and twenty-three of this chapter (or
 36 any one or combination of such articles of this chapter)."

37 (e) *Equivalency of permanent employees.*—The hours of
38 part-time employees shall be aggregated to determine the
39 number of equivalent full-time employees.

40 (f) *Redetermination of new jobs percentage.*—With the
41 annual return for the taxes imposed by article twelve-a or
42 thirteen of this chapter, filed for the third taxable year in
43 which the qualified investment is in service or use, the
44 taxpayer shall certify the actual number of new jobs created
45 by it in this state, that are directly attributable to the
46 qualified investment of the taxpayer: *Provided*, That on
47 and after the first day of July, one thousand nine hundred
48 eighty-seven, the phrase “taxes imposed by article twelve-a
49 or thirteen (or both) of this chapter” shall mean “taxes
50 imposed by articles thirteen, thirteen-a, thirteen-b and
51 twenty-three of this chapter (or any one or combination of
52 such articles of this chapter).”

53 (1) If the actual number of jobs created would result in a
54 higher new jobs percentage, the credit allowed under this
55 article shall be redetermined and amended returns filed for
56 the first and second taxable years that the qualified
57 investment was in service or use in this state.

58 (2) If the actual number of jobs created would result in a
59 lower new jobs percentage, the credit previously allowed
60 under this article shall be redetermined and amended
61 returns filed for the first and second taxable years. In
62 applying the amount of redetermined credit allowable for
63 the two preceding taxable years, the redetermined credit
64 shall first be applied to the extent it was originally applied
65 in such prior two years to workers' compensation
66 premiums, then to unemployment taxes, then to ad valorem
67 property tax rebates, then to personal income taxes, then to
68 corporation net income taxes, then to business franchise
69 taxes, then to telecommunications taxes, then to severance
70 taxes, then to carrier income taxes and lastly to business
71 and occupation taxes. Any additional taxes due under this
72 chapter shall be remitted with the amended returns filed
73 with the tax commissioner, along with interest, as provided
74 in section seventeen, article ten of this chapter, and a ten
75 percent penalty, which may be waived by the tax
76 commissioner if the taxpayer shows that the overclaimed
77 amount of the new jobs percentage was due to reasonable
78 cause and not due to willful neglect.

§11-13C-8. Forfeiture of unused tax credits; redetermination of credit allowed.

1 (a) *Disposition of property or cessation of use.*—If
2 during any taxable year, property with respect to which a
3 tax credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section six of this article; or

6 (2) Ceases to be used in an eligible business of the
7 taxpayer in this state prior to the end of its useful life, as
8 determined under said section six, then the unused portion
9 of the credit allowed for such property shall be forfeited for
10 the taxable year and all ensuing years. Additionally, except
11 when the property is damaged or destroyed by fire, flood,
12 storm or other casualty, or is stolen, the taxpayer shall
13 redetermine the amount of credit allowed in all earlier years
14 by reducing the applicable percentage of cost of such
15 property allowed under said section six, to correspond with
16 the percentage of cost allowable for the period of time that
17 the property was actually used in this state in the new or
18 expanded business of the taxpayer. Taxpayer shall then file
19 a reconciliation statement with its annual business and
20 occupation tax return or carrier income tax return, for the
21 year in which the forfeiture occurs and pay any additional
22 taxes owed due to reduction of the amount of credit
23 allowable for such earlier years, plus interest and any
24 applicable penalties: *Provided*, That for taxable periods
25 beginning on or after the first day of July, one thousand nine
26 hundred eighty-seven, such reconciliation statement shall
27 be filed with the annual return for the primary tax for
28 which the taxpayer is liable under articles thirteen,
29 thirteen-a, thirteen-b and twenty-three of this chapter.

30 (b) *Cessation of operation of business facility.*—If
31 during any taxable year the taxpayer ceases operation of a
32 business facility in this state for which credit was allowed
33 under this article, before expiration of the useful life of
34 property with respect to which tax credit has been allowed
35 under this article, then the unused portion of the allowed
36 credit shall be forfeited for the taxable year and all ensuing
37 years. Additionally, except when the cessation is due to fire,
38 flood, storm or other casualty, the taxpayer shall
39 redetermine the amount of credit allowed in earlier years by
40 reducing the applicable percentage of cost of such property

41 allowed under section six, to correspond with the
42 percentage of cost allowable for the period of time that the
43 property was actually used in this state in a business of the
44 taxpayer that is taxable under article twelve-a or thirteen
45 of this chapter. Taxpayer shall then file a reconciliation
46 statement with its annual business and occupation tax
47 return or carrier income tax return for the year in which the
48 forfeiture occurs, and pay any additional taxes owed due to
49 reduction of the amount of credit allowable for such earlier
50 years, plus interest and any applicable penalties: *Provided,*
51 That for taxable periods beginning on or after the first day
52 of July, one thousand nine hundred eighty-seven, such
53 reconciliation statement shall be filed with the annual
54 return for the primary tax for which the taxpayer is liable
55 under articles thirteen, thirteen-a, thirteen-b and twenty-
56 three of this chapter.

57 (c) *Reduction in number of employees.*—If during any
58 taxable year subsequent to the taxable year in which the
59 new jobs percentage is redetermined as provided in section
60 seven of this article, the average number of employees of the
61 taxpayer, for the then current taxable year, employed in
62 positions created because of and directly attributable to the
63 qualified investment falls below the minimum number of
64 new jobs created upon which the taxpayer's annual credit
65 allowance is based, the taxpayer shall calculate what his
66 annual credit allowance would have been had his new jobs
67 percentage been determined based upon the average
68 number of employees, for the then current taxable year,
69 employed in positions created because of and directly
70 attributable to the qualified investment. The difference
71 between the result of this calculation and the taxpayer's
72 annual credit allowance for the qualified investment as
73 determined under section four of this article, shall be
74 forfeited for the then current taxable year, and for each
75 succeeding taxable year unless for such succeeding taxable
76 year the taxpayer's average employment in positions
77 directly attributable to the qualified investment once again
78 meets the level required to enable the taxpayer to utilize its
79 full annual credit allowance for that taxable year.

§11-13C-9. Transfer of qualified investment to successors.

1 (a) *Mere change in form of business.*—Property shall not

2 be treated as disposed of under section eight of this article,
3 by reason of a mere change in the form of conducting the
4 business as long as the property is retained in a business in
5 this state, and the taxpayer retains a controlling interest in
6 the successor business. In this event, the successor business
7 shall be allowed to claim the amount of credit still available
8 with respect to the business facility or facilities transferred,
9 and the taxpayer (transferor) shall not be required to
10 redetermine the amount of credit allowed in earlier years.

11 (b) *Transfer or sale to successor.*—Property shall not be
12 treated as disposed of under section eight by reason of any
13 transfer or sale to a successor business which continues to
14 operate the business facility in this state. Upon transfer or
15 sale, the successor shall acquire the amount of credit that
16 remains available under this article for each subsequent
17 taxable year and the taxpayer (transferor) shall not be
18 required to redetermine the amount of credit allowed in
19 earlier years.

§11-13C-10. Identification of investment credit property.

1 Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts
3 for each item of qualified property:

- 4 (1) Its identity;
- 5 (2) Its actual or reasonably determined cost;
- 6 (3) Its straight-line depreciation life;
- 7 (4) The month and taxable year in which it was placed in
8 service;
- 9 (5) The amount of credit taken; and
- 10 (6) The date it was disposed of or otherwise ceased to be
11 qualified property.

§11-13C-11. Failure to keep records of investment credit property.

1 A taxpayer who does not keep the records required for
2 identification of investment credit property, is subject to
3 the following rules:

- 4 (1) A taxpayer shall be treated as having disposed of,
5 during the taxable year, any investment credit property
6 which the taxpayer cannot establish was still on hand, in
7 this state, at the end of that year.
- 8 (2) If a taxpayer cannot establish when investment

9 credit property reported for purposes of claiming this credit
10 returned during the taxable year was placed in service, the
11 taxpayer shall be treated as having placed it in service in the
12 most recent prior year in which similar property was placed
13 in service, unless the taxpayer can establish that the
14 property placed in service in the most recent year is still on
15 hand. In that event, the taxpayer will be treated as having
16 placed the returned property in service in the next most
17 recent year.

§11-13C-12. Interpretation and construction.

1 (a) No inference, implication or presumption of
2 legislative construction or intent shall be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision or portion of this article; and no legal effect shall
5 be given to any descriptive matter or heading relating to any
6 section, subsection or paragraph of this article.

7 (b) The provisions of this article shall be liberally
8 construed in order to effectuate the legislative intent
9 recited in section two of this article.

§11-13C-13. Severability.

1 (a) If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall
4 not affect, impair or invalidate the remainder of said
5 article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered, and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be
18 confined in its operation to the provision thereof directly
19 involved with, pertaining to, addressing or referring to the
20 said statute, and the application of such provision with

21 regard to other statutes or in other instances not affected by
22 any such invalid or repealed statute shall not be abrogated
23 or diminished in any way.

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION
AND FOR RESEARCH AND DEVELOPMENT
PROJECTS.**

§11-13D-1. Legislative finding and purpose.

§11-13D-2. Definitions.

§11-13D-3. Amount of credit allowed for industrial expansion or revitalization
and for eligible research and development projects.

§11-13D-4. Eligible investment for industrial expansion or revitalization.

§11-13D-5. Eligible investment for research and development.

§11-13D-6. Forfeiture of unused tax credits; redetermination of credit required.

§11-13D-7. Transfer of eligible investment to successors.

§11-13D-8. Prior industrial expansion credit preserved.

§11-13D-9. Severability.

§11-13D-1. Legislative finding and purpose.

1 The Legislature finds that the encouragement of the
2 location of new industry in this state; the expansion, growth
3 and revitalization of existing industrial facilities in this
4 state; and the conduct of research and development in this
5 state, for purposes of expanding markets for sales and uses
6 of this state's natural resources and industrial products, are
7 all in the public interest and promote the general welfare of
8 the people of this state. In order to encourage capital
9 investment in this state and thereby increase employment
10 and economic development, there is hereby provided a
11 business and occupation tax credit for industrial expansion
12 and revitalization in this state, and for certain research and
13 development related expenditures in this state.

§11-13D-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in article
3 thirteen of this chapter, unless a different meaning is
4 clearly required by the context of its use or by definition in
5 this article.

6 (b) For purposes of this article, the term:

7 (1) "Eligible investment" means that amount
8 determined under either section four of this article, for
9 investment in a new or expanded or revitalized industrial

10 facility, or under section five of this article, in the case of an
11 eligible research and development project.

12 (2) "Eligible taxpayer" means an industrial taxpayer
13 who purchases new property for the purpose of industrial
14 expansion, or for the purpose of revitalizing an existing
15 industrial facility in this state; or a taxpayer who purchases
16 property or services (or both) for the purpose of conducting
17 an eligible research and development project in this state.

18 (3) "Eligible research and development project" means
19 a research and development project engaged in or
20 conducted within this state, by a person who is engaged in
21 this state in the business of producing natural resources or
22 in an industrial business when such research and
23 development project is conducted for purposes relating to
24 the technical, economic, financial, engineering or
25 marketing aspects of expanding markets for, and
26 increasing sales of, this state's natural resource products, or
27 industrial products (or both).

28 (4) "Industrial business" means any privilege taxable
29 under section two-b or two-m, article thirteen of this
30 chapter, and includes a manufacturing service taxable
31 under section two-h of said article: *Provided*, That on and
32 after the first day of July, one thousand nine hundred
33 eighty-seven, the term "industrial business" shall mean the
34 business of manufacturing, compounding or preparing
35 tangible personal property for sale, profit or commercial
36 use, the business of generating electric power, and the
37 business of providing a manufacturing service, which were
38 taxable, respectively, under sections two-b, two-m and
39 two-h, article thirteen of this chapter on the first day of
40 January, one thousand nine hundred eighty-five.

41 (5) "Industrial facility" means any factory, mill, plant,
42 refinery, warehouse, buildings or complex of buildings
43 located within this state, including the land on which it is
44 located, and all machinery, equipment and other real and
45 tangible personal property located at or within such facility
46 used in connection with the operation of such facility in an
47 industrial business.

48 (6) "Industrial revitalization" means capital
49 investment in an industrial facility located in this state to
50 replace or modernize buildings, equipment, machinery and
51 other tangible personal property used in connection with

52 the operation of such facility in an industrial business of the
53 taxpayer, including the acquisition of any real property
54 necessary to the industrial revitalization.

55 (7) "Industrial expansion" means capital investment in
56 a new or expanded industrial facility in this state.

57 (8) "Industrial taxpayer" means any person subject to
58 business and occupation taxes under article thirteen of this
59 chapter, exercising any privilege taxable under section
60 two-b or two-m of said article thirteen, or providing a
61 manufacturing service taxable under section two-h of said
62 article thirteen: *Provided*, That on and after the first day of
63 July, one thousand nine hundred eighty-seven, "industrial
64 taxpayer" shall mean any person subject to tax under
65 section two-n, article thirteen of this chapter; or any person
66 subject to tax under article thirteen-a or twenty-three of
67 this chapter engaging in any activity that was taxable under
68 section two-b, article thirteen of this chapter, on the first
69 day of January, one thousand nine hundred eighty-five; or
70 any person taxable under article twenty-three of this
71 chapter providing a manufacturing service that was
72 taxable under section two-h, article thirteen of this chapter
73 on the first day of January, one thousand nine hundred
74 eighty-five.

75 (9) "Manufacturing service" means a privilege that
76 would be taxable under section two-b, article thirteen of
77 this chapter, if title to the raw materials used in the
78 manufacturing process was vested in the taxpayer
79 exercising the privilege taxable under section two-h of said
80 article thirteen.

81 (10) Subject to subdivision (12) below, "property
82 purchased for an eligible research and development
83 project" means real property, and improvements thereto,
84 and tangible personal property, but only if such real or
85 personal property is constructed or purchased on or after
86 the first day of July, one thousand nine hundred eighty-five,
87 for use as a component part of an eligible research and
88 development project which is located within this state on or
89 after the first day of July, one thousand nine hundred
90 eighty-five. This term includes only tangible personal
91 property with respect to which depreciation or
92 amortization, in lieu of depreciation, is allowable in
93 determining the personal income tax or corporation net

94 income tax liability of the purchaser under article twenty-
95 one or twenty-four of this chapter. Property acquired by
96 written lease for a term of ten years or longer, if used as a
97 component part of an eligible research and development
98 project, shall be included within this definition.

99 (11) Subject to subdivision (13) below, "property
100 purchased for industrial expansion" means real property,
101 and improvements thereto, and tangible personal property,
102 but only if such property was constructed, or purchased, on
103 or after the first day of July, one thousand nine hundred
104 sixty-nine, for use as a component part of a new or
105 expanded industrial facility (as defined in subdivision (5) of
106 this subsection) located within this state. This term includes
107 only tangible personal property with respect to which
108 depreciation, or amortization in lieu of depreciation, is
109 allowable in determining the personal income tax or
110 corporation net income tax liability of the industrial
111 taxpayer under article twenty-one or twenty-four of this
112 chapter, and has a useful life, at the time such property is
113 placed in service or use in this state, of four years or more.
114 Property acquired by written lease, for a primary term of
115 ten years or longer, if used as a component part of a new or
116 expanded industrial facility, shall be included within this
117 definition.

118 (12) Subject to subdivision (13) below, "property
119 purchased for industrial revitalization" means real
120 property, and improvements thereto, and new tangible
121 personal property, but only if such property was
122 constructed, or purchased, on or after the first day of July,
123 one thousand nine hundred eighty-one, for use as a
124 component part of an ongoing industrial facility (as defined
125 in subdivision (5) of this subsection located within this state.
126 This term includes only tangible personal property with
127 respect to which depreciation is allowable in determining the
128 personal income tax or corporation net income tax liability
129 of the industrial taxpayer under article twenty-one or twenty-
130 four of this chapter, and has a useful life at the time the
131 property is placed in service or use in this state of four years
132 or more. Property acquired by written lease for a primary
133 term of ten years or longer, if used as a component part of
134 an industrial revitalization, shall be included within this
135 definition.

136 (13) "Property purchased for industrial expansion,"
137 "property purchased for industrial revitalization" and
138 "property purchased for an eligible research and
139 development project" shall not include:

140 (A) Repair costs including materials used in the repair,
141 unless for federal income tax purposes the cost of the repair
142 must be capitalized and not expensed;

143 (B) Motor vehicles licensed by the department of motor
144 vehicles;

145 (C) Airplanes;

146 (D) Off-premise transportation equipment;

147 (E) Property which is primarily used outside this state;
148 and

149 (F) Property which is acquired incident to the purchase
150 of the stock or assets of an industrial taxpayer, which
151 property was or had been used by the seller in his industrial
152 business in this state, or which property was previously
153 designated "property purchased for industrial expansion"
154 or "property purchased for industrial revitalization," or
155 "property purchased for eligible research and development
156 project," and used to qualify for business and occupation
157 tax credit for industrial expansion or revitalization, or for
158 an eligible research and development project.

159 (14) Property shall be deemed to have been purchased
160 prior to a specified date only if:

161 (A) The physical construction, reconstruction or
162 erection of the property was begun prior to the specified
163 date, or such property was constructed, reconstructed,
164 erected or acquired pursuant to a written contract as
165 existing and binding on the taxpayer prior to the specified
166 date;

167 (B) The machinery or equipment was owned by the
168 taxpayer prior to the specified date or was acquired by the
169 taxpayer pursuant to a binding purchase contract which
170 was in effect prior to such date; or

171 (C) In the case of leased property, there was a binding
172 written lease or contract to lease identifiable property in
173 effect prior to the specified date.

174 (15) "Taxpayer" means any person taxable under
175 article thirteen of this chapter: *Provided*, That on and after
176 the first day of July, one thousand nine hundred eighty-
177 seven, "taxpayer" shall mean any person taxable under
178 article thirteen, thirteen-a or twenty-three of this chapter.

§11-13D-3. Amount of credit allowed for industrial expansion or revitalization and for eligible research and development projects.

1 (a) *Credit allowed.*—There shall be allowed to eligible
2 taxpayers a credit against the taxes imposed by article
3 thirteen, thirteen-a or twenty-three of this chapter, for
4 industrial expansion or revitalization, and for eligible
5 research and development projects. The amount of credit
6 shall be determined as hereinafter provided in this section.

7 (b) *Qualified investment for industrial expansion; July*
8 *1, 1969 — March 31, 1978.*—For property purchased for
9 industrial expansion during the period beginning the first
10 day of July, one thousand nine hundred sixty-nine, and
11 ending the thirty-first day of March, one thousand nine
12 hundred seventy-eight, the amount of allowable credit shall
13 be equal to ten percent of the qualified investment (as
14 determined in section four) made for industrial expansion,
15 and shall reduce the business and occupation tax liability of
16 the industrial taxpayer under article thirteen of this
17 chapter, subject to the following conditions and
18 limitations:

19 (1) The amount of credit allowable shall be applied over
20 a ten year period, at the rate of one-tenth thereof per
21 taxable year, beginning with the taxable year in which the
22 qualified investment is first placed in service or use in this
23 state.

24 (2) The amount of annual credit allowed shall not
25 reduce the business and occupation tax under article
26 thirteen of this chapter, below fifty percent of the amount
27 which would be imposed for such taxable year in the
28 absence of this credit against tax, computed before
29 application of the annual exemption allowed by section
30 three, article thirteen of this chapter.

31 (3) No carryover to a subsequent taxable year or
32 carryback to a prior taxable year shall be allowed for the
33 amount of any unused portion of any annual credit
34 allowance. Such unused credit shall be forfeited.

35 (c) *Qualified investment for industrial expansion; April*
36 *1, 1978—February 28, 1985.*—For property purchased for
37 industrial expansion during the period beginning the first
38 day of March, one thousand nine hundred seventy-eight,
39 and ending the twenty-eighth day of February, one

40 thousand nine hundred eighty-five, the amount of
41 allowable credit shall be equal to ten percent of the
42 qualified investment (as determined in section four) made
43 for industrial expansion, and shall reduce the business and
44 occupation tax liability of the industrial taxpayer under
45 sections two-b, two-h and two-m, article thirteen of this
46 chapter, subject to the following conditions and
47 limitations:

48 (1) The amount of credit allowable shall be applied over
49 a ten-year period, at the rate of one-tenth thereof per
50 taxable year, beginning with the taxable year in which the
51 qualified investment is first placed in service or use in this
52 state.

53 (2) The amount of annual credit allowed shall not
54 reduce the business and occupation taxes imposed by
55 section two, article thirteen of this chapter, under sections
56 two-b, two-h and two-m, article thirteen of this chapter,
57 below fifty percent of the amount which would be imposed
58 for such taxable year, in the absence of this credit against
59 tax, computed before application of the annual exemption
60 allowed by section three, article thirteen of this chapter:
61 *Provided*, That the tax under section two-h of said article
62 thirteen, shall not be reduced by more than fifty percent of
63 the tax attributable to the privilege of manufacturing for
64 another, which privilege would be taxable under section
65 two-b of said article thirteen, if title to the raw materials
66 involved in the manufacturing process were vested in the
67 taxpayer exercising the privilege taxable under section
68 two-h of said article thirteen.

69 (3) No carryover to a subsequent taxable year or
70 carryback to a prior taxable year shall be allowed for the
71 amount of any unused portion of any annual credit
72 allowance. Such unused credit shall be forfeited.

73 (d) *Eligible investment for industrial revitalization;*
74 *July 1, 1981—February 28, 1985.*—For property purchased
75 for industrial revitalization during the period beginning the
76 first day of July, one thousand nine hundred eighty-one,
77 and ending the twenty-eighth day of February, one
78 thousand nine hundred eighty-five, the amount of
79 allowable credit shall be equal to ten percent of the eligible
80 investment (as determined under section four) made for
81 industrial revitalization, and shall reduce the business and

82 occupation tax under sections two-b and two-h, article
83 thirteen of this chapter, subject to the following conditions
84 and limitations:

85 (1) The allowable credit shall be applied over a ten-year
86 period at the rate of one tenth of the amount thereof per
87 taxable year, beginning with the taxable year in which the
88 eligible investment is first placed in service or use in this
89 state.

90 (2) The amount of annual credit allowed shall not
91 reduce the business and occupation taxes imposed by
92 section two, article thirteen of this chapter, under sections
93 two-b and two-h of said article, below fifty percent of the
94 amount which would be imposed for the taxable year in the
95 absence of this credit against tax, computed before
96 application of the annual exemption allowed by section
97 three, article thirteen of this chapter: *Provided*, That the
98 tax under section two-h of said article thirteen, shall not be
99 reduced by more than fifty percent of the tax attributable to
100 the privilege of manufacturing for another, which privilege
101 would be taxable under section two-b of said article
102 thirteen, if title to the raw materials involved in the
103 manufacturing process were vested in the taxpayer
104 exercising the privilege taxable under section two-h of said
105 article thirteen.

106 (3) When in any taxable year the eligible industrial
107 taxpayer is entitled to claim credit under both this
108 subsection (d) and under subsection (b) or (c), or both, of this
109 section, the total amount of all credits allowed under this
110 section shall not exceed the fifty percent rule outlined in
111 subdivision (2) of this subsection.

112 (4) No carryover to a subsequent taxable year or
113 carryback to a prior taxable year shall be allowed for the
114 amount of any unused portion of any annual credit
115 allowance. Any unused credit shall be forfeited.

116 (5) No credit shall be allowed under this section for any
117 property purchased for industrial revitalization prior to the
118 first day of July, one thousand nine hundred eighty-one.

119 (e) *Eligible investment for industrial expansion or*
120 *revitalization after February 28, 1985.*—For property
121 purchased for industrial expansion or industrial
122 revitalization on or after the first day of March, one
123 thousand nine hundred eighty-five, the amount of

124 allowable credit shall be equal to ten percent of the eligible
125 investment (as determined in section four) made for
126 industrial expansion or industrial revitalization, and shall
127 reduce the business and occupation tax imposed under
128 article thirteen of this chapter subject to the following
129 conditions and limitations:

130 (1) The amount of credit allowable shall be applied over
131 a ten-year period, at the rate of one-tenth thereof per
132 taxable year, beginning with the taxable year in which the
133 eligible investment is first placed in service or use in this
134 state.

135 (2) The amount of annual credit allowed shall not
136 reduce the business and occupation taxes imposed by
137 article thirteen of this chapter, below fifty percent of the
138 amount which would be imposed for such taxable year in
139 the absence of this credit against tax, computed before
140 application of the annual exemption allowed by section
141 three, article thirteen of this chapter.

142 (3) When in any taxable year the industrial taxpayer is
143 entitled to claim credit under this subsection (e) and under
144 subsection (b), (c) or (d) of this section (or any combinations
145 thereof), the total amount of all credits allowed under this
146 section shall not exceed the fifty percent rule outlined in
147 subdivision (2) of this subsection.

148 (4) No carryover to a subsequent taxable year or
149 carryback to a prior taxable year shall be allowed for the
150 amount of any unused portion of any annual credit
151 allowance. Such unused credit shall be forfeited.

152 (5) When in any taxable year the industrial taxpayer is
153 entitled to claim credit under this article and article
154 thirteen-e of this chapter, the total amount of all such
155 credits allowable for the taxable year shall not reduce the
156 amount of business and occupation taxes imposed by article
157 thirteen of this chapter, below fifty percent of the amount
158 which would be imposed for such taxable year, computed
159 before allowance of the annual exemption allowed by
160 section three, article thirteen of this chapter.

161 (6) No credit shall be allowed under this subsection (e)
162 for any property purchased on or after the first day of
163 March, one thousand nine hundred eighty-five, for which
164 credit is allowed under article thirteen-c of this chapter.

165 (7) No credit shall be allowed under this subsection (e)

166 for any property purchased for industrial expansion or
167 industrial revitalization prior to the first day of March, one
168 thousand nine hundred eighty-five.

169 (f) *Eligible investment for research and development*
170 *project after June 30, 1985.*—For property and services
171 purchased for an eligible research and development project
172 on or after the first day of July, one thousand nine hundred
173 eighty-five, the amount of allowable credit shall be equal to
174 ten percent of the eligible investment (as determined in
175 section five) made for an eligible research and development
176 project, and shall reduce the business and occupation taxes
177 under sections two-a, two-b, two-h and two-m, article
178 thirteen of this chapter, subject to the following conditions
179 and limitations:

180 (1) The allowable credit shall be applied over a ten-year
181 period at the rate of one tenth of the amount thereof per
182 taxable year, beginning with the taxable year in which the
183 eligible investment is first placed in service or use in this
184 state, or is expensed for federal income tax purposes.

185 (2) The amount of annual credit allowed shall not
186 reduce the business and occupation taxes imposed by
187 section two, article thirteen of this chapter, under section
188 two-a of said article, on the business of producing natural
189 resources; under section two-b of said article thirteen, on
190 the business of manufacturing, compounding or preparing
191 tangible personal property for sale; under section two-h of
192 said article thirteen on the providing of a manufacturing
193 service; and under section two-m of said article thirteen, on
194 the business of generating electric power, below fifty
195 percent of the amount which would be imposed for the
196 taxable year in the absence of this credit against tax,
197 computed before application of the annual exemption
198 allowed by section three, article thirteen of this chapter.

199 (3) When in any taxable year the eligible taxpayer is
200 entitled to claim credit under both this subsection (f) and
201 subsection (b), (c) or (d) of this section (or any combinations
202 thereof), the total amount of all credits allowed under this
203 section shall not exceed the fifty percent rule outlined in
204 subdivision (2) of this subsection.

205 (4) No carryover to a subsequent tax year or carryback
206 to a prior taxable year shall be allowed for the amount of
207 any unused portion of any annual credit allowance. Any
208 unused credit shall be forfeited.

209 (5) No credit shall be allowed under this subsection (f)
210 for any property purchased for an eligible research and
211 development project, when such property is used to
212 determine the eligible investment under section four of this
213 article, or determine the amount of credit allowable under
214 article thirteen-c of this chapter.

215 (6) No credit shall be allowed under this subsection (f)
216 for any property purchased for research and development
217 prior to the first day of July, one thousand nine hundred
218 eighty-five.

219 (g) *Credit limitation.*—The aggregate amount of credit
220 allowable under this article and article thirteen-e of this
221 chapter, against the taxes imposed by article thirteen of this
222 chapter for the taxable year, shall in no event exceed fifty
223 percent of the tax due for the taxable year, computed prior
224 to application of the tax credits provided by this article and
225 articles thirteen-c and thirteen-e of this chapter, and the
226 annual exemption allowed provided by section three,
227 article thirteen of this chapter.

228 (h) *Application of credit after June 30, 1987.*—On and
229 after the first day of July, one thousand nine hundred
230 eighty-seven, the credits allowed under subsections (b), (c),
231 (e) and (f) of this section shall be applied to and reduce the
232 taxes imposed by articles thirteen, thirteen-a and twenty-
233 three of this chapter: *Provided,* That this credit shall not
234 reduce the sum of the net tax liability of the taxpayer under
235 articles thirteen, thirteen-a and twenty-three of this
236 chapter, for taxable year below fifty percent of the amount
237 thereof, determined before application of the credits
238 allowed by this article and article thirteen-c or thirteen-e,
239 or both, of this chapter.

**§11-13D-4. Eligible investment for industrial expansion or
revitalization.**

1 (a) *General.*—The eligible or qualified investment in
2 property purchased for industrial expansion or
3 revitalization shall be the applicable percentage of the cost
4 of each property purchased for the purpose of industrial
5 expansion or revitalization, which is placed in service or use
6 in this state, by the eligible taxpayer during the taxable
7 year.

8 (b) *Applicable percentage.*—For the purpose of

9 subsection (a), the applicable percentage for any property
10 shall be determined under the following table:

11 If useful life is:	The applicable percentage is:
12 4 years or more but less than 6 years	33 $\frac{1}{3}$
13 6 years or more but less than 8 years	66 $\frac{2}{3}$
14 8 years or more	100

15 The useful life of any property for purposes of this section
16 shall be determined as of the date such property is first
17 placed in service or use in this state by the taxpayer,
18 determined in accordance with federal income tax law.

19 (c) *Cost.*—For purposes of subsection (a), the cost of
20 each property purchased for industrial expansion or
21 revitalization, or for conduct of an eligible research and
22 development project, shall be determined under the
23 following rules:

24 (1) *Trade-ins.*—Cost shall not include the value of
25 property given in trade or exchange for the property
26 purchased for industrial expansion or revitalization.

27 (2) *Damaged, destroyed or stolen property.*—If property
28 is damaged or destroyed by fire, flood, storm or other
29 casualty, or is stolen, then the cost of replacement property
30 shall not include any insurance proceeds received in
31 compensation for the loss.

32 (3) *Rental property.*—The cost of property acquired by
33 lease for a term of ten years or longer shall be one hundred
34 percent of the rent reserved for the primary term of the
35 lease, not to exceed twenty years.

36 (4) *Property purchased for multiple use.*—The cost of
37 property purchased for multiple business use including use
38 as a component part of a new or expanded or revitalized
39 industrial business, together with some other business or
40 activity not eligible for credit under this article, shall be
41 apportioned between such businesses and occupations. The
42 amount apportioned to the new or expanded or revitalized
43 industrial business, shall be considered to be as an eligible
44 investment, subject to the conditions and limitations of this
45 section.

46 (5) *Self-constructed property.*—In the case of self-
47 constructed property, the cost thereof shall be the amount
48 properly charged to the capital account for purposes of
49 depreciation.

§11-13D-5. Eligible investment for research and development.

1 (a) *General.*—The eligible investment in a research and
 2 development project shall be the sum of the applicable
 3 percentage of the cost of land and depreciable property
 4 purchased for the conduct of an eligible research and
 5 development project, which is placed in service or use in
 6 this state during the taxable year, plus the amount of
 7 qualified research expenses (as defined in this section)
 8 deducted by the eligible taxpayer, for federal income tax
 9 purposes.

10 (b) *Applicable percentage of property.*—For the
 11 purpose of subsection (a), the applicable percentage for
 12 land and depreciable property shall be determined under
 13 the following table:

14 If useful life is:	The applicable percentage is:
15 Less than 6 years	33 $\frac{1}{3}$
16 6 years or more but less than 8 years	66 $\frac{2}{3}$
17 8 years or more	100

18 The useful life of any property for purposes of this section
 19 shall be determined as of the date such property is first
 20 placed in service or use in this state by the taxpayer,
 21 determined in accordance with federal income tax law.

22 (c) *Cost of property.*—For purposes of subsection (a), the
 23 cost of each property purchased for the conduct of an
 24 eligible research and development project shall be
 25 determined under the following rules:

26 (1) *Trade-ins.*—Cost shall not include the value of
 27 property given in trade or exchange for the property
 28 purchased for conduct of the research and development
 29 project.

30 (2) *Damaged, destroyed or stolen property.*—If property
 31 is damaged or destroyed by fire, flood, storm or other
 32 casualty, or is stolen, then the cost of replacement property
 33 shall not include any insurance proceeds received in
 34 compensation for the loss.

35 (3) *Rental property.*—The cost of property acquired by
 36 lease for a term of ten years or longer shall be one hundred
 37 percent of the rent reserved for the primary term of the
 38 lease, not to exceed twenty years.

39 (4) *Property purchased for multiple use.*—The cost of
 40 property purchased for multiple business use including
 41 direct use in the conduct of an eligible research and
 42 development project, together with some other business or

43 activity not eligible under this section, shall be apportioned
44 between such activities. The amount apportioned to the
45 conduct of the eligible research and development project
46 shall be considered to be eligible investment subject to the
47 conditions and limitations of this section.

48 (5) *Self-constructed property.*—In the case of self-
49 constructed property, the cost thereof shall be the amount
50 properly charged to the capital account for depreciation in
51 accordance with federal income tax law.

52 (d) *Qualified research expenses.*—For purposes of this
53 section:

54 (1) “Qualified research expenses” means the sum of
55 in-house and contract research expenses for qualified
56 research allocated to this state, which are paid or incurred
57 by the eligible taxpayer during the taxable year in carrying
58 on any trade or business taxable under sections two-a,
59 two-b and two-m, article thirteen of this chapter, or under
60 section two-h of said article thirteen (in the case of
61 manufacturing services only): *Provided*, That on and after
62 the first day of July, one thousand nine hundred eighty-
63 seven, “qualified research expenses” shall mean the sum of
64 in-house and contract research expenses for qualified
65 research, allocated to this state, which are paid or incurred
66 by the eligible taxpayer during the taxable year in carrying
67 on any trade or business taxable under article thirteen,
68 thirteen-a or twenty-three of this chapter, that would have
69 been taxable under section two-a, two-b, two-m or two-h
70 (in the case of manufacturing services only) of said article
71 thirteen, as in effect on the first day of January, one
72 thousand nine hundred eighty-five.

73 In no event shall “qualified research expenses” include
74 any expense that must be capitalized and depreciated for
75 federal income tax purposes, or any expenditure paid or
76 incurred for the purpose of ascertaining the existence,
77 location, extent or quality of any deposit of coal, limestone
78 or other natural resource, including oil and natural gas.

79 (2) “In-house research expenses” means:

80 (A) Wages paid or incurred to an employee for qualified
81 services performed in this state by such employee;

82 (B) Amounts paid or incurred for supplies used in the
83 conduct of qualified research in this state; and

84 (C) Amounts paid or incurred to another person for the

85 right to use personal property in the conduct of qualified
86 research in this state.

87 (3) "Qualified services" means services consisting of:

88 (A) Engaging in qualified research in this state; or

89 (B) Engaging in the direct supervision or direct support
90 of research activities in this state, which constitute
91 qualified research.

92 If substantially all of the services performed by an
93 individual for the taxpayer during the taxable year consist
94 of services meeting the requirements of subparagraph (A) or
95 (B), the term "qualified services" means all services
96 performed by such individual for the taxable year.

97 (4) "Supplies" means any tangible property other than:

98 (A) Land or improvements to land; and

99 (B) Property of a character subject to depreciation for
100 federal income tax purposes.

101 (5) "Wages" has the meaning given to such term by
102 Section 3401(a) of the Internal Revenue Code of 1954, as
103 amended. In the case of self-employed individuals and
104 owner-employees (within the meaning of Section 401(c)(1)
105 of said Internal Revenue Code), the term "wages" includes
106 the earned income (as defined in Section 401(c)(2) of said
107 Internal Revenue Code) of such employee. The term
108 "wages" shall not include any amount taken into account in
109 determining the federal targeted jobs credit under Section
110 51(a) of said Internal Revenue Code.

111 (6) "Contract research expenses" means:

112 (A) In general, sixty-five percent of any amount paid or
113 incurred by the taxpayer to any person (other than an
114 employee of the taxpayer) for qualified research.

115 (B) If any contract research expenses paid or incurred
116 during any taxable year are attributable to qualified
117 research to be conducted after the close of the taxable year,
118 such amount shall be treated as paid or incurred during the
119 taxable year during which the qualified research is
120 conducted.

121 (7) "Qualified research" means research and
122 development conducted for purposes relating to the
123 technical, economic, financial, engineering or marketing
124 aspects of expanding markets for and increasing sales of
125 this state's natural resource products or manufactured
126 products, or both: *Provided*, That it shall not include:

127 (A) Research or development conducted outside this
128 state;

129 (B) Research or development not directly related to
130 increasing the uses for and sales of this state's natural
131 resource products and industrial products;

132 (C) Research in the social sciences or humanities; or

133 (D) Research and development to the extent funded by
134 any grant, contract or otherwise by another person (or any
135 governmental entity).

136 (e) *Research by colleges, universities and certain*
137 *research organizations.*—In general, sixty-five percent of
138 the amount paid or incurred by a corporation to any
139 nonprofit educational organization which is an institution
140 of higher education (as defined in Section 3304 (f) of the
141 Internal Revenue Code of 1954, as amended), an institution
142 of higher education subject to the jurisdiction of the West
143 Virginia board of regents, or any other nonprofit
144 organization exempt from federal income taxes which is
145 organized and operated primarily to conduct scientific
146 research and is not a private foundation for federal income
147 tax purposes for research to be performed by such
148 organization shall be treated as contract research expenses.
149 The preceding sentence shall apply only if the amount is
150 paid or incurred pursuant to a written research agreement
151 between the corporation and the qualified organization.

152 (f) *Standards for determining qualified research*
153 *expenses.*—In prescribing standards for determining which
154 research and development expenses are considered to be
155 West Virginia qualified research expenses for purposes of
156 this section, the tax commissioner may consider: (1) The
157 place where the services are performed; (2) the residence or
158 business location of the person or persons performing the
159 services; (3) the place where qualified research supplies are
160 consumed; and (4) other factors that the tax commissioner
161 believes relevant in determining whether or not the
162 research and development expenses, land and depreciable
163 property were purchased and used for qualified research, as
164 defined in this article, during the taxable year.

**§11-13D-6. Forfeiture of unused tax credits; redetermination
of credit required.**

1 (a) *Disposition of property or cessation of use.*—If

2 during any taxable year, property with respect to which a
3 tax credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section four or five of this article; or

6 (2) Ceases to be used in the new or expanded or
7 revitalized industrial business, or in the eligible research
8 and development project, of the taxpayer in this state prior
9 to the end of its useful life, as determined under said section
10 four or five, then the unused portion of the credit allowed
11 for such property shall be forfeited for the taxable year and
12 all ensuing years. Additionally, except when the property is
13 damaged or destroyed by fire, flood, storm or other
14 casualty, or is stolen, the taxpayer shall redetermine the
15 amount of credit allowed in all earlier years by reducing the
16 applicable percentage of cost of such property allowed
17 under said section three, to correspond with the percentage
18 of cost allowable for the period of time that the property
19 was actually used in this state in the industrial business of
20 the taxpayer. Taxpayer shall then file a reconciliation
21 statement with its annual business and occupation tax
22 return for the year in which the forfeiture occurs and pay
23 any additional business and occupation taxes owed due to
24 reduction of the amount of credit allowable for such earlier
25 years, plus interest and any applicable penalties: *Provided*,
26 That on and after the first day of July, one thousand nine
27 hundred eighty-seven, the phrase "taxes imposed by article
28 twelve-a or thirteen (or both) of this chapter" shall mean
29 "taxes imposed by articles thirteen, thirteen-a and twenty-
30 three of this chapter (or any one or combination of such
31 articles of this chapter)."

32 (b) *Cessation of operation of industrial facility or*
33 *eligible research and development project.*—If during any
34 taxable year, the industrial taxpayer ceases operation of an
35 industrial facility in this state, or of an eligible research and
36 development project, for which credit was allowed under
37 this article, or article thirteen-c of this chapter prior to its
38 repeal, before expiration of the useful life of the property
39 with respect to which tax credit has been allowed under this
40 article or article thirteen-c of this chapter prior to its repeal,
41 then the unused portion of the allowed credit shall be
42 forfeited for the taxable year and all ensuing years.
43 Additionally, except when the cessation is due to fire, flood,

44 storm or other casualty, the taxpayer shall redetermine the
45 amount of credit allowed in earlier years by reducing the
46 applicable percentage of cost of such property allowed
47 under section three, to correspond with the percentage of
48 cost allowable for the period of time that the property was
49 actually used in this state in the industrial business of the
50 taxpayer. Taxpayer shall then file a reconciliation
51 statement with its annual business and occupation tax
52 return for the year in which the forfeiture occurs and pay
53 any additional business and occupation taxes owed due to
54 reduction of the amount of credit allowable for such earlier
55 years, plus interest and any applicable penalties: *Provided*,
56 That on and after the first day of July, one thousand nine
57 hundred eighty-seven, the phrase "taxes imposed by article
58 twelve-a or thirteen (or both) of this chapter" shall mean
59 "taxes imposed by articles thirteen, thirteen-a and twenty-
60 three of this chapter (or any one or combination of such
61 articles of this chapter)."

§11-13D-7. Transfer of eligible investment to successors.

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section six of this article, by
3 reason of a mere change in the form of conducting the
4 business as long as the property is retained in a similar
5 industrial business activity in this state and the taxpayer
6 retains a controlling interest in the successor business. In
7 this event, the successor business shall be allowed to claim
8 the amount of credit still available with respect to the
9 industrial facility or facilities transferred (or to the eligible
10 research and development project); and the taxpayer
11 (transferor) shall not be required to redetermine the amount
12 of credit allowed in earlier years.

13 (b) *Transfer or sale to successor.*—Property shall not be
14 treated as disposed of under section six by reason of any
15 transfer or sale to a successor business which continues to
16 operate the industrial facility in this state. Upon transfer or
17 sale, the successor shall acquire the amount of credit that
18 remains available under this article for each subsequent
19 taxable year and the taxpayer (transferor) shall not be
20 required to redetermine the amount of credit allowed in
21 earlier years.

§11-13D-8. Prior industrial expansion credit preserved.

1 Any tax credit to which an industrial taxpayer became
2 entitled under article thirteen-c of this chapter, before the
3 repeal of said article thirteen-c, shall be fully and
4 completely preserved under the provisions of this article, as
5 if the provisions of this article were in effect at the time the
6 qualifying investment was made.

§11-13D-9. Severability.

1 (a) If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall
4 not affect, impair or invalidate the remainder of said
5 article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered, and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be
18 confined in its operation to the provision thereof directly
19 involved with, pertaining to, addressing or referring to the
20 said statute, and the application of such provision with
21 regard to other statutes or in other instances not affected by
22 any such invalid or repealed statute shall not be abrogated
23 or diminished in any way.

**ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL
LOADING FACILITIES.**

§11-13E-2. Definitions.

§11-13E-3. Amount of credit allowed for coal loading facilities.

§11-13E-5. Forfeiture of unused tax credits; redetermination of credit
required.

§11-13E-6. Transfer of eligible investment to successors.

§11-13E-7. Severability.

§11-13E-2. Definitions.

1 (a) Any term used in this article shall have the same

2 meaning as when used in a comparable context in article
3 thirteen or thirteen-a of this chapter, unless a different
4 meaning is clearly required by the context of its use or by
5 definition in this article.

6 (b) For purpose of this article, the term:

7 (1) "Coal loading facility" means any building or
8 structure specifically designed and solely used to transfer
9 coal from a coal processing or preparation facility, or from a
10 coal storage facility, or both, or from any means of
11 transportation, to any means of rail or barge transportation
12 used to move coal, including such land as is directly
13 associated with and solely used for the coal loading facility,
14 and including any device or combination of machinery and
15 equipment that is directly associated with and solely used
16 for the loading of coal. This definition applies only when the
17 transfer is to any means of rail or barge transportation and
18 specifically excludes the transfer to any other form of
19 transportation. This may include, but is not limited to, the
20 coal loading tipple, conveyors, coal storage facilities,
21 weighing equipment and rail trackage, if they are directly
22 associated with and solely used for the loading of coal. In no
23 event may the eligible investment in a coal loading facility,
24 for purposes of this credit, include the cost of any coal
25 processing, preparation, blending or sizing facility or
26 equipment, or any combination thereof, even though
27 physically a part of the coal loading facility, and even
28 though such coal processing, preparation, blending or
29 sizing facility or equipment, or any combination thereof, is
30 necessary or essential to the loading of commercially usable
31 or marketable coal.

32 (2) "Eligible taxpayer" means any person subject to tax
33 under article thirteen, thirteen-a or twenty-three of this
34 chapter who purchases real or personal property, or a
35 combination thereof, for the purpose of building or
36 constructing a new or expanded coal loading facility in this
37 state, or who revitalizes an existing coal loading facility
38 located in this state, and upon completion, operates the new
39 or expanded or revitalized coal loading facility: *Provided*,
40 That on and after the first day of July, one thousand nine
41 hundred eighty-seven, the phrase "subject to tax under
42 article thirteen of this chapter" shall mean "subject to tax
43 under article thirteen-a or twenty-three of this chapter."

44 (3) "Revitalization" means capital investment in a coal
45 loading facility located in this state to replace or modernize
46 buildings, structures, equipment, machinery and other
47 tangible personal property directly associated with and
48 solely used in the operation of a coal loading facility,
49 including the acquisition of any real property directly
50 associated with and solely used in the operation of a
51 revitalized coal loading facility.

52 (4) Subject to subdivision (5) below, "property
53 purchased for a coal loading facility" means real property
54 and improvements thereto and tangible personal property,
55 but only if such real or personal property is constructed or
56 purchased for use as a component part of a new or expanded
57 coal loading facility, or the revitalization of an existing coal
58 loading facility located within this state. This term includes
59 only tangible personal property with respect to which
60 depreciation, or amortization in lieu of depreciation, is
61 allowable in determining the personal income tax or
62 corporation net income tax due under article twenty-one
63 or twenty-four of this chapter, and has a useful life at the
64 time such property is placed in service or use in this state of
65 four years or more. Property acquired by written lease for a
66 term of ten years or longer, if used as a component part of a
67 coal loading facility, shall be included within this
68 definition.

69 (5) "Property purchased for a coal loading facility"
70 shall not include:

71 (A) Property which qualifies or was qualified for credit
72 under article thirteen-c or thirteen-d of this chapter;

73 (B) Repair costs, including materials used in making the
74 repair, unless for federal income tax purposes the cost of the
75 repair must be capitalized and not expensed;

76 (C) Motor vehicles licensed by the department of motor
77 vehicles;

78 (D) Airplanes;

79 (E) Off-premise transportation equipment;

80 (F) Property which is primarily used outside the state;

81 (G) Property purchased prior to the first day of April,
82 one thousand nine hundred eighty-three; and

83 (H) Property which is acquired incident to the purchase
84 of the stock or assets of a taxpayer which property was or
85 had been used by the seller in his business in this state, or

86 which property was previously designated "property
87 purchased for industrial expansion" or "property
88 purchased for industrial revitalization" under article
89 thirteen-d of this chapter and used to qualify for the tax
90 credit provided by either of said articles.

91 (6) Property shall be deemed to have been purchased
92 prior to a specified date only if:

93 (A) The physical construction, reconstruction or
94 erection of the property was begun prior to the specified
95 date, or such property was constructed, reconstructed,
96 erected or acquired pursuant to a written contract as
97 existing and binding on the taxpayer prior to the specified
98 date;

99 (B) The machinery or equipment was owned by the
100 taxpayer prior to the specified date or was acquired by the
101 taxpayer pursuant to a binding purchase contract which
102 was in effect prior to such date; or

103 (C) In the case of leased property, there was a binding
104 written lease or contract to lease identifiable property in
105 effect prior to the specified date.

§11-13E-3. Amount of credit allowed for coal loading facilities.

1 (a) There shall be allowed to eligible taxpayers a credit
2 against the business and occupation taxes imposed by
3 article thirteen, thirteen-a or twenty-three of this chapter,
4 for investment in a new or expanded or revitalized coal
5 loading facility. The amount of this credit shall be
6 determined as hereinafter provided in this section.

7 (b) *Pre March 1, 1985 investment.*—For investment in a
8 new or expanded or revitalized coal loading facility made
9 on or after the first day of April, one thousand nine hundred
10 eighty-three, and prior to the first day of March, one
11 thousand nine hundred eighty-five, the amount of this
12 credit shall be equal to ten percent of the cost of the eligible
13 investment (as determined in section four) made in a coal
14 loading facility and shall reduce the business and
15 occupation taxes imposed by section two, article thirteen of
16 this chapter, under sections two-a, two-b and two-h of said
17 article thirteen of this chapter, subject to the following
18 conditions and limitations:

19 (1) The allowable credit shall be applied over a ten-year
20 period at the rate of one tenth of the amount thereof per

21 taxable year, beginning with the taxable year in which the
22 eligible investment is first placed in service or use in this
23 state.

24 (2) The amount of annual credit allowed shall not
25 reduce the business and occupation taxes imposed by
26 section two, article thirteen of this chapter, under section
27 two-a of said article thirteen, on the business of producing
28 coal; under section two-b of said article thirteen, on the
29 business of manufacturing, compounding or preparing coal
30 for sale; and under section two-h of said article thirteen, on
31 the activity of loading coal, below fifty percent of the
32 amount which would be imposed for the taxable year in the
33 absence of the annual exemption allowed by section three,
34 article thirteen of this chapter.

35 (3) When in any taxable year the eligible taxpayer is
36 entitled to claim credit under this article and article
37 thirteen-d of this chapter, the total amount of credits
38 allowed under sections two-b and two-h, article thirteen of
39 this chapter, shall not exceed fifty percent of the tax
40 liability under said sections, on manufacturing or
41 manufacturing-service activity.

42 (4) No carryover to a subsequent tax year or carryback
43 to a prior tax year shall be allowed for the amount of any
44 unused portion of the credit allowed under this subsection
45 (b) for the taxable year. Any unused credit shall be
46 forfeited.

47 (5) No credit shall be allowed under this subsection (b)
48 for any property purchased for a coal loading facility prior
49 to the first day of April, one thousand nine hundred eighty-
50 three.

51 (c) *Post February 28, 1985 investment.*—For investment
52 in a new or expanded or revitalized coal loading facility
53 made on or after the first day of March, one thousand nine
54 hundred eighty-five, the amount of the credit shall be equal
55 to ten percent of the cost of eligible investment (as
56 determined in section four) made in a coal loading facility
57 and shall reduce the business and occupation tax imposed
58 under article thirteen of this chapter, subject to the
59 following conditions and limitations:

60 (1) The amount of credit allowable shall be applied over
61 a ten-year period, at the rate of one-tenth thereof per
62 taxable year, beginning with the taxable year in which the

63 eligible investment is first placed in service or use in this
64 state.

65 (2) The amount of annual credit allowed shall not
66 reduce the business and occupation taxes under article
67 thirteen of this chapter, below fifty percent of the amount
68 which would be imposed for such taxable year in the
69 absence of this credit against tax, computed before
70 application of the annual exemption allowed by section
71 three, article thirteen of this chapter.

72 (3) When in any taxable year the eligible taxpayer is
73 entitled to claim credit computed under two or more
74 subsections of this section, the total amount of all credits
75 allowable under this section shall not exceed the fifty
76 percent rule outlined in subdivision (2) of this subsection.

77 (4) No carryover to a subsequent taxable year or
78 carryback to a prior taxable year shall be allowed for the
79 amount of any unused portion of any annual credit
80 allowance. Such unused credit shall be forfeited.

81 (5) When in any taxable year the eligible taxpayer is
82 entitled to claim credit under this article and article
83 thirteen-d of this chapter, the total amount of all such
84 credits allowable for the taxable year shall not reduce the
85 amount of business and occupation taxes under article
86 thirteen of this chapter, below fifty percent of the amount
87 which would be imposed for such taxable year computed
88 before allowance of the annual exemption allowed by
89 section three, article thirteen of this chapter.

90 (6) No credit shall be allowed under this subsection (c)
91 for any property purchased on or after the first day of
92 March, one thousand nine hundred eighty-five, for which
93 credit is allowed under article thirteen-c of this chapter.

94 (7) No credit shall be allowed under this subsection (c)
95 for any property purchased for a coal loading facility prior
96 to the first day of March, one thousand nine hundred
97 eighty-five.

98 (d) *Credit limitation.*—The aggregate amount of credit
99 allowable under this article and article thirteen-e of this
100 chapter, against the taxes imposed by article thirteen of this
101 chapter, for the taxable year, shall in no event exceed fifty
102 percent of the tax due for the taxable year computed prior
103 to application of the tax credits provided by this article and
104 article thirteen-d of this chapter, and the annual exemption

105 provided by section three, article thirteen of this chapter.
106 (e) *Application of credit after June 30, 1987.*—On and
107 after the first day of July, one thousand nine hundred
108 eighty-seven, the credits allowed under subsections (b), (c),
109 (e) and (f) of this section, shall be applied to and reduce the
110 taxes imposed by articles thirteen, thirteen-a and twenty-
111 three of this chapter: *Provided*, That this credit shall not
112 reduce the sum of the net tax liability of the taxpayer under
113 articles thirteen, thirteen-a and twenty-three of this
114 chapter for the taxable year below fifty percent of the
115 amount thereof, determined before application of the
116 credits allowed by this article and article thirteen-c or
117 thirteen-d, or both, of this chapter.

**§11-13E-5. Forfeiture of unused tax credits; redetermination
of credit required.**

1 (a) *Disposition of property or cessation of use.*—If
2 during any taxable year, property with respect to which a
3 tax credit has been allowed under this article:
4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section three of this article; or
6 (2) Ceases to be used in a coal loading facility by the
7 eligible taxpayer, in this state, prior to the end of its useful
8 life, as determined under said section three of this article,
9 then the unused portion of the credit allowed for such
10 property shall be forfeited for the taxable year and all
11 ensuing years. Additionally, except when the property is
12 damaged or destroyed by fire, flood, storm or other
13 casualty, or is stolen, the taxpayer shall redetermine the
14 amount of credit allowed in all earlier years by reducing the
15 applicable percentage of cost of such property allowed
16 under said section three of this article, to correspond with
17 the percentage of cost allowable for the period of time that
18 the property was actually used in this state as a coal loading
19 facility of the eligible taxpayer. The taxpayer shall then file
20 a reconciliation statement with its annual business and
21 occupation tax return for the year in which the forfeiture
22 occurs and pay any additional business and occupation
23 taxes, plus interest and any applicable penalties: *Provided*,
24 That on and after the first day of July, one thousand nine
25 hundred eighty-seven, the phrase “taxes imposed by article
26 twelve-a or thirteen (or both) of this chapter” shall mean

27 "taxes imposed by articles thirteen, thirteen-a and twenty-
28 three of this chapter (or any one or combination of such
29 articles of this chapter)."

30 (b) *Cessation of operation of coal loading facility.*—If
31 during any taxable year the eligible taxpayer ceases
32 operation of a coal loading facility in this state, for which
33 credit was allowed under this article, before expiration of
34 the useful life of the property with respect to which tax
35 credit has been allowed under this article, then the unused
36 portion of the allowed credit shall be forfeited for the
37 taxable year and all ensuing years. Additionally, except
38 when the cessation is due to fire, flood, storm or other
39 casualty, the taxpayer shall redetermine the amount of
40 credit allowed in earlier years by reducing the applicable
41 percentage of cost of such property allowed under section
42 three of this article, to correspond with the percentage of
43 cost allowable for the period of time that the property was
44 actually used in this state in a coal loading facility of the
45 eligible taxpayer. The taxpayer shall then file a
46 reconciliation statement with its annual business and
47 occupation tax return for the year in which the forfeiture
48 occurs and pay any additional business and occupation
49 taxes, plus interest and any applicable penalties: *Provided,*
50 That on and after the first day of July, one thousand nine
51 hundred eighty-seven, the phrase "taxes imposed by article
52 twelve-a or thirteen (or both) of this chapter" shall mean
53 "taxes imposed by articles thirteen, thirteen-a and twenty-
54 three of this chapter (or any one or combination of such
55 articles of this chapter)."

§11-13E-6. **Transfer of eligible investment to successors.**

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section five of this article by
3 reason of a mere change in the form of conducting the
4 business as long as the property is used as or in a coal
5 loading facility in this state and the taxpayer retains a
6 controlling interest in the successor business. In this event,
7 the successor business shall be allowed to claim the amount
8 of credit still available with respect to the coal loading
9 facility or facilities transferred and the taxpayer
10 (transferor) shall not be required to redetermine the amount
11 of credit allowed in earlier years.

12 (b) *Transfer or sale to successor.*—Property shall not be
13 treated as disposed of under section five by reason of any
14 transfer or sale to a successor business which continues to
15 operate the coal loading facility in this state. Upon transfer
16 or sale, the successor shall acquire the amount of credit that
17 remains available under this article for each subsequent
18 taxable year, and the taxpayer (transferor) shall not be
19 required to redetermine the amount of credit allowed in
20 earlier years.

§11-13E-7. Severability.

1 (a) If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall
4 not affect, impair or invalidate the remainder of said
5 article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered, and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be
18 confined in its operation to the provision thereof directly
19 involved with, pertaining to, addressing or referring to the
20 said statute, and the application of such provision with
21 regard to other statutes or in other instances not affected by
22 any such invalid or repealed statute shall not be abrogated
23 or diminished in any way.

ARTICLE 23. BUSINESS FRANCHISE TAX.

**§11-23-17a. Tax credit for business investment and jobs
expansion; industrial expansion and
revitalization; eligible research and
development projects; coal loading facilities.**

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article for the taxable year the amount

3 determined under articles thirteen-c, thirteen-d and
4 thirteen-e of this chapter relating respectively to:

5 (1) The tax credit for business investment and jobs
6 expansion;

7 (2) The tax credit for industrial expansion and
8 revitalization and eligible research and development
9 projects; and

10 (3) The tax credit for coal loading facilities.

11 (b) The tax commissioner shall prescribe such
12 regulations as he deems necessary to carry out the purposes
13 of this section and articles thirteen-c, thirteen-d and
14 thirteen-e of this chapter.

15 (c) This provision shall take effect on the first day of
16 July, one thousand nine hundred eighty-seven.

CHAPTER 165

(S. B. 621—Originating in the Committee on Finance)

[Passed March 30, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act; and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of
3 the United States relating to income taxes, unless a dif-
4 ferent meaning is clearly required. Any reference in this

5 article to the laws of the United States shall mean the
6 provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income for
9 federal income tax purposes. All amendments made to
10 the laws of the United States prior to the first day of
11 January, one thousand nine hundred eighty-five, shall be
12 given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of Janu-
14 ary, one thousand nine hundred eighty-four, and there-
15 after, but no amendment to the laws of the United States
16 made on or after the first day of January, one thousand
17 nine hundred eighty-five shall be given effect.

CHAPTER 166

(S. B. 343—By Senator Parker)

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

AN ACT to amend and reenact section seventy-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employer's return and payment of state income tax withheld; date for filing monthly return for taxes withheld in the month of December.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer's return and payment of withheld taxes.

1 (a) *General.*—Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following the
4 close of such calendar quarter, file a withholding return as
5 prescribed by the tax commissioner and pay over to the tax
6 commissioner the taxes so required to be deducted and

7 withheld. Where the aggregate amount so deducted and
8 withheld by any employer is less than twenty-five dollars in
9 a calendar quarter and the aggregate for the calendar year
10 can reasonably be expected to be less than one hundred
11 dollars, the tax commissioner may by regulation permit an
12 employer to file an annual return and pay over to the tax
13 commissioner the taxes deducted and withheld on or before
14 the last day of the month following the close of such
15 calendar year. The tax commissioner may, if he believes
16 such action necessary for the protection of the revenues,
17 require any employer to make such return and pay to him
18 the tax deducted and withheld at any time, or from time to
19 time.

20 (b) *Monthly returns and payments of withheld tax for*
21 *April and May, 1971.*—Notwithstanding the provisions of
22 subsection (a), in the case of each of the months of April and
23 May, one thousand nine hundred seventy-one, every
24 employer required to deduct and withhold tax under this
25 article, except any employer with respect to whom the tax
26 commissioner may have by regulation provided otherwise
27 in accordance with the provisions of subsection (a), shall,
28 for the months of April and May, one thousand nine
29 hundred seventy-one, file a withholding return for each of
30 such months as prescribed by the tax commissioner and pay
31 over to the tax commissioner the taxes so required to be
32 deducted and withheld for each of such months by the
33 twentieth day of June, one thousand nine hundred seventy-
34 one.

35 (c) *Monthly returns and payments of withheld tax on*
36 *and after June 1, 1971.*—Notwithstanding the provisions of
37 subsection (a), on and after June 1, 1971, every employer
38 required to deduct and withhold tax under this article shall,
39 for each of the first eleven months of the calendar year, on or
40 before the twentieth day of the succeeding month and for
41 the last calendar month of the year, on or before the last day
42 of the succeeding month, file a withholding return as
43 prescribed by the tax commissioner and pay over to the tax
44 commissioner the taxes so required to be deducted and
45 withheld, if such withheld taxes aggregate one hundred
46 dollars or more for such month; except any employer with
47 respect to whom the tax commissioner may have by

48 regulation provided otherwise in accordance with the
49 provisions of subsection (a).

50 (d) *Deposit in trust for tax commissioner.*—Whenever
51 any employer fails to collect, truthfully account for, pay
52 over the tax, or make returns of the tax as required in this
53 section, the tax commissioner may serve a notice requiring
54 such employer to collect the taxes which become collectible
55 after service of such notice, to deposit such taxes in a bank
56 approved by the tax commissioner, in a separate account, in
57 trust for and payable to the tax commissioner, and to keep
58 the amount of such tax in such account until payment over
59 to the tax commissioner. Such notice shall remain in effect
60 until a notice of cancellation is served by the tax
61 commissioner.

CHAPTER 167

(S. B. 622—Originating in the Committee on Finance)

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

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act; and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

*§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context in

* Clerks Note: This section was also amended by H. B. 1693, which passed subsequent to this act.

3 the laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by the
5 context or by definition in this article. Any reference in this
6 article to the laws of the United States or to the Internal
7 Revenue Code or to the federal income tax law shall mean
8 the provisions of the laws of the United States as relate to
9 the determination of income for federal income tax
10 purposes. All amendments made to the laws of the United
11 States prior to the first day of January, one thousand nine
12 hundred eighty-five, shall be given effect in determining
13 the taxes imposed by this article for the tax period
14 beginning the first day of January, one thousand nine
15 hundred eighty-four, and thereafter, but no amendment to
16 laws of the United States made on or after the first day of
17 January, one thousand nine hundred eighty-five, shall be
18 given effect.

19 (b) *Certain terms defined.*—For purposes of this article:

20 (1) The term “tax commissioner” means the tax
21 commissioner of the state of West Virginia or his delegate.

22 (2) The term “corporation” means and includes a joint-
23 stock company or any association which is taxable as a
24 corporation under the federal income tax law.

25 (3) The term “domestic corporation” means any
26 corporation organized under the laws of West Virginia.

27 (4) The term “foreign corporation” means any
28 corporation other than a domestic corporation.

29 (5) The term “state” means any state of the United
30 States, the District of Columbia, the Commonwealth of
31 Puerto Rico, any territory or possession of the United
32 States, and any foreign country or political subdivision
33 thereof.

34 (6) The term “taxable year” means the taxable year for
35 which the taxable income of the taxpayer is computed
36 under the federal income tax law.

37 (7) The term “taxpayer” means a corporation subject to
38 the tax imposed by this article.

39 (8) The term “tax” includes, within its meaning, interest
40 and additions to tax, unless the intention to give it a more
41 limited meaning is disclosed by the context.

42 (9) The term “commercial domicile” means the
43 principal place from which the trade or business of the
44 taxpayer is directed or managed.

45 (10) The term "compensation" means wages, salaries,
46 commissions and any other form of remuneration paid to
47 employees for personal services.

48 (11) The term "West Virginia taxable income" means
49 the taxable income of a corporation as defined by the laws
50 of the United States for federal income tax purposes,
51 adjusted as provided in section six of this article: *Provided,*
52 That in the case of a corporation having income from
53 business activity which is taxable without this state, its
54 "West Virginia taxable income" shall be such portion of its
55 taxable income as so defined and adjusted as is allocated or
56 apportioned to this state under the provisions of section
57 seven of this article.

58 (12) The term "business income" means income arising
59 from transactions and activity in the regular course of the
60 taxpayer's trade or business and includes income from
61 tangible and intangible property if the acquisition,
62 management and disposition of the property constitute
63 integral parts of the taxpayer's regular trade or business
64 operations.

65 (13) The term "nonbusiness income" means all income
66 other than business income.

67 (14) The term "public utility" means any business
68 activity to which the jurisdiction of the public service
69 commission of West Virginia extends under section one,
70 article two, chapter twenty-four of the code of West
71 Virginia.

72 (15) The term "this code" means the code of West
73 Virginia.

74 (16) The term "this state" means the state of West
75 Virginia.

CHAPTER 168

(S. B. 52—By Senator Tucker)

[Passed March 22, 1985; in effect ninety days from passage. Approved by the Governor.]

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

hundred thirty-one, as amended, relating to publication by the sheriff of a notice of sale of land for delinquent taxes; notice to landowners and lienholders; manner and time of notice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALE OF LAND FOR TAXES.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 On or before September tenth of each year, the sheriff
2 shall prepare a second list of delinquent lands, which shall
3 include all real estate in his county remaining delinquent as
4 of September first, together with a notice of sale, in form or
5 effect as follows:

6 Notice is hereby given that the following described tracts
7 or lots of land or undivided interests therein in the County
8 of which are delinquent for the nonpayment
9 of taxes for the year (or years) 19 . . . , will be offered for sale
10 by the undersigned sheriff (or collector) at public auction at
11 the front door of the courthouse of the county, between the
12 hours of ten in the morning and four in the afternoon, on the
13 day of, 19.....

14 Each unredeemed tract or lot, or each unredeemed part
15 thereof or undivided interest therein, will be sold at public
16 auction to the highest bidder for cash in an amount which
17 shall not be less than the taxes, interest and charges which
18 shall be due thereon to the date of sale, as set forth in the
19 following table:

20	Name of person	Quantity	Local	Total amount of taxes,
21	charged	of	descrip-	interest and charges
22	with taxes	land	tion	due to date of sale

23 Any of the aforesaid tracts or lots, or part thereof or an
24 undivided interest therein, may be redeemed by the
25 payment to the undersigned sheriff (or collector) before
26 sale, of the total amount of taxes, interest and charges due
27 thereon up to the date of redemption.

69 in this section in making such redemption. Costs collected
70 by the sheriff hereunder which are not expended for
71 publication and mailing shall be paid into the general
72 county fund.

CHAPTER 169

(Com. Sub. for H. B. 1575—By Delegate J. Martin and Delegate Starcher)

[Passed April 3, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-e, relating to licensing of transient merchants; definitions relating thereto; providing certain exemptions from licensing; prohibiting a transient merchant from transacting business in this state without a license; requiring certain information to be contained in applications for such licenses; requiring the commissioner of labor to prepare application forms and license certificates; establishing license fees and bonding requirements; providing for the issuance, nontransferability, validity and renewal of such license; requiring registered agents of transient merchants to be residents of this state; requiring the commissioner of labor to maintain a list of licensed transient merchants and their registered agents; providing for the secretary of state to accept service of process on behalf of transient merchants without registered agents; requiring registration of transient vendors with the sheriff of each county in which business will be transacted; registration fees; requiring sheriffs to maintain a list of registered transient merchants; authorizing conduct of business in counties and certain exceptions relating thereto; requiring display of license, registration receipt and business franchise certificates; criminal penalties for violations; and enforcement against violators.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11E. TRANSIENT MERCHANT LICENSING ACT.

- §47-11E-1. Short title.
- §47-11E-2. General definitions.
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§47-11E-1. Short title.

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Transient Merchant Licensing Act.”

§47-11E-2. General definitions.

- 1 As used in this article, the following words and phrases shall
- 2 have the meanings respectively ascribed to them in this section:

- 3 (a) “Commissioner” means the commissioner of labor or his
- 4 duly authorized representative.

- 5 (b) “Person” means any individual, corporation, partner-
- 6 ship, association or entity.

- 7 (c) “Temporary or transient business” means any business
- 8 conducted for the sale or offer for sale of goods, wares or
- 9 merchandise which is carried on in any building, structure,
- 10 motor vehicle, railroad car or real estate for a period of less
- 11 than six months in each year.

- 12 (d) “Merchandise, goods or wares” means any consumer
- 13 item that is, or is represented to be, new or not previously
- 14 owned by a consumer.

- 15 (e) “Transient merchant” means any person, firm, corpora-
- 16 tion, partnership or other entity which engages in, does or
- 17 transacts any temporary or transient business in the state,
- 18 either in one locality or in traveling from place to place in
- 19 the state, offering for sale or selling goods, wares, merchandise
- 20 or services and includes those merchants who, for the purpose
- 21 of carrying on such business, hire, lease, use or occupy any

22 building, structure, motor vehicle, railroad car or real estate.

§47-11E-3. Application; exemptions.

1 The provisions of this article shall not apply to:

2 (1) Sales at wholesale to retail merchants by commercial
3 travelers or selling agents in the usual course of business;

4 (2) Wholesale trade shows or conventions;

5 (3) Sales of goods, wares or merchandise by sample
6 catalogue or brochure for future delivery;

7 (4) State and local fairs and conventions;

8 (5) Any general sale, fair, auction or bazaar sponsored by
9 any church, religious or nonprofit organization;

10 (6) Garage sales held on premises devoted to residential use;

11 (7) Sales of crafts or items made by hand and sold or
12 offered for sale by the person making such crafts or handmade
13 items;

14 (8) Sales of agricultural products, except nursery products
15 and foliage plants;

16 (9) Sales made by a seller at residential premises pursuant
17 to an invitation issued by the owner or legal occupant of such
18 premises; or

19 (10) A person who operates a permanent business in this
20 state and in connection with the permanent business, operates
21 a temporary business location and prominently displays the
22 business name and permanent address while conducting
23 business from the temporary business location.

24 A transient merchant not otherwise exempted from the
25 provisions of this article shall not be relieved or exempted
26 from the provisions of this article by reason of associating
27 himself temporarily with any local dealer, auctioneer, trader,
28 contractor or merchant or by conducting such temporary or
29 transient business in connection with or in the name of any
30 local dealer, auctioneer, trader, contractor or merchant.

§47-11E-4. Licenses to operate as transient merchants.

1 It is unlawful for any transient merchant to transact business
2 in this state unless such merchant and the owners of any

3 goods, wares or merchandise to be offered for sale or sold,
4 if such are not owned by the merchant, shall have first secured
5 a license and shall have otherwise complied with the
6 requirements of this article.

§47-11E-5. Applications for transient merchant licenses.

1 (a) Any transient merchant desiring to transact business
2 shall make application for and obtain a license from the
3 commissioner. The application for license shall be filed with
4 the commissioner and shall include the following information:

5 (1) The name and permanent address of the transient
6 merchant making the application and if the applicant is a firm
7 or corporation the name and address of the members of the
8 firm or the officers of the corporation, as the case may be;

9 (2) If the applicant is a corporation, there shall be stated
10 on the application form the date of incorporation, the state
11 of incorporation, and if the applicant is a corporation formed
12 in a state other than the state of West Virginia, the date on
13 which such corporation qualified to transact business as a
14 foreign corporation in the state of West Virginia;

15 (3) A statement showing the kind of business proposed to
16 be conducted, the length of time for which the applicant
17 desires to transact such business and the location of such
18 proposed place of business;

19 (4) The name and permanent address of the transient
20 merchant's registered agents or offices;

21 (5) A statement that the applicant has acquired all other
22 required city, county and state permits and licenses;

23 (6) A receipt or statement showing that any personal
24 property taxes due on goods, wares or merchandise to be
25 offered for sale have been paid, including any taxes due under
26 the provisions of section eight, article five, chapter eleven of
27 this code;

28 (7) A written statement by each registered agent designated
29 in the application for a license that the agent is a resident of
30 the state of West Virginia and shall be agent of the transient
31 merchant upon whom any process, notice or demand required
32 or permitted by law to be served upon the transient merchant
33 may be served; and

34 (8) Counties in which the transient merchant intends to
35 conduct business.

36 (b) The commissioner shall design and cause to be printed
37 appropriate forms for applications for licenses and for the
38 license certificates to be issued to applicants under this article.

§47-11E-6. License fee; bond required.

1 Each application for a transient merchant license shall be
2 accompanied by a license fee of two hundred fifty dollars and
3 by a cash bond or a surety bond issued by a corporate surety
4 authorized to do business in the state in the amount of two
5 thousand dollars or five percent of the wholesale value of any
6 goods, wares, merchandise or services to be offered for sale
7 whichever sum is lesser. The surety bond shall be in favor of
8 the state of West Virginia and shall assure the payment by the
9 applicant of all taxes that may be due from the applicant to
10 the state or any political subdivision of the state, the payment
11 of any fines that may be assessed against the applicant or its
12 agents or employees for violation of the provisions of this
13 article and for the satisfaction of all judgments that may be
14 rendered against the transient merchant or its agents or
15 employees in any cause of action commenced by any purchaser
16 of goods, wares, merchandise or services within one year from
17 the date of the sale by such transient merchant. The bonds
18 shall be maintained so long as the transient merchant conducts
19 business in the state of West Virginia and for a period of one
20 year after the termination of such business and shall be
21 released only when the transient merchant furnishes satisfac-
22 tory proof to the commissioner that it has satisfied all claims
23 of purchasers of goods, wares, merchandise or services from
24 such merchant and that all state and local sales taxes and other
25 taxes have been paid.

**§47-11E-7. Issuance of licenses; nontransferability; conditions of
validity.**

1 A transient business license shall be issued hereunder only
2 when all requirements of this article have been met, such
3 license shall not be transferable, shall be valid only for a period
4 of ninety days and shall be valid only for the business stated
5 in the application. A license so issued shall be valid for only
6 one person unless such person shall be a member of a

7 partnership or employee of a firm or corporation obtaining
8 such license.

9 A license may be renewed for an additional period of ninety
10 days upon payment of an additional license fee of ten dollars.

§47-11E-8. Registered agents; state residency requirements; service of process, notice, etc., upon registered agents.

1 Each registered agent designated by a transient merchant in
2 the application for a license shall be a resident of the state
3 of West Virginia and shall be agent of the transient merchant
4 upon whom any process, notice or demand required or
5 permitted by law to be served upon the transient merchant
6 may be served. The registered agent shall agree in writing to
7 act as such agent and a copy of the agreement to so act shall
8 be filed by the applicant with the application for license
9 required by section five of this article.

§47-11E-9. Listings of transient merchants and registered agents to be maintained by commissioner.

1 The commissioner shall maintain an alphabetical list of all
2 transient merchants for each county and the names and
3 addresses of their registered agents.

§47-11E-10. Service of process, notices, etc., upon secretary of state.

1 If any transient merchant doing business or having done
2 business in this state shall fail to have or maintain a registered
3 agent in this state or if such registered agent cannot be found
4 at a permanent address in this state, the secretary of state shall
5 be an agent of such transient merchant for service of all
6 process, notices or demands. Service on the secretary of state
7 shall be made in the manner provided by section thirty-three,
8 article three, chapter fifty-six of this code, as amended. The
9 provisions of this section shall not limit or otherwise affect the
10 right of any person to serve any process, notice or demand
11 in any other manner now or hereafter authorized by law.

§47-11E-11. Local registration with county sheriff; fee; display of license.

1 After receipt of a transient vendor license from the
2 commissioner, a transient vendor shall pay a five dollar
3 registration fee and shall register in the office of the sheriff
4 in each county in which the transient vendor intends to do

5 business. The sheriff's office shall maintain and make available
6 to police agencies and the public, upon request, a current
7 listing of such registrations including date and time of
8 registration. Upon registration with the sheriff and offering
9 proof of licensing as required by section four of this article,
10 the vendor shall be authorized to conduct business in that
11 county for the seventy-two hour period immediately following
12 registration, except that nothing herein shall be deemed to
13 permit the conduct of business in those counties wherein the
14 same is prohibited on Sunday pursuant to the provisions of
15 article ten, chapter sixty-one of this code, and except that
16 nothing herein shall be deemed to permit the conduct of
17 business on public rights-of-way or other areas where the
18 conduct of business is otherwise prohibited, and except that
19 nothing herein shall be deemed to authorize the conduct of
20 business prior to registration with the state tax department
21 pursuant to the provisions of article twelve, chapter eleven of
22 this code.

23 A transient vendor conducting any business pursuant to this
24 article shall prominently display at the business site the license
25 issued by the commissioner of labor, the receipt from the
26 sheriff of the county wherein the business is being conducted,
27 and the business franchise certificate issued by the state tax
28 department.

§47-11E-12. Activities prohibited; criminal penalties; enforcement.

1 No person or entity shall transact a transient business as
2 defined in this article without having first obtained a license
3 therefor from the commissioner and without having then
4 registered with the sheriff in the county in which the transient
5 vendor transacts any business, nor shall any person or entity
6 knowingly advertise, offer for sale or sell any goods, wares,
7 merchandise or service in violations of the provisions of this
8 article.

9 Any person or entity violating any provision of this article
10 is guilty of a misdemeanor, and, upon conviction thereof, shall
11 be fined not less than two hundred nor more than one
12 thousand dollars or imprisoned in the county jail not less than
13 ten days nor more than one year, or both fined and
14 imprisoned. The penalties prescribed herein shall be in
15 addition to any other penalties prescribed by law for violation

16 of any other criminal offense committed by any such person
17 or entity.

18 Notwithstanding the enforcement powers of the commis-
19 sioner of labor and the state department of labor, violators
20 of this article shall be subject to investigation and arrest by
21 state, county and local law-enforcement officers.

CHAPTER 170

(H. B. 1904—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of
the Executive)

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

AN ACT to amend and reenact section three, article one; section ten, article five; sections one, one-b and fifteen, article six; section one, article eight; and section eleven, article ten, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the employment security generally, the unemployment compensation trust fund and the employee contributions thereto; employee eligibility for benefits and the qualifications therefor; requalification requirements; disqualification for such benefits; benefit payments for service with educational institutions; and the establishment and use of certain information provided.

Be it enacted by the Legislature of West Virginia:

That section three, article one; section ten, article five; sections one, one-b and fifteen, article six; section one, article eight; and section eleven, article ten, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Article.

1. Department of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
8. Unemployment Compensation Fund.
- 10 General Provisions.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.**§21A-1-3. Definitions.**

1 As used in this chapter, unless the context clearly requires
2 otherwise:

3 "Administration fund" means the employment security
4 administration fund, from which the administrative expenses
5 under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-month
8 period ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the last three
10 annual payrolls of an employer.

11 "Base period" means the first four out of the last five
12 completed calendar quarters immediately preceding the first
13 day of the individual benefit year.

14 "Base period employer" means any employer who in the
15 base period for any benefit year paid wages to an individual
16 who filed claim for unemployment compensation within such
17 benefit year.

18 "Base period wages" means wages paid to an individual
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the fifty-
21 two-week period beginning with the first day of the calendar
22 week in which a valid claim is effective, and thereafter the fifty-
23 two-week period beginning with the first day of the calendar
24 week in which such individual next files a valid claim for
25 benefits after the termination of his last preceding benefit year.
26 An initial claim for benefits filed in accordance with the
27 provisions of this chapter shall be deemed to be a valid claim
28 within the purposes of this definition if the individual has been
29 paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.

31 "Benefits" means the money payable to an individual with
32 respect to his unemployment.

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecutive
35 calendar months ending on March thirty-one, June thirty,
36 September thirty or December thirty-one, or the equivalent

37 thereof as the commissioner may by regulation prescribe.

38 "Commissioner" means the employment security
39 commissioner.

40 "Computation date" means June thirty of the year
41 immediately preceding the January one on which an employ-
42 er's contribution rate becomes effective.

43 "Employing unit" means an individual, or type of organi-
44 zation, including any partnership, association, trust, estate,
45 joint-stock company, insurance company, corporation (domes-
46 tic or foreign), state or political subdivision thereof, or their
47 instrumentalities, as provided in paragraph (b), subdivision (9)
48 of the definition of "employment" in this section, institution
49 of higher education, or the receiver, trustee in bankruptcy,
50 trustee or successor thereof, or the legal representative of a
51 deceased person, which has on January first, one thousand
52 nine hundred thirty-five, or subsequent thereto, had in its
53 employ one or more individuals performing service within this
54 state.

55 "Employer" means:

56 (1) Until January one, one thousand nine hundred seventy-
57 two, any employing unit which for some portion of a day, not
58 necessarily simultaneously, in each of twenty different calendar
59 weeks, which weeks need not be consecutive, within either the
60 current calendar year, or the preceding calendar year, has had
61 in employment four or more individuals irrespective of
62 whether the same individuals were or were not employed on
63 each of such days;

64 (2) Any employing unit which is or becomes a liable
65 employer under any federal unemployment tax act;

66 (3) Any employing unit which has acquired or acquires the
67 organization, trade or business, or substantially all the assets
68 thereof, of an employing unit which at the time of such
69 acquisition was an employer subject to this chapter;

70 (4) Any employing unit which, after December thirty-one,
71 one thousand nine hundred sixty-three, and until January one,
72 one thousand nine hundred seventy-two, in any one calendar
73 quarter, in any calendar year, has in employment four or more
74 individuals and has paid wages for employment in the total

75 sum of five thousand dollars or more, or which, after such
76 date, has paid wages for employment in any calendar year in
77 the sum total of twenty thousand dollars or more;

78 (5) Any employing unit which, after December thirty-one,
79 one thousand nine hundred sixty-three, and until January one,
80 one thousand nine hundred seventy-two, in any three-week
81 period, in any calendar year, has in employment ten or more
82 individuals;

83 (6) For the effective period of its election pursuant to
84 section three, article five of this chapter, any employing unit
85 which has elected to become subject to this chapter;

86 (7) Any employing unit which, after December thirty-one,
87 one thousand nine hundred seventy-one, (i) in any calendar
88 quarter in either the current or preceding calendar year paid
89 for service in employment wages of one thousand five hundred
90 dollars or more, or (ii) for some portion of a day in each of
91 twenty different calendar weeks, whether or not such weeks
92 were consecutive, in either the current or the preceding
93 calendar year had in employment at least one individual
94 (irrespective of whether the same individual was in employ-
95 ment in each such day) except as provided in subdivisions
96 eleven and twelve hereof;

97 (8) Any employing unit for which service in employment,
98 as defined in subdivision (9) of the definition of "employment"
99 in this section, is performed after December thirty-one, one
100 thousand nine hundred seventy-one;

101 (9) Any employing unit for which service in employment,
102 as defined in subdivision (10) of the definition of "employ-
103 ment" in this section, is performed after December thirty-one,
104 one thousand nine hundred seventy-one;

105 (10) Any employing unit for which service in employment,
106 as defined in paragraphs (b) and (c) of subdivision (9) of the
107 definition of "employment" in this section, is performed after
108 December thirty-one, one thousand nine hundred seventy-
109 seven;

110 (11) Any employing unit for which agricultural labor, as
111 defined in subdivision (12) of the definition of "employment"
112 in this section, is performed after December thirty-one, one
113 thousand nine hundred seventy-seven;

114 (12) Any employing unit for which domestic service in
115 employment, as defined in subdivision (13) of the definition
116 of "employment" in this section, is performed after December
117 thirty-one, one thousand nine hundred seventy-seven.

118 "Employment," subject to the other provisions of this
119 section, means:

120 (1) Service, including service in interstate commerce,
121 performed for wages or under any contract of hire, written or
122 oral, express or implied;

123 (2) Any service performed prior to January one, one
124 thousand nine hundred seventy-two, which was employment
125 as defined in this section prior to such date and, subject to
126 the other provisions of this section, service performed after
127 December thirty-one, one thousand nine hundred seventy-one,
128 by an employee, as defined in section 3306(i) of the Federal
129 Unemployment Tax Act, including service in interstate
130 commerce;

131 (3) Any service performed prior to January one, one
132 thousand nine hundred seventy-two, which was employment
133 as defined in this section prior to such date and, subject to
134 the other provisions of this section, service performed after
135 December thirty-one, one thousand nine hundred seventy-one,
136 including service in interstate commerce, by any officer of a
137 corporation;

138 (4) An individual's entire service, performed within or both
139 within and without this state if: (a) The service is localized in
140 this state or (b) the service is not localized in any state but
141 some of the service is performed in this state and (i) the base
142 of operations, or, if there is no base of operations, then the
143 place from which such service is directed or controlled, is in
144 this state or (ii) the base of operations or place from which
145 such service is directed or controlled is not in any state in
146 which some part of the service is performed but the
147 individual's residence is in this state;

148 (5) Service not covered under paragraph four of this
149 subdivision and performed entirely without this state with
150 respect to no part of which contributions are required and paid
151 under an unemployment compensation law of any other state
152 or of the federal government, shall be deemed to be

153 employment subject to this chapter if the individual perform-
154 ing such services is a resident of this state and the commis-
155 sioner approves the election of the employing unit for whom
156 such services are performed that the entire service of such
157 individual shall be deemed to be employment subject to this
158 chapter;

159 (6) Service shall be deemed to be localized within a state,
160 if: (a) The service is performed entirely within such state; or
161 (b) the service is performed both within and without such state,
162 but the service performed without such state is incidental to
163 the individual's service within this state, as, for example, is
164 temporary or transitory in nature or consists of isolated
165 transactions;

166 (7) Services performed by an individual for wages shall be
167 deemed to be employment subject to this chapter unless and
168 until it is shown to the satisfaction of the commissioner that:
169 (a) Such individual has been and will continue to be free from
170 control or direction over the performance of such services,
171 both under his contract of service and in fact; and (b) such
172 service is either outside the usual course of the business for
173 which such service is performed or that such service is
174 performed outside of all the places of business of the enterprise
175 for which such service is performed; and (c) such individual
176 is customarily engaged in an independently established trade,
177 occupation, profession or business;

178 (8) All service performed by an officer or member of the
179 crew of an American vessel (as defined in section three
180 hundred five of an act of Congress entitled Social Security Act
181 Amendment of 1946, approved August tenth, one thousand
182 nine hundred forty-six), on or in connection with such vessel,
183 provided that the operating office, from which the operations
184 of such vessel operating on navigable waters within and
185 without the United States is ordinarily and regularly
186 supervised, managed, directed and controlled, is within this
187 state;

188 (9) (a) Service performed after December thirty-one, one
189 thousand nine hundred seventy-one, by an individual in the
190 employ of this state or any of its instrumentalities (or in the
191 employ of this state and one or more other states or their
192 instrumentalities) for a hospital or institution of higher

193 education located in this state: *Provided*, That such service is
194 excluded from "employment" as defined in the Federal
195 Unemployment Tax Act solely by reason of section 3306(c) (7)
196 of that act and is not excluded from "employment" under
197 subdivision (11) of the exclusion from employment;

198 (b) Service performed after December thirty-one, one
199 thousand nine hundred seventy-seven, in the employ of this
200 state or any of its instrumentalities or political subdivisions
201 thereof or any of its instrumentalities or any instrumentality
202 of more than one of the foregoing or any instrumentality of
203 any foregoing and one or more other states or political
204 subdivisions: *Provided*, That such service is excluded from
205 "employment" as defined in the Federal Unemployment Tax
206 Act by section 3306(c)(7) of that act and is not excluded from
207 "employment" under subdivision (15) of the exclusion from
208 employment in this section; and

209 (c) Service performed after December thirty-one, one
210 thousand nine hundred seventy-seven, in the employ of a
211 nonprofit educational institution which is not an institution of
212 higher education;

213 (10) Service performed after December thirty-one, one
214 thousand nine hundred seventy-one, by an individual in the
215 employ of a religious, charitable, educational or other
216 organization but only if the following conditions are met:

217 (a) The service is excluded from "employment" as defined
218 in the Federal Unemployment Tax Act solely by reason of
219 section 3306(c)(8) of that act; and

220 (b) The organization had four or more individuals in
221 employment for some portion of a day in each of twenty
222 different weeks, whether or not such weeks were consecutive,
223 within either the current or preceding calendar year, regardless
224 of whether they were employed at the same moment of time;

225 (11) Service of an individual who is a citizen of the United
226 States, performed outside the United States after December
227 thirty-one, one thousand nine hundred seventy-one, (except in
228 Canada and in the case of Virgin Islands after December
229 thirty-one, one thousand nine hundred seventy-one, and before
230 January one of the year following the year in which the
231 secretary of labor approves for the first time an unemployment

232 insurance law submitted to him by the Virgin Islands for
233 approval) in the employ of an American employer (other than
234 service which is deemed "employment" under the provisions
235 of subdivision (4), (5) or (6) of this definition of "employment"
236 or the parallel provisions of another state's law) if:

237 (a) The employer's principal place of business in the United
238 States is located in this state; or

239 (b) The employer has no place of business in the United
240 States, but (i) the employer is an individual who is a resident
241 of this state; or (ii) the employer is a corporation which is
242 organized under the laws of this state; or (iii) the employer
243 is a partnership or a trust and the number of the partners or
244 trustees who are residents of this state is greater than the
245 number who are residents of any one other state; or

246 (c) None of the criteria of subparagraphs (a) and (b) of this
247 subdivision (11) is met but the employer has elected coverage
248 in this state or, the employer having failed to elect coverage
249 in any state, the individual has filed a claim for benefits, based
250 on such service, under the law of this state.

251 An "American employer," for purposes of this subdivision
252 (11) means a person who is (i) an individual who is a resident
253 of the United States; or (ii) a partnership if two thirds or more
254 of the partners are residents of the United States; or (iii) a
255 trust, if all of the trustees are residents of the United States;
256 or (iv) a corporation organized under the laws of the United
257 States or of any state;

258 (12) Service performed after December thirty-one, one
259 thousand nine hundred seventy-seven, by an individual in
260 agricultural labor as defined in subdivision (5) of the
261 exclusions from employment in this section when:

262 (a) Such service is performed for a person who (i) during
263 any calendar quarter in either the current or the preceding
264 calendar year paid remuneration in cash of twenty thousand
265 dollars or more to individuals employed in agricultural labor
266 or (ii) for some portion of a day in each of twenty different
267 calendar weeks, whether or not such weeks were consecutive,
268 in either the current or the preceding calendar year, employed
269 in agricultural labor ten or more individuals, regardless of
270 whether they were employed at the same moment of time;

271 (b) Such service is not performed in agricultural labor if
272 performed before January one, one thousand nine hundred
273 eighty-six, by an individual who is an alien admitted to the
274 United States to perform service in agricultural labor pursuant
275 to sections 214(c) and 101(a)(15)(H) of the Immigration and
276 Nationality Act;

277 (c) For the purposes of the definition of employment, any
278 individual who is a member of a crew furnished by a crew
279 leader to perform service in agricultural labor for any other
280 person shall be treated as an employee of such crew leader
281 (i) if such crew leader holds a valid certificate of registration
282 under the Farm Labor Contractor Registration Act of 1963;
283 or substantially all the members of such crew operate or
284 maintain tractors, mechanized harvesting or crop-dusting
285 equipment, or any other mechanized equipment, which is
286 provided by such crew leader; and (ii) if such individual is not
287 an employee of such other person within the meaning of
288 subdivision (7) of the definition of employer;

289 (d) For the purposes of this subdivision (12), in the case of
290 any individual who is furnished by a crew leader to perform
291 service in agricultural labor for any other person and who is
292 not treated as an employee of such crew leader under
293 subparagraph (c) of this subdivision (12), (i) such other person
294 and not the crew leader shall be treated as the employer of
295 such individual; and (ii) such other person shall be treated as
296 having paid cash remuneration to such individual in an
297 amount equal to the amount of cash remuneration paid to
298 such individual by the crew leader (either on his own behalf
299 or on behalf of such other person) for the service in
300 agricultural labor performed for such other person;

301 (e) For the purposes of this subdivision (12), the term "crew
302 leader" means an individual who (i) furnishes individuals to
303 perform service in agricultural labor for any other person, (ii)
304 pays (either on his own behalf or on behalf of such other
305 person) the individuals so furnished by him for the service in
306 agricultural labor performed by them, and (iii) has not entered
307 into a written agreement with such other person under which
308 such individual is designated as an employee of such other
309 person;

310 (13) The term "employment" shall include domestic service

311 after December thirty-one, one thousand nine hundred
312 seventy-seven, in a private home, local college club or local
313 chapter of a college fraternity or sorority performed for a
314 person who paid cash remuneration of one thousand dollars
315 or more after December thirty-one, one thousand nine
316 hundred seventy-seven, in any calendar quarter in the current
317 calendar year or the preceding calendar year to individuals
318 employed in such domestic service.

319 Notwithstanding the foregoing definition of "employment,"
320 if the services performed during one half or more of any pay
321 period by an employee for the person employing him
322 constitute employment, all the services of such employee for
323 such period shall be deemed to be employment; but if the
324 services performed during more than one half of any such pay
325 period by an employee for the person employing him do not
326 constitute employment, then none of the services of such
327 employee for such period shall be deemed to be employment.

328 The term "employment" shall not include:

329 (1) Service performed in the employ of this state or any
330 political subdivision thereof, or any instrumentality of this
331 state or its subdivisions, except as otherwise provided herein
332 until December thirty-one, one thousand nine hundred
333 seventy-seven;

334 (2) Service performed directly in the employ of another
335 state, or its political subdivisions, except as otherwise provided
336 in paragraph (a), subdivision (9) of the definition of
337 "employment," until December thirty-one, one thousand nine
338 hundred seventy-seven;

339 (3) Service performed in the employ of the United States
340 or any instrumentality of the United States exempt under the
341 Constitution of the United States from the payments imposed
342 by this law, except that to the extent that the Congress of the
343 United States shall permit states to require any instrumental-
344 ities of the United States to make payments into an
345 unemployment fund under a state unemployment compensa-
346 tion law, all of the provisions of this law shall be applicable
347 to such instrumentalities and to service performed for such
348 instrumentalities, in the same manner, to the same extent and
349 on the same terms as to all other employers, employing units,
350 individuals and services: *Provided*, That if this state shall not

351 be certified for any year by the secretary of labor under section
352 1603(c) of the Federal Internal Revenue Code, the payments
353 required of such instrumentalities with respect to such year
354 shall be refunded by the commissioner from the fund in the
355 same manner and within the same period as is provided in
356 section nineteen, article five of this chapter, with respect to
357 payments erroneously collected;

358 (4) Service performed after June thirty, one thousand nine
359 hundred thirty-nine, with respect to which unemployment
360 compensation is payable under the Railroad Unemployment
361 Insurance Act and service with respect to which unemployment
362 benefits are payable under an unemployment compensation
363 system for maritime employees established by an act of
364 Congress. The commissioner may enter into agreements with
365 the proper agency established under such an act of Congress
366 to provide reciprocal treatment to individuals who, after
367 acquiring potential rights to unemployment compensation
368 under an act of Congress, or who have, after acquiring
369 potential rights to unemployment compensation under an act
370 of Congress, acquired rights to benefit under this chapter.
371 Such agreement shall become effective ten days after such
372 publications which shall comply with the general rules of the
373 department;

374 (5) Service performed by an individual in agricultural labor,
375 except as provided in subdivision (12) of the definition of
376 "employment" in this section. For purposes of this subdivision
377 (5), the term "agricultural labor" includes all services
378 performed:

379 (a) On a farm, in the employ of any person, in connection
380 with cultivating the soil, or in connection with raising or
381 harvesting any agricultural or horticultural commodity,
382 including the raising, shearing, feeding, caring for, training and
383 management of livestock, bees, poultry and fur-bearing
384 animals and wildlife;

385 (b) In the employ of the owner or tenant or other operator
386 of a farm, in connection with the operation, management,
387 conservation, improvement or maintenance of such farm and
388 its tools and equipment, or in salvaging timber or clearing land
389 of brush and other debris left by a hurricane, if the major part
390 of such service is performed on a farm;

391 (c) In connection with the production or harvesting of any
392 commodity defined as an agricultural commodity in section
393 fifteen (g) of the Agricultural Marketing Act, as amended, or
394 in connection with the ginning of cotton, or in connection with
395 the operation or maintenance of ditches, canals, reservoirs or
396 waterways, not owned or operated for profit, used exclusively
397 for supplying and storing water for farming purposes;

398 (d) (i) In the employ of the operator of a farm in handling,
399 planting, drying, packing, packaging, processing, freezing,
400 grading, storing or delivering to storage or to market or to
401 a carrier for transportation to market, in its unmanufactured
402 state, any agricultural or horticultural commodity; but only if
403 such operator produced more than one half of the commodity
404 with respect to which such service is performed; or (ii) in the
405 employ of a group of operators of farms (or a cooperative
406 organization of which such operators are members) in the
407 performance of service described in clause (i), but only if such
408 operators produced more than one half of the commodity with
409 respect to which such service is performed; but the provisions
410 of clauses (i) and (ii) shall not be deemed to be applicable with
411 respect to service performed in connection with commercial
412 canning or commercial freezing or in connection with any
413 agricultural or horticultural commodity after its delivery to a
414 terminal market for distribution for consumption;

415 (e) On a farm operated for profit if such service is not in
416 the course of the employer's trade or business or is domestic
417 service in a private home of the employer. As used in this
418 subdivision (5), the term "farm" includes stock, dairy, poultry,
419 fruit, fur-bearing animals, truck farms, plantations, ranches,
420 greenhouses, ranges and nurseries, or other similar land areas
421 or structures used primarily for the raising of any agricultural
422 or horticultural commodities;

423 (6) Domestic service in a private home except as provided
424 in subdivision (13) of the definition of "employment" in this
425 section;

426 (7) Service performed by an individual in the employ of his
427 son, daughter or spouse;

428 (8) Service performed by a child under the age of eighteen
429 years in the employ of his father or mother;

430 (9) Service as an officer or member of a crew of an
431 American vessel, performed on or in connection with such
432 vessel, if the operating office, from which the operations of
433 the vessel operating on navigable waters within or without the
434 United States are ordinarily and regularly supervised,
435 managed, directed and controlled, is without this state;

436 (10) Service performed by agents of mutual fund broker-
437 dealers or insurance companies, exclusive of industrial
438 insurance agents, or by agents of investment companies, who
439 are compensated wholly on a commission basis;

440 (11) Service performed (i) in the employ of a church or
441 convention or association of churches, or an organization
442 which is operated primarily for religious purposes and which
443 is operated, supervised, controlled or principally supported by
444 a church or convention or association of churches; or (ii) by
445 a duly ordained, commissioned or licensed minister of a church
446 in the exercise of his ministry or by a member of a religious
447 order in the exercise of duties required by such order; or (iii)
448 prior to January one, one thousand nine hundred seventy-
449 eight, in the employ of a school which is not an institution
450 of higher education; or (iv) in a facility conducted for the
451 purpose of carrying out a program of rehabilitation for
452 individuals whose earning capacity is impaired by age or
453 physical or mental deficiency or injury or providing remun-
454 erative work for individuals who because of their impaired
455 physical or mental capacity cannot be readily absorbed in the
456 competitive labor market by an individual receiving such
457 rehabilitation or remunerative work; or (v) as part of an
458 unemployment work-relief or work-training program assisted
459 or financed in whole or in part by any federal agency or an
460 agency of a state or political subdivision thereof, by an
461 individual receiving such work relief or work training; or (vi)
462 prior to January one, one thousand nine hundred seventy-
463 eight, for a hospital in a state prison or other state correctional
464 institution by an inmate of the prison or correctional
465 institution, and after December thirty-one, one thousand nine
466 hundred seventy-seven, by an inmate of a custodial or penal
467 institution;

468 (12) Service performed in the employ of a school, college
469 or university, if such service is performed (i) by a student who
470 is enrolled and is regularly attending classes at such school,

471 college or university, or (ii) by the spouse of such a student,
472 if such spouse is advised, at the time such spouse commences
473 to perform such service, that (I) the employment of such
474 spouse to perform such service is provided under a program
475 to provide financial assistance to such student by such school,
476 college or university, and (II) such employment will not be
477 covered by any program of unemployment insurance;

478 (13) Service performed by an individual under the age of
479 twenty-two who is enrolled at a nonprofit or public educa-
480 tional institution which normally maintains a regular faculty
481 and curriculum and normally has a regularly organized body
482 of students in attendance at the place where its educational
483 activities are carried on as a student in a full-time program,
484 taken for credit at such institution, which combines academic
485 instruction with work experience, if such service is an integral
486 part of such program, and such institution has so certified to
487 the employer, except that this subdivision shall not apply to
488 service performed in a program established for or on behalf
489 of an employer or group of employers;

490 (14) Service performed in the employ of a hospital, if such
491 service is performed by a patient of the hospital, as defined
492 in this section;

493 (15) Service in the employ of a governmental entity referred
494 to in subdivision (9) of the definition of "employment" in this
495 section if such service is performed by an individual in the
496 exercise of duties (i) as an elected official; (ii) as a member
497 of a legislative body, or a member of the judiciary, of a state
498 or political subdivision; (iii) as a member of the state national
499 guard or air national guard; (iv) as an employee serving on
500 a temporary basis in case of fire, storm, snow, earthquake,
501 flood or similar emergency; (v) in a position which, under or
502 pursuant to the laws of this state, is designated as (I) a major
503 nontenured policy-making or advisory position, or (II) a
504 policy-making or advisory position the performance of the
505 duties of which ordinarily does not require more than eight
506 hours per week.

507 Notwithstanding the foregoing exclusions from the defini-
508 tion of "employment," services, except agricultural labor and
509 domestic service in a private home, shall be deemed to be in
510 employment if with respect to such services a tax is required

511 to be paid under any federal law imposing a tax against which
512 credit may be taken for contributions required to be paid into
513 a state unemployment compensation fund, or which as a
514 condition for full tax credit against the tax imposed by the
515 Federal Unemployment Tax Act are required to be covered
516 under this chapter.

517 "Employment office" means a free employment office or
518 branch thereof, operated by this state, or any free public
519 employment office maintained as a part of a state controlled
520 system of public employment offices in any other state.

521 "Fund" means the unemployment compensation fund
522 established by this chapter.

523 "Hospital" means an institution which has been licensed,
524 certified or approved by the state department of health as a
525 hospital.

526 "Institution of higher education" means an educational
527 institution which:

528 (1) Admits as regular students only individuals having a
529 certificate of graduation from a high school, or the recognized
530 equivalent of such a certificate;

531 (2) Is legally authorized in this state to provide a program
532 of education beyond high school;

533 (3) Provides an educational program for which it awards a
534 bachelor's or higher degree, or provides a program which is
535 acceptable for full credit toward such a degree, or provides
536 a program of post-graduate or post-doctoral studies, or
537 provides a program of training to prepare students for gainful
538 employment in a recognized occupation; and

539 (4) Is a public or other nonprofit institution.

540 Notwithstanding any of the foregoing provisions of this
541 definition all colleges and universities in this state are
542 institutions of higher education for purposes of this section.

543 "Payments" means the money required to be paid or that
544 may be voluntarily paid into the state unemployment
545 compensation fund as provided in article five of this chapter.

546 "Separated from employment" means, for the purposes of
547 this chapter, the total severance, whether by quitting, discharge

548 or otherwise, of the employer-employee relationship.

549 "State" includes, in addition to the states of the United
550 States, Puerto Rico, District of Columbia and the Virgin
551 Islands.

552 "Total and partial unemployment" means:

553 (1) An individual shall be deemed totally unemployed in any
554 week in which such individual is separated from employment
555 for an employing unit and during which he performs no
556 services and with respect to which no wages are payable to
557 him.

558 (2) An individual who has not been separated from
559 employment shall be deemed to be partially unemployed in any
560 week in which due to lack of full-time work wages payable
561 to him are less than his weekly benefit amount plus twenty-
562 five dollars: *Provided*, That said individual must have earnings
563 of at least twenty-six dollars.

564 "Wages" means all remuneration for personal service,
565 including commissions and bonuses, and the cash value of all
566 remuneration in any medium other than cash except for
567 agricultural labor and domestic service: *Provided*, That the
568 term "wages" shall not include:

569 (1) That part of the remuneration which, after remuneration
570 equal to three thousand dollars has been paid to an individual
571 by an employer with respect to employment during any
572 calendar year, is paid after December thirty-one, one thousand
573 nine hundred thirty-nine, and prior to January one, one
574 thousand nine hundred forty-seven, to such individual by such
575 employer with respect to employment during such calendar
576 year; or that part of the remuneration which, after remuner-
577 ation equal to three thousand dollars with respect to
578 employment after one thousand nine hundred thirty-eight, has
579 been paid to an individual by an employer during any calendar
580 year after one thousand nine hundred forty-six, is paid to such
581 individual by such employer during such calendar year, except
582 that for the purposes of sections one, ten, eleven and thirteen,
583 article six of this chapter, all remuneration earned by an
584 individual in employment shall be credited to the individual
585 and included in his computation of base period wages:
586 *Provided*, That notwithstanding the foregoing provisions, on

587 and after January one, one thousand nine hundred sixty-two,
588 the term "wages" shall not include:

589 That part of the remuneration which, after remuneration
590 equal to three thousand six hundred dollars has been paid to
591 an individual by an employer with respect to employment
592 during any calendar year, is paid during any calendar year
593 after one thousand nine hundred sixty-one; and shall not
594 include that part of remuneration which, after remuneration
595 equal to four thousand two hundred dollars is paid during a
596 calendar year after one thousand nine hundred seventy-one;
597 and shall not include that part of remuneration which, after
598 remuneration equal to six thousand dollars is paid during a
599 calendar year after one thousand nine hundred seventy-seven;
600 and shall not include that part of remuneration which, after
601 remuneration equal to eight thousand dollars is paid during
602 a calendar year after one thousand nine hundred eighty, to an
603 individual by an employer or his predecessor with respect to
604 employment during any calendar year, is paid to such
605 individual by such employee during such calendar year unless
606 that part of the remuneration is subject to a tax under a federal
607 law imposing a tax against which credit may be taken for
608 contributions required to be paid into a state unemployment
609 fund. For the purposes of this subdivision (1), the term
610 "employment" shall include service constituting employment
611 under any unemployment compensation law of another state;
612 or which as a condition for full tax credit against the tax
613 imposed by the Federal Unemployment Tax Act is required
614 to be covered under this chapter; and, except, that for the
615 purposes of sections one, ten, eleven and thirteen, article six
616 of this chapter, all remuneration earned by an individual in
617 employment shall be credited to the individual and included
618 in his computation of base period wages: *Provided*, That the
619 remuneration paid to an individual by an employer with
620 respect to employment in another state or other states upon
621 which contributions were required of and paid by such
622 employer under an unemployment compensation law of such
623 other state or states shall be included as a part of the
624 remuneration equal to the amounts of three thousand six
625 hundred dollars or four thousand two hundred dollars or six
626 thousand dollars or eight thousand dollars herein referred to.
627 In applying such limitation on the amount of remuneration
628 that is taxable, an employer shall be accorded the benefit of

629 all or any portion of such amount which may have been paid
630 by its predecessor or predecessors: *Provided, however,* That
631 if the definition of the term "wages" as contained in section
632 3306(b) of the Internal Revenue Code of 1954, as amended:
633 (a) Effective prior to January one, one thousand nine hundred
634 sixty-two, to include remuneration in excess of three thousand
635 dollars, or (b) effective on or after January one, one thousand
636 nine hundred sixty-two, to include remuneration in excess of
637 three thousand six hundred dollars, or (c) effective on or after
638 January one, one thousand nine hundred seventy-two, to
639 include remuneration in excess of four thousand two hundred
640 dollars, or (d) effective on or after January one, one thousand
641 nine hundred seventy-eight, to include remuneration in excess
642 of six thousand dollars, or (e) effective on or after January
643 one, one thousand nine hundred eighty, to include remuner-
644 ation in excess of eight thousand dollars, paid to an individual
645 by an employer under the Federal Unemployment Tax Act
646 during any calendar year, wages for the purposes of this
647 definition shall include remuneration paid in a calendar year
648 to an individual by an employer subject to this article or his
649 predecessor with respect to employment during any calendar
650 year up to an amount equal to the amount of remuneration
651 taxable under the Federal Unemployment Tax Act;

652 (2) The amount of any payment made after December
653 thirty-one, one thousand nine hundred fifty-two (including any
654 amount paid by an employer for insurance or annuities, or into
655 a fund, to provide for any such payment), to, or on behalf
656 of, an individual in its employ or any of his dependents, under
657 a plan or system established by an employer which makes
658 provision for individuals in its employ generally (or for such
659 individuals and their dependents), or for a class or classes of
660 such individuals (or for a class or classes of such individuals
661 and their dependents), on account of (A) retirement, or (B)
662 sickness or accident disability, or (C) medical or hospitaliza-
663 tion expenses in connection with sickness or accident
664 disability, or (D) death;

665 (3) Any payment made after December thirty-one, one
666 thousand nine hundred fifty-two, by an employer to an
667 individual in its employ (including any amount paid by an
668 employer for insurance or annuities, or into a fund, to provide
669 for any such payment) on account of retirement;

670 (4) Any payment made after December thirty-one, one
671 thousand nine hundred fifty-two, by an employer on account
672 of sickness or accident disability, or medical or hospitalization
673 expenses in connection with sickness or accident disability, to,
674 or on behalf of, an individual in its employ after the expiration
675 of six calendar months following the last calendar month in
676 which such individual worked for such employer;

677 (5) Any payment made after December thirty-one, one
678 thousand nine hundred fifty-two, by an employer to, or on
679 behalf of, an individual in its employ or his beneficiary (A)
680 from or to a trust described in section 401(a) which is exempt
681 from tax under section 501(a) of the Federal Internal Revenue
682 Code at the time of such payments unless such payment is
683 made to such individual as an employee of the trust as
684 remuneration for services rendered by such individual and not
685 as a beneficiary of the trust, or (B) under or to an annuity
686 plan which, at the time of such payment, is a plan described
687 in section 403(a) of the Federal Internal Revenue Code;

688 (6) The payment by an employer of the tax imposed upon
689 an employer under section 3101 of the Federal Internal
690 Revenue Code with respect to remuneration paid to an
691 employee for domestic service in a private home of the
692 employer of agricultural labor;

693 (7) Remuneration paid by an employer after December
694 thirty-one, one thousand nine hundred fifty-two, in any
695 medium other than cash to an individual in its employ for
696 service not in the course of the employer's trade or business;

697 (8) Any payment (other than vacation or sick pay) made by
698 an employer after December thirty-one, one thousand nine
699 hundred fifty-two, to an individual in its employ after the
700 month in which he attains the age of sixty-five, if he did not
701 work for the employer in the period for which such payment
702 is made;

703 (9) Payments, not required under any contract of hire, made
704 to an individual with respect to his period of training or service
705 in the armed forces of the United States by an employer by
706 which such individual was formerly employed;

707 (10) Vacation pay, severance pay or savings plans received
708 by an individual before or after becoming totally or partially

709 unemployed but earned prior to becoming totally or partially
710 unemployed: *Provided*, That the term totally or partially
711 unemployed shall not be interpreted to include (1) employees
712 who are on vacation by reason of the request of the employees
713 or their duly authorized agent, for a vacation at a specific time,
714 and which request by the employees or their agent is acceded
715 to by their employer, (2) employees who are on vacation by
716 reason of the employer's request provided they are so informed
717 at least ninety days prior to such vacation, or (3) employees
718 who are on vacation by reason of the employer's request where
719 such vacation is in addition to the regular vacation and the
720 employer compensates such employee at a rate equal to or
721 exceeding their regular daily rate of pay during the vacation
722 period.

723 Gratuities customarily received by an individual in the
724 course of his employment from persons other than his
725 employing unit shall be treated as wages paid by his employing
726 unit, if accounted for and reported to such employing unit.

727 The reasonable cash value of remuneration in any medium
728 other than cash shall be estimated and determined in
729 accordance with rules prescribed by the commissioner, except
730 for remuneration other than cash for services performed in
731 agricultural labor and domestic service.

732 "Week" means a calendar week, ending at midnight
733 Saturday, or the equivalent thereof, as determined in
734 accordance with the regulations prescribed by the
735 commissioner.

736 "Weekly benefit rate" means the maximum amount of
737 benefit an eligible individual will receive for one week of total
738 unemployment.

739 "Year" means a calendar year or the equivalent thereof, as
740 determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

***§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.**

1 On and after July one, one thousand nine hundred eighty-
2 one, an employer's payment shall remain two and seven-tenths
3 percent, until:

* Clerk's Note: This section was also amended by S. B. 195, which passed prior to this act.

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout which
6 an employer's account was chargeable with benefits.

7 (2) His payments credited to his account for all past years
8 exceed the benefits charged to his account by an amount equal
9 to at least the percent of his average annual payroll as shown
10 in Column B of Table II. His rate shall be the amount
11 appearing in Column C of Table II on line with the percentage
12 in Column B.

13 When the total assets of the fund as of January one of the
14 calendar year equal or exceed one hundred percent but are less
15 than one hundred twenty-five percent of the average benefit
16 payments from the trust fund for the three preceding calendar
17 years, an employer's rate shall be the amount appearing in
18 Column D of Table II on line with the percentage in Column
19 B.

20 When the total assets of the fund as of January one of a
21 calendar year equal or exceed one hundred twenty-five percent
22 but are less than one hundred fifty percent, an employer's rate
23 shall be the amount appearing in Column E of Table II on
24 line with the percentage in Column B.

25 When the total assets of the fund as of January one of a
26 calendar year equal or exceed one hundred fifty percent, an
27 employer's rate shall be the amount appearing in Column F
28 of Table II on line with the percentage in Column B.

29

TABLE II

30	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
31		Percentage of				
32		Average				
33		Annual Payroll				
34		By Which				
35	Rate	Credits Exceed	Employer's			
36	Class	Charges	Rate			
37	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
38	(2)	6.0	4.1	3.1	2.1	1.1
39	(3)	7.0	3.9	2.9	1.9	0.9
40	(4)	8.0	3.7	2.7	1.7	0.7
41	(5)	9.0	3.5	2.5	1.5	0.5
42	(6)	10.0	3.3	2.3	1.3	0.3

43	(7)	10.5	3.1	2.1	1.1	0.1
44	(8)	11.0	2.9	1.9	0.9	0.0
45	(9)	11.5	2.7	1.7	0.7	0.0
46	(10)	12.0	2.5	1.5	0.5	0.0
47	(11)	12.5	2.3	1.3	0.3	0.0
48	(12)	13.0	2.1	1.1	0.1	0.0
49	(13)	14.0	1.9	0.9	0.0	0.0
50	(14)	16.0	1.7	0.7	0.0	0.0
51	(15)	18.0 and over	1.5	0.5	0.0	0.0

52 All employer accounts in which charges for all past years
 53 exceed credits for such past years shall be adjusted effective
 54 June thirty, one thousand nine hundred sixty-seven, so that
 55 as of said date, for the purpose of determining such employer's
 56 rate of contribution, the credits for all past years shall be
 57 deemed to equal the charges to such accounts.

58 Effective on and after the computation date of June thirty,
 59 one thousand nine hundred eighty-four, the noncredited
 60 contribution identified in section seven of this article shall not
 61 be added to the employer's debit balance to determine the
 62 employer contribution rate.

63 Effective on and after the computation date of June thirty,
 64 one thousand nine hundred sixty-seven, all employers with a
 65 debit balance account in which the benefits charged to their
 66 account for all past years exceed the payments credited to their
 67 account for such past years by an amount up to and including
 68 ten percent of their average annual payroll, shall make
 69 payments to the unemployment compensation fund at the rate
 70 of three percent of wages paid by them with respect to
 71 employment; except that effective on and after July one, one
 72 thousand nine hundred eighty-one, all employers with a debit
 73 balance account in which the benefits charged to their account
 74 for all past years exceed the payments credited to their account
 75 for such past years by an amount up to and including five
 76 percent of their average annual payroll, shall make payments
 77 to the unemployment compensation fund at the rate of five
 78 and five-tenths percent of wages paid by them with respect to
 79 employment.

80 Effective on or after July one, one thousand nine hundred
 81 eighty-one, all employers with a debit balance account in
 82 which the benefits charged to their account for all past years

83 exceed the payments credited to their account for such past
84 years by an amount in excess of five percent but less than ten
85 percent of their average annual payroll, shall make payments
86 to the unemployment compensation fund at the rate of six and
87 five-tenths percent of wages paid by them with respect to
88 employment.

89 Effective on and after the computation date of June thirty,
90 one thousand nine hundred sixty-seven, all employers with a
91 debit balance account in which the benefits charged to their
92 account for all past years exceed the payments credited to their
93 account for such past years by an amount of ten percent or
94 above of their average annual payroll, shall make payments
95 to the unemployment compensation fund at the rate of three
96 and three-tenths percent of wages paid by them with respect
97 to employment; except that effective on and after July one,
98 one thousand nine hundred eighty-one, such payments to the
99 unemployment compensation fund shall be at the rate of seven
100 and five-tenths percent of wages paid by them with respect to
101 employment or at such other rate authorized by this article.

102 "Debit balance account" for the purpose of this section
103 means an account in which the benefits charged for all past
104 years exceed the payments credited for such past years.

105 "Credit balance account" for the purposes of this section
106 means an account in which the payments credited for all past
107 years exceed the benefits charged for such past years.

108 Once a debit balance account rate is established for an
109 employer's account for a year, it shall apply for the entire year.

110 "Due date" means the last day of the month next following
111 a calendar quarter. In determining the amount in the fund on
112 any due date, contributions received, but not benefits paid, for
113 such month next following the end of a calendar quarter shall
114 be included.

115 (a) Notwithstanding any other provision of this section,
116 every employer subject to the provisions of this chapter shall,
117 in addition to any other tax provided for in this section, pay
118 contributions at the rate of one percent surtax on wages paid
119 by him with respect to employment, beginning January first,
120 one thousand nine hundred eighty-one, until such time that
121 the commissioner determines that the fund assets equal or

122 exceed the average benefits payments from the fund for the
123 preceding three calendar years at which time such surtax shall
124 be discontinued, and the commissioner shall so notify the
125 employers subject to the provisions of this chapter.

126 (b) Notwithstanding any other provision of this section,
127 every debit balance employer subject to the provisions of this
128 chapter, and any foreign corporation or business entity
129 engaged in the constuction trades which has not been an
130 employer in the state of West Virginia for thirty-six consec-
131 utive months ending on the computation date, shall, in
132 addition to any other tax provided for in this section, pay
133 contributions at the rate of one percent surtax on wages paid
134 by him with respect to employment for a period of three years,
135 beginning January first, one thousand nine hundred eighty-six.

136 (c) Effective June thirty, one thousand nine hundred eighty-
137 five, and each computation date thereafter, the reserve balance
138 of a debit balance employer shall be reduced to fifteen percent
139 if such balance exceeds fifteen percent. The amount of
140 noncredited tax shall be reduced by an amount equal to the
141 eliminated charges. If the eliminated charges exceed the
142 amount of noncredited tax, the noncredited tax shall be
143 reduced to zero.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-1b. Requalification requirement.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

*§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter continues
4 to report at an employment office in accordance with the
5 regulations of the commissioner, and provides accurate
6 verification of his social security number.

7 (2) He has made a claim for benefits in accordance with the
8 provisions of article seven of this chapter.

9 (3) He is able to work and is available for full-time work
10 for which he is fitted by prior training or experience and is

* Clerk's Note: This section was also amended by S. B. 195, which passed prior to this act.

11 doing that which a reasonably prudent person in his
12 circumstances would do in seeking work.

13 (4) He has been totally or partially unemployed during his
14 benefit year for a waiting period of one week prior to the week
15 for which he claims benefits for total or partial unemployment.

16 (5) He has within his base period earned wages for
17 employment equal to not less than two thousand two hundred
18 dollars and must have earned wages in more than one quarter
19 of his base period.

§21A-6-1b. Requalification requirement.

1 An individual filing a claim for benefits which, if otherwise
2 valid, would establish a subsequent benefit year, in order to
3 be eligible for benefits for such subsequent benefit year, must
4 have returned to work and earned wages in covered employ-
5 ment after the beginning of his previous benefit year equal to
6 or exceeding an amount eight times his weekly benefit rate
7 amount established for the previous benefit year, and be
8 otherwise eligible under the provisions of this article and of
9 this chapter.

**§21A-6-15. Benefit payments for service with nonprofit organiza-
tions, state hospitals, institutions of higher educa-
tion, educational institutions and governmental
entities.**

1 (1) Benefits based on service in employment as defined in
2 subdivisions (9) and (10) of the definition of "employment" in
3 section three, article one of this chapter, shall be payable in
4 the same amount, on the same terms and subject to the same
5 conditions as compensation payable on the basis of other
6 service subject to this chapter; except that benefits based on
7 service in an instructional, research or principal administrative
8 capacity in an institution of higher education shall not be paid
9 to an individual for any week of unemployment which begins
10 during the period between two successive academic years, or
11 during a similar period between two regular terms, whether
12 or not successive, or during a period of paid sabbatical leave
13 provided for in the individual's contract, if the individual has
14 a contract or contracts to perform services, in any such
15 capacity for any institution or institutions of higher education
16 for both such academic years or both such terms.

17 (2) Benefits based on service in employment defined in
18 subdivisions (9) and (10) of the definition of "employment" in
19 section three, article one of this chapter, shall be payable in
20 the same amount, on the same terms and subject to the same
21 conditions as benefits payable on the basis of other service
22 subject to this chapter, except that:

23 (a) With respect to service performed after December thirty-
24 one, one thousand nine hundred seventy-seven, in an
25 instructional, research or principal administrative capacity for
26 an educational institution, benefits shall not be paid based on
27 such services for any week of unemployment commencing
28 during the period between two successive academic years, or
29 during a similar period between two regular but not successive
30 terms, or during any holiday or vacation period, or during a
31 period of paid sabbatical leave provided for in the individual's
32 contract, to any individual if such individual performs such
33 services in the first of such academic years (or terms) or prior
34 to the beginning of such holiday or vacation period and if
35 there is a contract or a reasonable assurance that such
36 individual will perform services in any such capacity for any
37 educational institution in the second of such academic years
38 or terms or after such holiday or vacation period: *Provided,*
39 That subsection (1) of this section shall apply with respect to
40 such services prior to January one, one thousand nine hundred
41 seventy-eight;

42 (b) With respect to services performed after April one, one
43 thousand nine hundred eighty-three, in any other capacity for
44 an educational institution, benefits shall not be paid on the
45 basis of such services to any individual for any week which
46 commences during any holiday or vacation period, or during
47 a period between two successive academic years or terms if
48 such individual performs such services in the first of such
49 academic years or terms or prior to the beginning of such
50 holiday or vacation period and there is a reasonable assurance
51 that such individual will perform such services in the second
52 of such academic years or terms or after such holiday or
53 vacation periods, except that if compensation is denied to any
54 individual under this subsection and such individual was not
55 offered an opportunity to perform such services for the
56 educational institution for the second of such academic years
57 or terms, such individual shall be entitled to a retroactive

58 payment of compensation for each week for which the
59 individual filed a timely claim for compensation and for which
60 compensation was denied solely by reason of this clause.

61 (c) On and after April one, one thousand nine hundred
62 eighty-four, benefits shall not be payable on the basis of
63 services in any such capacities as specified in subdivisions (a)
64 and (b) of this section, to any individual who performed such
65 services in an educational institution while in the employ of
66 an educational service agency. For purposes of this subdivision
67 the term "educational service agency" means a governmental
68 agency or governmental entity which is established and
69 operated exclusively for the purpose of providing such services
70 to one or more educational institutions.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-1. Establishment .

1 There is hereby established as a special fund, separate and
2 apart from all public moneys or funds of the state, an
3 unemployment compensation fund. The fund shall consist of:

4 (1) All payments collected under this chapter.

5 (2) Interest earned upon money in the fund.

6 (3) Property or securities acquired through the use of the
7 fund.

8 (4) Earnings of such property or securities.

9 (5) Amounts transferred from the employment security
10 special administration fund.

11 (6) Any moneys received from the federal unemployment
12 account in the unemployment trust fund in accordance with
13 Title XII of the Social Security Act, as amended.

14 All money in the fund shall be mingled and undivided.

15 Any interest required to be paid on advances under Title
16 XII of the Social Security Act, as amended, shall be paid by
17 the date on which such interest is due. No interest shall be
18 paid directly or indirectly from amounts in the unemployment
19 compensation trust fund.

ARTICLE 10. GENERAL PROVISIONS.**§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.**

1 The commissioner may require an employing unit to provide
2 sworn or unsworn reports concerning:

3 (1) The number of individuals in its employ.

4 (2) Individually their hours of labor.

5 (3) Individually the rate and amount of wages.

6 (4) Such other information as is reasonably connected with
7 the administration of this chapter.

8 Information thus obtained shall not be published or be open
9 to public inspection so as to reveal the identity of the
10 employing unit of the individual, with the exception of
11 information furnished to the department of welfare as required
12 under the provisions of section sixteen, article six of this
13 chapter, information furnished to the United States depart-
14 ment of agriculture, information provided to the department
15 of human services for enforcement of the medicaid program
16 under Title Nineteen of the Social Security Act and informa-
17 tion furnished to the United States department of health and
18 human services or any state or federal program operating and
19 approved under Title One, Title Ten, Title Fourteen or Title
20 Sixteen of the Social Security Act. However, a claimant of
21 benefit or any other interested party shall, upon request, be
22 supplied with information from such records to the extent
23 necessary for the proper presentation or defense of a claim.
24 Such information may be made available to any agency of this
25 or any other state, or any federal agency, charged with the
26 administration of an unemployment compensation law or the
27 maintenance of a system of public employment offices.

28 A person who violates the provisions of this section shall
29 be guilty of a misdemeanor, and, upon conviction, shall be
30 fined not less than twenty dollars nor more than two hundred
31 dollars, or imprisoned not longer than ninety days, or both.

32 No action for slander or libel, either criminal or civil, shall
33 be predicated upon information furnished by any employer or
34 any employee to the commissioner in connection with the
35 administration of any of the provisions of this chapter.

CHAPTER 171

(H. B. 1099—By Delegate Wiedebusch and Delegate Faircloth)

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

AN ACT to amend and reenact section one, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the state advisory council of the department of employment security.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ADVISORY COUNCIL.

§21A-3-1. Creation; continuation and reestablishment.

1 There is hereby created in the department of employment
2 security a "state advisory council" composed of nine members.

3 After having conducted a performance audit through its
4 joint committee on government operations, pursuant to section
5 nine, article ten, chapter four of this code, the Legislature
6 hereby finds and declares that the state advisory council of the
7 department of employment security should be continued and
8 reestablished. Accordingly, notwithstanding the provisions of
9 section four, article ten, chapter four of this code, the state
10 advisory council of the department of employment security
11 shall continue to exist until the first day of July, one thousand
12 nine hundred ninety-one.

CHAPTER 172

(H. B. 1084—By Delegate Wiedebusch and Delegate Faircloth)

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

AN ACT to amend and reenact section nine, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the frequency of

regular meetings of the state advisory council in the department of employment security; specifying certain months during which regular meetings are to be held; exact date and time to be set by commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ADVISORY COUNCIL.

§21A-3-9. Meetings.

1 The council shall hold one regular meeting in May and one
2 regular meeting in November each year. The exact date and
3 time of each regular meeting shall be determined by the
4 commissioner. Special meetings may be convened on the call
5 of the commissioner, the governor, or a majority of the
6 members.

CHAPTER 173

(Com. Sub. for S. B. 195—By Mr. Tonkovich, Mr. President)

[Passed March 6, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and ten, article six of said chapter; and to amend and reenact section five, article six-a of said chapter, all relating to unemployment compensation; employer coverage and responsibility; experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates; three-year, one percent surtax on wages paid by debit balance employers and foreign corporations or businesses engaged in construction trades; reduction of certain debit balance employer's reserve balance; employee eligibility; benefits; eligibility qualifications; increase of minimum wage earned during base period to qualify for benefits; benefit rate-total unemployment; annual computation and publication of rates; reducing maximum duration for entitlement to benefits from twenty-eight to

twenty-six weeks; changing the maximum weekly benefit rate; amending the benefit table; and increasing the total extended benefit amount.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one and ten, article six of said chapter be amended and reenacted; and that section five, article six-a, chapter twenty-one-a of said code be amended and reenacted, all to read as follows:

Article

- 5. **Employer Coverage and Responsibility.**
- 6. **Employee Eligibility; Benefits.**
- 6A. **Extended Benefits Program.**

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

***§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.**

1 On and after July one, one thousand nine hundred eighty-
2 one, an employer's payment shall remain two and seven-
3 tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout
6 which an employer's account was chargeable with benefits.

7 (2) His payments credited to his account for all past years
8 exceed the benefits charged to his account by an amount
9 equal to at least the percent of his average annual payroll as
10 shown in Column B of Table II. His rate shall be the amount
11 appearing in Column C of Table II on line with the
12 percentage in Column B.

13 When the total assets of the fund as of January one of a
14 calendar year equal or exceed one hundred percent but are
15 less than one hundred twenty-five percent of the average
16 benefit payments from the trust fund for the three
17 preceding calendar years, an employer's rate shall be the
18 amount appearing in Column D of Table II on line with the
19 percentage in Column B.

20 When the total assets of the fund as of January one of a
21 calendar year equal or exceed one hundred twenty-five

*Clerks Note: This section was also amended by H. B. 1904, which passed subsequent to this act.

22 percent but are less than one hundred fifty percent, an
 23 employer's rate shall be the amount appearing in Column E
 24 of Table II on line with the percentage in Column B.

25 When the total assets of the fund as of January one of a
 26 calendar year equal or exceed one hundred fifty percent, an
 27 employer's rate shall be the amount appearing in Column F
 28 of Table II on line with the percentage in Column B.

29

TABLE II

	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
	Rate	Percentage of Average Annual Payroll By which Credits Exceed Charges	Employer's Rate			
	Class					
30	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
31	(2)	6.0	4.1	3.1	2.1	1.1
32	(3)	7.0	3.9	2.9	1.9	0.9
33	(4)	8.0	3.7	2.7	1.7	0.7
34	(5)	9.0	3.5	2.5	1.5	0.5
35	(6)	10.0	3.3	2.3	1.3	0.3
36	(7)	10.5	3.1	2.1	1.1	0.1
37	(8)	11.0	2.9	1.9	0.9	0.0
38	(9)	11.5	2.7	1.7	0.7	0.0
39	(10)	12.0	2.5	1.5	0.5	0.0
40	(11)	12.5	2.3	1.3	0.3	0.0
41	(12)	13.0	2.1	1.1	0.1	0.0
42	(13)	14.0	1.9	0.9	0.0	0.0
43	(14)	16.0	1.7	0.7	0.0	0.0
44	(15)	18.0 and over	1.5	0.5	0.0	0.0

45 All employer accounts in which charges for all past years
 46 exceed credits for such past years shall be adjusted effective
 47 June thirty, one thousand nine hundred sixty-seven, so that
 48 as of said date, for the purpose of determining such
 49 employer's rate of contribution, the credits for all past years
 50 shall be deemed to equal the charges to such accounts.

51 Effective on and after the computation date of June
 52 thirty, one thousand nine hundred sixty-eight, and
 53 notwithstanding the provisions of subsection (1), section
 54 seven of this article relating to the noncrediting of
 55 employers' accounts with the first seven tenths or with the

56 first four tenths of one percent of contributions paid; for the
57 purpose of determining whether or not an employer shall
58 pay contributions at a rate in excess of two and seven-
59 tenths percent as hereinafter set forth, but not for the
60 purpose of determining such rate, the department shall,
61 only for the purpose set forth herein and not as a credit to
62 such account, add to the accounts of all employers having a
63 debit balance, contribution payments made by such
64 employers on and after July one, one thousand nine
65 hundred sixty-seven, which payments are not credited to
66 employers' accounts by reason of the provisions contained
67 in subsection (1), section seven of this article. If, after such
68 contribution payments have been added to such employers'
69 accounts, such accounts continue to show a debit balance,
70 such employers shall make payments at a rate in excess of
71 four and five-tenths percent. If, after such contribution
72 payments have been added to such employers' accounts,
73 such accounts show a credit balance, such employers shall
74 make payments at the rate of four and five-tenths percent.
75 If, under the conditions set forth in this paragraph, it is
76 determined that an employer shall pay contributions at a
77 rate in excess of four and five-tenths percent, the rate in
78 excess of four and five-tenths percent at which an employer
79 shall pay contributions shall then be determined solely
80 under the conditions set forth in the following paragraphs
81 of this section. The provisions contained in this paragraph
82 shall in no way be considered as providing for the crediting
83 to an employer's account, of amounts of employer
84 contribution payments which are expressly not credited to
85 employers' accounts in subsection (1), section seven of this
86 article.

87 Effective on and after the computation date of June
88 thirty, one thousand nine hundred sixty-seven, all
89 employers with a debit balance account in which the
90 benefits charged to their account for all past years exceed
91 the payments credited to their account for such past years
92 by an amount up to and including ten percent of their
93 average annual payroll, shall make payments to the
94 unemployment compensation fund at the rate of three
95 percent of wages paid by them with respect to employment;
96 except that effective on and after July one, one thousand
97 nine hundred eighty-one, all employers with a debit

98 balance account in which the benefits charged to their
99 account for all past years exceed the payments credited to
100 their account for such past years by an amount up to and
101 including five percent of their average annual payroll, shall
102 make payments to the unemployment compensation fund at
103 the rate of five and five-tenths percent of wages paid by
104 them with respect to employment.

105 Effective on or after July one, one thousand nine hundred
106 eighty-one, all employers with a debit balance account in
107 which the benefits charged to their account for all past
108 years exceed the payments credited to their account for
109 such past years by an amount in excess of five percent but
110 less than ten percent of their average annual payroll, shall
111 make payments to the unemployment compensation fund at
112 the rate of six and five-tenths percent of wages paid by them
113 with respect to employment.

114 Effective on and after the computation date of June
115 thirty, one thousand nine hundred sixty-seven, all
116 employers with a debit balance account in which the
117 benefits charged to their account for all past years exceed
118 the payments credited to their account for such past years
119 by an amount of ten percent or above of their average
120 annual payroll, shall make payments to the unemployment
121 compensation fund at the rate of three and three-tenths
122 percent of wages paid by them with respect to employment;
123 except that effective on and after July one, one thousand
124 nine hundred eighty-one, such payments to the
125 unemployment compensation fund shall be at the rate of
126 seven and five-tenths percent of wages paid by them with
127 respect to employment or at such other rate authorized by
128 this article.

129 "Debit balance account" for the purpose of this section
130 means an account in which the benefits charged for all past
131 years exceed the payments credited for such past years.

132 "Credit balance account" for the purposes of this section
133 means an account in which the payments credited for all
134 past years exceed the benefits charged for such past years.

135 Once a debit balance account rate is established for an
136 employer's account for a year, it shall apply for the entire
137 year.

138 "Due date" means the last day of the month next
139 following a calendar quarter. In determining the amount in

140 the fund on any due date, contributions received, but not
141 benefits paid, for such month next following the end of a
142 calendar quarter shall be included.

143 (a) Notwithstanding any other provision of this section,
144 every employer subject to the provisions of this chapter
145 shall, in addition to any other tax provided for in this
146 section, pay contributions at the rate of one percent surtax
147 on wages paid by him with respect to employment,
148 beginning January first, one thousand nine hundred eighty-
149 one, until such time that the commissioner determines that
150 the fund assets equal or exceed the average benefits
151 payments from the fund for the preceding three calendar
152 years at which time such surtax shall be discontinued, and
153 the commissioner shall so notify the employers subject to
154 the provisions of this chapter.

155 (b) Notwithstanding any other provision of this section,
156 every debit balance employer subject to the provisions of
157 this chapter, and any foreign corporation or business entity
158 engaged in the construction trades which has not been an
159 employer in the state of West Virginia for thirty-six
160 consecutive months ending on the computation date, shall,
161 in addition to any other tax provided for in this section, pay
162 contributions at the rate of one percent surtax on wages
163 paid by him with respect to employment for a period of
164 three years, beginning January first, one thousand nine
165 hundred eighty-six.

166 (c) Effective June thirty, one thousand nine hundred
167 eighty-five, and each computation date thereafter, the
168 reserve balance of a debit balance employer shall be
169 reduced to fifteen percent if such balance exceeds fifteen
170 percent. The amount of noncredited tax shall be reduced by
171 an amount equal to the eliminated charges. If the
172 eliminated charges exceed the amount of noncredited tax,
173 the noncredited tax shall be reduced to zero.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

***§21A-6-1. Eligibility qualifications.**

1 An unemployed individual shall be eligible to receive

*Clerks Note: This section was also amended by H. B. 1904, which passed subsequent to this act.

2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter
4 continues to report at an employment office in accordance
5 with the regulations of the commissioner.

6 (2) He has made a claim for benefits in accordance with
7 the provisions of article seven of this chapter.

8 (3) He is able to work and is available for full-time work
9 for which he is fitted by prior training or experience and is
10 doing that which a reasonably prudent person in his
11 circumstances would do in seeking work.

12 (4) He has been totally or partially unemployed during
13 his benefit year for a waiting period of one week prior to the
14 week for which he claims benefits for total or partial
15 unemployment.

16 (5) He has within his base period earned wages for
17 employment equal to not less than two thousand two
18 hundred dollars and must have earned wages in more than
19 one quarter of his base period.

**§21A-6-10. Benefit rate — Total unemployment; annual
computation and publication of rates.**

1 Each eligible individual who is totally unemployed in any
2 week shall be paid benefits with respect to that week at the
3 weekly rate appearing in Column (C) in the Benefit Table in
4 this paragraph, on the line on which in Column (A) there is
5 indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment"
7 in section three, article one of this chapter. The employee's
8 wage class shall be determined by his base period wages as
9 shown in Column (B) in the Benefit Table. The right of an
10 employee to receive benefits shall not be prejudiced nor the
11 amount thereof be diminished by reason of failure by an
12 employer to pay either the wages earned by the employee or
13 the contribution due on such wages. An individual who is
14 totally unemployed but earns in excess of twenty-five
15 dollars as a result of odd-job or subsidiary work in any
16 benefit week shall be paid benefits for such week in
17 accordance with the provisions of this chapter pertaining to
18 benefits for partial unemployment.

19 The maximum benefit for each wage class shall be equal
20 to twenty-six times the weekly benefit rate.

21 On and after July one, one thousand nine hundred eighty-
22 five, and until July one, one thousand nine hundred eighty-

23 eight, the maximum weekly benefit rate shall be seventy
 24 percent of the average weekly wage in West Virginia, which
 25 average weekly wage shall not exceed three hundred and
 26 twenty-two dollars per week; thereafter, the maximum
 27 benefit rate shall be sixty-six and two-thirds percent of the
 28 average weekly wage in West Virginia.

29 Beginning on July one, one thousand nine hundred
 30 eighty-eight, the commissioner shall determine the
 31 maximum weekly benefit rate upon the basis of the formula
 32 set forth above and shall establish wage classes as are
 33 required, increasing or decreasing the amount of the base
 34 period wages required for each wage class by one hundred
 35 fifty dollars, establishing the weekly benefit rate for each
 36 wage class by rounded dollar amount to be fifty-five
 37 percent of one fifty-second of the median dollar amount of
 38 wages in the base period for such wage class, and
 39 establishing the maximum benefit for each wage class as an
 40 amount equal to twenty-six times the weekly benefit rate.
 41 The maximum weekly benefit rate, when computed by the
 42 commissioner, in accordance with the foregoing provisions,
 43 shall be rounded to the next lowest multiple of one dollar.

44

BENEFIT TABLE

A Wage Class	B Wages in Base Period	C Weekly Benefit Rate	Maximum Benefit in Benefit Year, for Total and/or Partial Un- employment
45	Under \$2,200.00	Ineligible	
46 1	\$2,200.00— 2,349.99	\$24.00	\$624.00
47 2	2,350.00— 2,499.99	25.00	650.00
48 3	2,500.00— 2,649.99	27.00	702.00
49 4	2,650.00— 2,799.99	28.00	728.00
50 5	2,800.00— 2,949.99	30.00	780.00
51 6	2,950.00— 3,099.99	31.00	806.00
52 7	3,100.00— 3,249.99	33.00	858.00
53 8	3,250.00— 3,399.99	35.00	910.00
54 9	3,400.00— 3,549.99	36.00	936.00
55 10	3,550.00— 3,699.99	38.00	988.00
56 11	3,700.00— 3,849.99	39.00	1,014.00

57	12	3,850.00—	3,999.99	41.00	1,066.00
58	13	4,000.00—	4,149.99	43.00	1,118.00
59	14	4,150.00—	4,299.99	44.00	1,144.00
60	15	4,300.00—	4,449.99	46.00	1,196.00
61	16	4,450.00—	4,599.99	47.00	1,222.00
62	17	4,600.00—	4,749.99	49.00	1,274.00
63	18	4,750.00—	4,899.99	51.00	1,326.00
64	19	4,900.00—	5,049.99	52.00	1,352.00
65	20	5,050.00—	5,199.99	54.00	1,404.00
66	21	5,200.00—	5,349.99	55.00	1,430.00
67	22	5,350.00—	5,499.99	57.00	1,482.00
68	23	5,500.00—	5,649.99	58.00	1,508.00
69	24	5,650.00—	5,799.99	60.00	1,560.00
70	25	5,800.00—	5,949.99	62.00	1,612.00
71	26	5,950.00—	6,099.99	63.00	1,638.00
72	27	6,100.00—	6,249.99	65.00	1,690.00
73	28	6,250.00—	6,399.99	66.00	1,716.00
74	29	6,400.00—	6,549.99	68.00	1,768.00
75	30	6,550.00—	6,699.99	70.00	1,820.00
76	31	6,700.00—	6,849.99	71.00	1,846.00
77	32	6,850.00—	6,999.99	73.00	1,898.00
78	33	7,000.00—	7,149.99	74.00	1,924.00
79	34	7,150.00—	7,299.99	76.00	1,976.00
80	35	7,300.00—	7,449.99	78.00	2,028.00
81	36	7,450.00—	7,599.99	79.00	2,054.00
82	37	7,600.00—	7,749.99	81.00	2,106.00
83	38	7,750.00—	7,899.99	82.00	2,132.00
84	39	7,900.00—	8,049.99	84.00	2,184.00
85	40	8,050.00—	8,199.99	85.00	2,210.00
86	41	8,200.00—	8,349.99	87.00	2,262.00
87	42	8,350.00—	8,499.99	89.00	2,314.00
88	43	8,500.00—	8,649.99	90.00	2,340.00
89	44	8,650.00—	8,799.99	92.00	2,392.00
90	45	8,800.00—	8,949.99	93.00	2,418.00
91	46	8,950.00—	9,099.99	95.00	2,470.00
92	47	9,100.00—	9,249.99	97.00	2,522.00
93	48	9,250.00—	9,399.99	98.00	2,548.00
94	49	9,400.00—	9,549.99	100.00	2,600.00
95	50	9,550.00—	9,699.99	101.00	2,626.00
96	51	9,700.00—	9,849.99	103.00	2,678.00
97	52	9,850.00—	9,999.99	104.00	2,704.00
98	53	10,000.00—	10,149.99	106.00	2,756.00

99	54	10,150.00— 10,299.99	108.00	2,808.00
100	55	10,300.00— 10,449.99	109.00	2,834.00
101	56	10,450.00— 10,599.99	111.00	2,886.00
102	57	10,600.00— 10,749.99	112.00	2,912.00
103	58	10,750.00— 10,899.99	114.00	2,964.00
104	59	10,900.00— 11,049.99	116.00	3,016.00
105	60	11,050.00— 11,199.99	117.00	3,042.00
106	61	11,200.00— 11,349.99	119.00	3,094.00
107	62	11,350.00— 11,499.99	120.00	3,120.00
108	63	11,500.00— 11,649.99	122.00	3,172.00
109	64	11,650.00— 11,799.99	124.00	3,224.00
110	65	11,800.00— 11,949.99	125.00	3,250.00
111	66	11,950.00— 12,099.99	127.00	3,302.00
112	67	12,100.00— 12,249.99	128.00	3,328.00
113	68	12,250.00— 12,399.99	130.00	3,380.00
114	69	12,400.00— 12,549.99	131.00	3,406.00
115	70	12,550.00— 12,699.99	133.00	3,458.00
116	71	12,700.00— 12,849.99	135.00	3,510.00
117	72	12,850.00— 12,999.99	136.00	3,536.00
118	73	13,000.00— 13,149.99	138.00	3,588.00
119	74	13,150.00— 13,299.99	139.00	3,614.00
120	75	13,300.00— 13,449.99	141.00	3,666.00
121	76	13,450.00— 13,599.99	143.00	3,718.00
122	77	13,600.00— 13,749.99	144.00	3,744.00
123	78	13,750.00— 13,899.99	146.00	3,796.00
124	79	13,900.00— 14,049.99	147.00	3,822.00
125	80	14,050.00— 14,199.99	149.00	3,874.00
126	81	14,200.00— 14,349.99	150.00	3,900.00
127	82	14,350.00— 14,499.99	152.00	3,952.00
128	83	14,500.00— 14,649.99	154.00	4,004.00
129	84	14,650.00— 14,799.99	155.00	4,030.00
130	85	14,800.00— 14,949.99	157.00	4,082.00
131	86	14,950.00— 15,099.99	158.00	4,108.00
132	87	15,100.00— 15,249.99	160.00	4,160.00
133	88	15,250.00— 15,399.99	162.00	4,212.00
134	89	15,400.00— 15,549.99	163.00	4,238.00
135	90	15,550.00— 15,699.99	165.00	4,290.00
136	91	15,700.00— 15,849.99	166.00	4,316.00
137	92	15,850.00— 15,999.99	168.00	4,368.00
138	93	16,000.00— 16,149.99	170.00	4,420.00
139	94	16,150.00— 16,299.99	171.00	4,446.00
140	95	16,300.00— 16,449.99	173.00	4,498.00

141	96	16,450.00— 16,599.99	174.00	4,524.00
142	97	16,600.00— 16,749.99	176.00	4,576.00
143	98	16,750.00— 16,899.99	177.00	4,602.00
144	99	16,900.00— 17,049.99	179.00	4,654.00
145	100	17,050.00— 17,199.99	181.00	4,706.00
146	101	17,200.00— 17,349.99	182.00	4,732.00
147	102	17,350.00— 17,499.99	184.00	4,784.00
148	103	17,500.00— 17,649.99	185.00	4,810.00
149	104	17,650.00— 17,799.99	187.00	4,862.00
150	105	17,800.00— 17,949.99	189.00	4,914.00
151	106	17,950.00— 18,099.99	190.00	4,940.00
152	107	18,100.00— 18,249.99	192.00	4,992.00
153	108	18,250.00— 18,399.99	193.00	5,018.00
154	109	18,400.00— 18,549.99	195.00	5,070.00
155	110	18,550.00— 18,699.99	196.00	5,096.00
156	111	18,700.00— 18,849.99	198.00	5,148.00
157	112	18,850.00— 18,999.99	200.00	5,200.00
158	113	19,000.00— 19,149.99	201.00	5,226.00
159	114	19,150.00— 19,299.99	203.00	5,278.00
160	115	19,300.00— 19,449.99	204.00	5,304.00
161	116	19,450.00— 19,599.99	206.00	5,356.00
162	117	19,600.00— 19,749.99	208.00	5,408.00
163	118	19,750.00— 19,899.99	209.00	5,434.00
164	119	19,900.00— 20,049.99	211.00	5,486.00
165	120	20,050.00— 20,199.99	212.00	5,512.00
166	121	20,200.00— 20,349.99	214.00	5,564.00
167	122	20,350.00— 20,499.99	216.00	5,616.00
168	123	20,500.00— 20,649.99	217.00	5,642.00
169	124	20,650.00— 20,799.99	219.00	5,694.00
170	125	20,800.00— 20,949.99	220.00	5,720.00
171	126	20,950.00— 21,099.99	222.00	5,772.00
172	127	21,100.00— 21,249.99	223.00	5,798.00
173	128	21,250.00— and over	225.00	5,850.00

174 After he has established such wage classes, the
 175 commissioner shall prepare and publish a table setting
 176 forth such information.

177 Average weekly wage shall be computed by dividing the
 178 number of employees in West Virginia earning wages in
 179 covered employment into the total wages paid to employees
 180 in West Virginia in covered employment, and by further
 181 dividing said result by fifty-two, and shall be determined
 182 from employer wage and contribution reports for the

183 previous calendar year which are furnished to the
184 department on or before June one following such-calendar
185 year. The average weekly wage, as determined by the
186 commissioner, shall be rounded to the next higher dollar.

187 The computation and determination of rates as aforesaid
188 shall be completed annually before July one, and any such
189 new wage class, with its corresponding wages in base
190 period, weekly benefit rate, and maximum benefit in a
191 benefit year established by the commissioner in the
192 foregoing manner effective on a July one, shall apply only to
193 a new claim established by a claimant on and after said July
194 one, and shall not apply to continued claims of a claimant
195 based on his new claim established before said July one.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any eligible
2 individual with respect to his applicable benefit year shall
3 be the least of the following amounts:

4 (1) Fifty percent of the total amount of regular benefits
5 which were payable to him under this chapter in his
6 applicable benefit year;

7 (2) Thirteen times his weekly benefit amount which was
8 payable to him under this chapter for a week of total
9 unemployment in the applicable benefit year: *Provided,*
10 That an individual filing for extended benefits through the
11 interstate benefit payment plan and residing in a state
12 where an extended benefit period is not in effect shall be
13 limited to payment for only the first two weeks of such
14 extended benefits.

CHAPTER 174

(S. B. 653—By Mr. Tonkovich, Mr. President and Senator Harman)

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

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-c, relating to implementation of the provisions of

the Qualified Veterans Housing Bond Amendment of 1984 by the establishment of, and the sale of bonds for, the veterans' mortgage fund and the administration of the veterans' mortgage fund program by the West Virginia housing development fund; providing that article eighteen-c be known as the West Virginia veterans' mortgage fund; finding that qualified veterans constitute a readily identifiable and particularly deserving segment of the state's population; providing definitions for the terms bond, housing development fund, lending institution, loan, outstanding bond, program, residential dwelling, state and veteran; creating the veterans' mortgage fund; designating money and interests included in the veterans' mortgage fund; authorizing the issuance of veterans' mortgage bonds; pledging the credit of the state and providing security for bonds; establishing legality for investment and tax exemptions; providing for listing by auditor and agent for registration; authorizing use of veterans' loan payments to pay bonds and interest; providing for sale of bonds by governor; authorizing auditor to be custodian of unsold bonds; providing for designation of bond counsel and financial advisor; providing for approval and payment of necessary expenses; naming housing development fund to administer the veterans' mortgage fund program; authorizing the housing development fund to make available the veterans' mortgage funds; providing for terms and conditions of loans; authorizing the housing development fund to issue rules and regulations; prohibiting funds and benefits inuring to benefit of directors; and providing for annual audit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18C. VETERANS' MORTGAGE FUND.

- §31-18C-1. Short title.
- §31-18C-2. Legislative findings; purpose and intent of article.
- §31-18C-3. Definitions.
- §31-18C-4. Veterans' mortgage fund created; purpose.

- §31-18C-5. Money and interests included in the veterans' mortgage fund.
§31-18C-6. Veterans' mortgage bonds; amount; terms of bonds; when may issue.
§31-18C-7. Pledge of credit of state and security for bonds.
§31-18C-8. Legality for investment; tax exemption.
§31-18C-9. Listing by auditor; agent for registration.
§31-18C-10. Veterans' loan payments used to pay bonds and interest; investment of remainder.
§31-18C-11. Sale by governor; minimum price.
§31-18C-12. Auditor to be custodian of unsold bonds.
§31-18C-13. Bond counsel and financial advisor.
§31-18C-14. Approval and payment of all necessary expenses.
§31-18C-15. Administration of veterans' mortgage fund program by West Virginia housing development fund.
§31-18C-16. Powers and duties of housing development fund regarding veterans' mortgage fund.
§31-18C-17. Terms and conditions of loans from veterans' mortgage fund.
§31-18C-18. Prohibition of funds inuring to the benefit of or being distributable to the directors or officers.
§31-18C-19. Annual audit.

§31-18C-1. Short title.

- 1 This article shall be known and may be cited as the "West
2 Virginia Veterans' Mortgage Fund Act."

§31-18C-2. Legislative findings; purpose and intent of article.

- 1 It is hereby found, determined and declared as a matter of
2 legislative finding: (a) That veterans, who have sacrificed in
3 the service of their country valuable years of their lives and
4 considerable earning potential, constitute a readily
5 identifiable and particularly deserving segment of this
6 state's population; (b) that by making additional housing
7 loans available to eligible veterans, limited below-market
8 rate private home loan funds will be more readily available
9 to those qualified to receive such loans; and (c) that the
10 provisions of the Qualified Veterans Housing Bond
11 Amendment of 1984 authorize the Legislature to enact
12 legislation to establish a fund for the purpose of making
13 loans to qualified veterans.

- 14 It is hereby declared to be the public policy of this state to
15 assist its qualified veterans in financing owner-occupied
16 residences. It is the purpose and intent of the Legislature in
17 enacting this article to provide loans to qualified veterans
18 of this state to finance owner-occupied single-family

19 residential dwellings, as a recognition of their sacrifice and
20 service.

21 The Legislature finds that the public policy of the state as
22 set forth in this section cannot be effectively attained
23 without the funding, establishment, operation and
24 maintenance of the veterans' mortgage fund, and further,
25 that although federal law now effectively prohibits the
26 issuance of tax-exempt bonds to finance the operation of
27 the veterans' mortgage fund program, at such time as
28 federal law is amended so as to permit the issuance of such
29 bonds, because of the critical need to provide such
30 financing for veterans and because of the possibility that
31 Congress might at any time thereafter again take action
32 which would prohibit the operation of the veterans'
33 mortgage fund program, an emergency will exist, requiring
34 that any procedural, interpretive or legislative rules
35 determined by the West Virginia housing development fund
36 to be necessary for the administration of the veterans'
37 mortgage fund program, be promulgated by the West
38 Virginia housing development fund as emergency rules, in
39 accordance with and subject to the provisions of section
40 fifteen, article three, chapter twenty-nine-a of this code.
41 This article authorizes the issuing and selling of general
42 obligation bonds of the state secured by the general credit
43 and taxing power of the state to be issued to provide
44 financing for mortgage loans to qualifying veterans.

§31-18C-3. Definitions.

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

- 3 (1) "Bond" means any veterans' mortgage bond, a state
4 general obligation bond issued pursuant to this article;
- 5 (2) "Housing development fund" means the West
6 Virginia housing development fund created and established
7 under article eighteen, chapter thirty-one of this code;
- 8 (3) "Lending institution" means a bank, trust company,
9 savings bank, national banking association, savings and
10 loan association, building and loan association, mortgage
11 bank, mortgage company, credit union, life insurance
12 company or other financial institution that customarily
13 provides service or aids in the financing of mortgages on
14 single-family residential housing which has been approved

15 for participation in the program by the housing
16 development fund; the term includes a holding company for
17 any of the foregoing;

18 (4) "Loan" means a veterans' mortgage loan to finance
19 the purchase, construction, improvement or rehabilitation
20 of a residential dwelling, made or acquired by the housing
21 development fund under this article, in the name of and on
22 behalf of the state, secured by a deed of trust or mortgage on
23 such residential dwelling;

24 (5) "Outstanding bond" means a bond which has been
25 issued pursuant to this article and has not been repaid, but
26 does not include bonds which are to be paid from
27 designated moneys or securities which are irrevocably held
28 in trust solely for such purpose;

29 (6) "Program" means the veterans' mortgage fund
30 program administered by the housing development fund
31 pursuant to this article;

32 (7) "Residential dwelling" means a single-family
33 residence located in the state, in which a veteran intends to
34 reside as his or her principal residence;

35 (8) "State" means the state of West Virginia; and

36 (9) "Veteran" means a person who served in the active
37 military, naval or air service, and who was discharged or
38 released therefrom under conditions other than
39 dishonorable.

§31-18C-4. Veterans' mortgage fund created; purpose.

1 (a) There is hereby created and established under the
2 jurisdiction of the office of the treasurer of the state a
3 veterans' mortgage fund. All moneys resulting from the sale
4 of bonds pursuant to this article shall be credited to such
5 fund.

6 (b) For the purpose of creating and maintaining a fund
7 to provide loans for veterans in accordance with this article,
8 the state shall issue its negotiable bonds to provide funds
9 for a veterans' mortgage fund loan program to be made
10 pursuant to this article.

§31-18C-5. Money and interests included in the veterans' mortgage fund.

1 (a) The veterans' mortgage fund shall include:

2 (1) Any interest of the state in all loans made to veterans

3 pursuant to the program including any guaranty or
4 insurance thereon or on the homes or any mortgage-backed
5 certificates or like instruments taken in exchange therefor,
6 until the principal amount of such loans together with any
7 interest and penalties due have been received by the state;

8 (2) The proceeds from the issuance and sale of such
9 bonds;

10 (3) Income, rents and any other pecuniary benefits
11 received by the state as a result of making or acquiring
12 veterans' mortgage loans;

13 (4) Sums received by way of indemnity or forfeiture for
14 the failure of any bidder for the purchase of any such bonds
15 to comply with his bid and accept and pay for such bonds;

16 (5) Interest received from investments of any such
17 money including earnings received on bond proceeds prior
18 to disbursement for the purchase of loans; and

19 (6) Any equitable interest in properties encumbered
20 under this program.

21 (b) Money in the veterans' mortgage fund shall be
22 deposited in the state treasury to the credit of the veterans'
23 mortgage fund.

24 (c) Money in the fund shall be held in the following
25 accounts:

26 (1) A loan account, into which shall be deposited the
27 proceeds from the issuance and sale of bonds, from which
28 loans shall be made or repaid; and

29 (2) A general account, into which shall be deposited all
30 other money properly credited to the fund, from which shall
31 be paid the principal of and interest on the bonds, and all
32 expenses relating to the administration and operation of
33 such fund.

**§31-18C-6. Veterans' mortgage bonds; amount; terms of
bonds; when may issue.**

1 (a) Bonds of the state, under authority of the Qualified
2 Veterans Housing Bond Amendment of 1984, are hereby
3 authorized to be issued and sold for the sole purpose of
4 raising funds for the veterans' mortgage fund, to be used for
5 financing loans. No such bonds may be issued, however,
6 unless they are part of an issue described in a written
7 declaration executed by the governor and filed in the office
8 of the secretary of state. The aggregate annual amount

9 payable on all such bonds, including both principal and
10 interest, shall be limited such that the debt service accruing
11 on such bonds in any fiscal year shall not exceed thirty-five
12 million dollars exclusive of any amounts payable on such
13 bonds for which moneys or securities have been irrevocably
14 set aside and dedicated solely for the purpose of such
15 payment. The total proceeds of each bond sale shall be
16 deposited in the manner hereinafter provided and shall be
17 earmarked, designated and used for the purposes of this
18 article.

19 (b) The description contained in any declaration with
20 respect to an issue of bonds hereunder shall specify that the
21 veterans' mortgage fund program is to be financed through
22 the issuance of the bonds, the estimate of the cost of loans,
23 the aggregate amount of outstanding bonds which may at
24 any point in time constitute a part of such issue, the time or
25 times and manner of sale of such bonds, and the particular
26 terms of such bonds, or the manner in which such terms will
27 be determined, including the date or dates, time or times of
28 issuance, time or times and amount or amounts of maturity
29 or maturities, specified or variable rate or rates of interest,
30 the form of such bonds and provisions for registration or
31 exchange, if applicable, the method and manner of payment
32 of such bonds, the provisions, if any, for redemption or
33 renewal of such bonds, and specifying such other similar
34 matters as the governor may determine to be necessary and
35 appropriate in connection with the sale and issuance of the
36 bonds.

37 (c) Such bonds shall be executed by the governor under
38 the great seal of the state, attested by the signature of the
39 secretary of state, and the coupons, if any, attached thereto
40 shall be authenticated by the signature of the governor.
41 Such signatures may be by facsimile signature, but, unless
42 provision has been made for the authentication thereof by a
43 bond registrar determined to be responsible by the
44 governor, each bond shall bear at least one manual
45 signature.

46 (d) Prior to the preparation of definitive bonds, the
47 governor may under like restrictions issue temporary bonds
48 with or without coupons, exchangeable for definitive bonds
49 upon the issuance of the latter. Such bonds may be issued
50 without any other proceedings, or the happening of any

51 other conditions or things than those proceedings,
52 conditions or things which are specified and required by
53 this article or by the constitution of the state.

§31-18C-7. Pledge of credit of state and security for bonds.

1 (a) The state covenants and agrees with the holders of
2 the bonds issued pursuant hereto as follows: (1) That such
3 bonds shall constitute a direct and general obligation of the
4 state; (2) that the full faith and credit of the state is hereby
5 pledged to secure the payment of the principal of and
6 interest on such bonds; (3) that an annual state tax shall be
7 collected in an amount sufficient to pay, as it may accrue,
8 the interest on such bonds and the principal thereof; and (4)
9 that such tax shall be levied in any year only to the extent
10 that the moneys in the veterans' mortgage fund irrevocably
11 set aside for and applied to the payment of the interest on
12 and principal of said bonds becoming due and payable in
13 such year are insufficient therefor.

14 (b) In addition, in connection with any issue of bonds
15 hereunder, the governor may pledge or assign as security for
16 the payment of the principal of or interest on such bonds,
17 any of the following:

18 (1) The proceeds of any such bonds pending their use or
19 of bonds which may be issued to renew such bonds;

20 (2) The loans made with the proceeds of such bonds
21 including all collateral security for the payment of such
22 loans;

23 (3) The proceeds of any mortgage or other insurance or
24 guaranty or letters of credit or similar arrangements
25 undertaken in connection with the financing of the
26 program; and

27 (4) Any other assets, including certificates of any entity
28 approved by the governor received in exchange for loans
29 pursuant to subdivision (k), section sixteen of this article,
30 specifically designated for the purpose of paying any such
31 principal or interest.

32 (c) Any such pledge or assignment by the governor shall
33 be valid and binding from the time it is made, and the lien of
34 such pledge or assignment shall be enforceable and need not
35 be perfected by delivery or any filing or further act. Such
36 lien shall be valid against all parties having claims of any

37 kind in tort, contract or otherwise, irrespective of whether
38 such parties have notice of the lien of such pledge or
39 assignment.

§31-18C-8. Legality for investment; tax exemption.

1 (a) The bonds are hereby made securities in which all
2 insurance companies and associations, and other persons
3 carrying on an insurance business, all banks, bankers, trust
4 companies, building and loan associations, savings and
5 loan associations, investment companies and other persons
6 carrying on a banking business, and other persons, except
7 administrators, guardians, executors, trustees and
8 fiduciaries, who are now or who may hereafter be
9 authorized to invest in bonds or other obligations of the
10 state, may properly and legally invest funds including
11 capital in their control or belonging to them.

12 (b) The bonds and the income therefrom shall at all
13 times be exempt from taxation.

§31-18C-9. Listing by auditor; agent for registration.

1 All bonds issued under this article shall be separately
2 listed by the auditor of the state in books provided for the
3 purpose, in each case giving the date, number, character
4 and amount of obligations issued, and in case of registered
5 bonds, the name and post office address of the person, firm
6 or corporation registered as the owner thereof, but the
7 governor may, in his declaration with respect to such bonds,
8 designate an agent within or without the state for the
9 purpose of registration of transfer of such bonds.

§31-18C-10. Veterans' loan payments used to pay bonds and interest; investment of remainder.

1 (a) There shall be paid into the general account in the
2 veterans' mortgage fund all money from any and all loan
3 payments made by veterans under the terms of the loans for
4 the purpose of paying the interest on and principal of such
5 bonds and from any other source whatsoever which is made
6 liable by law or contract for the payment of the principal of
7 such bonds or the interest thereon.

8 (b) Moneys from time to time in the general account in
9 the fund in excess of the amount currently required for the
10 payment of the due principal of, or interest on, the bonds,

11 and the current expenses of the fund shall be invested by the
12 state treasurer at the direction of the governor.

§31-18C-11. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized at
2 such time or times as he may determine necessary to provide
3 funds for the making or purchase of loans, as herein
4 provided, and after consultation with the housing
5 development fund regarding the status and requirements of
6 the program and subject to the limitations contained in this
7 article. All sales shall be at not less than at such price or
8 prices as he shall determine to be in the best interest of the
9 state.

§31-18C-12. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this article.

§31-18C-13. Bond counsel and financial advisor.

1 The governor shall designate the bond counsel
2 responsible for the issuance of a final approving opinion
3 regarding the legality of the sale of such bonds and may at
4 his discretion designate a financial advisor to the governor
5 for the issuance and sale of such bonds.

§31-18C-14. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses incurred
2 in the execution of this article, to the extent such expenses
3 are not otherwise paid out of the veterans' mortgage fund,
4 shall be paid out of the general fund of the state on warrants
5 of the auditor of the state drawn on the state treasurer.

**§31-18C-15. Administration of veterans' mortgage fund
program by West Virginia housing
development fund.**

1 The program shall be administered by the West Virginia
2 housing development fund.

**§31-18C-16. Powers and duties of housing development fund
regarding veterans' mortgage fund.**

1 The West Virginia housing development fund is hereby
2 authorized and empowered:

- 3 (a) To make available the moneys from the veterans'
4 mortgage fund for the making or purchase of loans in the
5 name of and on behalf of the state;
- 6 (b) To make and execute contracts, including contracts
7 for the purchase of bond or pool insurance, releases,
8 compromises, compositions and other instruments
9 necessary or convenient for the exercise of its powers, or to
10 carry out its purposes under this article;
- 11 (c) To impose and collect reasonable fees and charges in
12 connection with the making, purchase and servicing of
13 loans, which fees and charges shall be limited to the
14 amounts required to pay the expenses related to the
15 administration of the program, including operating and
16 administrative costs and any bond guaranty fees;
- 17 (d) To employ such agents and consultants as it deems
18 advisable and to fix their compensation and prescribe their
19 duties with respect to the program;
- 20 (e) To acquire, hold and dispose of personal and real
21 property for its purposes under this article;
- 22 (f) To enter into agreements or other transactions with
23 any federal or state agency, any lending institution or any
24 other person, partnership, corporation, association or
25 organization;
- 26 (g) To sell, at public or private sale, any loan or other
27 negotiable instrument or obligation securing a loan made
28 under the provisions of this article;
- 29 (h) To make loans or to purchase loans from lending
30 institutions in the manner and under the terms and
31 conditions prescribed by this article;
- 32 (i) To enter into agreements with lending institutions
33 and other entities for advertising the program, for taking
34 applications for loans, for originating loans in the name of
35 the state or in the name of such lending institution, for
36 supervising the execution of promissory notes, deeds of
37 trust and other documents and agreements associated with
38 the program, for accepting and transmitting loan payments
39 and otherwise servicing loans, for the operation and
40 administration of any other aspect of the program or to
41 operate and administer any and all aspects of the program;
- 42 (j) To reimburse itself or to pay such lending institutions
43 or other entities pursuant to any such agreements for any

- 44 reasonable and necessary fees and expenses incurred in the
45 operation and administration of the program; and
46 (k) To exchange loans for certificates issued by an entity
47 approved by the governor for amounts and on terms and
48 conditions acceptable to the governor.

§31-18C-17. Terms and conditions of loans from veterans' mortgage fund.

- 1 No loans shall be made or acquired by the housing
2 development fund except loans to veterans who meet
3 reasonable criteria of creditworthiness as defined by the
4 housing development fund and in accordance with the
5 following terms and conditions, among other terms and
6 conditions which the housing development fund shall
7 require that:
- 8 (a) No loan shall be made unless an affidavit shall be
9 executed by the veteran establishing his eligibility and
10 submitted to the housing development fund together with
11 evidence of his or her eligible status;
- 12 (b) The proceeds of all loans shall be used only for
13 financing the purchase of residential dwellings by veterans;
- 14 (c) All loans shall be repaid in full over a term not to
15 exceed thirty years plus a reasonable construction period in
16 the case of a construction loan, and at a rate of interest
17 determined by the housing development fund, which may
18 set the interest rate to provide a margin over the rate paid on
19 the bonds issued under this article. The difference between
20 the interest rate on the loans and the interest rate on such
21 bonds may be used in whole or in part to defray the expense
22 of administering the program;
- 23 (d) The principal amount of each loan shall be limited to
24 the appraised value of the residential dwelling;
- 25 (e) Each loan shall be evidenced by a negotiable
26 promissory note executed and delivered by the veteran and
27 shall be secured by a first lien deed of trust upon the
28 residential dwelling financed by the proceeds of the loan,
29 subject only to such exceptions as shall be acceptable to the
30 housing development fund; and
- 31 (f) All notes and deeds of trust accepted as security for
32 loans under this article shall be payable to the order of and
33 for the use and benefit of the state.
- 34 The housing development fund is hereby empowered and

35 authorized to propose and promulgate such rules and
36 regulations as it determines are necessary or desirable in
37 the administration of the program, including procedural,
38 interpretive, legislative and emergency rules.

**§31-18C-18. Prohibition of funds inuring to the benefit of or
being distributable to the directors or officers.**

1 No part of the funds of the veterans' mortgage fund shall
2 inure to the benefit of or be distributable to the directors or
3 officers of the housing development fund or other private
4 persons except that the housing development fund shall be
5 authorized and empowered to pay reasonable
6 compensation for services rendered, and to make loans as
7 previously specified in furtherance of its purposes under
8 this article: *Provided*, That no such loans shall be made to
9 and no property shall be purchased or leased from, or sold,
10 leased or otherwise disposed of to any director or officer of
11 the housing development fund.

§31-18C-19. Annual audit.

1 The housing development fund shall cause an annual
2 audit to be made by an independent certified public
3 accountant of the books, accounts and records of the
4 program, and with respect to the receipts, disbursements,
5 contracts, mortgages or deeds of trust, assignments, loans
6 and all other matters relating to its operation of the
7 program. The person, firm, association, partnership or
8 corporation performing such audit shall furnish copies of
9 the audit report to the treasurer, where such audit report
10 shall be placed on file and made available for inspection by
11 the general public.

CHAPTER 175

(H. B. 1098—By Delegate W. Martin)

[Passed March 6, 1985; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County
to transfer a certain parcel of real estate located in Middleway
District to the Jefferson County Animal Welfare Society,

reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY ANIMAL WELFARE SOCIETY.

§1. Jefferson County commission authorized to transfer a parcel of real estate to the Jefferson County Animal Welfare Society.

1 The Legislature hereby recognizes that the humane detention
2 and disposition of stray and unwanted animals is necessary for
3 the welfare of the people of Jefferson County. Accordingly,
4 the Legislature hereby finds and declares that the transfer of
5 land belonging to Jefferson County to any organization or
6 corporation for the furtherance of such activities promotes the
7 general welfare of the public and, therefore, is a public
8 purpose.

9 The county commission of Jefferson County is hereby
10 authorized and empowered to transfer and convey unto the
11 Jefferson County Animal Welfare Society all that certain lot
12 or parcel of land situate in Middleway District of Jefferson
13 County, West Virginia, and more particularly bounded and
14 described as:

15 Beginning at a point in the centerline of West Virginia
16 State Route No. 15, said point being in the western line
17 (extended) of a twenty foot right-of-way; thence with the
18 centerline of said West Virginia State Route No. 15, N 60
19 degrees-52'-51"W, a distance of 202.03 feet; thence leaving
20 said centerline, N 19 degrees-49'-53"E, 218.47 feet to a No.
21 5 rebar; thence S 60 degrees-52'-51"E and parallel to the
22 aforesaid centerline of West Virginia State Route No. 15,
23 202.03 feet to a No. 5 rebar in the westerly line of the
24 aforesaid twenty foot right-of-way; thence with said right-
25 of-way line (extended) S 19 degrees-49'-53"W, 218.47 feet
26 to the place of beginning and containing 1.00 acres, more
27 or less; and being the same property shown upon a map
28 entitled "Plat of Survey Showing 1.00 Acre Parcel,
29 Middleway District, Jefferson County, West Virginia," dated
30 September 5, 1984, and made by Appalachian Surveys, Inc.;
31 and being a part of the property known as the "Jefferson
32 County farm" which was conveyed to the County of
33 Jefferson by deed of record in the office of the Clerk of

34 the County Commission of Jefferson County, West
35 Virginia, in Deed Book 38, at page 24, reference to which
36 map and deed is here made for a more particular
37 description of said property.

38 Any proper conveyance made by the county commission
39 of Jefferson County transferring ownership of the above
40 described parcel to the Jefferson County Animal Welfare
41 Society shall contain a provision that ownership of such
42 property shall revert to the county commission should the
43 land cease to be used for animal shelter purposes.

CHAPTER 176

(Com. Sub. for H. B. 2073—By Delegate Hutchinson and Delegate Ryan)

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

AN ACT to establish the New River parkway authority; functions; members; appointment; powers and duties; officers; bylaws; rules and regulations; compensation; authority as corporate body; support, maintenance and operation; and severability.

Be it enacted by the Legislature of West Virginia:

NEW RIVER PARKWAY AUTHORITY

- §1. Parkway authority created; functions.
- §2. Members; appointment; powers and duties generally; officers; rules and regulations; compensation.
- §3. Body corporate.
- §4. Support, maintenance and operation.
- §5. Severability.

§1. Parkway authority created; functions.

1 There is hereby created a New River parkway authority, to
2 coordinate with counties, municipalities, state and federal
3 agencies, public nonprofit corporations, private corporations,
4 associations, partnerships and individuals for the purpose of
5 planning, assisting and establishing recreational, tourism,
6 industrial, economic and community development of the New

7 River parkway for the benefit of West Virginians.

§2. **Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.**

1 (a) The authority consists of six voting members and five
2 ex officio nonvoting members. All members shall be appointed
3 before the first day of July, one thousand nine hundred eighty-
4 five.

5 (b) Three voting members shall be appointed by the Raleigh
6 county commission. Three voting members shall be appointed
7 by the Summers county commission. No more than two of the
8 three voting members appointed by a county commission may
9 be members of the same political party. The terms of the
10 voting members initially appointed by a county commission
11 are as follows: One member shall be appointed for a term of
12 one year, one member shall be appointed for a term of two
13 years and one member shall be appointed for a term of three
14 years. All successive appointments shall be for a term of four
15 years. Any voting member may be removed for cause by the
16 appointing county commission.

17 (c) The five ex officio nonvoting members are the commis-
18 sioner of highways or his designee, the director of natural
19 resources or his designee, the commissioner of agriculture or
20 his designee, and, if they choose to serve after being invited
21 to do so by the county commissions of Raleigh and Summers
22 Counties, the district engineer of the United States Army
23 Corps of Engineers or his designee and the supervisor of the
24 New River gorge national river office or his designee. If either
25 or both of the latter two decline to serve, then the county
26 commissions of Raleigh and Summers Counties shall each
27 appoint one nonvoting member. All terms of ex officio
28 nonvoting members are for four years.

29 (d) Should a vacancy occur, the person appointed to fill the
30 vacancy shall serve only for the unexpired portion thereof. All
31 members are eligible for reappointment.

32 (e) There shall be an annual meeting of the authority on
33 the second Monday in July in each year and a monthly
34 meeting on a day and at such time as the authority may
35 designate in its bylaws. A special meeting may be called by
36 the president, the secretary or any two members of the

37 authority and may be held only after all members are given
38 notice thereof in writing. Three members constitute a quorum
39 for all meetings. At each annual meeting of the authority, it
40 shall elect a president, vice president, secretary and treasurer.
41 The authority shall adopt such bylaws, rules and regulations
42 as are necessary for its own operation and management. The
43 authority has all but only those powers necessary, incidental,
44 convenient and advisable for the following purposes:

45 (1) The preparation of a plan or plans for the New River
46 parkway.

47 (2) Advocating actions consistent with that plan or its
48 provisions to or before any governmental entity or any private
49 person or entity; and

50 (3) Otherwise acting in an advisory capacity with regard to
51 any aspects of the New River parkway upon or without request
52 to any governmental entity or private person or entity. The
53 authority may not own any of the real estate or real property
54 herein described for development and may not be responsible
55 for operating or maintaining the parkway.

56 Each voting member of the authority shall be compensated
57 monthly by the governing bodies which appointed such
58 members in an amount to be fixed by such governing body.

§3. Body corporate.

1 The authority hereby created shall be a public corporation
2 and as such it may contract and be contracted with, sue and
3 be sued, plead and be impleaded and may have and use a
4 corporate seal.

§4. Support, maintenance and operation.

1 The governing bodies of Raleigh and Summers Counties
2 may provide for the support, maintenance and operation of
3 the New River parkway authority and other related activities
4 under jurisdiction of the authority hereby created.

§5. Severability.

1 If any provision hereof is held invalid, such invalidity shall
2 not affect other provisions hereof which can be given effect
3 without the invalid provision, and to this end the provisions
4 of this act are declared to be severable.

CHAPTER 177

(H. B. 2027—By Delegate J. Martin and Delegate Jordan)

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

AN ACT to authorize the county commission of Randolph County to transfer up to five thousand dollars to the Frank and Eleanor Wimer memorial fund.

Be it enacted by the Legislature of West Virginia:

WIMER MEMORIAL FUND.

- §1. Legislative findings.
§2. Authorization to donate funds.
§1. **Legislative findings.**

1 The Legislature hereby finds that Frank Wimer was a coach
2 in the public schools of Randolph County from 1926 to 1964;
3 that Frank Wimer was in the National Coaches Hall of Fame
4 and a national figure; that Frank Wimer and his wife Eleanor
5 were treasured contributors to the common good of their
6 community, county and state by their services to the youth of
7 their community and otherwise; that a facility in the City of
8 Elkins, Randolph County, West Virginia used for athletic and
9 other appropriate public gatherings has been named Wimer
10 field in memory of Frank and Eleanor Wimer; that various
11 public and private persons and organizations are seeking
12 through the auspices of the Frank and Eleanor Wimer
13 memorial fund to accomplish a substantial renovation of
14 Wimer Field, in part, to increase its seating capacity so there
15 may be a larger and improved public facility for large athletic
16 and other gatherings of the citizens of the City of Elkins,
17 Randolph County, and the state of West Virginia.

§2. Authorization to donate funds.

1 The county commission of Randolph County, by commis-
2 sion action, is empowered to recognize Wimer field as a most
3 worthy public purpose and the county commission of
4 Randolph County is hereby authorized, empowered to donate,
5 give and transfer to the Frank and Eleanor Wimer memorial
6 fund a sum of up to five thousand dollars for the renovation
7 of Wimer field to the memory of Frank and Eleanor Wimer
8 and to require the funds be returned should the renovation
9 not take place or the funds not be necessary and convenient

10 to said renovation, all within a reasonable time as may be
11 determined by the Randolph county commission.

CHAPTER 178

(Com. Sub. for H. B. 1582—By Delegate Hutchinson and Delegate Ryan)

[Passed April 9, 1985; in effect from passage. Approved by the Governor.]

AN ACT authorizing the public land corporation of West Virginia to transfer the surface only of Sandstone Falls state park, the Minden railroad right-of-way and McKendree public hunting area to the United States national park service.

Be it enacted by the Legislature of West Virginia:

SANDSTONE FALLS, MINDEN RAILROAD AND MCKENDREE PUBLIC HUNTING AREA TRANSFER.

§1. **Public land corporation of West Virginia authorized to transfer the surface only of Sandstone Falls state park, Minden railroad right-of-way and McKendree public hunting area to the United States national park service.**

1 The Legislature hereby finds and declares that the transfer
2 of the Sandstone Falls state park, the Minden railroad right-
3 of-way and the McKendree public hunting area to the United
4 States national park service for their future development,
5 improvement and maintenance promotes the general welfare
6 of the public and, therefore, is a public purpose.

7 The public land corporation of West Virginia is hereby
8 authorized and empowered to transfer and convey unto the
9 United States national park service the following three parcels
10 of land:

11 (1) The surface only of that certain plot or parcel of land
12 known as Sandstone Falls state park, being situate in
13 Richmond District of Raleigh County, West Virginia and
14 containing seventy-one and thirty-five one-hundredths acres,
15 more or less;

16 (2) The surface only of that certain plot or parcel of land
17 known as the Minden railroad right-of-way, being situate in

18 Fayetteville District of Fayette County, West Virginia and
19 containing twenty-three and forty-nine one-hundredths acres,
20 more or less; and

21 (3) The surface only of that certain plot or parcel of land
22 known as McKendree public hunting area, being situate in
23 New Haven District of Fayette County, West Virginia and
24 containing one hundred fifteen acres, more or less.

25 Any proper conveyance made by the public land corporation
26 of West Virginia transferring ownership of the three surface
27 parcels of land stated above to the United States national park
28 service shall contain a provision that ownership of such
29 properties shall revert to the state should the lands cease to
30 be used for public park and recreational purposes.

CHAPTER 179

(H. B. 1675—By Delegate McKinley and Delegate Blatnik)

[Passed March 27, 1985; in effect from passage. Approved by the Governor.]

AN ACT generally to authorize the establishment and termination of the centre market commission, a body corporate and politic, by the City of Wheeling; findings and purposes; appointment of a board therefor to serve without compensation; board qualifications; terms; election of officers and removal; authorization to acquire, deal with and dispose of real and personal property and funds; authorization to contract, employ personnel, sue and be sued; authorization to own and operate facilities and fix and collect fees; and providing other necessary powers.

Be it enacted by the Legislature of West Virginia:

CENTRE MARKET COMMISSION.

- §1. Legislative findings and purposes.
§2. Centre commission may be created; board of directors; appointment; powers and duties generally; officers; bylaws; rules and regulations.
§3. Powers and duties.
- §1. **Legislative findings and purposes.**

1 The Legislature hereby finds and declares that:

2 (a) The Centre Market Square Historic District, city of
3 Wheeling, county of Ohio, state of West Virginia, is richly
4 endowed with numerous historic buildings which have a close
5 and immediate relationship to the values upon which this city
6 and state and the nation were founded;

7 (b) That within the Centre Market Square Historic District
8 there are two market houses owned by the city that are on
9 the national register of historic places which are unique to this
10 state;

11 (c) That it would be a most worthy public purpose to
12 authorize the governing body of the city of Wheeling to
13 establish and terminate a centre market commission for the
14 following reasons:

15 1. To preserve and protect the historical and architectural
16 heritage and to promote the economic redevelopment of the
17 Centre Market Square Historic District.

18 2. To effect and accomplish the protection, enhancement,
19 and perpetuation of the Centre Market Square Historic
20 District and its historic buildings;

21 3. To improve, develop, maintain and operate the historic
22 market houses;

23 4. To protect and enhance the Centre Market Square
24 Historic District's attractions to residents, tourists and visitors
25 and to serve as support and stimulus to business and industry;

26 5. To strengthen the economy of the Centre Market Square
27 Historic District and the city;

28 6. To foster civic pride in the beauty and noble accomp-
29 lishments of the past;

30 7. To promote the use of the Centre Market Square Historic
31 District and its historic market house for the education,
32 pleasure and welfare of the people of the city of Wheeling.

**§2. Centre commission may be created; board of directors;
appointment; powers and duties generally; officers;
bylaws; rules and regulations.**

1 The governing body of the City of Wheeling is hereby

2 authorized to create a centre market commission by ordinance,
3 the same to be a body corporate and politic which shall have
4 a board of directors as its governing body. The commission
5 may be created for a time certain or until terminated by like
6 ordinance of such governing body. The board consists of five
7 persons appointed by the city council. the members shall be
8 residents of Wheeling and shall serve without compensation.
9 They shall be appointed for a period of four years and may
10 hold no political office, municipal, county or state. The city
11 council shall, on or after the effective date of this act, appoint
12 five members, one for two years, two for three years and two
13 for four years, respectively, as designated by the city council.
14 Their respective successors, however, shall be appointed for the
15 term of four years excepting that any person appointed to fill
16 a vacancy occurring, before the expiration of a term, shall
17 serve only for the unexpired term. Any commissioner is eligible
18 for reappointment. However, any vacancy created either by the
19 expiration of a term, or otherwise, shall be filled by the
20 appointing body. Upon the appointment of the commission,
21 the members thereof shall elect from among their number a
22 chairman and a secretary-treasurer who shall hold office for
23 one year and be eligible for reelection. Annually thereafter the
24 commission shall organize by the election of a secretary-
25 treasurer and such other officers from its own number as it
26 may deem advisable. Members of the commission may be
27 removed from office in the same manner as provided for the
28 removal of county officers under article six, chapter six of the
29 code of West Virginia, one thousand nine hundred thirty-one,
30 as amended.

§3. Powers and duties.

1 The commission may be given the following powers and
2 duties: Acquire property by purchase, lease, gift or otherwise;
3 sell or lease property so acquired; contract and be contracted
4 with; sue and be sued; solicit and accept gifts, bequests,
5 endowments and funds both public and private; employ and
6 compensate personnel; own and operate necessary facilities
7 and equipment; fix, charge and collect fees for its acts and
8 undertakings; and other powers necessary for the exercise of
9 those powers enumerated above consistent with the purposes
10 of the commission.

CHAPTER 180

(H. B. 1848—By Delegate Neal and Delegate Crookshanks)

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

AN ACT to authorize the city of White Sulphur Springs, Greenbrier County, West Virginia, to establish an interest bearing White Sulphur Springs capital improvement fund account; and authority of the governing body to expend the income from that account for capital improvements.

Be it enacted by the Legislature of West Virginia:

WHITE SULPHUR SPRINGS CAPITAL IMPROVEMENT FUND.

§1. Governing body of city of White Sulphur Springs authorized to establish an interest bearing capital improvement fund.

1 The governing body of the city of White Sulphur Springs
2 is hereby authorized and empowered to establish a special
3 interest bearing fund, and to transfer and deposit in the special
4 fund all moneys received by the city of White Sulphur Springs
5 from the sale and exchange of real estate in a deed of exchange
6 between CSX Hotels, Inc., a West Virginia corporation and
7 the city of White Sulphur Springs, dated December 27, 1984,
8 and recorded in the office of the clerk of the county
9 commission of Greenbrier County, West Virginia. The
10 governing body is further authorized and empowered to use
11 the income, only, from the special fund created under the
12 authority of this act and to expend the same, year to year,
13 for capital improvements.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 9

(By Delegate Sattes)

[Adopted April 2, 1985.]

Giving legislative approval to the readmission of the State of Oklahoma into the Southern Regional Education Compact entered into by the State of West Virginia and other southern states; to declare that, upon ratification of the compact by the legislature and approval by the Governor of Oklahoma and approval by the other states which are parties to the compact, the State of Oklahoma shall again become a party to the compact; and for other purposes.

WHEREAS, By action of the Legislature, the State of West Virginia is a party to the Southern Regional Education Compact with the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia; and

WHEREAS, The State of Oklahoma having withdrawn from the Southern Regional Education Compact has now indicated its interest in rejoining the southern states as a party to the compact; therefore, be it

Resolved by the Legislature of West Virginia:

That the readmission of the State of Oklahoma is approved and that the State of Oklahoma is again a party to the Southern Regional Education Compact upon ratification of the compact by the legislature and approval by the Governor of the State of Oklahoma and upon approval of readmission by the other states which are parties to the compact.

HOUSE CONCURRENT RESOLUTION 24

(By Delegate Conley, et al.)

[Adopted April 11, 1985.]

Urging the Congress of the United States to reject any proposed

legislation to abolish or defund the Appalachian Regional Commission.

WHEREAS, There is an urgent need to aid the economic growth of West Virginia and to reverse the increasing unemployment figures; and

WHEREAS, Industries essential to our country's survival are located in West Virginia and make our State a prime factor in the growth and development of Appalachia; and

WHEREAS, The Appalachian Regional Commission funding and its continuance is essential to the development of roads, sewer, public service districts and to putting and keeping West Virginians working; and

WHEREAS, Our public officials in Washington and in this State should make the fight against abolishing and defunding of the Appalachian Regional Commission a top priority because every citizen of this State will be affected if Congress should defund the ARC; and

WHEREAS, West Virginia economic development, growth and survival depend on the maintenance of the ARC; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby urged to reject any proposed legislation that would abolish or defund the Appalachian Regional Commission; and, be it

Further Resolved, That a copy of this resolution be forwarded to Senators Byrd and Rockefeller, to members of the West Virginia Congressional Delegation and to both houses of the Congress of the United States.

HOUSE CONCURRENT RESOLUTION 34
(By Delegates Bailey, Flanigan, McNeely and Wellman)

[Adopted April 12, 1985.]

Requesting the West Virginia Board of Education to establish a policy that will standardize the grading scales among West Virginia's fifty-five counties.

WHEREAS, The West Virginia Board of Education has enacted a

policy requiring public school students to maintain a 2.0 grade point average to participate in extracurricular activities; and

WHEREAS, The West Virginia Board of Education has not defined a standardized relative value to numerical or letter grades awarded students; and

WHEREAS, The fifty-five county boards of education have different grading scales, resulting in circumstances whereby a student may be ineligible in his or her county while being eligible in another county; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Board of Education is requested to enact a standardized policy regarding the numerical or letter grade scaling for the fifty-five counties of West Virginia; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the Superintendent of the West Virginia Board of Education.

HOUSE CONCURRENT RESOLUTION 42
(By Delegates Jones, Murphy, Phillips and Pino)

[Adopted April 12, 1985.]

Expressing the will of the Legislature of West Virginia to lower the rate of high school dropouts in West Virginia; and recommending certain policies and practices to assist in lowering such rate.

WHEREAS, Data-based research has shown that high school dropouts can be just as motivated to learn, just as responsive to their teachers and fellow students, and just as ambitious as others in their age groups; and

WHEREAS, During this age of high technology, when the ability of a state to reach its economic potential rests on the quality of its workforce, the dropout situation becomes an intolerable burden on the State and its people and permanently contributes to the economic decline of the State; therefore, be it

Resolved by the Legislature of West Virginia:

That each county board of education establish a research-based dropout prevention program with special attention given to early

detection and remediation of high-risk students, and that each county board provide for consultation among any school and its feeder school or schools regarding dropout prevention and career guidance for high-risk students; and, be it

Further Resolved, That each county board of education develop a plan for the implementation of alternative programs and meaningful educational experiences designed to meet the needs of those students whose learning styles are incompatible with the present school program and who would benefit from other learning styles and strategies, such to provide an incentive for school attendance; and, be it

Further Resolved, That each county board of education establish referral services and rehabilitation, counseling and school re-entry programs for students who have withdrawn from school, and establish counseling, tutoring and other programs designed to discourage students from such withdrawal; and, be it

Further Resolved, That each county board report to the state board of education any job preparation programs established in accordance with article two-c, chapter eighteen of the code of West Virginia and that the state board report on the first day of the session of the West Virginia Legislature convening in January, one thousand nine hundred eighty-six, to the Speaker of the House of Delegates and the President of the Senate as to the status of the job preparation program required by such article; and, be it

Further Resolved, That the state board of education establish an on-going committee composed of government, business, industry, management, labor, schools, religious organizations and citizens for discussion and action towards the continual development of West Virginia school children; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the state superintendent of schools and to each county superintendent of schools.

HOUSE JOINT RESOLUTION 18
(By Delegates J. Martin and Carmichael)

[Adopted April 12, 1985.]

Proposing an amendment to the Constitution of the State of West

Virginia, amending article three thereof, by adding thereto a new section, designated section twenty-two, relating to the right of a person to keep and bear arms; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that article three thereof be amended by adding thereto a new section, designated section twenty-two, to read as follows:

ARTICLE III. BILL OF RIGHTS.

§22. Right to keep and bear arms.

A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Right to Keep and Bear Arms Amendment" and the purpose of the proposed amendment is summarized as follows: "To allow a person to keep and bear arms for defense of self, family, home and state and for recreation."

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 19
(By Delegates Ryan and M. Harman)

[Adopted April 13, 1985.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating

to exempting inventory and warehouse goods from ad valorem property taxation when such property is in transit and declaring that such property has acquired no situs for taxation purposes in West Virginia; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that section one-a, article ten thereof, be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1a. Exemption from ad valorem property taxation.

Notwithstanding the provisions of the preceding section, bank deposits, money and household goods and personal effects if such household goods and personal effects are not held or used for profit, shall be exempt from ad valorem property taxation. Personal property which is moving in interstate commerce through or over the territory of the State of West Virginia, or which was consigned to a warehouse, public or private, within the State from outside the State for storage in transit to a final destination outside the State, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in West Virginia for purposes of taxation and shall be exempt from ad valorem taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged: *Provided*, That property shall be deprived of such exemption if a new or a different product is created: *Provided, however*, That such exemption shall not apply to inventories of natural resources held for the manufacturing and sale of energy.

Notwithstanding the foregoing, for the first day of July, one thousand nine hundred eighty-seven, and for the first day of July of each year thereafter, ad valorem property taxation upon the value of property situate in a warehouse facility shall be reduced by one-fifth until such time as the property is fully exempt from taxation as herein provided in this section.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 3" and designated as the "Warehouse Freeport Tax Amendment" and the purpose of the proposed amendment is summarized as follows: "To exempt inventory and warehouse goods from ad valorem property taxation when such property is in transit and to declare that such property has acquired no situs for taxation in West Virginia."

SENATE CONCURRENT RESOLUTION 4

(By Senator R. Williams)

[Adopted March 19, 1985.]

Supporting the inclusion in the United States Congress' 1985 Farm Bill a forestry section which would provide for a long-term tree planting program.

WHEREAS, Forestry plays a major role in the economy of this nation, with the expected demand for softwood in the United States to exceed supply, at current price levels, by the year 2000; and

WHEREAS, There are millions of acres of eroding marginal crop and pastureland which will reduce the overall productivity of our agriculture and forestry land base; and

WHEREAS, Tree planting on those marginal crop and pasturelands will yield a greater average annual rate of return to the landowner and reduce erosion and improve water quality; therefore, be it

Resolved by the Legislature of West Virginia:

That the inclusion of a forestry section to the 1985 Farm Bill that would provide federal incentives for planting trees on marginal crop and pasturelands, particularly those which are eroding at accelerated rates and those which will yield a greater economic return to the landowner if planted in trees, is hereby supported; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to the West Virginia Congressional Delegation.

SENATE CONCURRENT RESOLUTION 14

(By Senator Shaw)

[Adopted April 1, 1985.]

Urging the Congress of the United States to actively participate in and fund the Gallipolis Locks and Dam Project.

WHEREAS, With each passing year as the amount of barge traffic increases on the Ohio River with the expansion and growth of manufacturing and industrial development, it becomes necessary to increase the number of locks to accommodate the barge traffic on the river; and

WHEREAS, There is presently a bottleneck on the Ohio River just north of Point Pleasant, the construction of additional locks for barge traffic is necessary; and

WHEREAS, The construction of additional locks along the Ohio River will be good for the local economy and will create needed jobs for West Virginians; therefore, be it

Resolved by the Legislature of West Virginia:

That this body respectfully urges the Congress of the United States to provide funding for the Gallipolis Locks and Dam Project which will increase economic growth through providing jobs and will also increase the much needed number of locks on the Ohio River for barge traffic.

Further Resolved, That the Clerk of the Senate forward copies of this resolution to each member of the West Virginia Congressional Delegation.

SENATE CONCURRENT RESOLUTION 15

(By Senators Tucker, Holliday, Spears and R. Williams)

[Adopted March 26, 1985.]

Urging the United States Congress to closely examine all efforts to dispose of the Consolidated Rail Corporation (Conrail).

WHEREAS, The United States Department of Transportation Secretary Elizabeth Dole has recommended that Conrail be sold; and

WHEREAS, The disposal of Conrail might affect the production and shipping of coal from mines in West Virginia; and

WHEREAS, The effects of this sale should be fully studied; therefore, be it

Resolved by the Legislature of West Virginia:

That the President of the Senate and the Speaker of the House forthwith in a joint communique advise the appropriate authorities in the United States Congress that a resolution has passed both houses of the West Virginia Legislature, calling upon the United States Congress to closely examine all efforts to dispose of Conrail in a fashion that might affect the production and shipping of coal from West Virginia mines; and, be it

Further Resolved, That the President of the Senate and the Speaker of the House advise the Honorable Arch A. Moore, Jr., Governor of the State of West Virginia, of its joint resolution and call upon him to join with such actions as are necessary to fully examine the sale of Conrail.

SENATE CONCURRENT RESOLUTION 16

(By Senator Boettner)

[Adopted March 20, 1985.]

Directing the Legislature of West Virginia to encourage, support and advance the continuance and growth of the National Railroad Passenge Corporation, known as Amtrak.

WHEREAS, The National Railroad Passenger Corporation, known as Amtrak, serves the citizens of West Virginia; and

WHEREAS, Our citizens' use of Amtrak has increased continously since 1971 until at the present time over 55,500 persons used Amtrak in 1985 to arrive and depart from points in our State; and

WHEREAS, Amtrak directly employs 29 citizens of this State and indirectly supports the employment of many others through the purchase of supplies and equipment from their employers; and

WHEREAS, Amtrak has invested several hundred thousand dollars in this State for the construction of passenger facilities and other equipment; and

WHEREAS, Amtrak has continually improved the quality of its service, strengthened its financial position and increased the number of passengers carried to the point where it transported 22 million people in 1984 and expects to increase that amount by two percent to three percent in 1985; and

WHEREAS, The budget presented to the Congress of the United States by the President would, if enacted, deprive Amtrak of the federal funding required for its continued existence; and

WHEREAS, The effective elimination of Amtrak would result in serious adverse economic consequences to this State and its citizens in terms of loss of investment, loss of income to equipment and supplies contractors with Amtrak, loss of rail passenger service, loss of jobs and a concomitant strain on the Railroad Retirement system by the loss of many contributors to that system; therefore, be it

Resolved by the Legislature of West Virginia:

That Amtrak must be continued in operation to serve West Virginia as it has in the past; and

That the Congress of the United States should provide sufficient funding through appropriation of those amounts of money necessary to maintain Amtrak in fiscal year 1986 in at least as sound a position operationally and financially as it has been in fiscal year 1985; and, be it

Further Resolved, That the Clerk of the Senate shall forthwith transmit a copy of this resolution to each member of the Congressional Delegation from West Virginia, to the Honorable Elizabeth H. Dole, Secretary of Transportation, United States Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 and to the Chairmen of the committees on appropriations of the United States Congress.

SENATE CONCURRENT RESOLUTION 24

(By Mr. Tonkovich, Mr. President, et al.)

[Adopted April 13, 1985.]

Providing for the first and second sessions of the third West Virginia Silver Haired Legislature conducted by elected Delegates and

Senators who are persons sixty years old or older to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia Legislature have continually evidenced their concern for issues and programs affecting older West Virginians; and

WHEREAS, West Virginia legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, The Silver Haired Legislature is an effective means to identify common problems, not only of senior citizens, but all West Virginians, and to propose realistic, feasible solutions to those problems in the form of legislation; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, The members of the first and second Silver Haired Legislatures were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, Over twenty states across the nation are conducting successful Silver Haired Legislature sessions, West Virginia being one of the first; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; and

WHEREAS, A two-year authorization for the Silver Haired Legislature would be desirous insofar as it would serve to make the Silver Haired Legislature sessions more realistic and would allow for longer range planning and development of this program; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 67th West Virginia Senate and the first session of the 67th West Virginia House of Delegates grant permission to the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislature Session and related training activities during 1985 and during 1986: *Provided*, That no person who has publicly announced his candidacy for any elective office of this State or any political subdivision thereof, or any member or former member of the the West Virginia Legislature may serve as a member of the Silver Haired Legislature; and, be it

Further Resolved, That the Office of the Clerk of the Senate and the Office of the Clerk of the House of Delegates assist the West Virginia Commission on Aging to effectuate the purposes of this resolution.

SENATE CONCURRENT RESOLUTION 31

(By Mr. Tonkovich, Mr. President, Senators Jarrell and Spears)

[Adopted March 27, 1985.]

Honoring members of the Armed Forces of the United States from West Virginia who were killed while on active duty, and the veterans of West Virginia and declaring March 27, 1985, as "Veterans Visibility Day."

WHEREAS, Since the founding of this country, the native sons and daughters of West Virginia have served in the Armed Forces of the United States and have freely given their lives on many foreign soils to protect the cause of liberty; and

WHEREAS, The veterans of West Virginia and their families have endured great sacrifices as a result of such patriotic service in the Armed Forces of our nation; and in the never ending struggle to preserve the peace of the world, young men from this State died on foreign shores; and

WHEREAS, The memory of these brave West Virginians should not pass without an expression of honor and gratitude; and it is necessary to recognize and honor the valor and patriotism of these West Virginians and of all our veterans, their families and those from the State of West Virginia presently serving in our Armed Forces; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature expresses the utmost honor and gratitude to the members of the Armed Forces of the United States from West Virginia who have lost their lives in the service to their country and declaring March 27, 1985, as "Veterans Visibility Day."

SENATE JOINT RESOLUTION 16

(By Mr. Tonkovich, Mr. President (By Request)
and Senator Harman)

[Adopted March 13, 1985.]

Proposing an amendment to the Constitution of the State of West

Virginia, authorizing the issuing and selling of additional state bonds in an amount not exceeding two hundred million dollars and the distribution of the proceeds thereof to county boards of education for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia shall be submitted to the voters of the State at the general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is as follows:

The Legislature shall have power to authorize the issuing and selling of state bonds, not exceeding in the aggregate two hundred million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of the bonds hereby authorized to be issued and sold shall, notwithstanding the provisions of section six, article ten of this Constitution or any other provision of this Constitution to the contrary, be distributed to such county boards of education as qualify therefor by meeting such conditions, qualifications and requirements as shall be prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty-four years, and all such taxes so levied shall be irrevocably dedicated for the payment of principal of and interest on such bonds until such principal of and interest on

such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Better School Buildings Amendment," and the purpose of the proposed amendment is summarized as follows: "To authorize the Legislature to issue and sell state bonds in an amount not exceeding two hundred million dollars for distribution to county boards of education for use by such boards for the construction, renovation, remodeling and equipping of elementary and secondary school buildings and facilities and for acquisition and preparation of sites therefor."

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