

Rec. 12/11/33

**ENROLLED BILL**  
(SECOND EXTRAORDINARY SESSION, 1933)

House Bill No. 63

(~~By Mr.~~ *Originating in the Committee*  
*on the Judiciary.*)

Passed Dec. 9 1933

In Effect from Passage

Passage

Takes effect

Originated in the

Clerk House of Delegates.

Clerk.

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Chairman Senate Committee.

Chairman House Committee.

## ENROLLED BILL

(Com. Sub. for H. B. No. 63)

[Passed December 9, 1933 ; in effect from passage.]

AN ACT to amend and reenact chapter thirty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, entitled : "An act to amend sections one to fifteen, inclusive, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by substituting therefor sections one to twenty-six, inclusive, relating to tax levies", by substituting therefor sections one to twenty-five, inclusive.

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

That chapter thirty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 1. In order to maintain and preserve those orderly  
2 functions of government dealing with the operation and admin-

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*Chairman House Committee.*

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3 istration of public schools and counties as provided for in the  
4 constitution of the state, and it being the judgment of the Leg-  
5 isature that the following is the only solution of this problem  
6 consonant with the amendment to the constitution adopted No-  
7 vember eighth, one thousand nine hundred thirty-two, and the  
8 decisions of the Supreme Court of Appeals thereon and the  
9 Legislature finding that only by this method can adequate con-  
10 stitutional levies be made available for the different levying  
11 bodies of the state, this act, therefore, contemplates that the  
12 payment of the interest, sinking fund and amortization charges  
13 of bond issues issued prior to the eighth day of November, one  
14 thousand nine hundred thirty-two, of counties, magisterial dis-  
15 tricts, school districts and other districts, except municipalities,  
16 issued for roads, now used as a part of the state road system,  
17 and issued for schools, now used as a part of the state free  
18 school system, shall be paid from taxes levied by the Legislature  
19 on privileges, franchises and incomes of persons and corpora-  
20 tions, as authorized by section one, article ten, of the constitution  
21 of West Virginia as amended by a vote of the people on the  
22 eighth day of November, one thousand nine hundred thirty-  
23 two. *Provided, however,* That should the legislative appropria-

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tion for the payment of said interest, sinking fund and amorti-  
zation charges, in whole or in part, for any reason fail, then the  
levies hereinafter provided for shall first be applied to the  
payment of such charges until the same are satisfied.

Nothing contained herein shall be so construed as to relieve  
any county, magisterial district or school district of its liability  
for the payment of its outstanding bonded indebtedness.

Nothing herein shall be so construed as to make the state  
assume or become responsible for the debts or liabilities of any  
county, magisterial district or school district.

Sec. 2. The board of public works shall lay a levy of one cent  
on the one hundred dollars' valuation of all real and personal  
property subject to taxation in the state, the proceeds of which  
levy shall be paid into the state fund for general revenue. The  
proper officers shall extend the levy on the property books of  
their respective counties.

Sec. 3. For the purpose of local levies, property shall be classi-  
fied as follows:

Class I. All tangible personal property employed exclusively  
in agriculture, including horticulture and grazing;

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5 All products of agriculture (including livestock) while owned  
6 by the producer;

7 All money and all notes, bonds, bills and accounts receivable,  
8 stocks and other intangible personal property.

9 Class II. All property owned, used and occupied by the owner  
10 exclusively for residential purposes;

11 All farms, including land used for horticulture and grazing,  
12 occupied and cultivated by their owners or bona fide tenants.

13 Class III. All real and personal property situated without  
14 municipalities, exclusive of classes I and II.

15 Class IV. All real and personal property situated within  
16 municipalities, exclusive of classes I and II.

Sec. 4. Each local levying body shall hold a session on the first  
2 Tuesday in August for the transaction of business generally,  
3 and particularly for the business herein required, but for the  
4 fiscal year one thousand nine hundred thirty-three—one thou-  
5 sand nine hundred thirty-four, such meeting shall be held on the  
6 first Tuesday following the first Wednesday after this act be-  
7 comes effective.

Sec. 5. The county court shall, at the session provided for in

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*Chairman Senate Committee.*

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2 section four of this article, make an itemized statement which  
3 shall set forth :

4 (1) The amount due and the amount that will become due  
5 and collectible from every source during the current fiscal year  
6 except from the levy of taxes to be made for the year ;

7 (2) Debts legally incurred, including interest on indebted-  
8 ness, funded or bonded or otherwise ;

9 (3) All expenditures to be paid out of the levy for the cur-  
10 rent fiscal year, with proper allowance for delinquent taxes,  
11 exonerations and contingencies ;

12 (4) The total amount necessary to be raised for each fund  
13 by levy of taxes for the current year ;

14 (5) The proposed county levy in cents on each one hundred  
15 dollars' assessed valuation of each class of property for the  
16 county ;

17 (6) The separate and aggregate amounts of the real, personal,  
18 and public utility property in each class in the county and in  
19 each subdivision thereof ;

20 A copy of the statement, duly certified, by the clerk of  
21 the court shall be forwarded to the tax commissioner, and shall  
22 be published twice, at least one week intervening between pub-

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Chairman Senate Committee.

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23 lications, in two newspapers published in the county, of general  
24 circulation and of opposite politics. If there is only one news-  
25 paper published in the county, the publication shall be made  
26 therein: *Provided, however,* That publication having been made  
27 for the fiscal year one thousand nine hundred thirty-three—  
28 one thousand nine hundred thirty-four, no further publication  
29 shall be required for said fiscal year, and the county court shall  
30 cause to be posted at the front door of the court house the state-  
31 ment herein provided for not less than ten days prior to the  
32 second meeting hereinafter provided for, which posting shall  
33 constitute full and sufficient publication for said fiscal year.

34 The session, except for the fiscal year one thousand nine hun-  
35 dred thirty-three—one thousand nine hundred thirty-four, shall  
36 then stand adjourned until the third Tuesday in August, at  
37 which time it shall reconvene. For the fiscal year one thousand  
38 nine hundred thirty-three—one thousand nine hundred thirty-  
39 four, the session shall stand adjourned until the second Tuesday  
40 after the meeting provided for in section four of this article.

41 The court shall then hear and consider any objections made  
42 orally or in writing by the prosecuting attorney, by the tax  
43 commissioner or his representative, or by any taxpayer of the

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44 county, to the estimate and proposed levy or to any item thereof.

45 The court shall enter of record any objections so made and the  
46 reasons and grounds for such objections.

47 The failure of any officer or taxpayer to offer objections shall  
48 not preclude him from pursuing any legal remedy necessary to  
49 correct any levy made by any fiscal body under this article.

50 The court, after hearing objections, shall reconsider the pro-  
51 posed original estimate and proposed rate of levy, and if the  
52 objections are well taken, shall correct the estimate and levy.

53 No such estimate and levy, however, shall be entered until the  
54 same shall have first been approved, in writing, by the tax com-  
55 missioner. When the same shall have been approved by the tax  
56 commissioner, the clerk shall then enter the estimate and levy,  
57 together with the order of the court approving them and the  
58 written approval of the tax commissioner thereof, in the proper  
59 record book.

60 The county court shall then levy as many cents per hundred  
61 dollars' assessed valuation on each class of property in the  
62 county or its subdivisions, according to the last assessment, as  
63 will produce the amounts shown to be necessary by the state-  
64 ment. The levy for all county purposes authorized by law, shall

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65 not exceed, on class I property, nine and four-tenths cents;  
66 on class II property, eighteen and seven-tenths cents; and on  
67 class III and class IV property, thirty-seven and five-tenths  
68 cents.

69 When less than the maximum levies are imposed, the levies  
70 upon each class of property shall be in the same proportions as  
71 the maximums herein authorized.

Sec. 6. When an order is made for a levy the clerk of the  
2 court, within three days, shall prepare, certify and forward  
3 copies to the tax commissioner, the state auditor, the assessor  
4 and the officer who, according to law, is required to collect the  
5 levy. He shall charge the collecting officer with the amount  
6 of the levy in the proper account book. The assessor shall imme-  
7 diately extend the taxes in the land and personal property  
8 books. The officer who is required to collect the levy shall make  
9 out proper tax bills. County levies shall be collected by the  
10 sheriff at the same time, in the same manner, and under the  
11 same regulations as other taxes are collected. Delinquent lists  
12 for county levies shall be returned and delinquent lands sold  
13 for county levies in the same manner and at the same place and

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14 under the same regulations that lands returned delinquent for  
15 state taxes are returned and sold.

Sec. 7. Every board of education shall, at the session provided  
2 for in section four of this article, if the laying of a levy has  
3 been authorized by the voters of the district under article nine,  
4 chapter eighteen of the code, make a statement setting forth :

5 (1) The separate amounts due the various funds, and the  
6 amounts that will become due and collectible during the current  
7 fiscal year except from the levy of taxes to be made for the year ;

8 (2) Debts legally incurred, including interest on indebted-  
9 ness, funded or bonded or otherwise ;

10 (3) All expenditures to be paid out of the levy for the current  
11 fiscal year, with proper allowances for delinquent taxes, exoner-  
12 ations and contingencies ;

13 (4) The amount necessary to be raised by the levy of taxes  
14 for the current fiscal year ;

15 (5) The proposed rate of levy in cents on each one hundred  
16 dollars' assessed valuation of each class of property ;

17 (6) The separate and aggregate amounts of the assessed val-  
18 uation of real, personal, and public utility property within each  
19 class.

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*James A. Rogers*

*Chairman House Committee.*

*Chairman Senate Committee.*

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20 The secretary of the board shall forward immediately a certi-  
21 fied copy of the statement to the tax commissioner and shall  
22 publish the statement in a manner similar to that provided in  
23 section five of this article. For the fiscal year one thousand  
24 nine hundred thirty-three—one thousand nine hundred thirty-  
25 four, the session shall stand adjourned until the second Tuesday,  
26 after the meeting provided for in section four of this article.

27 The session, except for the fiscal year one thousand nine  
28 hundred thirty-three—one thousand nine hundred thirty-four,  
29 shall then stand adjourned until the third Tuesday in August,  
30 at which time it shall reconvene and proceed in a manner similar  
31 in all respects to that provided for in section five of this article.

32 The board shall not finally enter any levy until the same shall  
33 have received the approval, in writing, of the tax commissioner,  
34 and after receiving such approval shall enter the statement as  
35 originally approved in its record of proceedings, together with  
36 the written approval of the tax commissioner, and shall levy as  
37 many cents on each one hundred dollars' assessed valuation of  
38 each class of property as will produce the amount necessary for  
39 defraying the expenses for the fiscal year. These levies shall not  
40 exceed on class I property, twenty-seven and one-tenth cents;

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41 on class II property, fifty-five and three-tenths cents; on class  
42 III and on class IV property, one hundred eleven and five-tenths  
43 cents.

44 When less than the maximum levies are imposed, the levies  
45 upon each class of property shall be in the same proportions as  
46 the maximums herein authorized.

Sec. 8. Within three days after the board of education has  
2 laid the levies, the secretary of the board shall forward to the  
3 county superintendent and to the tax commissioner certified  
4 copies of the orders laying levies and the rate of levy upon  
5 each class. Within three days thereafter the county superin-  
6 tendent shall report the rate of levy for each of the various  
7 classes and the total value of real, personal, and public utility  
8 property in each class in every district to the clerk of the  
9 county court, the assessor, the state superintendent and the  
10 auditor. The proper county officers shall then extend on the  
11 property books the amount of taxes levied. The sheriff shall  
12 collect and account for the taxes as required by law.

Sec. 9. The municipal council shall, at the session provided  
2 for in section four, ascertain the fiscal condition of the corpor-  
3 ation, and make an itemized statement which shall set forth:

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4 (1) The amount due and the amount that will become due  
5 and collectible from every source during the current fiscal year  
6 except from the levy of taxes to be made for the year;

7 (2) Debts legally incurred, including interest on indebted-  
8 ness, funded or bonded or otherwise;

9 (3) All other expenditures to be paid out of the funds of  
10 the municipality for the current fiscal year with proper allow-  
11 ance for delinquent taxes, exonerations, and contingencies;

12 (4) The total amount necessary to be raised by the levy of  
13 taxes for the current fiscal year;

14 (5) The proposed rate of levy in cents on each one hundred  
15 dollars' assessed valuation of each class of property for interest  
16-17 and sinking fund requirements;

18 (6) The proposed rate of levy in cents on each one hundred  
19 dollars' assessed valuation of each class of property remaining  
20 after the debt levy herein provided for;

21 (7) The separate and aggregate assessed valuation of real,  
22 personal, and public utility property in each class in the muni-  
23 cipality.

24 The recording officer of the municipality shall forward im-

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25 mediately a certified copy of the statement to the tax commis-  
26 sioner, and shall publish the statement in a manner similar to  
27 that provided in section five of this article. The session, except  
28 for the fiscal year one thousand nine hundred thirty-three—  
29 one thousand nine hundred thirty-four, shall then stand ad-  
30 journed until the third Tuesday in August, at which time it  
31 shall reconvene and proceed in a manner similar in all respects  
32 to that provided for in section five of this article. For the fiscal  
33 year one thousand nine hundred thirty-three—one thousand  
34 nine hundred thirty-four, the session shall stand adjourned  
35 until the second Tuesday after the meeting provided for in  
36 section four of this article.

37 The council shall not finally enter any levy until the same  
38 shall have been approved in writing by the tax commissioner  
39 and after receiving such approval shall enter the statement as  
40 finally approved in its record of proceedings, together with the  
41 written approval of the tax commissioner and shall levy as many  
42 cents on each one hundred dollars' assessed valuation of each  
43 class of property as will produce the amount necessary to defray  
44 the interest and sinking fund charges on such indebt-  
45 edness. For this purpose, the levies in the first instance shall

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46 not exceed, on class I property, twelve and five-tenths cents;  
47 on class II property, twenty-five cents; and on class IV prop-  
48 erty, fifty cents. When such maximum levies shall not produce  
49 sufficient revenue to discharge the requirements for such  
50 indebtedness the council shall lay an additional levy upon all  
51 property subject to taxation within the municipality, without  
52 regard to classification, as will produce a sufficient amount in  
53 addition to said classified levies, to meet such requirements for  
54 interest and sinking fund.

55 When the entire classified levies of the municipality are re-  
56 quired for the payment of such indebtedness, the council shall  
57 have no power or authority to lay any such levies for the cur-  
58 rent expenses of said municipality. When less than the maxi-  
59 mum levies in this section provided are required for the pay-  
60 ment of such interest and sinking fund requirements the  
61 council may levy so much of the levies authorized herein as  
62 remain after providing for such indebtedness to meet require-  
63 ments for current expenses of the municipality.

64 When less than the maximum levies are imposed for any  
65 and all purposes, the levies upon each class of property shall

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66 be in the same proportion as the classified levies herein author-  
67 ized.

Sec. 10. Within three days after the council of a municipality  
2 has laid the levies, its recording officer shall forward certified  
3 copies of the order laying the levies to the tax commissioner,  
4 the state auditor and the officer whose duty it is to extend the  
5 levies.

Sec. 11. A local levying body may provide for an election  
2 to increase the levies, by entering on its record of proceedings,  
3 an order setting forth:

- 4 (1) The purpose for which additional funds are needed;
- 5 (2) The amount for each purpose;
- 6 (3) The total amount;
- 7 (4) The separate and aggregate assessed valuation of each  
8 class of taxable property within its jurisdiction;
- 9 (5) The proposed additional rate of levy in cents on each  
10 class of property;
- 11 (6) The proposed number of years, not to exceed three, to  
12 which the additional levy shall apply.

13 The local levying body shall submit to the voters within their  
14 political subdivision, the question of the additional levy at either

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15 a general or special election. If at least sixty per cent of the  
16 voters cast their ballots in favor of the additional levy, the  
17 local levying board may impose the additional levy. This levy  
18 shall not exceed fifty per cent of the rates authorized in sec-  
19 tion five, seven or nine of this article, as the case may be.

20 Levies authorized by this section shall not continue for more  
21 than three years without resubmission to the voters.

Sec. 12. The local levying body shall publish notice, calling  
2 the election, at least once each week for two successive weeks  
3 before the election in two newspapers of opposite politics and  
4 of general circulation in the territory in which the election is  
5 held. If there is only one newspaper published in the county,  
6 the publication shall be made therein. The local levying body  
7 shall also post printed copies of the order at each place of voting  
8 at least ten days before the election. All the provisions of the  
9 laws concerning general elections shall apply as far as they are  
10 practicable, except as follows: A separate ballot shall be used  
11 at a levy election held in connection with any other election.  
12 The ballot shall be entitled: "Special election to authorize  
13 additional levies for the year(s).....and for the  
14 purpose of....., according to the order of

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*A. H. Gray*

*James L. Smith*

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15 the.....entered on the .....

16 day of.....”

17 “The additional levy shall be on class I property.....

18 cents; on class II property.....cents; on class III

19 property (if any).....cents; on class IV property....

20 (if any).....cents.”

Sec. 13. The tax commissioner shall prepare and furnish  
2 forms and instructions for making the statement required in  
3 sections five, seven and nine of this article. The attorney gen-  
4 eral shall prepare and furnish forms and instructions for the  
5 holding of any election authorized by this article.

Sec. 14. Within forty days after an order for a levy the  
2 circuit court of the county, or the judge in vacation, may allow  
3 a writ of supersedeas on the petition of at least twenty-four  
4 persons interested in reversing the order. The levying body,  
5 without awaiting the final decision, may rescind the order, and  
6 impose a new levy. If the court, on the hearing, finds that the  
7 order is contrary to law and reverses the order, the levying  
8 body shall impose a levy according to law. If money is col-  
9 lected under any order which is afterward rescinded or re-  
10 versed, the collecting officer shall, upon demand, refund any

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11 payment to the person from whom it was collected. If the  
12 collecting officer fails to repay the amount, he and his sureties  
13 shall be jointly and severally liable for the amount and the  
14 costs of recovery. Recovery may be had by summons before a  
15 justice or on motion in the circuit court.

Sec. 15. When all the levies allotted hereunder to any county  
2 court, school board or municipality shall not be required by  
3 such county court, school board and municipality, then any  
4 other one or more of such levying bodies within the county  
5 may levy so much or such part thereof as remains of said allot-  
6 ment within its particular taxing district, by and with the  
7 consent in writing, of the tax commissioner obtained after a  
8 proper showing, in writing, to the tax commissioner of the  
9 necessity therefor.

Sec. 16. County courts, boards or officers expending funds de-  
2 rived from the levying of taxes shall expend the funds only for  
3 the purposes for which they were raised.

Sec. 17. A local fiscal body shall not expend money or incur  
2 obligations:

- 3 (1) In an unauthorized manner;  
4 (2) For an unauthorized purpose;

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5 (3) In excess of the amount allocated to the fund in the  
6 levy order;

7 (4) In excess of the funds available for current expenses.

Sec. 18. Any indebtedness created, contract made, or order  
2 or draft issued in violation of section sixteen of this article  
3 shall be void.

Sec. 19. Whenever a fiscal body expends money or incurs  
2 obligations in violation of this article, action or suit, in the name  
3 of the state of West Virginia for the use of the political division  
4 affected, shall be instituted by the prosecuting attorney of the  
5 county, or the attorney general of the state, in a court of com-  
6 petent jurisdiction to recover the money expended or to cancel  
7 the obligation, or both.

Sec. 20. A person who, in his official capacity, willfully par-  
2 ticipates in the violation of section sixteen of this article shall  
3 be personally liable, or jointly with other participants, for the  
4 amount illegally expended.

Sec. 21. A person who in his official capacity wilfully par-  
2 ticipates in an illegal expenditure may be proceeded against  
3 for the recovery of the amount illegally expended. The political  
4 subdivision concerned, a taxpayer of the subdivision, the state

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*James D. Smith*  
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*Chairman House Committee.*

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5 tax commissioner or a person prejudiced may bring the pro-  
6 ceeding.

7 All moneys recovered in these proceedings shall be paid into  
8 the treasury of the proper fiscal body and credited to the proper  
9 fund.

10 If the plaintiff prevails, he shall recover against the defend-  
11 ant, the costs of the proceedings, including a reasonable at-  
12 torney's fee to be fixed by the trial court.

Sec. 22. A person who in his official capacity wilfully vio-  
2 lates the provisions of this article shall be guilty of a misde-  
3 meanor, and upon conviction shall be fined not more than five  
4 hundred dollars, or confined in jail not more than one year,  
5 or both. Upon conviction he shall also forfeit his office.

Sec. 23. The state, a taxpayer, or the tax commissioner may  
2 institute and prosecute to final judgment any proceeding for  
3 the removal of a member of a local fiscal body who has wil-  
4 fully or negligently violated any of the provisions of this article.

5 Upon the petition of the state, a taxpayer, or the tax commis-  
6 sioner, the court, or in vacation the judge, shall set a time for  
7 hearing the petition. An attested copy of the petition and  
8 the charges contained therein, shall be served upon the defend-

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*D. Hyman*

*James L. Smith*

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9 ants at least twenty days prior to the date of hearing. No other  
10 pleading or notice of the proceedings shall be necessary.

Sec. 24. The discounts allowed for prompt payment of taxes  
2 as provided by law, shall for the first half of the fiscal year one  
3 thousand nine hundred thirty-three—one thousand nine hun-  
4 dred thirty-four, be extended and allowed by the collecting offi-  
5 cer, if payment thereof be made on or before February first, one  
6 thousand nine hundred thirty-four: *Provided, however, That*  
7 the tax commissioner may, in his discretion, uniformly extend  
8 such discount period to not later than March first, one thousand  
9 nine hundred thirty-four, by giving proper notice thereof, in  
10 writing, to the collecting officers of the several counties.

Sec. 25. If any section, paragraph, sentence, clause, word  
2 and/or application of any part hereof be held unconstitutional,  
3 the same shall not affect the validity of the remaining portions.  
4 All existing provisions of law inconsistent with this act are  
5 hereby repealed.

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*Anna D. F. H.*  
Chairman Senate Committee.

*Wm. S. Hines*  
Speaker of the House of Delegates.

*Geo. D. Hall*  
Clerk of the House of Delegates.

*A. S. Matthews*  
President of the Senate.

*Thomas P. Smith*  
Clerk of the Senate.

*James L. Smith*  
Chairman House Committee.

The within is... *approved* .....

this... *11<sup>th</sup>* ... day of... *December* ..., 1933.

*H. S. Kump*  
Governor.