

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



# ENROLLED

HOUSE BILL No. 5

(By Mr. Dammous)



PASSED February, 28, 1953

In Effect Ninety days from Passage



FILED IN THE OFFICE OF THE SECRETARY OF STATE  
of West Virginia

MAR 5 1953

D. MITT O'BRIEN,

SECRETARY OF STATE

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**ENROLLED**  
**House Bill No. 5**

(By MR. SAMMONS)

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[Passed February 28, 1953; in effect ninety days from passage.]

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AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seven-a, relating to low cost municipal improvements.

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

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

**Article 7-a. Low Cost Improvements.**

Section 1. *Purpose of Article; Liberal Construction;*  
2 *Method Cumulative.*—It is hereby declared to be the  
3 purpose and policy of the Legislature in enacting this law  
4 to provide for a simplified method of low cost municipal  
5 improvements which are impracticable to be accom-

6 plished by normal budgets or by the procedures under  
7 articles eight and nine of this chapter. To this end, this  
8 article shall be liberally construed by council or court to  
9 accomplish its purpose; and the adoption of this method  
10 of municipal improvements shall not be deemed and con-  
11 strued to be the adoption of an exclusive method, but  
12 shall be deemed and construed to be the adoption of an  
13 available method additional to any others which may  
14 have theretofore been available by charter or general  
15 law or which may hereafter become available.

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

2 (a) “Municipality” shall include any incorporated city,  
3 town or village, whether existing and operating under  
4 a special charter, home rule charter or general law;

5 (b) “Council” shall include any governing body or  
6 bodies exercising the powers commonly exercised by the  
7 council of a municipality;

8 (c) “Abutter” shall include the owner or owners, as  
9 of the date of the first publication of the notice described  
10 in section eight of this article, of the property abutting  
11 on both sides of any street, alley, public way or easement

12 upon or in which an improvement shall be made or pro-  
13 posed to be made under this article;

14 (d) "Engineer" shall mean the city engineer or, if the  
15 municipality has no regularly employed city engineer, any  
16 registered professional engineer, if there be any practicing  
17 in the county or the municipality, or if no such engineer be  
18 practicing in the county, any competent civil engineer.

19 (e) "Petitioner" shall, unless the context clearly indi-  
20 cates otherwise, include those abutters, whether one or  
21 more than one, who file the petition and bond described  
22 in section four of this article;

23 (f) "Improvement" shall include the grading, regrad-  
24 ing, paving, repaving, surfacing, resurfacing, curbing, re-  
25 curbing and repairing of streets and alleys, and the build-  
26 ing, renewing and repairing of sidewalks, and the build-  
27 ing, renewing and repairing of storm sewers, sanitary  
28 sewers and sewer systems or parts thereof in any streets,  
29 easements, public ways or alleys, or portions thereof, in-  
30 dependently or in conjunction with other of such im-  
31 provements, within the municipality; and

32 (g) "Total cost" shall include, to the extent that they

33 were furnished, but excepting salaries and wages paid  
34 to municipal employees that would have been paid re-  
35 gardless of the work on the proposed improvement, the  
36 cost and expense of surveys, engineering and attorney  
37 fees, the printing and publishing in relation thereto, and  
38 the cost and expense of all labor, work, supervision, in-  
39 spection, equipment leased and materials furnished and  
40 used in completing said improvements.

Sec. 3. *Powers of Municipal Corporations Relating to*  
2 *Street, Sidewalk and Sewer Improvements.*—Every mu-  
3 nicipality in this state is hereby authorized, in addition  
4 to any other rights or powers conferred upon it, to make  
5 improvements upon the terms and conditions and in the  
6 manner hereinafter set forth.

Sec. 4. *Petition of Abutters; Petitioner's Bond; Action*  
2 *of Council; Memorandum of Engineer.*—Upon the filing of  
3 written petition and bond hereinafter described by the  
4 persons owning the greater amount of frontage of property  
5 abutting upon both sides of any portion of a street, public  
6 way, alley or easement, or, where the petition states the  
7 willingness of the petitioner to pay all of the total cost,

8 upon the filing of the petition and bond hereinafter de-  
9 scribed by any one or more of the abutters on any street,  
10 public way, alley or easement, the council shall, by  
11 ordinance or resolution, order the engineer to investi-  
12 gate and to prepare a memorandum describing the por-  
13 tions of the streets, alleys, public ways or easements  
14 proposed to be improved, and certifying the reasonable  
15 necessity of the improvement, the plans and specifica-  
16 tions for the improvement, and a list of all items com-  
17 prising the total cost of the improvement as specified in  
18 section two-g of this article, with an estimate of the cost  
19 of each item.

20 The petition shall list the name and actual mailing  
21 address of the petitioner; it shall specify the part or parts  
22 of the therein named streets, alleys, public ways or ease-  
23 ments that petitioner desires improved; it shall specifi-  
24 cally describe the proposed improvement desired; it shall  
25 state whether the petitioner will pay all of the total cost,  
26 or whether he desires the total cost to be apportioned  
27 among all of the abutters; in any case where two or more  
28 petitioners file the petition, if the petition indicates their

29 intent to pay all of the total cost, it shall state either that  
30 they desire to have such total cost apportioned among  
31 them on a pro rata basis of their abutting footages ac-  
32 cording to a list of such footages compiled by them and  
33 inserted in the petition, or whether they desire to pay  
34 such total cost according to a list of percentage shares  
35 formulated by them and inserted in the petition; and it  
36 shall be signed by the petitioner. The bond shall be given  
37 by the petitioner, with good security, to be approved by  
38 the council; it shall be in the amount of one thousand  
39 dollars; and it shall bind the petitioner (jointly and  
40 severally in the case of more than a single petitioner)  
41 to pay all charges and assessments made on him under  
42 this article.

Sec. 5. *Appeal on Engineer's Memorandum; Charges*  
2 *upon Failure of Petition.*—If the memorandum of the en-  
3 gineer certifies that the proposed improvement is not  
4 reasonably necessary, and/or that the estimated total  
5 cost is more than one thousand dollars, the council shall  
6 notify the petitioner of the adverse report in the engin-  
7 eer's memorandum, and of a time (at least ten days from

8 the date of the mailing of the notice as provided below)  
9 and place of a council meeting, at which the engineer  
10 shall be present, at which the petitioner may object to  
11 or be heard on any part of the engineer's memorandum  
12 concerned with the said adverse report; and this notice  
13 shall be given by mailing a copy thereof to the petitioner  
14 at the address listed in the petition unless the petitioner  
15 shall have notified the council in writing of a change in  
16 his actual mailing address, in which case the notice shall  
17 be mailed according to such change. The council may  
18 modify the memorandum in accordance with the evidence  
19 introduced at said meeting; but if no evidence is intro-  
20 duced, the engineer's memorandum shall be accepted.  
21 In any case, where the petition fails because of no reason-  
22 able necessity and/or because of an estimated total cost  
23 of more than one thousand dollars, the petitioner shall  
24 be charged with all municipal expenses in connection  
25 therewith except salaries and wages of regular municipal  
26 officials and employees, which charge shall be made by  
27 ordinance or resolution of the council; and a statement  
28 of such charge shall be mailed to the petitioner at the



29 address listed in the petition unless the petitioner shall  
30 have notified the council in writing of a change in his  
31 actual mailing address, in which case the statement shall  
32 be mailed according to such change.

Sec. 6. *When Petition Deemed Granted.*—A petition  
2 for improvement shall be deemed granted when it and  
3 the accompanying bond have been found to be regular,  
4 and when the engineer's memorandum, as modified on  
5 petitioner's appeal in the event that it was appealed and  
6 modified, indicates that the proposed improvement is  
7 reasonably necessary and that the total cost will not  
8 exceed one thousand dollars.

Sec. 7. *Procedure When Petitioner to Pay All of Total  
2 Cost; Council Order When Petition Granted.*—If the pe-  
3 titioner has stated in the petition that he will pay all of  
4 the total cost, the council shall, as soon as the petition is  
5 granted as provided in section six of this article, order  
6 by ordinance or resolution the proper municipal authori-  
7 ties to proceed with the accomplishment of the improve-  
8 ment according to the plans and specifications in the  
9 engineer's memorandum, as modified on petitioner's ap-

10 peal in the event that they were appealed and modified.

*Sec. 8. Procedure When Total Cost to Be Apportioned*

2 *Among All Abutters; Notice to Abutting Owners before*  
3 *Authorizing Improvements; Form of Notice; Protest*  
4 *Meeting; Certificate of Publication; Notice to Railroad*  
5 *or Foreign Corporation; Automatic Revocation of Grant*  
6 *of Petition; Charges upon Automatic Revocation.—If*  
7 the petitioner has stated in the petition that he de-  
8 sires the total cost to be apportioned among all of  
9 the abutters, the council shall, as soon as the petition  
10 is granted, cause notice to be given to all abutters that  
11 the petition has been granted, that the engineer's  
12 memorandum, certifying reasonable necessity, plans and  
13 specifications, and cost estimates, will be reconsidered,  
14 before work is started, at a public meeting of the coun-  
15 cil at a time and place named in the notice, and that all  
16 abutters will be given an opportunity to protest or be  
17 heard concerning any or all particulars of the engineer's  
18 memorandum at that meeting or an adjournment thereof.

19 The above mentioned notice to the abutters may be by  
20 personal service on abutters at least ten days before

21 the protest meeting. In lieu of personal service of such  
22 notice, the following described notice, or one in substan-  
23 tially the same form, may be given, and shall be deemed  
24 to have been served on all such abutters, by publication  
25 once a week for three successive weeks before said meet-  
26 ing in some newspaper of general circulation in said  
27 municipality, as follows:

28 "NOTICE TO ALL PERSONS OWNING PROPERTY  
29 ABUTTING ON \_\_\_\_\_ (here describe the  
30 portions of the streets, alleys, public ways or easements  
31 to be improved) IN THE MUNICIPALITY OF \_\_\_\_\_  
32 \_\_\_\_\_ (name of municipality);

33 A petition has been conditionally granted by the \_\_\_\_\_  
34 \_\_\_\_\_ (common council, board of directors, commission-  
35 ers or other governing body) of the municipality of  
36 \_\_\_\_\_ (name of municipality) to improve the  
37 \_\_\_\_\_ (street, alley, public way or easement)  
38 above described in \_\_\_\_\_ (name of munic-  
39 ipality) by \_\_\_\_\_ (grading, regrading, con-  
40 structing storm sewers or other general description of  
41 the proposed improvement), as specifically described in

42 the engineer's memorandum certifying the reasonable  
43 necessity of the proposed improvement, the plans and  
44 specifications thereof, and the estimate of the items of  
45 cost thereof, and to apportion the cost of such improve-  
46 ment among the owners, as of \_\_\_\_\_ (the  
47 date of the first publication of this notice), of the abutting  
48 property.

49 The engineer's memorandum above described will be  
50 reconsidered by the \_\_\_\_\_ (governing body) at  
51 a public meeting to be held on \_\_\_\_\_ (date) at \_\_\_\_\_  
52 (time) at \_\_\_\_\_ (place). Any abutting owner or in-  
53 terested party will be given an opportunity to protest  
54 or be heard at said meeting or an adjournment there-  
55 of.

56 \_\_\_\_\_ (name of the clerk or recorder),  
57 \_\_\_\_\_ (official position)."

58 A certificate of publication of the notice, made by the  
59 newspaper publisher, and a copy of the notice shall be  
60 made a part of the minutes of the governing body and  
61 spread on its records of the meeting described in the  
62 notice. The service of said notice upon all persons, firms

63 or corporations owning any interest in any property  
64 abutting upon any portion of said street, alley, public  
65 way or easement to be improved shall conclusively be  
66 deemed to have been given when such newspaper pub-  
67 lication shall have been completed: *Provided*, That where  
68 any foreign railroad or other foreign corporation is the  
69 owner of property abutting upon any street, alley, public  
70 way or easement sought to be improved under the pro-  
71 visions hereof, notice shall be given to such railroad or  
72 other foreign corporation as prescribed by section one,  
73 article ten, chapter eight of the code of West Virginia,  
74 one thousand nine hundred thirty-one, before the adop-  
75 tion of any ordinance or resolution relating to, and pro-  
76 viding for, such improvements.

77 Any part or parts of the engineer's memorandum may  
78 be modified or remodified at the protest meeting in ac-  
79 cordance with the evidence introduced at such meeting,  
80 including the extent of the portions of the streets, alleys,  
81 public ways or easements proposed to be improved as  
82 designated in the engineer's memorandum. If, after  
83 modification at such protest meeting, the memorandum

84 indicates that the proposed improvement is not reason-  
85 ably necessary and/or that its estimated total cost is more  
86 than one thousand dollars, then the petition shall be  
87 automatically revoked; and the petitioner shall be  
88 charged with all municipal expense in connection there-  
89 with except salaries and wages of regular municipi-  
90 pal employees, which charge shall be made by ordi-  
91 nance or resolution of the council; and a state-  
92 ment of said charge shall be mailed to the petitioner  
93 at the address listed in the petition unless the petitioner  
94 shall have notified the council in writing of a change in  
95 his actual mailing address, in which case the statement  
96 shall be mailed according to such change.

97 If the engineer's memorandum has not been so modi-  
98 fied at the protest meeting as to render the petition auto-  
99 matically revoked as provided above, the council shall  
100 order by ordinance or resolution the proper municipal  
101 authorities to proceed with the accomplishment of the  
102 improvement according to the plans and specifications  
103 in the engineer's memorandum, as modified at the protest  
104 meeting in the event that they were modified.

Sec. 9. *Accomplishment of the Improvement; Municipal Facilities Used Where Practicable.*—When the proper municipal authorities shall have been ordered by the council to proceed under either section seven or section eight of this article, they shall do so without delay. The improvement shall be accomplished, as far as possible without interfering with normal municipal services, with the regular municipal employees and equipment; but contracts may be made with reputable firms for the improvement. Said authorities shall keep an account of all items of cost connected therewith that affect the total cost of the improvement. Upon completion of the improvement, said proper municipal authorities shall deliver the account of costs to the engineer.

Sec. 10. *Apportionment among Petitioners Only; Limit on Total Cost Chargeable to Petitioner; Notice.*—Where the petitioner has indicated in the petition his willingness to pay all of the total cost, the engineer shall compute the actual total cost as soon as the improvement is completed and the account mentioned in section nine of this article is given to him; and, where more than a single

8 petitioner filed the petition, the engineer shall assess the  
9 amount owed by each petitioner according to the method  
10 indicated in the petition as prescribed by section four of  
11 this article: *Provided*, That if the actual total cost exceeds  
12 one thousand dollars, the municipality shall be respon-  
13 sible for such excess over one thousand dollars; and that,  
14 notwithstanding that the actual total cost is less than one  
15 thousand dollars, if the actual total cost exceeds the esti-  
16 mated total cost by more than ten percent of the latter,  
17 the municipality shall be responsible for such excess over  
18 one hundred ten percent of the estimated total cost.

19 The engineer shall certify his determination of charges  
20 to the council; and, after adopting the same by ordinance  
21 or resolution, the council shall notify the petitioner of  
22 the assessment list by mailing a written copy thereof to  
23 the petitioner at the address listed in the petition unless  
24 the petitioner shall have notified the council in writing  
25 of a change in his actual mailing address, in which case  
26 the statement shall be mailed according to such change.

Sec. 11. *Apportionment among All Abutters; Limit on*  
2 *Total Cost Chargeable to Abutters; Engineer's Report;*



3 *Notice; Hearings; Correcting and Laying Assessments.—*

4 Where the petitioner has indicated in the petition his  
5 desire to have the total cost apportioned among all of  
6 the abutters, the engineer shall, as soon as the council  
7 has ordered the proper municipal authorities to proceed  
8 under section eight of this article, determine or cause to  
9 be determined the several frontages abutting on the im-  
10 provement, a brief description thereof, and the owners of  
11 such frontages as of the date of the first publication of the  
12 notice described in section eight of this article; and he  
13 shall keep an account of all items of cost connected there-  
14 with that affect the total cost. As soon as the improvement  
15 is completed and the account mentioned in section nine  
16 of this article is given to him, the engineer shall compute  
17 the actual total cost of the improvement.

18 The total cost shall be personally borne by such abut-  
19 ters, including the petitioner, as of the date of the first  
20 publication of the notice described in section eight of this  
21 article; and the amount of the assessment against each  
22 shall be apportioned by the engineer on the basis of the  
23 following formula. Each lot or parcel of land so abutting

24 shall be assessed with that portion of the total cost of  
25 the entire project which is represented by the proportion  
26 which the abutting frontage in feet of such lot or parcel  
27 bears to the total abutting frontage in feet of all the lots  
28 or parcels of land abutting on the streets, public ways,  
29 alleys or easements so improved: *Provided, however,*  
30 That if the character of the improvements shall be sub-  
31 stantially different upon different streets, public ways,  
32 easements or alleys, or portions thereof, the cost may be  
33 equitably apportioned to the respective streets, public  
34 ways, alleys, easements, or portions thereof, in proportion  
35 to the character and cost of the improvements respec-  
36 tively thereon; and as a part of the cost so apportioned  
37 to each respective street, public way, easement, or alley,  
38 or portion thereof, shall be apportioned to and assessed  
39 against the respective lots or parcels of land abutting  
40 thereupon in the proportion as hereinabove provided:  
41 *Provided further,* That if any part of the street, alley,  
42 easement or public way improved is used by a railway  
43 then the cost of the portion of the improvements between  
44 the rails and for two feet outside said rails shall be as-

45 sessed against and wholly borne by the owner of the  
46 railway: *Provided further*, That if there be any land or  
47 other property abutting on the portion of the street or  
48 alley so improved which it has been determined by the  
49 governing body of the municipality, and, shown in the  
50 ordinance or resolution authorizing the improvement,  
51 not to be specially benefited by the improvement, or for  
52 other reasons would not be liable to assessment for any  
53 of the cost of improvement, then the cost of the improve-  
54 ments abutting such part of said street or alley, as is  
55 so determined to be nonassessable shall be apportioned  
56 among, assessed and borne by the remaining property  
57 abutting upon the portion of the street, alley, public way  
58 or easement improved in proportion to the frontage of  
59 such remaining abutting property as hereinabove pro-  
60 vided: *Provided further*, That if such improvement in-  
61 clude the construction or reconstruction of sidewalks on  
62 only one side of a street, alley, public way or easement,  
63 then the cost of such sidewalk shall be assessed only on  
64 the property abutting on that side where the sidewalks  
65 are so constructed: *Provided further*, That if there be

66 land or other property abutting the street, alley, ease-  
67 ment or public way so improved which is owned by the  
68 United States of America, and for that reason not legally  
69 subject to assessment, then the municipality shall pay the  
70 proportionate part of the cost of the improvement which  
71 otherwise would be assessable against such federally  
72 owned land or property: *Provided further*, That if the  
73 actual total cost exceeds one thousand dollars, the munici-  
74 pality shall be responsible for such excess over one thou-  
75 sand dollars; and that, notwithstanding that the actual  
76 total cost is less than one thousand dollars: if the actual  
77 total cost exceeds the estimated total cost by more than  
78 ten percent of the latter, the municipality shall be respon-  
79 sible for such excess over one hundred ten percent of the  
80 estimated total cost.

81 The engineer shall formulate a report showing the  
82 chargeable total cost to be borne by the abutters, the  
83 names of the abutters (including the petitioner), the sev-  
84 eral frontages owned by said abutters and a brief descrip-  
85 tion thereof, and the proper amount of the chargeable to-  
86 tal cost to be assessed personally against each abutter, and

87 shall deliver such report to the council. The council shall  
88 thereupon give notice to the abutters to be assessed that,  
89 on or after a date named in said notice, an assessment may  
90 be laid personally against the abutters as embodied in said  
91 report. Said notice shall state that the abutters so named,  
92 or other interested party, may on said date appear before  
93 the council to move the correction or revision of such pro-  
94 posed assessment. Said notice, which shall be by publica-  
95 tion once a week for two successive weeks in some news-  
96 paper of general circulation in the county in which said  
97 municipality is located, shall show the same facts em-  
98 bodied in the engineer's report hereinabove described. On  
99 or after the date so advertised, the council may revise,  
100 amend, correct and verify the report according to the evi-  
101 dence introduced by appealing abutters or by the engin-  
102 eer, and shall thereafter proceed by ordinance or reso-  
103 lution to lay the assessments, as corrected and verified,  
104 against the abutters personally.

Sec. 12. *Due Dates of Assessments; Statements of De-*  
2 *fault to Petitioner.*—Assessments made under section  
3 eleven of this article shall be due the municipality within

4 sixty days after the passage by the council of the ordi-  
5 nance or resolution laying the assessment; and upon pay-  
6 ment of an assessment by an abutter, he shall be given a  
7 receipt therefor, a copy of which shall be retained by the  
8 municipality; and, upon payment in due course of all of  
9 such assessments upon an improvement, the petitioner  
10 shall be automatically discharged on his bond. If any  
11 such assessment, in whole or in part, be not paid within  
12 said sixty days, the council shall determine the total  
13 amount in default and shall charge said amount to the  
14 petitioner by ordinance or resolution; and a statement  
15 of the charge shall be mailed to the petitioner at the  
16 address listed in the petition unless the petitioner shall  
17 have notified the council in writing of a change in his  
18 actual mailing address, in which case the statement shall  
19 be mailed according to such change.

Sec. 13. *Due Dates of Charges Against Petitioner;*  
2 *Municipality's Collection on Bond; Petitioner's Right*  
3 *of Action.*—Charges made on any petitioner under sec-  
4 tions five, eight, ten and twelve of this article shall be  
5 due the municipality within thirty days from the date

6 that a statement was mailed to him as provided in said  
7 last mentioned sections. If any such charges on any  
8 petitioner be not paid within such thirty days, the council  
9 shall by ordinance or resolution authorize the proper  
10 municipal authorities to proceed to collect on the peti-  
11 tioner's bond.

12 Any petitioner who is forced to pay, either by collection  
13 on the bond or by voluntary payment to avoid collection  
14 on the bond, any sum which should have been paid by  
15 another petitioner or any other abutter, shall have a  
16 right of action against any such defaulter for the amount  
17 that the defaulter should have paid, with interest at six  
18 percent from the date that the defaulter was in default;  
19 and, where a petitioner makes a voluntary payment for  
20 any such defaulter to avoid collection on the bond, a  
21 receipt shall be given him, and a copy retained by the  
22 city, showing the petitioner who made such payment,  
23 the defaulter for whom the payment was made, and the  
24 charge or assessment for which the defaulter was in de-  
25 fault, which receipt shall be prima facie evidence of the  
26 petitioner's right to collect from the defaulter named in

27 said receipt for the amount specified therein, with interest  
28 as above stated.

Sec. 14. *Assessments Where Property Owned or Con-*  
2 *trolled by Public Charitable, Eleemosynary, Educational*  
3 *or Religious Institutions; Duty of Those in Charge to Cause*  
4 *Assessments to Be Paid.*—When any of the lots abutting  
5 the portion of the street, alley, easement or public way  
6 improved consist of property owned or controlled by the  
7 state, county, municipality, board of education or other  
8 public body, or consist of property owned or used for a  
9 church or a religious, charitable, educational or eleemo-  
10 synary institution for purposes not subject to taxation,  
11 the owners of such property as of the date of the first  
12 publication of the notice described in section eight of this  
13 article shall nevertheless be assessed with their proper  
14 proportion of the total cost; and it shall be the duty of  
15 the owner and/or those persons having charge of the  
16 fiscal affairs of such owner or the management of any  
17 such property or institution to make proper arrangements  
18 for the payment of such assessments and to cause the  
19 same to be paid.



Sec. 15. *Separability*.—If any provision or part of this  
2 article is declared unconstitutional or invalid, such dec-  
3 laration shall in no way affect any other part thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*H. M. Kueby*  
Chairman Senate Committee

*C. H. Ambley*  
Chairman House Committee

Originated in the House of Delegates

Takes effect *Thirty days from* passage.

*Thomas M. Ryan*  
Clerk of the Senate

*Ralph J. Benson*  
Clerk of the House of Delegates

*Ralph J. Benson*  
President of the Senate

*W. E. Rouse*  
Speaker House of Delegates

The within *approved* this the *5th*  
day of *March*, 1953.

*William C. Marland*  
Governor

