WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 264
(By Mr. Moreland and Mr. Davis)

PASSED March 14, 1959

In Effect

Filed in Office of the Secretary of State of West Virginia MAR 20 1959
JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

Senate Bill No. 264
(By Mr. Moreland and Mr. Davis)

[Passed March 14, 1959; in effect ninety days from passage.]

AN ACT to repeal article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article five, relating to the development, through planning and zoning, of urban and rural areas, and providing for the creation of city and county planning commissions; for the authority of said planning commissions to prepare comprehensive plans for the physical development of the territory within its jurisdiction; for the approval of such comprehensive plans; for cooperation between planning commissions and other governmental bodies; for subdivision control and plat approval;
for the issuance of improvement location permits; for au-

thority to zone both urban and rural property; for the pro-
cedure for the adoption of such zoning ordinance; for the cre-

ation of zoning boards of appeals, prescribing their pow-
ers and duties, and the procedure to be followed therein;

for judicial review of administrative decisions; and pro-

viding for the enforcement of the article, and the penalties

for the violation of the provision thereof.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be repealed,
and a new article five be enacted in lieu thereof, to read as fol-

lows:

Article 5. Urban and Rural Planning and Zoning.

Section 1. Statement of Intent.—The governing body of
every municipality in the state and the county court of
every county in this state may by ordinance create a plan-
ning commission in order to promote the orderly develop-
ment of its governmental units and its environs. It is the
object of this legislation to encourage local units of gov-
ernment to improve the present health, safety, conven-
ience, and welfare of their citizens and to plan for the fu-
ture development of their communities to the end that
highway systems be carefully planned, that new commun-
ity centers grow only with adequate highway, utility,
health, educational, and recreational facilities; that the
needs of agriculture, industry and business be recognized
in future growth; that residential areas provide healthy
surroundings for family life; and that the growth of the
community is commensurate with and promotive of the
efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this
legislation that the planning commission shall serve in an
advisory capacity to the governing body of a city or a
county court, and in addition, that certain regulatory
powers be created over developments affecting the public
welfare and not now otherwise controlled, and that ad-
ditional powers be granted legislative bodies of cities,
towns and counties to carry out the purposes of this act.

Sec. 2. Continuation of Powers and Duties.—Upon the
taking effect of this act, a planning commission heretofore
established shall continue to operate as though authorized
under the terms of the present act. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this act.

The membership of existing commissions shall continue unchanged until the first regular meeting of the governing body of a city or the county court in the January of the year following the passage of this act. At that time, any appointments or changes necessary shall be made to bring the membership of the commissions within the provisions of this act.

Sec. 3. Definitions.—As used in this article:

1. "Municipality" shall mean a city or town incorporated under the laws of West Virginia;
2. "City" shall mean a municipal corporation with a population in excess of two thousand;
3. "Town" shall mean a municipal corporation with a population of two thousand or less;
4. "Governing body of a city" shall mean the council or commission created by the charter of a city or town which
enacts ordinances and resolutions and is responsible for
the public policy of the city or town;

5. "Administrative authority of a city" shall mean the
officer or body which is responsible for the conduct and
management of the affairs of the city or town in accord-
ance with general law, the charter and the ordinances,
resolutions and orders of the governing body;

6. "County court" shall mean the governmental body
created by article eight, section twenty-two of the West
Virginia constitution;

7. "Commission or planning commission" shall mean a
city planning commission or a county planning commis-
sion;

8. "Comprehensive plan" means a complete compre-
hensive plan or any of its parts such as a comprehensive
plan of land use and zoning, of thoroughfares; of sanita-
tion; of recreation, and other related matters, and includ-
ing such ordinance or ordinances as may be deemed
necessary to implement such complete comprehensive
plan or parts thereof by legislative approval and provision
for such regulations as are deemed necessary and their enforcement;

9. “Public place” includes any tracts owned by the state or its subdivisions;

10. “Streets” includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways;

11. “Unit of government” means any federal, state, regional, county, city, town, or government corporation;

12. “Utility” means any facility used in rendering service which the public has a right to demand;

13. “Person” means individual, firm or corporation.

Sec. 4. Powers Conferred.—Where power is conferred, singly or disjunctively, on the governing body or administrative authority of a city, that power may be exercised only in relation to the city planning commission. Where power is conferred, singly or disjunctively, on the county court, that power may be exercised only in relation to the county planning commission.

Sec. 5. City Planning Commission; Membership.—The city planning commission shall consist of not less than five nor more than fifteen citizens, all of whom shall be
freeholders and residents of the municipality, who shall be qualified by knowledge and experience in matters pertaining to the development of the city, who shall include representatives of business, industry and labor, three-fifths of all members shall have been residents of the municipality for at least ten years prior to nomination, and who shall be nominated by the administrative authority and confirmed by the governing body of the city. One member of the commission shall also be a member of the governing body of the city and one member shall also be a member of the administrative department of the city. The term of these two members shall be co-extensive with the term of office to which he has been elected or appointed, unless the administrative authority and governing body of a city, at the first regular meeting of each year, appoint others to serve as the city’s representatives. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be appointed for terms of three
years each. Vacancies shall be filled by appointment for
the unexpired term only. Members of the commission
shall serve without compensation, but shall be reim-
ursed for actual expenses incurred in the performance
of their official duties.

Sec. 6. County Planning Commission; Membership.—
The county planning commission shall consist of not less
than five nor more than fifteen citizens, all of whom shall
be freeholders and residents of the county, who shall be
qualified by knowledge and experience in matters per-
taining to the development of the county, who shall in-
clude representatives of business, industry, labor and
farming, three-fifths of all members shall have been
residents of the county for at least ten years prior to
appointment, and who shall be appointed by the county
court. One member of the commission shall also be a
member of the county court. The term of this member
shall be co-extensive with the term of office to which he
has been elected, unless the county court, at the first
regular meeting of each year, appoints another member
to serve as its representative. The remaining members of
the commission first appointed shall serve respectively
for terms of one year, two years and three years, divided
equally or as nearly equally as possible between these
terms. Thereafter, members shall be appointed for terms
of three years each. Vacancies shall be filled by appoint-
ment for the unexpired term only. Members of the com-
mission shall serve without compensation, but shall be
reimbursed for actual expenses incurred in the perform-
ance of their official duties.

Sec. 7. Advisory Members.—In case the city is situated
in a county which has a county planning commission, a
designated representative of the county planning com-
mision shall be an advisory member of the city planning
commission. In case there is a city planning commission
a designated representative of the city planning com-
mision shall be an advisory member of the county plan-
ning commission. Such advisory members shall have all
the privileges of membership except the right to vote.

Sec. 8. Regular and Special Meetings.—The commis-
sion shall fix the time for holding regular meetings, but it
Enr. S. B. No. 264]

shall meet at least once in the months of January, April,
July and October.

Special meetings of the commission may be called by
the president or by two members upon written request to
the secretary. The secretary shall send to all the mem-
bers, at least two days in advance of a special meeting, a
written notice fixing the time and place of the meeting.

Written notice of a special meeting is not required if
the time of the special meeting has been fixed in a regular
meeting, or if all members are present at the special
meeting.

Sec. 9. Quorum.—A majority of members shall con-
stitute a quorum. No action of the commission is official,
however, unless authorized by a majority of the commis-
sion at a regular or properly called special meeting.

Sec. 10. Officers; Appropriation.—The county court in
the case of the county planning commission, and the gov-
erning body of the city in the case of city planning com-
mision shall provide the commission with suitable offices
for the holding of meetings and the preservation of plans,
maps, documents and accounts, and shall provide by ap-
11 [Enr. S. B. No. 264

7 appropriation a sum sufficient to defray the reasonable ex-
8 penses of the commission.

Sec. 11. Officers.—At its first regular meeting in each
2 year the commission shall elect from its members a presi-
3 dent and vice president. The vice president shall have
4 authority to act as president of the commission during
5 the absence or disability of the president.

Sec. 12. Appointment of Employees.—The commission
2 may appoint and prescribe the duties and fix the com-
3 pensation of a secretary, and such employees as are neces-
4 sary for the discharge of the duties and responsibilities of
5 the commission. All such compensation, however, shall
6 be in conformity to and in compliance with salaries and
7 compensation theretofore fixed by the city or county court
8 of such cities or counties.
9 The commission may make contracts for special or
10 temporary services and any professional counsel. The
11 prosecuting attorney of a county, upon request, shall
12 render legal assistance and service to the county planning
13 commission.
Sec. 13. **City-County Commission; Powers.**—The governing body of any city located in a county having an established planning commission may, by ordinance, designate such county commission as the city planning commission.

A county planning commission designated as a city commission shall have for that city all the powers and duties granted under this act to a city planning commission.

Any city designating a county planning commission as its city planning commission may contract annually to pay the county a proportionate part of the expenses which is properly chargeable to the planning service rendered such city and any such payments received by the county shall be appropriated by the county to the county planning commission in addition to any funds budgeted for planning purposes.

Sec. 14. **Administrative Powers and Duties.**—To effectuate the purposes of this act, the commission shall have the power and duty to:

1. Exercise general supervision of and make regula-
5. Prescribe uniform rules pertaining to its investigations and hearings.

2. Supervise the fiscal affairs and responsibilities of the commission.

4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the commission, such compensation to be in conformity to and in compliance with salaries and compensations theretofore fixed by the governing body of a city or county court of such cities or counties. Delegate to employees authority to perform ministerial acts in all cases except where final action of the commission is necessary.

5. Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission.

6. Make recommendations and an annual report to the governing body of a city or county court concerning the
statement of planning within its jurisdiction.

7. Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this act.

8. Adopt a seal, and certify to all official acts.

9. Invoke any legal, equitable or special remedy for the enforcement of the provisions of the act or ordinance or its action taken thereunder.

10. Prepare and submit an annual budget in the same manner as other departments of city and county government and shall be limited in all expenditures to the provisions made therefor by the governing body of such city or the county court of such county.

11. If deemed advisable, establish an advisory committee or committees.

Sec. 15. Appropriation; Expenditures; Gifts.—After a governing body of a city or a county court has passed an ordinance creating a planning commission, the governing body or county court shall appropriate funds to carry out the duties of the commission.
The planning commission shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.

A city or county may accept gifts and donations for planning commission purposes. Any moneys so accepted shall be deposited with the city or county in a special non-reverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special non-reverting fund only upon vouchers signed by the president and secretary of the planning commission.

Sec. 16. Comprehensive Plan; Purposes.—A planning commission shall make and recommend for adoption to the governing body of the city or the county court, as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction. Any county plan may include the planning of incorporated towns to the extent to which, in the commission's judgment, they are related to the planning of the unincorporated territory
of the county as a whole, provided, however, that the plan shall not be considered as a comprehensive plan for any incorporated town without the consent of the planning commission and the governing body of such incorporated town, and provided further that the county plan shall be coordinated with the plans of the state road commission, insofar as it relates to highways or thoroughfares under the jurisdiction of that commission.

The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show recommendations for the development of the territory covered by the plan and may include, among other things, the general location, character and extent of streets or roads, viaducts, bridges, waterways and waterfront developments, parkways, playgrounds, forests, reservations, parks, airports and other public ways, grounds, places and spaces; the general location and extent of publicly owned utilities and terminals, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places,
spaces, buildings, properties, utilities or terminals; the general character, location and extent of community centers, town sites or housing development; the general location and extent of forests, agricultural areas and open development areas for the purposes of conservation, food and water supply, sanitary drainage facilities or the protection of urban development; a land-classification and utilization program; the distribution of population, and the uses of land for trade, industry, habitation, recreation, agriculture, forestry, soil and water conservation and other purposes.

In the preparation of a comprehensive plan, a planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions within the territory under its jurisdiction. The comprehensive plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the area which will, in accordance with present and future needs and resources, best promote the health, safety, morals, order, convenience, prosperity or general welfare
of the inhabitants, as well as efficiency and economy in the
process of development, including, among other things,
such distribution of population and of the uses of land for
urbanization, trade, industry, habitation, recreation, agri-
culture, forestry and other purposes as will tend:

1. To create conditions favorable to health, safety, trans-
portation, prosperity, civic activities and recreational, edu-
cational and cultural opportunities;

2. To reduce the wastes of physical, financial or human
resources which result from either excessive congestion
or excessive scattering of population; and

3. Toward the efficient and economic utilization, con-
servation and production of the supply of food and water
and of drainage, sanitary and other facilities and re-
sources.

Sec. 17. Comprehensive Plan; Contents.—A comprehen-
sive plan may include a study of the following:

1. Careful and comprehensive surveys and studies of
existing conditions and the probable future growth of the
city and its environs or of the county.

2. Maps, plats, charts and descriptive material present-
ing basic information, locations, extent and character of any of the following:

a. History, population and physical site conditions.
b. Land use, including the height, area, bulk, location and use of private and public structures and premises.
c. Population densities.
d. Community centers and neighborhood units.
e. Blighted and slum areas.
f. Streets and highways, including bridges, viaducts, subways, parkways, alleys and other public ways and places.
g. Sewers, sanitation and drainage, including handling, treatment and disposal of excess drainage waters, sewage, garbage, refuse and other wastes.
h. Stream pollution.
i. Flood control and prevention.
j. Public and private utilities, including water, light, heat, communication and other services.
k. Transportation, including rail, bus, truck, air and water transport and their terminal facilities.
1. Local mass transit, including motor and trolley bus; street, elevated or underground railways and taxicabs.
2. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges and other public grounds, spaces and facilities of a recreational nature.
3. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions and other civic and social service buildings.
4. Education, including location and extent of schools, colleges and universities.
5. Land utilization, including residence, industry, agriculture, forests, and other uses.
6. Conservation of water, soil, agricultural and mineral resources.
7. Any other factors which are a part of the physical, economic or social situation within the city or county.

3. Reports, maps, charts and recommendations setting forth plans for the development, redevelopment, improvement, extension and revision of the subjects and physical situations of the city or county set out in part two of this
section so as to substantially accomplish the object of this legislation as set out in section one of this article.

4. A long-range development program of public works projects, based on the recommended plans of the commission, for the purpose of eliminating unplanned, unsightly, untimely and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up to date by yearly revisions.

5. A long-range financial program of governmental expenditures in order that such development program may be carried out, and the keeping of such program up to date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

Sec. 18. Comprehensive Plan; Public Hearing.—Prior to the adoption of a comprehensive plan, the commission shall give notice and hold a public hearing on the plan and a proposed ordinance for its enforcement. At least thirty days prior to the date set for hearing, the commission shall publish in a newspaper of general circu-
lation in the city or county a notice of the time and place
of the hearing.

Sec. 19. Comprehensive Plan; Adoption.—After a public
hearing has been held, the commission may by resolution
adopt the comprehensive plan and recommend the ordi-
nance to the governing body of the city or the county
court.

Sec. 20. Comprehensive Plan; Certification.—Upon
adoption of the comprehensive plan and the recommenda-
tion of the ordinance, the secretary shall certify a copy
of the plan to the governing body of the city or the
county court.

At the first meeting of the governing body of a city or
the county court after adoption of the plan, the secretary
or a member of the commission shall present the plan and
ordinance to the governing body or the county court.

Sec. 21. Comprehensive Plan; Approval.—After certifi-
cation of the plan and ordinance to the governing body
of a city or the county court, the governing body of the
city or the county court shall proceed to a consideration
of the plan and ordinance and shall either amend, approve
or reject the same. If the ordinance adopting the compre-
hensive plan is required by law to be published, said pub-
lication shall be sufficient if the plan is incorporated by
reference in said ordinance, and it shall not be necessary
to publish the full text of said plan in the ordinance.

Sec. 22. Comprehensive Plan; Rejection or Amendment.

If the governing body of the city or the county court
rejects the plan and ordinance or amends it, then it shall
be returned to the commission for its consideration, with
a written statement of the reasons for its rejection or
amendment.

The commission shall have forty-five days in which to
consider the rejection or amendment and report to the
governing body of a city or the county court. If the com-
mmission approves the amendment, the ordinance shall
stand as passed by the governing body of a city or the
county court as of the date of the filing of the commis-
sion's report with the governing body of a city or the
county court. If the commission disapproves the amend-
ment or rejection, it shall state its reasons in the report,
and the governing body of a city or the county court shall
again consider said plan and ordinance, and its action in
amending or rejecting said plan and ordinance, after such
consideration, shall be final.

In case the commission does not file a report with the
governing body of a city or the county court within forty-
five days, the action in amending or rejecting the ordi-
nance shall become final.

Sec. 23. Comprehensive Plan and Ordinance; Amend-
ment.—After the adoption of a comprehensive plan and
ordinance, all amendments to it shall be adopted accord-
ing to the procedure set forth in sections eighteen through
twenty-two, except that, if the governing body of a city
or the county court desires an amendment it may direct
the planning commission to prepare an amendment and
submit it to public hearing within sixty days after formal
written request by the governing body of a city or the
county court.

Sec. 24. Comprehensive Plan; Validation of Prior Ac-
tion.—The adoption of a comprehensive plan or any gen-
eral development plans by a planning commission under
the authority of prior acts is hereby validated and shall
continue in effect until amended under the authority of
this act.

Sec. 25. Comprehensive Plan; Intergovernmental Co-
operation.—Whenever the commission undertakes the
preparation of a comprehensive plan, the departments
and officials of state, city, county and separate taxing units
operating within lands under the jurisdiction of the com-
mission, shall make available, upon the request of the
commission, such information, documents, and plans as
have been prepared or upon the request of the commission
shall provide such information as relates to the commis-
sion’s activity.

Sec. 26. Comprehensive Plan; Territorial Jurisdiction.—
A city planning commission shall adopt a comprehensive
plan for the development of the city, but the authority of
such city planning commission shall not extend beyond
the corporate limits of the city.

Sec. 27. Cooperation Between Planning Commissions.—
In the exercise of the powers covered by this article, the
3 planning commission of any county or city may cooperate
4 with the planning commissions or legislative and admin-
5 istrative bodies and officials of other counties and of cities
6 and towns within or without such county, with a view
7 to coordinating and integrating the planning and zoning
8 of such county or city with the plans of such other coun-
9 ties and of such cities and towns, and may appoint such
10 committee or committees and may adopt such rules as
11 may be thought proper to effect such cooperation. Such
12 planning commissions and legislative and administrative
13 bodies and officials of other counties and of cities and
14 towns are hereby authorized to cooperate with such
15 county or city planning commissions for the purposes of
16 such co-ordination and integration. Similarly, such county
17 or city planning commissions may cooperate with the
18 conservation commission of West Virginia and make use
19 of advice and information furnished by such commission
20 and by other appropriate state and federal officials, de-
21 partments and agencies and all state departments and
22 agencies having information, maps, and data pertinent to
the planning and zoning of such county or city may make such available for the use of such planning commission.

Sec. 28. Approval of Plats.—After a comprehensive plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk, a plat of a subdivision shall not be recorded by the county clerk unless it has first been approved by the planning commission having jurisdiction over the area.

Sec. 29. Application For Approval.—A person desiring the approval of a plat shall submit a written application for a certificate together with a copy of the proposed plat to the planning commission having jurisdiction. Upon receipt of the application, the commission, if it tentatively approves the application, shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.
Sec. 30. Approval of Plats; Basis for Commission’s Action.—In determining whether an application for approval shall be granted, the commission shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.

2. Coordination with and extension of facilities included in the comprehensive plan.

3. Establishment of minimum width, depth, and area of lots within the projected subdivision.

4. Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience, and the harmonious development of the city or county.

5. Fair allocations of areas for streets, parks, schools, public and semi-public buildings, homes, utilities, business and industry.

As a condition of approval of a plat the commission may specify:

1. The manner in which streets shall be laid out, graded and improved.
2. Provisions for water, sewage, and other utility services.

3. Provision for schools.

4. Provision for essential municipal services.

5. Provision for recreational facilities.

Sec. 31. Approval of Plats; Commission Action.—After hearing and within a reasonable time after application for approval of the plat, the commission shall approve or disapprove it. If the commission approves, it shall affix the commission’s seal upon the plat. If it disapproves, it shall set forth its reasons in its own records and provide the applicant with a copy.

Sec. 32. Approval Fees.—The commission may establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application.

Sec. 33. Plats Filed Without Approval.—After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordi-
nance has been filed with the county clerk, the filing and
recording of a plat involving the subdivision of lands cov-
ered by such comprehensive plan and ordinance shall be
without legal effect unless approved by the commission:

Provided, however, That failure to comply with this sec-
tion shall not invalidate or affect the title to any land
within the area of such plat: And provided further, That
if such plat shall bear the seal of the commission it shall
be presumed to have been approved thereby.

Sec. 34. Plats; Conditional Approval.—The commission
may approve a plat for a subdivision in which the im-
provements and installations have not been completed as
required by the ordinance for the approval of plats if the
applicant provides a bond which shall:

1. Run to the city or county which established the com-
mission.

2. Be in an amount determined by the commission to be
sufficient to complete the improvements and installations
in compliance with the ordinance.

3. Be with surety satisfactory to the commission.
4. Specify the time for the completion of the improvements and installations.

Any funds received from these bonds shall be used by the legally constituted body charged with making public improvements for the city or county only for completion of the improvements and installations for which they were provided, and without prior appropriation. The city or county is authorized to make these improvements and installations.

Sec. 35. Plat Control; Jurisdiction.—After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and re-plats have been adopted and a certified copy of the ordinance has been filed with the county clerk, the city planning commission shall have exclusive control over the approval of all plats involving incorporated land covered by the comprehensive plan and ordinance. The city planning commission shall have exclusive control over the approval of plats involving unincorporated land within its jurisdiction, unless a county court has adopted a comprehensive plan and ordinance, providing for subdivision control and
approval of plats and re-plats covering such lands, in which case the county planning commission shall have exclusive control over the approval.

All control over plats granted by other statutes, so far as they are in harmony with the provisions of this act, shall be transferred to the commission having jurisdiction over the land involved. Existing provisions for platting control, so far as they are inconsistent with the provisions of this act, are hereby repealed.

Sec. 36. Improvement Location Permits.—Within the corporate limits of a city, a structure shall not be located and an improvement location permit for a structure on platted or unplatted lands shall not be issued unless the structure and its location conform to the comprehensive plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on unincorporated lands within the jurisdiction of the commission unless the structure and its location conform to the comprehensive plan and ordinance, except that, if the lands lie within a county which has adopted a comprehensive plan and ordinance, then the city compre-
hensive plan and ordinance shall not apply and the structure must conform to the county comprehensive plan and ordinance.

Sec. 37. Improvement Location Permits; Authority to Control.—The ordinance may designate the official or employee of the city or county who shall have authority to issue improvement location permits within the jurisdiction of the commission and in conformance with the comprehensive plan and ordinance.

Power is granted by this act, to any city having adopted a comprehensive plan and ordinance, for the issuance and control of improvement location permits on unincorporated areas within the jurisdiction of its commission if the lands lie within a county not having adopted a comprehensive plan and ordinance.

Sec. 38. Certiorari Procedure.—A decision of the commission may be reviewed by certiorari procedure the same as that provided for the appeal of zoning cases from the decision of the board of zoning appeals.

A petition for certiorari shall specify the grounds upon which the petition alleges the illegality of the commis-
Such petition must be filed in the circuit court of the county in which the land is located within thirty days after the date of such decision.

Sec. 39. Zoning Authority.—As an integral part of the planning of areas so that adequate light, air, convenience of access, and safety from fire, flood and other danger may be secured; that congestion in the public streets may be lessened or avoided; that the public health, safety, comfort, morals, convenience and general public welfare may be promoted; and that the object of this legislation, as set out in section one of this article, may be further accomplished, the governing body of a city or the county court shall have the following powers:

1. To classify, regulate and limit the height, area, bulk and use of buildings hereafter to be erected.

2. To regulate and determine the area of front, rear, and side yards, courts and other open spaces about such buildings.

3. To regulate and determine the use and intensity of use of land and lot areas.

4. To classify, regulate and restrict the location of
trades, callings, industries, commercial enterprises and
the location of buildings designed for specified uses.

5. To classify and designate the rural lands among agri-
cultural, industrial, commercial, residential, and other
uses and purposes.

6. To divide the city or county into districts of such kind,
character, number, shape and area as may be deemed ne-
cessary to carry out the purposes of this section.

Sec. 40. Zoning Districts.—The various kinds of districts
created and designated as use, height, area, volume or
bulk districts, as well as districts created for any other
purpose necessary to carry out the purposes of section
thirty-nine need not necessarily cover or include the same
territory, and may overlap or coincide. The districts cre-
ated shall also be subject to the following:

1. Regulations as to height, area, bulk and use of build-
ings and as to the area of all yards, courts and open spaces
shall be uniform for each class of buildings throughout
each district.

2. For each district designated for the location of trades,
callings, industries, commercial enterprises or buildings
designated for specified uses, regulations may be enforced
specifying uses that shall be excluded or subjected to rea-
sonable requirements of a special nature and designating
the use for which buildings may not be erected, altered
or used.
3. The regulations in one or more districts of the same
kind or character may differ from those in other like dis-
tricts but shall be uniform for each district.
4. Several parts of the city or county may be classified
within a single district although not contiguous.

Sec. 41. Zoning Districts; Preliminary Study.—In estab-
lishing such districts and regulations the governing body
of a city or the county court shall pay reasonable regard
to existing conditions, the character of buildings erected
in each district, the most desirable use for which the land
in each district may be adapted and the conservation of
property values throughout the city or county.

Sec. 42. Zoning District; Tentative Report.—Recom-
mandations as to the boundaries of districts and the regu-
lations and restrictions to be enforced therein shall be
prepared by the planning commission. The commission
may prepare the tentative report on its own initiative or
the governing body of a city or the county court may re-
quire its preparation.

The commission shall hold public preliminary hearings
and conferences, at such times and places and upon such
notice as it may determine to be necessary to inform and
aid itself in the preparation of the tentative report.

The tentative report, which shall include the proposed
zoning ordinance with explanatory maps, shall be made
to the governing board of a city or the county court by the
planning commission.

Sec. 43. Tentative Report; Action by Legislative Body.—

The governing body of a city or the county court shall con-
sider the tentative report of the planning commission and
shall return it, with any suggestions and recommenda-
tions, to the planning commission for its final report.

No ordinance under authority of this act shall be passed
until after the final report of the planning commission has
been received by the governing body of a city or the
county court.
Sec. 44. Final Report; Action.—After the final report has been submitted by the planning commission the governing body of a city or the county court shall afford all interested persons an opportunity to be heard with reference to it at public hearings convenient for all persons affected to be held at times and places to be specified in notices to be published in a daily newspaper of general circulation in the city or county. The notices shall state the time and places of the hearings, that the report contains a comprehensive zoning ordinance for the city or county, that written objections to the final report filed with the clerk of the governing body of a city or with the county clerk at or before the hearings will be heard and that the hearings will be continued from time to time as may be found necessary. The notice shall be published at least twice within ten days before the time set for the hearings, during which time the final report shall be on file in the office of the planning commission for public examination. Upon completion of the public hearings, the governing body of a city or the county court shall proceed to the consideration of the ordinance.
Sec. 45. Supplemental and Amending Ordinances.—The governing body of a city or the county court may, from time to time, amend, supplement or change the regulations and districts fixed by ordinance pursuant to this article.

Sec. 46. Petitions for Change of Zoning Regulations.—Petitions, duly signed, may be presented to the clerk of the city or the county requesting an amendment, supplement or change of the regulations of the zoning ordinance by:

1. The planning commission.
2. By the owners of fifty percentum or more of the area involved in the petition.

Sec. 47. Proposed Changes; Action.—Amendments, supplements or changes of the regulations of the zoning ordinance shall be considered as amendments to the comprehensive plan. Any proposed ordinance for the amendment, supplement, change or repeal of the zoning ordinance not originating from petition of the planning commission shall be referred to the planning commission for
consideration and report before any final action is taken
by the governing body of a city or the county court.

Prior to the submission to the governing body of a city
or the county court of a planning commission petition or a
report on a proposed ordinance referred to it for an
amendment, supplement, change or repeal of the zoning
ordinance, the planning commission shall give notice and
hold a public hearing in the manner prescribed for adop-
tion of a comprehensive plan in section eighteen of this
article.

Sec. 48. Election; Procedure.—If within sixty days fol-
lowing the approval of the zoning ordinance by the county
court or the governing body of the city a petition is filed
with the county clerk praying for the submission of such
zoning ordinance for approval or rejection to the electors
residing in the area within the jurisdiction of the city or
county planning commission, such ordinance shall not
take effect until the same shall have been approved by a
majority of the electors voting in said election at any
regular or special election called for that purpose. The
petition provided herein may be in any number of coun-
terparts and must be signed by a number of registered voters residing in the area affected by the proposed zoning equal to not less than fifteen per cent of the total votes cast in the affected area for all candidates for governor at the last preceding general election at which a governor was elected. Only registered voters residing in the area affected by the proposed ordinance shall be eligible to vote in said election.

Upon the ballots cast at such election there shall be written or printed the following:

☐ For zoning.

☐ Against zoning.

If a majority of the votes cast upon the question be for zoning, the provisions of said zoning ordinance shall, upon the day the results of such an election are declared, be effective. If a majority of the votes cast be against zoning, the question may again be submitted to a vote at any regular election or election for officers in the manner herein provided.

Elections for the purpose of voting upon the question of zoning may be held at any general, primary or special
33 election which the governing body of a city or the county
34 court in its order submitting the same to a vote may desig-
35 nate.
36 Notice of all zoning elections shall be given by publica-
37 tion of the order calling such election at least once each
38 week for four successive weeks prior to the day of the
39 election in two newspapers of different politics, if there
40 be such, of general circulation in the area in which the
41 election is to be held. If only one newspaper be of general
42 circulation in such area, the notice shall be published as
43 aforesaid therein.
44 Elections shall be held at the voting precincts estab-
45 lished for holding general elections. All the provisions of
46 the general election laws of this state concerning general,
47 primary or special elections, when not in conflict with
48 provisions of this article, shall apply to elections here-
49 under, insofar as practicable.

Sec. 49. Validation of Existing Ordinances.—All zoning
2 ordinances, and all amendments, supplements and changes
3 thereto legally adopted under any prior enabling acts, and
4 all actions taken under the authority of any such ordi-
nances, are hereby validated and continued in effect, until
amended or repealed by action of the governing body of
such city taken under authority of this act. These ordi-
nances shall have the same effect as though previously
adopted as a comprehensive plan of land use or parts
thereof.

Sec. 50. Existing Uses Safeguarded.—Such ordinance or
ordinances shall not prohibit the continuance of the use of
any land, building or structure for the purpose for which
such land, building or structure is used at the time such
ordinance or ordinances take effect, but any addition to
any existing building for the purpose of carrying on any
use prohibited under the zoning regulations applicable to
the district may be prohibited: Provided, however, That
no such prohibition shall apply to alterations, additions
to, replacement of structures, or to the acquisition or use
of land presently owned by any firm or industry but not
used for agricultural or industrial purposes or to the use
or acquisition of additional land which may be required
for the protection, continuing development or expansion
of any agricultural, industrial or manufacturing operation
or any present or future satellite agricultural, industrial
or manufacturing use. If a non-conforming use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structures may be located: Provided, however, That abandonment of any particular agricultural or manufacturing process shall not be construed as abandonment of agricultural or manufacturing use.

Nothing in this article shall be deemed to authorize an ordinance, rule, or regulation which would prevent, outside of urban areas, the complete use and alienation of any timber and any and all minerals, including coal, oil and gas, by the owner or alienee thereof. For the purpose of this section, urban area shall include all lands or lots within the jurisdiction of a city planning commission as defined in this article.

Sec. 51. Board of Zoning Appeals; Creation; Membership; Terms; Vacancies.—As a part of the zoning ordinance, the governing body of a city or the county court shall create a board of zoning appeals consisting of five
members to be appointed by the governing body of a city or the county court.

The members of the board of zoning appeals shall be freeholders and residents of the city or county and three-fifths of such members shall have been residents of the city or county, as the case may be, for at least ten years preceding the time of their appointment. No member of the board of zoning appeals shall be a member of the planning commission nor shall any member hold other elective or appointive office in the city or county government. Members of the board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties.

Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; two for a term of three years. The terms shall expire on the first day of January of the first, second or third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.
If a vacancy occurs, by resignation or otherwise, among the members of the board of zoning appeals, the governing body of a city or the county court shall appoint a member for the unexpired term.

Sec. 52. Officers; Quorum; Employees.—At the first meeting of each year, the board of zoning appeals shall elect a chairman and vice chairman from its members. The vice chairman shall have authority to act as chairman during the absence or disability of the chairman. A majority of members of a board of zoning appeals shall constitute a quorum. No action of the board is official, however, unless authorized by a majority of the board.

The board of zoning appeals may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties all in conformity to and compliance with salaries and compensations therefore fixed by the city or county.

Sec. 53. Offices; Appropriation.—The county court in the case of the county board of zoning appeals, and the governing body of the city in the case of city board of zoning
appeals shall provide the board with suitable offices for
the holding of meetings and the preservation of plans,
maps, documents and accounts, and shall provide by ap-
propriation a sum sufficient to defray the reasonable ex-
penses of the board.

Sec. 54. Rules and Procedures.—The board of zoning ap-
peals shall adopt such rules concerning the filing of ap-
peals and applications for variances and exceptions, giv-
ing of notice and conduct of hearings as shall be necessary
to carry out their duties under the terms of this act.

The board shall keep minutes of its proceedings, keep
records of its examinations and other official actions and
shall record the vote on all actions taken. All minutes and
records shall be filed in the office of the board and shall
be a public record.

Sec. 55. Powers and Duties.—The board of zoning ap-
peals shall:

1. Hear and determine appeals from and review any
order, requirement, decision or determination made by an
administrative official or board charged with the enforce-
ment of any ordinance or regulation adopted pursuant to
sections thirty-nine through forty-nine of this article.

2. Permit and authorize exceptions to the district regu-
lations only in the classes of cases or in particular situa-
tions as specified in the ordinance.

3. Hear and decide special exceptions to the terms of the
ordinance upon which the board is required to act under
the ordinance.

4. Authorize upon appeal in specific cases such variance
from the terms of the ordinance as will not be contrary
to the public interest, where, owing to special conditions,
a literal enforcement of the provisions of the ordinance
will result in unnecessary hardship, and so that the spirit
of the ordinance shall be observed and substantial justice
done.

In exercising its powers, the board of zoning appeals
may reverse or affirm, wholly or partly, or may modify
the order, requirement, decision or determination ap-
pealed from as in its opinion ought to be done in the
premises, and to that end shall have all the powers of the
officer or board from whom the appeal is taken.
Sec. 56. Appeal from Decision of Administrative Official or Board.—An appeal taken from the requirement, decision or the determination made by an administrative official or board charged with the enforcement of any ordinance pursuant to sections thirty-nine through forty-nine of this article shall be filed with the board of zoning appeals.

The appeal shall specify the grounds thereof and shall be filed within such time and in such form as may be prescribed by the board by general rule.

The administrative official or board from whom the appeal is taken shall, upon request of the board of zoning appeals, transmit to it all documents, plans and papers constituting the record of the action from which an appeal was taken.

Sec. 57. Hearing of Appeal.—The board of zoning appeals shall fix a reasonable time for the hearing of an appeal. Public notice shall be given of the hearing and due notice shall be given additionally to the interested parties.

The board of zoning appeals may require the party tak-
ing the appeal to assume the cost of public notice and due
notice to interested parties.

Upon the hearing, any party may appear in person, by
agent or by attorney.

Sec. 58. Severity of Work on Premises.—When an ap-
peal from the decision of any official or board has been
taken and filed with the board of zoning appeals, all pro-
ceedings and work on the premises concerning which the
decision was made shall be stayed unless the official or
board from whom the appeal was taken shall certify to the
board of zoning appeals that, by reason of facts stated in
the certificate, a stay would cause imminent peril to life
or property. In such case, proceedings or work shall not
be stayed except by a restraining order which may be
granted by the circuit court of the county in which the
premises affected are situated, on application, on notice to
the officer or board from whom the appeal is taken and the
owner of the premises affected and on due cause shown.

Sec. 59. Petition for Writ of Certiorari from Decision.—
Every decision of the board of zoning appeals shall be sub-
ject to review by certiorari.
Any person or persons, firm or corporation jointly or severally aggrieved by any decision of the board of zoning appeals, may present to the circuit court of the county in which the premises affected are located a petition duly verified, setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the date of the decision and the order of the boards of zoning appeals complained of.

Sec. 60. Notice to Adverse Parties.—On filing a petition for a writ of certiorari with the clerk of the circuit court of the county in which the premises affected are situated, the petitioner shall cause a notice to be issued and served by the sheriff of the county upon the adverse party or parties, if any, as shown by the record of the appeal in the office of the board of zoning appeals. The adverse party or parties shall be any property owner whom the record of the board of zoning appeals shows to have appeared at the hearing before the board in opposition to the petitioner. If the record shows a written remonstrance or other document opposing the request of
petitioner containing more than three names, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named shall not be required.

The notice shall state that a petition for a writ of certiorari has been filed in the circuit court of the county, asking for a review of the decision of the board of zoning appeals, designating the premises affected and the date of the decision and the time fixed for the return of the writ of certiorari by the board of zoning appeals.

The service of the writ of certiorari by the sheriff on the chairman or secretary of the board of zoning appeals shall constitute notice to the board and to the city or any official or board thereof charged with the enforcement of the zoning ordinance, and no further summons or notice with reference to the filing of such petition shall be necessary.

Sec. 61. Action of Court on Petition.—Upon presentation of a petition for a writ of certiorari, the circuit court of the county in which the premises affected are situated,
or a judge thereof in vacation shall direct the board of zoning appeals within twenty days from the date of such citation, to show cause why a writ of certiorari should not issue. If such board fails to show the satisfaction of the court that a writ should not issue then the court may allow a writ of certiorari directed to the board of zoning appeals. The writ shall prescribe the time in which a return shall be made to it. This time shall not be less than ten days from the date of issuance of the writ and may be extended by the court or judge thereof.

Sec. 62. Stay of Work on Allowance of Writ.—The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected under the decision to be brought up for review. The court may, however, on application and on notice to all parties to the decision and on due cause shown grant such relief as the circumstances of the case may require, including an order staying the work until final determination of the case by the court.

Such staying order may be issued by the court without requiring the petitioner to enter into a written undertak-
Sec. 63. *Return to Writ by Board of Zoning Appeals.*—

The return to the writ of certiorari by the board of zoning appeals must concisely set forth such facts and data as may be pertinent and present material to show the grounds of the decision appealed from.

The return must be verified by the secretary of the board.

The board shall not be required to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.

Sec. 64. *Action by the Court.*—The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make its determination and render its judgment with reference to the legality of the decision of the board of zoning appeals on the facts set out in the return to the writ of certiorari.

If it shall appear to the court that testimony is necessary
for the proper disposition of the matter, it may take evi-
dence to supplement the evidence and facts disclosed by
the return to the writ of certiorari, but no such review
shall be by trial de novo.

In passing upon the legality of the decision of the board
of zoning appeals, the court may reverse or affirm, wholly
or in part, or may modify the decision of the board of zon-
ing appeals brought for review.

Sec. 65. Appeals from Court Judgment.—An appeal
may be taken to the supreme court of appeals of West Vir-
ginia from the final judgment of the court reversing, af-
firming or modifying the decision of the board of zoning
appeals in the same manner, and upon the same terms,
conditions and limitations as appeals in other civil actions.

Sec. 66. Enforcement.—The governing body of a city or
the county court may provide penalties as set out in sec-
tion sixty-eight of this act for failure to comply with the
provisions of any ordinance adopted pursuant to this act
and may declare that the buildings erected, raised or con-
verted or land or premises used in violation of any pro-
vision of any ordinance or regulation made under the au-
authority of sections thirty-nine through sixty-five of this article to be common nuisances and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

Sec. 67. Injunction.—The planning commission, the board of zoning appeals or any designated enforcement official may institute a suit for injunction in the circuit court of the county to restrain an individual or a governmental unit from violating the provisions of this article or of an ordinance enacted pursuant to its terms. The planning commission or the board of zoning appeals may also institute a suit for a mandatory injunction directing an individual or a governmental unit to remove a structure erected in violation of the provisions of this article or of an ordinance enacted pursuant to its terms. If the planning commission or the board of zoning appeals is successful in its suit, the respondent shall bear the costs of the action.

Sec. 68. Penalty.—A person who violates any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars and not more than three hundred dollars.
Sec. 69. Provisions Supplemental.—The provisions of this article are supplemental to and do not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions or officials of the state government by other state statute and these powers shall remain in full force and effect. Powers of supervision and regulation by such divisions of the state government over city, town, county and other local governmental units, individuals, firms or corporations also are not abrogated and shall continue in full effect: Provided, however, That if the county court of Monongalia county shall not create a county planning commission as contemplated herein, the county court of said county is hereby authorized to enact an ordinance for the zoning of any unincorporated territory in said county within one-half mile of the campus of any state-supported institution of higher education. With respect to the zoning of such territory the county court shall have the same authority as is conferred upon municipalities as provided herein.

Sec. 70. Conflict with Other Laws.—Wherever the regulations made under authority of this article require a
greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provision of such statute or local ordinance or regulation shall govern.

Sec. 71. General Repealer.—All acts or parts of acts inconsistent with the provisions of this act are, to the extent of their inconsistence, repealed, except as provided in section seventy. Any town, as herein defined, presently having a zoning ordinance is hereby excepted from the pro-
visions of this section, and such town may continue to enforce said zoning ordinance.

Sec. 72. Severability Clause.—The provisions of this act are considered severable, and if any provision is found to be unconstitutional, it is the intention of the Legislature that the remainder have full force and effect.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect 70 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 20th day of March, 1959.

Governor