WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1962

ENROLLED

HOUSE BILL No. 20

(By Mr. Speaker, Mr. Singleton)

PASSED January 26, 1962

In Effect From Passage

Filed in Office of the Secretary of State of West Virginia FEB 5 1962
JOE F. BURDETT
SECRETARY OF STATE
AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending article seven thereof, relating to the executive department of state government.

State Executive and Budget Amendment.

Be it enacted by the Legislature of West Virginia:

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

That article seven of the constitution of West Virginia
be amended to read as follows:

"Article VII. The Executive.

Section 1. Governor.—The chief executive power of the State shall be vested in a Governor, who shall cause the laws to be faithfully executed. He may require the Attorney General to institute and prosecute appropriate actions and proceedings in the courts, brought in the name of the State, to enforce compliance with the laws.

Sec. 2. Elected Officers.—In addition to a Governor, there shall be an Attorney General, who shall be the chief legal officer of the State, an Auditor, who shall be the chief fiscal officer of the State, a Commissioner of Agriculture, a Secretary of State and a Treasurer. These officers shall be elected by the qualified voters of the State, and the election shall be held at such times and places as may be prescribed by law. Their terms of office shall be four years and until their successors as designated herein have qualified. Their terms shall commence on the first Monday after the second Wednesday of January next after their election. During their terms of office, they shall reside within the county in which
the seat of government is located. Unless otherwise pro-
vided by law, they shall keep at the seat of government
the public records, books and papers pertaining to their
respective offices. They shall have such powers and per-
form such duties as may be prescribed by this constitu-
tion or by law.

Sec. 3. Election Returns; Contests.—The returns of
every election for the officers named in section two of
this article shall be sealed and transmitted by the re-
turning officers to the Secretary of State, directed to the
Speaker of the House of Delegates, who shall, immediately
after the organization of the House, before proceeding to
other business, and in the presence of a majority of the
members of each House of the Legislature, open and pub-
lish the returns. The person having the highest number
of votes for each of the offices shall be declared elected;
but if two or more shall have the highest and equal
number of votes for the same office, one of them shall be
chosen for the office by joint vote of a majority of the
members of both Houses.

Contested elections for these state elective offices shall
be determined in such manner as may be prescribed by law.

Sec. 4. Eligibility.—None of the officers named in section two of this article shall hold any other office during the term of his service. A person who has been elected or has served as Governor during all or any part of two consecutive terms shall be ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms.

Sec. 5. Executive and Administrative Organization.—Except for the offices of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and governing boards of institutions of higher education, all executive and administrative offices, departments, and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by the Legislature among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. However, temporary commissions for special purposes may be established by law, and such
commissions need not be allocated within a principal department.

Except for the offices of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and the governing boards of institutions of higher education, each principal department shall be under the supervision of the Governor. The head of each such principal department shall be a single executive unless otherwise provided by law.

The Legislature, in compliance with these provisions, shall prior to the first day of July, one thousand nine hundred sixty-three, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the state government among and within the principal departments. If such allocation shall not have been completed within the time limited, the Governor shall call an extraordinary session of the Legislature to which he shall submit a plan or plans for consideration to complete such allocation; and no other matters shall be considered at such session.

Sec. 6. Appointment and Removal of Officers.—The
Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint, to serve at the pleasure of the Governor during their terms of office and until the appointment and qualification of their successors, the heads of the principal departments which are under his supervision, whether the head be a single executive or members of a board, commission, or other body prescribed by law.

Without such advice and consent, unless otherwise provided by law, the Governor shall also appoint all other officers whose offices are established by this Constitution or shall be created by law and whose appointment or election is not otherwise provided; and no such officers, except officers of the Legislature, shall be appointed or elected by the Legislature. Except as otherwise provided by general laws, such officers shall serve at the pleasure of the Governor. He shall also have the power to remove any officer, in the manner prescribed by law, for incompetency, neglect of duty, gross immorality, malfeasance in office, or official misconduct. The Governor shall fill
any vacancies in such offices in the manner prescribed by law. Unless removed, such officers shall continue to serve until their successors are appointed and qualified.

Sec. 7. Governor's Messages.—The Governor shall, at the beginning of each session, and at such other time as he may deem necessary, give to the Legislature information by message as to the condition and affairs of the State, and shall in like manner recommend such measures as he shall deem desirable or expedient.

Sec. 8. Extraordinary Legislative Session.—The Governor may convene the Legislature in extraordinary session whenever, in his opinion, the interest of the State requires it; and it shall be his duty to convene the Legislature on application in writing of three fifths of the members elected to each House. When convened at the Governor's instance, the Legislature shall enter upon no business except that stated in the proclamation by which it was convened.

Sec. 9. Legislature's Meeting Place.—The Governor may direct that sessions of the Legislature be held at some convenient place other than the seat of government
whenever from the presence of an enemy, or from any other cause, it shall become an unsafe place for the meeting of the Legislature.

Sec. 10. Commander-in-Chief of Armed Forces.—The Governor shall be commander-in-chief of the armed forces of the State (except when they shall be called into the service of the United States), and may call the same out to enforce the execution of the laws, suppress insurrection, or repel invasion.

Sec. 11. Executive Clemency.—The Governor shall have and may exercise general powers of executive clemency, including the power to commute capital punishment and other sentences, to grant reprieves, to remit fines and penalties in whole or in part, and except where the prosecution has been carried on by the House of Delegates, to grant full or conditional pardons after conviction. The Legislature may by law provide for a board composed of not more than three members, to be appointed by the Governor and to serve during his will and pleasure, to which board he may delegate any or all of his powers of executive clemency, except the power to
commute capital punishment. The Governor or the board, as the case may be, shall report to each House of the Legislature at every regular session thereof, and at such other times as required by either House, the particulars of every case in which executive clemency has been granted since the last preceding report. The report shall be in such form and detail as may be prescribed by law.

Sec. 12. Governor's Approval or Disapproval of Bills Passed by the Legislature.—Except as otherwise provided in this Constitution, every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and may proceed to reconsider the bill. Upon such reconsideration, if a majority of the members elected to that House agree to pass the bill, it shall be sent, together with the objections of the Governor to the other House, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that House, it
shall become a law notwithstanding the objections of
the Governor: Provided, That, if upon such reconsider-
ation the bill be amended and reenacted, then it shall
be again sent to the Governor and he shall act upon it
as if it were before him for the first time. In all such
cases, the vote of each House shall be determined by
yeas and nays to be entered on the journal.

Any bill which shall not be returned by the Governor
within five days, Sunday excepted, after it shall have
been presented to him, shall be a law, in the same manner
as if he had signed it, unless the Legislature shall, by
adjournment, prevent its return; in which case it shall
be filed with his objections in the office of an officer pre-
scribed by law within fifteen days, Sundays excepted,
after such adjournment, or become a law.

Sec. 13. Salaries of Elected Officers.—The Governor,
Attorney General, Auditor, Commissioner of Agriculture,
Secretary of State and Treasurer shall each receive for
his services a salary to be fixed by law, which shall not
be increased or diminished during his official term, and
for the performance of any official duty he shall not re-
receive to his own use any fees, costs, perquisites of office
or compensation, except his salary. He shall account for
and pay over in the manner provided by law all moneys
collected by him by virtue of his office.

Sec. 14. Vacancy in Governorship; Judicial Determination.—In the event of a vacancy in the office of Governor
resulting from death, resignation or removal of a Governor
in office, or the death of a Governor-elect or his failure
to qualify, or from any other cause, the functions, powers,
duties and emoluments of the office shall devolve, first,
upon the President of the Senate; second, upon the
Speaker of the House of Delegates; and then upon such
officers and in such order of succession as may be pro-
vided by law; and in any of these cases, except as other-
wise provided herein, the person designated shall serve
until a successor shall be elected and qualified as herein
provided.

The office of Governor shall be deemed vacant if the
Supreme Court of Appeals finds and declares that a Gov-
ernor in office is unable to discharge the duties of the
office by reason of his mental, physical, or other disability:
Provided, however, That such vacancy shall cease to exist if, prior to the election of a person to fill the vacancy, the court shall find and declare that the inability to discharge the duties of the office by reason of his mental, physical or other disability has ceased to exist.

Upon the filing of a verified petition in writing by one third of the members elected to each House of the Legislature, alleging valid and reasonable grounds for declaring the office of Governor vacant or that the inability which created a vacancy has ceased to exist, the Supreme Court of Appeals shall have original jurisdiction, by quo warranto or other appropriate proceedings, to hear and determine questions concerning a vacancy in the office of Governor. The court may proceed to hearing on such petition and make such findings and determinations as may be warranted. Such proceedings shall have precedence over all other matters before the court, and may be heard in a regular or special term. In the event the court finds that a vacancy does or does not exist, a mandate declaratory thereof shall be issued by the court. The provisions of this section may be implemented by rules
of court, but no rule shall impede or unnecessarily delay
the expeditious hearing and determination herein con-
templated.

Sec. 15. Other Elective Office Vacancies.—In the event
of a vacancy in the office of Attorney General, Auditor,
Commissioner of Agriculture, Secretary of State or Treas-
urer resulting from death, resignation, or removal of the
person in office, or the death of the person elected to
the office, or from any other cause, the Governor shall
nominate and, by and with the advice and consent of
the Senate (a majority of all the Senators elected con-
curring by yeas and nays), appoint a person to fill the
vacancy. The appointee shall, upon qualifying, hold the
office, unless he be removed, until his successor shall be
appointed, or elected, and qualified.

Sec. 16. Elections to Fill Vacancies.—Whenever a va-
cancy shall occur in the office of Governor, Attorney Gen-
eral, Auditor, Commissioner of Agriculture, Secretary of
State or Treasurer, a successor shall be elected to fill the
unexpired term at the general election next succeeding
the vacancy, unless the vacancy shall occur within sixty
days immediately preceding such general election, in
which case a successor shall not be elected to fill the
unexpired term.
Notwithstanding the provisions of section three of this
article, the returns of an election for any such officer for
an unexpired term shall be directed to an officer pre-
scribed by law who shall open and publish the returns,
and declare the results in such manner as may be provided
by law: Provided, however, That if two or more candi-
dates have the highest and equal number of votes for the
same office, one of them shall be chosen and declared
elected to the office by joint vote of a majority of the
members of both Houses of the Legislature in the regular
or extraordinary session next succeeding the election.
Sec. 17. Vacancies Filled in Recess of Legislature.—In
the event of a vacancy, during a recess of the Senate,
in any office the appointment to which requires confirma-
tion by the Senate, the Governor shall appoint a person
to such office, who, upon qualifying, shall hold the office,
unless he be removed, for the time herein provided.
The nomination of the person thus appointed during a
recess shall be deemed made to the Senate by the Governor at the time of the appointment, unless the nomination be withdrawn by the Governor prior to confirmation by the Senate. A person so nominated, when confirmed by the Senate (a majority of all the Senators elected concurring by yeas and nays), shall hold the office during the remainder of the term, unless he be removed, and until his successor shall be appointed, or elected, and qualified. If such an interim appointment is not confirmed, it shall expire upon the adjournment of the regular or extraordinary session of the Legislature next after the appointment or when the appointee has been rejected by the Senate, whichever shall first occur.

If a vacancy in any such office shall exist during a regular or extraordinary session of the Legislature, the Governor shall, if practicable, forward to the Senate before its adjournment the name of the person nominated to fill such vacancy.

No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall a
person, whose nomination for an office failed to be con-
firmed, be eligible, prior to the next regular session of the
Legislature, for an interim appointment to the same
office.

Sec. 18. Budget and Supplementary Appropriation Bills.
—The Legislature shall not appropriate any money out of
the treasury except in accordance with the provisions of
this section.

Sub-Section A—Appropriation Bills

(1) Every appropriation bill shall be either a budget
bill, or a supplementary appropriation bill, as hereinafter
provided.

Sub-Section B—Budget Bills

(2) Within ten days after the convening of the regular
session of the Legislature in odd-numbered years, unless
such time shall be extended by the Legislature, and on
the second Wednesday of January in even-numbered
years, the Governor shall submit to the Legislature a
budget for the next ensuing fiscal year. The budget shall
contain a complete plan of proposed expenditures and
estimated revenues for the fiscal year and shall show the
estimated surplus or deficit of revenues at the end of the fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves and surplus or deficit of the State; (c) the debts and funds of the State; (d) an estimate of the State's financial condition as of the beginning and end of the fiscal year covered by the budget; (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the State's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law, (a) for the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor;
(d) for payment and discharge of the principal and interest of any debt of the State created in conformity with the Constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the State under the Constitution and laws of the State; (f) for such other purposes as are set forth in the Constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each House the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each House shall promptly cause the bill to be introduced therein, and such bill shall be known as the 'Budget Bill'. The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he may deliver such an amendment or supplement to the presiding officers of both Houses; and the amendment or supplement shall
thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or diminishing the items therein: Provided, however, That the Legislature shall not increase the estimate of revenues submitted in the budget without the approval of the Governor: Provided further, That, except as otherwise provided in this Constitution, the salary or compensation of any public officer shall not be increased or diminished during his term of office; and the bill when and as passed by both Houses shall be law immediately without further action by the Governor.

(6) The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either House of the Legislature it shall be their duty, to appear and be
heard with respect to any budget bill, and to answer inquiries relative thereto.

Sub-Section C—Supplementary Appropriation Bills

Neither House shall consider other appropriations for the next ensuing fiscal year until the budget bill for such year has been finally acted upon by both Houses, and no such other appropriations whether supplementing the budget for a current fiscal year or the next ensuing fiscal year, shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in the bill unless it appears from such budget that there is sufficient revenue available; (c) no supplementary appropriation bill shall become a law unless it be passed in each House by a vote of a majority of the members present, and the yeas and nays recorded on its final passage.
Each supplementary appropriation bill shall be presented to the Governor of the State as provided in section twelve of this article and thereafter all the provisions of that section shall apply.

Sub-Section D—General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during the extended session except a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power, and it shall be his duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such
form and at such times as he shall direct. The estimates
for the legislative department, certified by the presiding
officer of each House, and for the judiciary, as provided
by law, certified by the Auditor, shall be transmitted to
the Governor in such form and at such times as he shall
direct, and shall be included in the budget.

(10) The Governor may provide for public hearings
on all estimates and may require the attendance at such
hearings of representatives of all agencies and all insti-
tutions applying for state moneys. After such public
hearings he may, in his discretion, revise all estimates
except those for the legislative and judiciary departments.

(11) The Legislature may, from time to time, enact
such laws, not inconsistent with this section, as may be
necessary and proper to carry out its provisions.

(12) In the event of any inconsistency between any of
the provisions of this section and any of the other pro-
visions of the Constitution, the provisions of this section
shall prevail. But nothing herein shall be construed as
preventing the Governor from calling extraordinary ses-
sions of the Legislature, as provided by section eight of
this article, or as preventing the Legislature at such ex-
traordinary sessions from considering any emergency ap-
propriation or appropriations.

(13) If any item of any appropriation bill passed under
the provisions of this section shall be held invalid upon
any ground, such invalidity shall not affect the legality
of the bill or of any other item of such bill or bills."

Sec. 2. Amendment to Be Known as the "State Executive
and Budget Amendment".—For convenience in refer-
ring to said proposed amendment, and in the prepara-
tion of the form of the ballot hereinafter provided for,
said proposed amendment is hereby designated as the
"State Executive and Budget Amendment".

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

For ratification of State Executive and Budget Amendment.

Against ratification of State Executive and Budget Amendment.

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

Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.—As soon as the result is ascertained, the commissioners, or a majority of them, and the
canvassers. (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at precinct No. _____, in the district of _______________________, in the county of ______________________, on the ______ day of ______________________, one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

"For ratification of State Executive and Budget Amendment _______________ __________ votes.

"Against ratification of State Executive and Budget Amendment _______________ __________ votes.

"Given under our hands this ______ day of ______________________, one thousand nine hundred sixty-two."

The said two certificates shall correspond with each other in all respects and contain the full and true returns
in said election at each place of voting on said question.

The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the court house at the same time the ballots, poll books, and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of .......... , having carefully and impartially ex-
examined the returns of the election held in said county,
in each district thereof, on the .......... day of November,
one thousand nine hundred sixty-two, do certify that the
results of the election in said county, on the question of
the ratification or rejection of the proposed amendment is
as follows:

"For ratification of State Executive and Budget Amend-
ment __________ votes.

"Against ratification of State Executive and Budget
Amendment __________ votes.

"Given under our hands this........... day of ............
.......... ..., one thousand nine hundred sixty-two."

One of the certificates shall be filed in the office of the
clerk of the county court, and the other forwarded by
mail to the secretary of state, who shall file and preserve
the same until the day on which the result of said elec-
tion in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

On the twenty-fifth day after the election is held, or as
soon thereafter as practicable, the said certificates shall
be laid before the governor, whose duty it shall be to
ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed in the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification, as part of the constitution of the state.

Sec. 6. Publication of Proposed Amendment by Governor.—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect From passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 5th day of February, 1962.

[Signature]
Governor