

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1962



ENROLLED

HOUSE BILL No... 23....

(By Mr. *Speaker*, Mr. *Dingleton*, and Mr. *Mitchell*)



PASSED *February 8* 1962

In Effect *July 1, 1962* Reseage



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JOE F. BURDETT
SECRETARY OF STATE

23

ENROLLED

House Bill No. 23

(By MR. SPEAKER, MR. SINGLETON, and MR. MITCHELL)

[Passed February 8, 1962; in effect July 1, 1962.]

AN ACT to amend and reenact sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to coal mining.

Be it enacted by the Legislature of West Virginia:

That sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 1. Administration; Enforcement.

Section 5. Eligibility; Salary.—The director of the department of mines shall be a male citizen of West Virginia, shall be a competent person of good repute and

4 temperate habits and shall have had at least fifteen years'
5 experience underground in coal mines, at least ten of
6 which shall have been underground in mines in this
7 state. He shall possess a practical knowledge of the dif-
8 ferent systems of working, ventilating and draining coal
9 mines, and a practical and scientific knowledge of all
10 noxious and dangerous gases found in such mines. A
11 diploma in mining engineering from the West Virginia
12 University school of mines, or any similarly accredited
13 engineering school shall be counted as two years' work-
14 ing experience. The director shall devote all of his time
15 to the duties of his office, and shall not be directly or
16 indirectly interested financially in any mine in this state.
17 The salary of the director of the department of mines
18 shall be fourteen thousand dollars per year, and traveling
19 expenses, which shall be paid out of the state treasury
20 upon a requisition upon the state auditor, properly certi-
21 fied by the director of the department of mines.

Sec. 7. Mine Inspectors; Districts and Divisions; Em-
2 **ployment; Tenure; Oath; Bond.**—Notwithstanding any
3 other provisions of law, mine inspectors shall be selected,
4 serve and be removed as in this article provided.

5 The director of the department of mines shall divide
6 the state into not more than forty-five mining districts,
7 and not more than five mining divisions, so as to equalize,
8 as far as practical, the work of each inspector. He may
9 assign inspectors to districts, designate and assign ~~not~~
10 more than one inspector at large to each division and
11 one assistant inspector at large. He shall designate the
12 places of abode of inspectors at points convenient to the
13 mines of their respective districts, and, in the case of in-
14 spectors and assistant inspectors at large, their respective
15 divisions.

16 Mine inspectors serving as such on the first day of
17 July, one thousand nine hundred fifty-eight may continue
18 to serve for a probationary period not exceeding one year
19 and if eligible as prescribed by section eight of this article,
20 may qualify for appointment during such probationary
21 period in accordance with the provisions of said section
22 eight: *Provided, however,* That in the event the mine
23 inspectors' examining board is unable to provide an ade-
24 quate register of certified eligible candidates for appoint-
25 ment prior to the first day of July, one thousand nine

26 hundred fifty-nine, said mine inspectors serving on a
27 probationary basis as aforesaid may at the discretion of
28 the director continue to serve at the will and pleasure of
29 the director until such time as an eligible candidate has
30 been furnished, said additional period of service not to
31 extend beyond midnight on the thirty-first day of Decem-
32 ber, one thousand nine hundred fifty-nine.

33 Except as in the next preceding paragraph provided,

SP. 34 all mine inspectors appointed after the mine inspectors'
EXAMINING 35 [✓] examining board has certified to the director of the depart-
36 ment of mines an adequate register of qualified eligible
37 candidates in accordance with section eight of this article,
38 so long as such register contains the names of at least
39 three qualified eligible candidates, shall be appointed
40 from the names on such register. Each original appoint-
41 ment shall be made by the director of the department of
42 mines for a probationary period of not more than one
43 year.

44 The director of the department of mines shall make
45 each appointment from among the three qualified eligible
46 candidates on the register having the highest grades or

47 from mine inspectors serving on the first day of July,
48 one thousand nine hundred fifty-eight, and since that
49 date on a probationary basis as hereinbefore provided
50 and who qualify according to section eight of this article:

51 *Provided, however,* That the director of the department
52 of mines may, for good cause, at least thirty days prior
53 to making an appointment, strike any name from the
54 register. Upon striking any name from the register the
55 director of the department of mines shall immediately
56 notify in writing each member of the mine inspectors'
57 examining board of his action, together with a detailed
58 statement of the reasons therefor. Thereafter the mine
59 inspectors' examining board, after hearing, if it finds that
60 the action of the director of the department of mines was
61 arbitrary or unreasonable, may order the name of any
62 candidate so stricken from the register to be reinstated
63 thereon. Such reinstatement shall be effective from the
64 date of removal from the register.

65 Any candidate passed over for appointment for three
66 years shall be automatically stricken from the register.

67 After having served for a probationary period of one

68 year to the satisfaction of the director of the department
69 of mines, a mine inspector shall have permanent tenure
70 until he becomes sixty-five years of age, subject only to
71 dismissal for cause in accordance with the provisions of
72 section eight of this article. No mine inspector while in
73 office shall be directly or indirectly interested as owner,
74 lessor, operator, stockholder, superintendent or engineer
75 of any coal mine. Before entering upon the discharge of
76 his duties as a mine inspector, he shall take the oath of
77 office prescribed by the constitution, and shall execute
78 a bond in the penalty of two thousand dollars, with se-
79 curity to be approved by the director of the department
80 of mines, conditioned upon the faithful discharge of his
81 duties, a certificate of which oath and bond shall be filed
82 in the office of the secretary of state.

83 The district inspectors, inspectors at large and assistant
84 inspectors at large, together with the director, shall make
85 all inspections authorized by articles one and two of this
86 chapter and shall perform such other duties as are im-
87 posed upon mine inspectors by articles one, two and six
88 of this chapter.

Sec. 8. Eligibility for Appointment as Mine Inspector;

2 Qualifications; Salary and Expenses; Removal.—(a) No
3 person shall be eligible for appointment as a mine inspec-
4 tor after the effective date of this article unless, at the
5 time of his probationary appointment he: (1) Is a citizen
6 of West Virginia, in good health, not less than thirty nor
7 more than fifty-five years of age, and of good character,
8 reputation and temperate habits; (2) has had at least
9 ten years' practical experience in coal mines, at least five
10 years of which, immediately preceding his original ap-
11 pointment, shall have been in mines in this state: *Pro-*
12 *vided, however,* That graduation from the school of mines
13 of West Virginia University or any other accredited col-
14 lege of mining engineering shall be considered the equiva-
15 lent of two years' practical experience; (3) has had prac-
16 tical experience with dangerous gases found in coal mines;
17 and (4) has a good theoretical and practical knowledge
18 of mines, mining methods, mine ventilation, sound safety
19 practices and applicable mining laws.

20 (b) In order to qualify for appointment as a mine
21 inspector an eligible applicant shall submit to a written

22 and oral examination by the mine inspectors' examining
23 board and furnish such evidence of good health, character
24 and other facts establishing eligibility as the board may
25 require. If the board finds after investigation and exami-
26 nation that an applicant: (1) Is eligible for appointment
27 and (2) has passed all written and oral examinations,
28 with a grade of at least ninety per cent, the board shall
29 add such applicant's name and grade to the register of
30 qualified eligible candidates and certify its action to the
31 director of the department of mines. No candidate's
32 name shall remain in the register for more than three
33 years without requalifying.

34 (c) Salaries of district inspectors shall not be less than
35 seventy-five hundred dollars nor more than eighty-four
36 hundred dollars per annum; assistant inspectors at large
37 not less than eight thousand dollars nor more than eighty-
38 seven hundred dollars per annum; inspectors at large not
39 less than eighty-four hundred dollars nor more than nine
40 thousand dollars per annum, and reasonable traveling ex-
41 penses. Within the limits provided by law, the salary
42 of each inspector shall be fixed by the director of the

43 department of mines, subject to the approval of the mine
44 inspectors' examining board. In fixing salaries of mine
45 inspectors, the director of the department of mines shall
46 consider ability, performance of duty and experience. No
47 reimbursement for traveling expenses shall be made ex-
48 cept upon an itemized account of such expenses submitted
49 by the inspector, who shall verify, upon oath, that such
50 expenses were actually incurred in the discharge of his
51 official duties.

52 (d) A mine inspector, after having received a perma-
53 nent appointment shall be removed from office only for
54 physical or mental impairment, incompetency, neglect of
55 duty, drunkenness, malfeasance in office, or other good
56 cause.

57 Proceedings for the removal of a mine inspector may
58 be initiated by the director of the department of mines
59 whenever he has reasonable cause to believe and does
60 believe that adequate cause exists, warranting removal.
61 Such a proceeding shall be initiated by a verified petition,
62 filed with the board by the director of the department of
63 mines, setting forth with particularity the facts alleged.

64 Not less than twenty reputable citizens, who are oper-
65 ators or employees in mines in the state, may petition
66 the director of the department of mines for the removal
67 of a mine inspector. If such petition is verified by at
68 least one of the petitioners, based on actual knowledge
69 of the affiant, and alleges facts which, if true, warrant
70 the removal of the inspector, the director of the depart-
71 ment of mines shall cause an investigation of the facts
72 to be made. If, after such investigation, the director finds
73 that there is substantial evidence which, if true, warrants
74 removal of the inspector, he shall file a petition with the
75 board requesting removal of the inspector.

76 On receipt of a petition by the director of the depart-
77 ment of mines seeking removal of a mine inspector the
78 board shall promptly notify the inspector to appear before
79 it at a time and place designated in said notice, which
80 time shall be not less than fifteen days thereafter. There
81 shall be attached to the copy of the notice served upon
82 the inspector a copy of the petition filed with the board.

83 At the time and place designated in said notice, the
84 board shall hear all evidence offered in support of the

85 petition and on behalf of the inspector. Each witness
86 shall be sworn and a transcript shall be made of all evi-
87 dence taken and proceedings had at any such hearing.
88 No continuance shall be granted except for good cause
89 shown.

90 The chairman of the board and the director of the de-
91 partment of mines shall have power to administer oaths
92 and subpoena witnesses.

93 Any mine inspector who shall wilfully refuse or fail
94 to appear before the board, or having appeared, shall
95 refuse to answer under oath any relevant question on the
96 ground that his testimony or answer might incriminate
97 him, or shall refuse to waive immunity from prosecution
98 on account of any relevant matter about which he may
99 be asked to testify at any such hearing before the board,
100 shall forfeit his position.

101 If, after hearing, the board finds that the inspector
102 should be removed, it shall enter an order to that effect.

103 The decision of the board shall be final and shall not be
104 subject to judicial review.

Article 2. Coal Mines.

Section 5. Ventilation of Mines in General.—The operator or mine foreman of every coal mine, whether worked by shaft, slope or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In mines classified as gassy the quantity of air passing through the last open crosscut between the intake and return in any set of entries shall be not less than six thousand cubic feet of air per minute, and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases: *Provided, however,* That the quantity of air reaching the last crosscut in pillar sections may be less than six thousand cubic feet per minute if at least six thousand cubic feet of air per minute is being delivered to the intake of the pillar line. In nongassy mines the quantity of air being circulated shall not be less than one hundred fifty cubic feet per man per minute. If animals are used in a mine, five hundred cubic feet per animal per minute must be provided in addition to the minimum volume specified for men. The air current shall under any conditions have a suffi-

21 cient volume and velocity to reduce and carry away
22 smoke from blasting and any flammable or harmful
23 gases. All active underground working places in a mine
24 shall be ventilated by a current of air containing not less
25 than nineteen and five-tenths per centum of oxygen, and
26 not more than one per centum of carbon dioxide, and no
27 harmful quantities of other noxious or poisonous gases.
28 As working places advance, crosscuts for air shall be
29 made not to exceed eighty feet apart in pillars, or line
30 brattice or other approved methods of ventilation shall
31 be used so as to properly ventilate the face. With the
32 approval of the state department of mines, greater dis-
33 tances than those so specified may be made between
34 crosscuts. All crosscuts between the main intake and
35 return airways not required for passage of air and equip-
36 ment shall be closed with stoppings substantially built
37 with incombustible material, so as to keep working places
38 well ventilated.

39 In gassy mines a system of bleeder openings or air
40 courses designed to provide positive movement of air
41 through and/or around abandoned or caved areas, suffi-

42 cient to prevent dangerous accumulation of gas in such
43 areas and to minimize the effect of variations in atmos-
44 pheric pressure, shall be made a part of pillar recovery
45 plans projected after the effective date of this article.

46 If a bleeder return is closed as a result of roof falls or
47 water during pillar recovery operations, pillar operations
48 may continue without reopening the bleeder return so
49 long as a minimum of twelve thousand cubic feet of
50 air per minute is delivered to the intake of the pillar
51 line.

52 Not more than sixty persons shall be permitted to work
53 in the same air current: *Provided*, That a larger number,
54 not exceeding eighty persons, may be allowed by the
55 director of the department of mines where it is imprac-
56 ticable to comply with the foregoing requirements.

57 No operator or mine foreman shall permit any persons
58 ~~to~~^{to} work where they are unable to maintain the quantity
59 and quality of the air current as heretofore required:
60 *Provided, however*, That such provision shall not pro-
61 hibit the employment of men to make places of employ-
62 ment safe.

63 The ventilation of any mine shall be so arranged by
64 means of airlocks, overcasts, or undercasts, that the use
65 of doors on passageways where men or equipment travel
66 may be kept to a minimum. Where doors are used in a
67 gassy mine they shall be erected in pairs so as to provide
68 a ventilated airlock, unless the doors are operated me-
69 chanically: *Provided, however,* That such provisions shall
70 not apply to doors in or between panel or room entries.
71 In mines not classified gassy, single doors may be used,
72 provided such doors are closed promptly after men or
73 equipment have passed through them.

74 Overcasts or undercasts shall be constructed of incom-
75 bustible material and maintained in good condition.

76 Where practicable, a crosscut shall be provided at or
77 near the face of each entry or room before such places
78 are abandoned.

79 Rooms, entries, airways, or other working places shall
80 not be driven in advance of air currents. Such provisions
81 shall not prohibit, as the room, entry or aircourse ad-
82 vances, the "necking" of any place for a distance which
83 shall not exceed that actually required for the installation

84 of mining equipment in use at this location: *Provided,*
85 *however,* That such room necks or entries are kept free
86 of accumulations of methane by use of line brattice or
87 other adequate means.

Sec. 13. Same; Instruction of Employees.—It shall be
2 the duty of the mine foreman, or the assistant mine fore-
3 man, of every coal mine in this state, to see that every
4 person employed to work in such mine shall, before be-
5 ginning work therein, be instructed in the particular
6 danger incident to his work in such mine, and furnished
7 a copy of the mining laws and rules of such mine. Every
8 inexperienced person so employed shall work under the
9 direction of the mine foreman, his assistant, or such
10 other experienced worker as may be designated by the
11 mine foreman or assistant, until he is familiar with the
12 danger incident to his work.

13 Persons whose duties require them to use a flame safety
14 lamp shall be examined at least annually as to their
15 competence by a certified man and a record that such
16 examination was given, together with pertinent data

17 relating thereto, shall be kept on file by the operator and
18 a copy furnished to the department of mines.

Sec. 55. Protective Clothing.—Welders and helpers
2 shall use proper shields or goggles to protect their eyes.
3 All employees shall have approved goggles or shields and
4 use same where there is a hazard from flying particles,
5 or other eye hazards.

6 Employees engaged in haulage operations and all other
7 persons employed around moving equipment on the sur-
8 face and underground shall wear snug-fitting clothing.

9 Protective gloves shall be worn when material which
10 may injure hands is handled, but gloves with gauntleted
11 cuffs shall not be worn around moving equipment.

12 Safety hats and safety-toed shoes shall be worn by all
13 men while in or around a mine.

Sec. 58. Fire Protection.—Suitable fire protection shall
2 be provided at surface installations of fans, shops, tipples
3 and preparation plants, substations, hoist rooms and
4 compressor stations.

5 Underground storage places for lubricating oil and

6 grease in excess of two days' supply shall be of fireproof
7 construction.

8 Lubricating oil and grease kept in face regions or other
9 underground working places in a mine shall be in portable
10 closed, metal containers.

11 At underground shops and oil storage stations oily
12 rags, oily waste and waste paper shall be kept in closed
13 metal containers until removed for disposal.

14 Suitable underground fire protection shall be provided
15 at stationary substations and compressor stations, shops,
16 pumps, doors, transformer stations, battery charging sta-
17 tions, where oil and grease is stored, at conveyor loading
18 or discharge points and strategic points along rubber belt
19 lines, stables, and on active working sections.

20 Rock dust in quantities of five hundred pounds or more
21 shall be considered suitable for fire protection at the above
22 mentioned underground locations, except that a fire ex-
23 tinguisher suitable for the hazards present shall be pro-
24 vided as an additional protection at underground shops,
25 permanent substations, compressor stations, battery
26 charging stations and transformer stations.

27 Mine openings, where there is danger of fire entering
28 the mine, shall have adequate protection against surface
29 fires or dangerous volumes of smoke entering the mine.

**Sec. 62. No Mine to Be Opened Or Reopened without
2 Prior Approval of Director of Department of Mines; Ap-
3 proval Fee.**—After the effective date of this section, no
4 mine shall be opened or reopened unless prior approval
5 has been obtained from the director of the department of
6 mines, which approval shall not be unreasonably with-
7 held. The operator shall pay for such approval a fee of
8 ten dollars, which payment shall be tendered with the
9 operator's application for such approval.

10 Within forty-five days after January first of each year
11 the operator of each mine holding a certificate evidencing
12 approval of the director to open a mine, shall apply for
13 the extension of such certificate of approval for an ad-
14 ditional year. Such approval, evidenced by a certificate
15 of the director, shall be granted as a matter of right and
16 without charge if at the time such application is made
17 the operator is in compliance with the provisions of sec-
18 tion seventy-four of this article. Applications for exten-

19 sion of such certificates of approval not submitted within
20 the time required shall be processed as an application
21 to open or reopen a mine and shall be accompanied by a
22 fee of ten dollars.

23 Certificates of approval issued pursuant to this section
24 shall not be transferable.

25 The provisions of this section shall be printed on the
26 reverse side of every certificate issued hereunder.

Sec. 74. Monthly Report by Operator of Mine.—The
2 operator of every coal mine shall, on or before the end
3 of each calendar month, file with the director a report
4 covering the preceding calendar month on forms fur-
5 nished by the director. Such reports shall state the num-
6 ber of accidents which have occurred, the number of per-
7 sons employed, the days worked and the actual tonnage
8 of coal mined.

Article 6. Certification of Coal Miners.

Section 1. Certificate of Competency and Qualification
2 **Required of Miners; Apprentices.**—Except as hereinafter
3 provided no person shall be employed or work as a coal
4 miner in any mine in this state, without first having

5 obtained a certificate of competency and qualification.

6 Any miner holding a certificate may have one person
7 working with him, and under his direction, as an appren-
8 tice, and any foreman, assistant foreman or fire boss may
9 have not more than five persons working with him and
10 under his immediate supervision and direction, as ap-
11 prentices, for the purpose of learning and being in-
12 structed in the duties and calling of mining.

13 For the purposes of this article the term "coal miner"
14 or "miner" shall mean all underground workers in bi-
15 tuminous coal mines, except as hereinafter provided.

Sec. 2. Mine Inspect^τors to Examine and Certify Com-
2 **petency of Miners.**—On and after July one, one thousand
3 nine hundred sixty-two, all duties in connection with ex-
4 amining and certifying the competency and qualification
5 of coal miners shall be vested in and shall be performed
6 by mine inspectors (inspectors at large, assistant in-
7 spectors at large and district inspectors). Such duties
8 shall be exercised under the general supervision and
9 direction of the director of the department of mines, ex-
10 cept as otherwise provided in this article.

11 Certificates of competency and qualification issued prior
12 to July one, one thousand nine hundred sixty-two, by the
13 miners' examining board under prior law shall continue
14 to be valid for all purposes.

Sec. 3. Examinations by Inspectors; Records.—At such
2 times as mine inspectors make regular inspections of a
3 mine, they shall arrange to sit at some suitable place
4 convenient to the mine for the purpose of examining the
5 qualifications and competency of any person seeking a
6 certificate of qualification and competency. Notice of the
7 time and place of such examination shall be given to
8 management at the mine, to the local union thereat if
9 there is a local union, and notice shall also be posted at the
10 place or places in the vicinity of the mine where notices
11 to employees are ordinarily posted. Examinations shall
12 also be held at such times and places, and after such
13 notice, as the director finds necessary to enable all ap-
14 plicants for certificates to have opportunity to qualify for
15 certification.

16 Each inspector giving examinations shall keep an ac-
17 curate record showing a correct detailed account of the

18 examination of each applicant, including questions asked
19 and the answers given. Such records shall be forwarded
20 at least once each month to the director for filing in his
21 office as public records, open to public inspection.

Sec. 4. Fee for Examination.—Each applicant for ex-
2 amination shall pay to the examining inspector a fee of
3 one dollar. All such fees shall be promptly transmitted
4 to the director and by him paid into the state treasury.

Sec. 5. Examination to Be Practical; Certificates Not
2 **Transferable; How Certificates to Be Issued.**—All ex-
3 aminations shall be conducted in the English language
4 and shall be of a practical nature, so as to determine the
5 competency and qualifications of the applicant to engage
6 in the mining of bituminous coal with reasonable safety
7 to himself and his fellow employees. No applicant shall
8 be certified as qualified or competent who (1) has had
9 less than one year's practical experience as a miner or
10 as a miner apprentice, or (2) lacks a sound knowledge
11 of first aid. Evidence of satisfactory completion of a
12 course of instruction in first aid offered by the West Vir-
13 ginia Department of Mines, the Federal Bureau of Mines

14 or by such other sponsor as the director may approve,
15 may be received as proof of competence in first aid with-
16 out further examination.

17 Applicants shall be examined under oath and inspectors
18 shall have power to administer oaths to all applicants and
19 witnesses.

20 If the inspector examining the applicant finds the ap-
21 plicant qualified and competent to be a coal miner, he
22 shall issue to the applicant a certificate of qualification
23 and competency in such form as shall be prescribed by
24 the director, which shall entitle the holder thereof to be
25 employed and work as a coal miner in any mine in this
26 state.

27 Certificates shall not be transferrable and an attempt
28 to transfer a certificate shall be deemed a violation of
29 this article.

Sec. 6. Refusal to Issue Certificate; Appeal.—If the in-
2 spector who examines an applicant for a certificate of
3 qualification and competency as a miner finds that the
4 applicant is not qualified and competent, he shall so

5 notify the applicant not more than ten days after the date
6 of examination.

7 Any applicant aggrieved by an action of a mine in-
8 spector in failing or refusing to issue a certificate of
9 qualification and competency may, within ten days of
10 notice of the action complained of, appeal to the director
11 who shall promptly give the applicant a hearing de novo
12 and either affirm the action of the inspector or take such
13 action as the inspector should have taken.

Sec. 7. Limitation of Scope of Article.—All persons
2 possessing certificates of qualification issued by the de-
3 partment of mines of this state, entitling them to act as
4 mine foremen, assistant mine foreman, or fire boss, shall
5 be eligible to engage at any time as miners in bitumi-
6 nous mines of this state. Supervisory and technically
7 trained employees of the operator, whose work con-
8 tributes only indirectly to mine operations, shall not
9 be required to possess a miners' certificate.

Sec. 8. Penalties.—Any person violating any of the pro-
2 visions of this article shall, upon conviction, be fined not
3 less than twenty-five nor more than one hundred dollars,

4 and in default in the payment of such fine and costs, shall
5 be imprisoned in the county jail for a period not exceed-
6 ing thirty days.

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

James Davis, Jr.
Chairman Senate Committee

Wm. W. Withrow
Chairman House Committee

Originated in the House.

Takes effect *July 1, 1962.* ~~Passage.~~

Morrice Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Singletary
Speaker of the House of Delegates

The within *approved* this the *Fifteenth*
day of *February*, 1962.

Tommy Barron
Governor

