

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963



ENROLLED

*Committee Substitute for*  
HOUSE BILL No. 296

(By ~~Art~~ *the Committee on Forestry and Conservation*)



PASSED March 6, 1963

In Effect July 1, 1963, Passage



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JOE F. BURDETT  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

For

**House Bill No. 296**

[Originating in the Committee on Forestry and Conservation.]

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[Passed March 6, 1963; in effect July 1, 1963]

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AN ACT to amend chapter twenty by amending and reenacting sections one, two, three, four, five, six, seven and eight, article six, and by adding to said article six five new sections, designated nine, ten, eleven, twelve and thirteen; and to amend chapter twenty-two by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, and the same relating to the administration and control of surface mining, and the reclamation of lands affected thereby.

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

That chapter twenty be amended by amending and reenacting sections one, two, three, four, five, six, seven and eight, article six, and by adding to said article six, five new sections, designated nine, ten, eleven, twelve and thirteen; and that chapter twenty-two be amended by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a, thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all to read as follows:

## **CHAPTER 20. NATURAL RESOURCES**

### **Article 6. Reclamation.**

**Section 1. Division of Reclamation; Duties and Functions.**—The division of reclamation, herein created and established, shall have within its jurisdiction and super-

4 vision all lands and areas of the state mined or suscep-  
5 tible of being mined for the removal of minerals and  
6 all other lands and areas of the state deforested, burned  
7 over, barren or otherwise denuded, unproductive, and  
8 subject to soil erosion and waste, except land being util-  
9 ized in the production of agricultural commodities. In-  
10 cluded within such lands and areas shall be lands seared  
11 and denuded by chemical operations and processes,  
12 abandoned coal mining areas, swamplands, land and  
13 areas subject to flowage easements and backwaters from  
14 river locks and dams, and river, stream, lake and pond  
15 shore areas subject to soil erosion and waste. The juris-  
16 diction and supervision exercised by the division shall  
17 be consistent with other provisions of this chapter, shall  
18 be in cooperation with other offices and divisions of the  
19 department, and shall not interfere with or encroach  
20 upon powers, functions and services lawfully within the  
21 jurisdiction of the government of the United States.

22 The chief of the division shall organize and staff his  
23 division for the orderly, efficient and economical execu-  
24 tion and administration of the provisions of this article

25 as an integral part of the department's natural resources  
26 program.

27 The director of the West Virginia agricultural experi-  
28 ment station at West Virginia university shall select and  
29 designate a competent and qualified person and a mem-  
30 ber of his staff to be state land reclamation specialist  
31 who will study mining procedures and methods and their  
32 relation to subsequent land reclamation of disturbed  
33 areas. He shall also serve in a liaison and advisory ca-  
34 pacity between the experiment station and agencies  
35 with responsibilities or interests in reclamation programs  
36 and projects. The director of the experiment station shall  
37 fix the state land reclamation specialist's salary, which  
38 shall be paid from university funds, and shall arrange  
39 on the university campus for adequate office facilities,  
40 stenographic and clerical assistance, and such other  
41 supplies and materials as needed by the state land rec-  
42 lamation specialist. When performing services for such  
43 agencies, his travel expenses may be paid from the  
44 agency's funds. The state land reclamation specialist  
45 shall study and develop reclamation programs and

46 projects consistent with the provisions of this chapter  
47 and be under the supervision and direction of the di-  
48 rector of the experiment station.

**Sec. 2. Legislative Purpose; Apportionment of Respon-**  
2 **sibility.**—The Legislature finds and declares that the de-  
3 partment of natural resources shall have jurisdiction and  
4 control over land and soil aspects of surface mining op-  
5 erations, and the restoration and reclamation of lands  
6 surface mined and areas affected thereby, but that sur-  
7 face mining as an industrial enterprise and occupation  
8 shall be under the jurisdiction and control and subject  
9 to the regulations of the state department of mines.

10 The director of the department of mines and the direc-  
11 tor of the department of natural resources shall correlate  
12 and coordinate their respective departmental programs  
13 and records so as to effect an orderly and harmonious  
14 administration of the provisions of this article.

**Sec. 3. Definitions.**—For the purpose of this article:  
2 the term “surface mining” shall include all industrial  
3 activity for the recovery of minerals except those sub-  
4 ject to the provisions of articles one, two, four, five and

5 seven of chapter twenty-two of the code of West Virginia,  
6 one thousand nine hundred thirty-one, as amended, and,  
7 subject to such exception, shall include plant and equip-  
8 ment used in processing said minerals.

9 For the purpose of this article a "surface mine" shall  
10 include all areas surface mined or being surface mined  
11 as well as adjacent areas ancillary to the operation to-  
12 gether with preparation and processing plants, storage  
13 areas and haulageways: *Provided*, That such areas are  
14 sufficiently concentrated that they can be adequately  
15 supervised by one foreman: *And provided further*, That  
16 mines subject to the provisions of article<sup>5</sup>~~1~~ one, two, four,  
17 five and seven of chapter twenty-two of the code of West  
18 Virginia, as amended, are not "surface mines" within this  
19 definition.

20 For the purpose of this article, "disturbed land", shall  
21 include the area from which the overburden has been  
22 removed in surface mining operations, plus the area  
23 covered by the spoil, and any areas used in surface min-  
24 ing operations which by virtue of their use are susceptible  
25 to excessive erosion.

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26 For the purpose of this article, "operator" shall mean  
27 any individual, a corporation, a partnership, an associa-  
28 tion or a trust which is granted a permit to engage in  
29 any activity covered by this article.

**Sec. 4. Duties of Operators; Requirements; Procedures.**

2 —It shall be the duty of each operator to:

3 (1) Remove metal, lumber and other debris resulting  
4 from mining operations.

5 (2) Regrade in a manner to be established by rules  
6 and regulations of the director, in accordance with, but  
7 not limited to, the following principles of reclamation:

8 (a) Wherever practicable, and wherever spoil banks  
9 form adjoining ridges or peaks above the level of the coal  
10 seam from which such spoil banks have been removed,  
11 grade the surface of such spoil banks so as to reduce the  
12 depressions between the peaks of such spoil banks to a  
13 surface which will be a rolling topography. Such grading  
14 shall be done in such a way as will minimize erosion due  
15 to rainfall and will also eliminate steep grades between  
16 peaks and make the surface more suitable for tree cutting  
17 or logging operations or for cattle grazing. Such grading

18 shall be done in a manner which will minimize, as far as  
19 practicable, the presence of large rocks, or materials  
20 which would be toxic to plant life, on the surface of the  
21 graded area. Where spoil banks consist of single isolated  
22 peaks, and where such peaks extend above the level of  
23 the coal seam from which such spoil banks have been  
24 removed, such peaks shall be graded to an approximately  
25 level surface having a width of not less than fifteen feet.

26 (b) Wherever the final cut of an operation is not to be  
27 used for water impoundment as provided for in subsec-  
28 tion (5), and wherever such final cut is within a reason-  
29 able grading distance of overburden deposits, and wher-  
30 ever such overburden deposits are composed of materials  
31 which are suitable for the support of tree growth, or the  
32 growth of grasses or other reclamation vegetation, or  
33 where such material reasonably can be expected to be-  
34 come suitable by natural leaching and weathering pro-  
35 cesses, such overburden material shall be graded so as  
36 to cover the bottom of such final cut.

37 In planning and executing surface mining operations  
38 the operator shall at all times have proper regard for the

39 duties imposed by subparagraphs (a) and (b) of this  
40 section and shall exercise all reasonable and practical  
41 measures required so as not unnecessarily to lose or make  
42 unavailable overburden material for the grading required  
43 by subparagraphs (a) and (b).

44 (3) Where the outside spoil deposit is made on a steep  
45 hillside, rocks that have rolled down into a cleared valley  
46 shall be placed back at the toe of the hillside or deposited  
47 at some equally suitable location.

48 (4) Seal off with a fill all openings from underground  
49 mining operations at the base of the final cut. Such seal-  
50 ing off with a fill shall be done in such a way as to avoid  
51 creating danger from the impoundment of large quan-  
52 tities of water.

53 (5) Where the operator elects to impound water to  
54 provide lakes or ponds for wildlife, recreational or water  
55 supply purposes, such operator shall file formal request  
56 with the department of natural resources and receive  
57 approval before such ponds or lakes can be created in  
58 impounding such water. In making such improvements  
59 such operator must avoid the creation of conditions that

60 might encourage slides, acid formation, or flood hazard.

61 (6) Plant in a manner so as to establish a satisfactory

62 cover of trees, shrubs, grasses or vines upon the part of

63 the area of land affected where such revegetation is prac-

64 ticable, within a reasonable length of time, or offer to

65 deposit with the <sup>acid</sup>~~state~~ conservation district, in which the

66 operation covered by such permit is located, a sufficient

67 amount of money to reclaim, insofar as planting, the area

68 of land affected, as estimated by the district. If the dis-

69 trict assumes responsibility for the planting, the director

70 shall release the bond and return the security given in

71 lieu of bond.

72 The intent of this section is to, insofar as reasonably  
73 practical, restore the land to a desirable purpose and use.

74 The director may, in the exercise of his sound discretion,

75 when not in conflict with the intent of this section, modify

76 such requirements to bring about a more desirable land

77 use, including but not limited to industrial sites, sanitary

78 landfills, recreational areas, building sites, etc.: *Provided,*

79 *however,* That the person, firm, corporation, or agency

80 making such modifications will execute contracts, post

81 bond or otherwise insure full compliance with this sec-  
82 tion in the event such modified program is not carried  
83 to completion within a reasonable length of time.

84 For failure to complete the duties of the operator  
85 within a reasonable length of time, as prescribed by the  
86 director, and after receipt of a thirty-day notice in writ-  
87 ing from the director, which notice may be sent by reg-  
88 istered or certified mail to the operator, at his last known  
89 address, that any one or more of such things have not  
90 been done, the permit covering the particular operation  
91 shall be revoked by the director and the performance  
92 bond shall be forfeited, and any other permits that may  
93 have been issued to the operator involved shall be sus-  
94 pended, unless the operator shall submit a plan of  
95 reclamation suitable to the director and accepted by him  
96 within said thirty-day period. Unless the operator car-  
97 ries out the plan of reclamation accepted by the director,  
98 within the time limits prescribed in such plan, the direc-  
99 tor shall revoke the permit covering the particular  
100 operation, and forfeit the performance bond, and any  
101 and all other permits that may have been issued to the

102 operator involved shall be revoked and any and all per-  
103 formance bonds shall be forfeited.

104 Any operator whose mining permit has been revoked  
105 shall not be eligible to receive another such permit or to  
106 have suspended permits reinstated until he shall have  
107 complied with the requirements of all the laws in respect  
108 to former permits issued him.

**Sec. 5. Performance Bond; Forfeiture; Procedure;**  
2 **Funds and Uses.**—Upon default in the performance of the  
3 conditions of the performance bond, the director shall  
4 give notice to the attorney general and it shall be his  
5 duty to collect the forfeiture without delay.

6 All such forfeitures hereafter collected, as provided  
7 in this article, shall be deposited with the state treasurer  
8 in a special fund to be designated "Surface Mining Recla-  
9 mation Fund", to the credit of the department and shall  
10 be expended to reclaim and rehabilitate land disturbed  
11 in accordance with the provisions of this article.

12 It shall be the duty of the director to cause to be pre-  
13 pared a plan for the reclamation and rehabilitation of  
14 land affected in accordance with the provisions of section

15 four of this article and said director shall reclaim and  
16 rehabilitate said lands in accordance with said plan and in  
17 so doing the director shall comply with the provisions of  
18 article three, chapter five-a of the code of West Virginia  
19 in obtaining supplies, materials, equipment and contrac-  
20 tual services deemed necessary by the director for the  
21 proper reclamation and rehabilitation of said land. The  
22 monies in the fund shall be expended upon the lands upon  
23 which the permit was issued and for which the bond was  
24 posted. The director may expend any monies remaining,  
25 over and above that required to reclaim the area for  
26 which the bond was posted, to reclaim any area covered  
27 under the provisions of this article. The department may,  
28 when deemed necessary, avail itself of any services which  
29 may be provided by the state or federal governments.

**Sec. 6. Validity of Existing Permits and Bonds.—**The  
2 provisions of chapter eighty-four of the acts of the Legis-  
3 lature of West Virginia, regular session, one thousand nine  
4 hundred thirty-nine; the provisions of chapter eighty-five  
5 of the acts of the Legislature of West Virginia, regular  
6 session, one thousand nine hundred forty-five; the pro-

7 visions of chapter ninety-nine of the acts of the Legislature  
8 of West Virginia, regular session, one thousand nine hun-  
9 dred fifty-nine; the provisions of chapter one hundred  
10 thirty-three of the acts of the Legislature of West Virginia,  
11 regular session, one thousand nine hundred sixty-one,  
12 shall continue to be in full force and govern in all re-  
13 spects every existing right for surface mining operations,  
14 every outstanding permit for surface mining operations  
15 and every existing cash or other bond posted in connec-  
16 tion therewith, and the enactment of this article shall  
17 not affect any offenses or act committed or done, or any  
18 penalty or forfeiture incurred, or any right established,  
19 accrued, or accruing before the day this law takes effect.  
20 Any money received from the forfeiture of bonds given  
21 under the provisions of said acts shall be deposited in  
22 the same fund and used in the same manner as forfeitures  
23 under this article. Every operator under an existing per-  
24 mit, under which actual mining operations have not been  
25 commenced prior to the effective date of this article,  
26 shall nevertheless be required to perform all duties speci-  
27 fied in section four of this article, and for failure to do so,

28 his bond shall be forfeited and he shall be subject to all  
29 other penalties provided by the above mentioned former  
30 act. Every such operator shall be required to comply  
31 with the provisions of section four of this article under  
32 which actual mining operations have not been com-  
33 menced prior to the effective date of this article.

**Sec. 7. When Bond Released and Discharged.**—Upon  
2 satisfactory completion of all requirements of law under  
3 the permit granted to any operator pursuant to the pro-  
4 visions hereof, the director of the department of natural  
5 resources shall issue to the operator a certificate releas-  
6 ing and discharging the bond and surety thereon, or  
7 shall cause to be returned to the operator any securities  
8 given under section five, article two-a, chapter twenty-  
9 two of the code.

**Sec. 8. Special Reclamation Fund; Purposes and Uses.**  
2 —The Legislature finds and declares that lands within  
3 this state have been subjected to surface mining oper-  
4 ations and have not been reclaimed in accordance with  
5 modern standards and which are not now covered by  
6 bond to guarantee such reclamation. This Legislature

7 further finds and declares that the cost of reclaiming  
8 these lands will be nine hundred thousand dollars. The  
9 Legislature has devised a method of collecting special  
10 fees, as set forth in section three-a, article two-a, chapter  
11 twenty-two of the code of West Virginia, one thousand  
12 nine hundred thirty-one, as amended, for the reclamation  
13 and rehabilitation of the above referred to lands and  
14 accordingly there is hereby created a special fund desig-  
15 nated "Special Reclamation Fund." The purpose of this  
16 fund shall be solely that of a depository for special  
17 reclamation fees collected, pursuant to sections three and  
18 three-a, article two-a, chapter twenty-two, as amended,  
19 which said special fees shall be used only for the purpose  
20 of reclaiming and rehabilitating the lands above referred  
21 to. The special reclamation fund shall be administered  
22 by the director of the department of natural resources.  
23 Said director shall cause to be prepared plans for the  
24 reclamation and rehabilitation of lands herein above re-  
25 ferred to and shall prepare specifications for reclamation  
26 of said lands, and said director, as funds become avail-  
27 able in the special reclamation fund, shall reclaim and

28 rehabilitate said lands in accordance with said plans  
29 and specifications, and in so doing the director shall  
30 comply with the provisions of article three, chapter five-  
31 a, of the code of West Virginia, one thousand nine hun-  
32 dred thirty-one, as amended, in obtaining supplies, mate-  
33 rials, equipment and contractual services deemed neces-  
34 sary by the director for the purposes of reclamation and  
35 rehabilitation of said lands.

36 The special reclamation fund shall remain in existence  
37 until such time as special reclamation fees have been  
38 collected and expended in the net amount of nine hun-  
39 dred thousand dollars, after refunds provided for in sec-  
40 tion three-a, article two-a, chapter twenty-two of the  
41 code of West Virginia, one thousand nine hundred thirty-  
42 one, as amended.

**Sec. 9. Rules and Regulations.**—The director shall  
2 promulgate rules and regulations for the effective adminis-  
3 tration of this article.

**Sec. 10. Orders Shall Be in Writing.**—Every adjudica-  
2 tion, determination or finding by the director affecting  
3 the rights, duties or privileges of any person subject to this

4 article shall be made by written order and shall contain  
5 a written finding of fact by the director of the facts upon  
6 which the adjudication, determination or finding is  
7 based. Notice of the making of such order shall be given  
8 to the person whose rights, duties or privileges are  
9 affected thereby by mailing a true copy thereof to such  
10 person by registered mail.

**Sec. 11. Reclamation Board of Review.**—There is  
2 hereby created a reclamation board of review consisting  
3 of five members appointed by the governor with the ad-  
4 vice and consent of the senate for terms of five years,  
5 except that the terms of the first five members of said  
6 board shall be for one, two, three, four and five years,  
7 respectively, as designated by the governor at the time  
8 of the appointment, except that any vacancy in the  
9 office of member of said board shall be filled by appoint-  
10 ment by the governor for the unexpired term of the  
11 member whose office shall be vacant. Each vacancy  
12 occurring on said board shall be filled by appointment  
13 within sixty days after such vacancy occurs. One of the  
14 appointees to such board shall be a person who, by rea-

15 son of his previous vocation, employment, or affiliations,  
16 can be classed as a representative of coal surface mine  
17 operators. One of the appointees to such board shall be  
18 a person who, by reason of his previous training and  
19 experience, can be classed as one learned and experienced  
20 in modern forestry practices. One of the appointees to  
21 such board shall be a person who, by reason of his  
22 previous training and experience, can be classed as one  
23 capable and experienced in the practice of agriculture.  
24 One of the appointees to such board shall be a person  
25 who, by reason of his previous training and experience,  
26 can be classed as one capable and experienced in earth-  
27 grading problems. One of the appointees to such board  
28 shall be a person who, by reason of his previous train-  
29 ing and experience, can be classed as one capable and  
30 experienced in water conservation problems. Not more  
31 than three members shall be members of the same poli-  
32 tical party.

33 The board may designate an employee of the reclama-  
34 tion division to act as its secretary. Such secretary shall  
35 perform such duties as the board prescribes.

36 Three members constitute a quorum and no action of  
37 the board shall be valid unless it has the concurrence  
38 of at least three members. The board shall keep a record  
39 of its proceedings.

40 Each member shall be paid as compensation for his  
41 work as such member twenty dollars per day when  
42 actually engaged in the performance of his work as a  
43 member and when engaged in travel necessary in con-  
44 nection with such work from funds appropriated for  
45 such purpose. In addition to such compensation each  
46 member shall be reimbursed for all traveling, hotel and  
47 other expenses necessarily incurred in the performance  
48 of his work as a member.

49 Annually one member shall be elected as chairman  
50 and another member shall be elected as vice-chairman.  
51 Such officers shall serve for terms of one year.

52 The governor may remove any member of the board  
53 from office for inefficiency, neglect of duty, malfeasance,  
54 misfeasance, or nonfeasance, after delivering to such  
55 member the charges against him in writing together  
56 with at least ten days' written notice of the time and

57 place at which the governor will publicly hear such mem-  
58 ber, either in person or by counsel, in defense of the  
59 charges against him. If such member is removed from  
60 office, the governor shall file in the office of the secretary  
61 of state a complete statement of the charges made against  
62 such member and a complete report of the proceedings  
63 thereon. In such case the action of the governor re-  
64 moving such member from office is final.

**Sec. 12. Appeal to Board.**—Any person claiming to be  
2 aggrieved or adversely affected by any order of the direc-  
3 tor or by his failure to enter an order may appeal to the  
4 reclamation board of review for an order vacating or  
5 modifying such order, or for such order as the director  
6 should have entered.

7 The person so appealing to the board shall be known  
8 as appellant and the director shall be known as appellee.  
9 Appellant and appellee shall be deemed to be parties to  
10 the appeal.

11 Such appeal shall be in writing and shall set forth the  
12 order or omission complained of and the grounds upon  
13 which the appeal is based. Where appellant claims to be

14 adversely affected by an order, such appeal shall be filed  
15 with the board within thirty days after the date upon  
16 which appellant received notice by registered mail of the  
17 making of the order complained of. Notice of the filing  
18 of such appeal shall be filed with the director within three  
19 days after the appeal is filed with the board.

20 Within seven days after receipt of such notice of appeal  
21 the director shall prepare and certify to the board at the  
22 expense of appellant a complete record of the proceed-  
23 ings out of which the appeal arises, including all docu-  
24 ments and correspondence in the director's file relating to  
25 the matter.

26 Upon the filing of such appeal the board shall fix the  
27 time and place at which the hearing on the appeal will  
28 be held, which hearing shall be held within twenty days  
29 after notice of appeal is filed, and shall give appellant and  
30 the director at least ten days' written notice thereof by  
31 mail. The board may postpone or continue any hearing  
32 upon its own motion or upon application of appellant or  
33 of the director.

34 The filing of an appeal provided for in this section shall  
35 stay execution of the order appealed from.

36 The board shall hear the appeal *de novo*, and either  
37 party to the appeal may submit evidence.

38 For the purpose of conducting a hearing on an appeal,  
39 the board may require the attendance of witnesses and  
40 the production of books, records, and papers, and it may,  
41 and at the request of any party it shall, issue subpoenas  
42 for witnesses or *subpoenas duces tecum* to compel the  
43 production of any books, records, or papers directed to  
44 the sheriff of the counties where such witnesses are  
45 found, which subpoenas shall be served and returned in  
46 the same manner as subpoenas in civil litigation are  
47 served and returned. The fees and mileage of sheriffs  
48 and witnesses shall be the same as those allowed in liti-  
49 gation in trial courts. Such fees and mileage expenses in-  
50 curred at the request of appellant shall be paid in ad-  
51 vance by appellant, and the remainder of such expenses  
52 shall be paid out of funds appropriated for the expenses  
53 of the division of reclamation.

54 In case of disobedience or neglect of any subpoena

55 served on any person, or the refusal of any witnesses to  
56 testify to any matter regarding which he may be law-  
57 fully interrogated, the circuit court of the county in  
58 which such disobedience, neglect, or refusal occurs, or  
59 any judge thereof, on application of the board or any  
60 member thereof, shall compel obedience by attachment  
61 proceedings for contempt as in the case of disobedience  
62 of the requirements of a subpoena issued from such court  
63 or a refusal to testify therein. Witnesses at such hearings  
64 shall testify under oath, and any member of the board  
65 may administer oaths or affirmations to persons who so  
66 testify.

67 At the request of any party to the appeal, a stenographic  
68 record of the testimony and other evidence submitted  
69 shall be taken by an official court shorthand reporter at  
70 the expense of the party making the request therefor.  
71 Such record shall include all of the testimony and other  
72 evidence and the rulings on the admissibility thereof  
73 presented at the hearing. The board shall pass upon the  
74 admissibility of evidence, but any party may at the time  
75 object to the admission of any evidence and except to the

76 rulings of the board thereon, and if the board refuses to  
77 admit evidence the party offering same may make a prof-  
78 *of a* *copy* *sent* ~~fer~~ thereof, and such proffer shall be made a part of the  
79 record of such hearing.

80 If upon completion of the hearing the board finds that  
81 the order appealed from was lawful and reasonable, it  
82 shall make a written order affirming the order appealed  
83 from; if the board finds that such order was unreasonable  
84 or unlawful, it shall make a written order vacating the  
85 order appealed from and making the order which it finds  
86 the director should have made; and if the board finds that  
87 the director has unreasonably or unlawfully failed to act  
88 or enter an order it shall enter such order as it finds the  
89 director should have made. Every order made by the  
90 board shall contain a written finding by the board of the  
91 facts upon which the order is based. Notice of the making  
92 of such order shall be given forthwith to each party to  
93 the appeal by mailing a certified copy thereof to each  
94 such party by registered mail.

95 The order of the board shall be final unless vacated  
96 by a circuit court on appeal.

**Sec. 13. Appeal to Court.**—Any party adversely  
2 affected by an order of the reclamation board of review  
3 may appeal to the circuit court of Kanawha county or the  
4 circuit court of the county where the land involved in  
5 the controversy may be. Any party desiring to so appeal  
6 shall file with the board a notice of appeal designating the  
7 order appealed from and stating whether the appeal is  
8 taken on questions of law or questions of law and fact.  
9 A copy of such notice shall also be filed by appellant with  
10 the court and shall be mailed or otherwise delivered to  
11 appellee. Such notices shall be filed and mailed or other-  
12 wise delivered within thirty days after the date upon  
13 which appellant received notice from the board by regis-  
14 tered mail of the making of the order appealed from. No  
15 appeal bond shall be required to make either an appeal  
16 on questions of law or an appeal on questions of law and  
17 fact effective.

18 The filing of a notice of appeal shall not automatically  
19 operate as a suspension of the order of the board. If it  
20 appears to the court that an unjust hardship to the appel-  
21 lant will result from the execution of the board's order

22 pending determination of the appeal, the court may grant  
23 a suspension of such order and fix its terms.

24 Within fifteen days after receipt of the notice of appeal  
25 the board shall prepare and file in the court the complete  
26 record of proceedings out of which the appeal arises,  
27 including a transcript of the testimony and other evidence  
28 which has been submitted before the board. The expense  
29 of preparing and transcribing such record shall be taxed  
30 as a part of the costs of the appeal. Appellant shall pro-  
31 vide security for costs satisfactory to the court. Upon  
32 demand by a party the board shall furnish at the cost of  
33 the party requesting the same a copy of such record. In  
34 the event such complete record is not filed in the court  
35 within the time provided for in this section either party  
36 may apply to the court to have the case docketed, and the  
37 court shall order such record filed.

38 Appeals taken on questions of law, facts or both, shall  
39 be heard upon assignments of error filed in the cause or  
40 set out in the briefs of the appellant. Errors not  
41 argued by brief may be disregarded, but the court may  
42 consider and decide errors which are not assigned or  
43 argued.

44 The hearing before the court shall be upon the record  
45 made before the reclamation board of review. The court  
46 may set aside any findings of fact of the reclamation  
47 board of review which are clearly erroneous in view of  
48 the reliable, probative and substantial evidence on the  
49 whole record, or which are determined by the court to  
50 involve a clearly unwarranted exercise of discretion. The  
51 judgment of the court shall be final unless reversed,  
52 vacated, or modified on appeal to the supreme court of  
53 appeals of West Virginia and jurisdiction is hereby con-  
54 ferred upon such court to hear and entertain such appeals  
55 upon application made therefor in the manner and within  
56 the time provided for civil appeals generally.

## CHAPTER 22. MINES AND MINERALS

### Article 2-a. Surface Mining.

Section 1. **Legislative Purpose; Apportionment of Re-**  
2 **sponsibility.**—The Legislature finds and declares that the  
3 department of mines shall have jurisdiction and control  
4 over all aspects of surface mining as an industrial en-  
5 terprise: *Provided, however,* That the jurisdiction and  
6 control over land and soil aspects of surface mining and

7 the restoration and reclamation of lands surface mined  
8 and the areas affected thereby shall be under the juris-  
9 diction and control of the department of natural re-  
10 sources. The director of the department of mines and  
11 the director of natural resources shall correlate and  
12 coordinate their respective departmental programs and  
13 records so as to effect an orderly and harmonious ad-  
14 ministration of the provisions of this article.

**Sec. 2. Definitions.**—For the purpose of this ar-  
2 ticle, the term “surface mining” shall include all in-  
3 dustrial activity for the recovery of minerals, except  
4 those subject to the provisions of articles one, two,  
5 four, five and seven of chapter twenty-two of the  
6 code of West Virginia, one thousand nine hundred  
7 thirty-one, as amended, and subject to such excep-  
8 tion, shall include plant and equipment used in process-  
9 ing said minerals.

10 For the purpose of this article, a “surface mine” shall  
11 include all areas surface mined or being surface mined,  
12 as well as adjacent areas ancillary to the operation, to-  
13 gether with preparation and processing plants, storage

14 areas and haulageways: *Provided*, That such areas are  
15 sufficiently concentrated that they can be adequately  
16 supervised by one foreman: *And provided further*, That  
17 mines subject to the provisions of articles one, two, four,  
18 five and seven of chapter twenty-two of the code of West  
19 Virginia, one thousand nine hundred thirty-one, as  
20 amended, are not "surface mines" within this definition.

21 For the purpose of this article, "disturbed land" shall  
22 include the area from which the overburden has been  
23 removed in surface mining operations, plus the area  
24 covered by the spoil, plus any areas used in surface mining  
25 operations which by virtue of their use are susceptible  
26 to excessive erosion.

27 For the purpose of this article, "operator" shall mean  
28 any individual, a corporation, a partnership, an associ-  
29 ation or a trust which is granted a permit to engage in  
30 any activity covered by this article.

**Sec. 3. Permit Required; Fees and Use of Proceeds.--**

2 It shall hereafter be unlawful for any person, firm, part-  
3 nership, association, trust or corporation, to engage in  
4 surface mining without having first obtained from the

5 department of mines a permit therefor as provided in  
6 this section. Application for a surface mining permit  
7 shall be made in writing on forms prescribed by the di-  
8 rector and shall be signed and verified by the applicant,  
9 its principal executive officer or officers and a majority  
10 of its board of directors or persons performing similar  
11 functions (or, if there is no board of directors or persons  
12 performing similar functions, by the majority of the  
13 persons having the power of control over the manage-  
14 ment of the applicant). The application, in addition to  
15 such other information as may be reasonably required  
16 by the director shall contain the following information:  
17 (1) The common name and geologic title, where appli-  
18 cable, of the mineral or minerals to be extracted; (2) a  
19 map as provided in section eight hereof; (3) the owner  
20 or owners of the surface of the land; (4) the owner or  
21 owners of the mineral; (5) the source of the operator's  
22 legal right to enter and conduct operations on the land  
23 covered by the permit; (6) a reasonable estimate of the  
24 number of acres of land that will be disturbed by mining  
25 on the area to be covered by the permit during the en-

26 suing one and one-half years; (7) the permanent and  
27 temporary post office addresses of the applicant and of  
28 the owners of the surface and the mineral; (8) whether  
29 any surface mining permits are now held and the num-  
30 bers thereof; (9) the names and post office addresses of  
31 every officer, partner, director (or person performing a  
32 similar function), of applicant, together with all persons,  
33 if any, owning of record or beneficially (alone or with  
34 associates), if known, ten percent or more of any class of  
35 stock of the applicant; (10) if known, whether applicant,  
36 any subsidiary or affiliate or any person, partnership,  
37 association, trust or corporation controlled by or under  
38 common control with applicant, or any person required  
39 to be identified by item (9) above, has ever had a sur-  
40 face or strip mining permit issued under the laws of this  
41 state revoked or has ever had a surface or strip mining  
42 bond, or security deposited in lieu of bond, forfeited.

43 Upon filing of an application in proper form accom-  
44 panied by the fees and bond or other security required  
45 by this article the director shall issue the permit applied  
46 for, unless the director finds that the applicant is or has

47 been affiliated with or managed, or controlled by, or is  
48 or has been under common control with a person, part-  
49 nership, association, trust or corporation which has had  
50 a surface or strip mining permit revoked or bond or other  
51 security forfeited for failure to reclaim lands as required  
52 by the laws of this state; *Provided, however,* That no  
53 surface mining permit shall be refused because of any  
54 past revocation of a permit or forfeiture of a bond or  
55 other security if, after such revocation or forfeiture the  
56 lands disturbed have been properly reclaimed without  
57 cost to the state or there has been paid into the surface  
58 mining reclamation fund such sum, as the director of  
59 the department of natural resources finds is adequate to  
60 reclaim such lands.

61 The permit shall be valid for one year from its date  
62 of issue. Upon verified application, containing such in-  
63 formation as the director may reasonably require, accom-  
64 panied by such additional fees, bond or other security  
65 as is required by this article, the director shall from year  
66 to year renew the permit.

67 Except as otherwise herein provided, a registration  
68 fee of ten dollars shall be paid to the department of  
69 mines for each surface mine, and said registration fee  
70 shall be paid upon application for the permit for such  
71 surface mine. Registration fees for surface mine permits  
72 other than permits for surface mining of coal shall be  
73 deposited with the state treasurer to the credit of the  
74 general revenue fund.

75 The registration fee for permits for surface mining of  
76 coal whether by open cut, auger method or by highwall  
77 mechanical mining shall be one hundred dollars. The  
78 annual renewal fee for permits for surface mining of  
79 coal shall be fifty dollars payable on the anniversary  
80 date of said permit upon renewal.

81 Any operator who shall fail to request an annual re-  
82 newal of any permit issued in accordance with this sec-  
83 tion and any operator who fails to pay any fees provided  
84 for in this article shall, in the discretion of the director,  
85 have his permit revoked by said director.

86 An operator who has been issued a surface mining per-  
87 mit may use any of the usual methods of mining, in-

88 cluding the auger method or highwall mechanical min-  
89 ing or a combination of mining methods described in  
90 section two, surface mining.

91 All registration and renewal fees for surface mining  
92 of coal shall be collected by the director and shall be  
93 deposited with the treasurer of the state of West Vir-  
94 ginia to the credit of the special reclamation fund created  
95 in section eight, article six, chapter twenty of the code  
96 of West Virginia, one thousand nine hundred thirty-one,  
97 as amended.

**Sec. 3-a. Special Reclamation Fees.**—In addition to  
2 the fees required in section three of this article, every  
3 applicant for a permit to surface mine coal shall, before  
4 said permit be issued, pay to the director a special rec-  
5 lamation fee of thirty dollars for each acre of land affected  
6 in the mining operation.

7 For the purpose of this article the area of land affected  
8 shall consist of the area from which the coal is actually  
9 produced after removal of the overburden, plus the  
10 acreage on which the overburden from the production  
11 area is deposited, delimited by lines perpendicular to the

12 highwall; except that in highwall mechanical mining,  
13 the area of land affected shall consist of the area of sur-  
14 face disturbed immediately adjacent to the highwall,  
15 plus the acreage on which excavated material is deposited.  
16 The initial payment shall be based on the same number  
17 of acres for which bond is posted. Every operator who  
18 shall amend his permit to surface mine coal to include  
19 additional acreage as provided in section five hereof shall  
20 at the same time as additional bond is furnished as pro-  
21 vided in said section five, pay to the director a special  
22 reclamation fee of thirty dollars for each additional acre  
23 of land to be included in said operator's permit. Maps  
24 which are submitted as required in section eight shall  
25 indicate any affected areas from which coal has not been  
26 loaded. The director shall determine if special reclama-  
27 tion fees for each acre of land affected have been paid by  
28 such operator. In the event that all said fees have not  
29 been paid then said operator shall pay said fee or fees, as  
30 above set forth. In the event that said operator shall have  
31 paid a fee or fees for more acres than actually affected,  
32 the director shall certify said overpayment to the direc-

33 tor of natural resources who shall have refunded out of  
34 the special reclamation fund such overpayment.

35 The director shall deposit with the treasurer of the  
36 state of West Virginia to the credit of the special recla-  
37 mation fund all special reclamation fees collected. All  
38 refunds made by authority of this section shall be made  
39 from said fund, which said fund was created in section  
40 eight, article six, chapter twenty of the code of West  
41 Virginia, one thousand nine hundred thirty-one, as  
42 amended. Said fees shall be collected only until such  
43 time as the special reclamation fund shall expire as pro-  
44 vided in said section.

**Sec. 4. Inactive Permits.**—The director, in his discre-  
2 tion, may issue an inactive status permit to any operator  
3 who has discontinued the production of coal on the area  
4 covered by surface mining permit or permits. The di-  
5 rector shall, prior to the granting of such inactive status,  
6 ascertain from the director of natural resources that  
7 sufficient reclamation work on lands disturbed shall  
8 have been completed: *Provided, however,* That access  
9 roads constructed in a manner approved by the director

10 of natural resources shall not be reclaimed: *And provided*  
11 *further*, That the operator shall maintain his right of en-  
12 try. The annual renewal fee for inactive status permits  
13 shall be ten dollars.

**Sec. 5. Performance Bond.**—Each operator who shall  
2 make application for a permit under section three of this  
3 article shall, at the time such permit is requested, furnish  
4 bond on a form to be prescribed and furnished by the  
5 director payable to the state of West Virginia and con-  
6 ditioned that the operator shall faithfully perform all  
7 of the requirements of this article and the provisions of  
8 article six, chapter twenty of the code of West Virginia,  
9 one thousand nine hundred thirty-one, as amended. The  
10 amount of bond shall be one hundred fifty dollars per  
11 acre of land based upon the number of acres of land  
12 which the operator estimates will be disturbed by sur-  
13 face mining during the next ensuing one and one-half  
14 years. The minimum amount of bond furnished shall  
15 be one thousand dollars. Such bond shall be executed  
16 by the operator and a corporate surety licensed to do  
17 business in the state of West Virginia: *Provided, however,*

18 That in lieu of corporate surety, the operator may elect  
19 to deposit with the director cash or collateral securities  
20 as follows: bonds of the United States and its possessions;  
21 of the federal land banks; of the home owners loan cor-  
22 poration; full faith and credit general obligation bonds  
23 of the state of West Virginia, or other states; and of any  
24 county, district or municipality of the state of West Vir-  
25 ginia or other states. The cash deposit or market value  
26 of such securities shall be equal to or greater than the  
27 sum of the bond. The director shall, upon receipt of any  
28 such deposit of cash or securities, immediately place the  
29 same with the treasurer of the state of West Virginia  
30 whose duty it shall be to receive and hold the same in the  
31 name of the state in trust for the purposes for which  
32 such deposit is made. The operator making the deposit  
33 shall be entitled from time to time to receive from the  
34 state treasurer, upon the written order of the director,  
35 the whole or any portion of any securities so deposited,  
36 upon depositing with him, in lieu thereof, cash or other  
37 securities of the classes herein specified having value  
38 equal to or greater than the sum of the bond.

39 The director shall deliver to the director of the depart-  
40 ment of natural resources the corporate surety or a copy  
41 of the treasurer's receipt for collateral securities or cash  
42 deposited together with a copy of the permit, the permit  
43 application and a copy of the map for which the bond is  
44 posted.

45 Within sixty days following the anniversary date of  
46 the permit, the operator shall post additional bond in  
47 the amount of one hundred fifty dollars per acre for each  
48 additional acre estimated to be disturbed during the next  
49 year following the anniversary date of the permit. At  
50 this time bond previously posted may be released for any  
51 areas upon which reclamation work has been completed  
52 as provided for in section seven, article six, chapter  
53 twenty of the code of West Virginia, one thousand nine  
54 hundred thirty-one, as amended.

55 In the event that the operator's estimate of land to be  
56 disturbed is less than the actual area disturbed, the op-  
57 erator shall file additional bond sufficient to cover an  
58 amended estimate of lands to be disturbed by surface

59 mining operations. No filing fee shall be required in the  
60 filing of additional bond.

61 It shall be unlawful for any owner or owners of surface  
62 rights or the owner or owners of mineral rights to inter-  
63 fere with the operator in the discharge of his obligations  
64 to the state for the reclamation of lands disturbed by  
65 him. If the owner or owners of surface rights or the  
66 owner or owners of mineral rights desire other operators  
67 to conduct mining operations on lands disturbed by the  
68 operator furnishing bond hereunder, it shall be the duty  
69 of said owner or owners to require that the other operator  
70 or operators have secured the necessary mining permit  
71 and furnished suitable bond as provided herein in the  
72 amount of one hundred fifty dollars an acre for that por-  
73 tion of the disturbed area required for such operations.  
74 The director shall certify to the director of the depart-  
75 ment of natural resources that such bond has been posted  
76 and permit issued. The director of the department of  
77 natural resources shall then release an equivalent amount  
78 of bonds of the operator originally furnishing bond on  
79 the disturbed area.

**Sec. 6. Performance Bond on Existing Permits.—**Any  
2 operator holding a valid surface mining permit upon  
3 which tonnage has been produced within one year pre-  
4 ceding the effective date of this article or any operator  
5 holding a valid surface mining permit upon which mining  
6 operations have not been commenced prior to the effec-  
7 tive date of this article shall have the option of converting  
8 such permit, and the bonds posted therefor, to comply  
9 with the provisions of sections three and five of this  
10 article.

**Sec. 7. Regulations for the Preservation of Life and**  
2 **Property.—**All provisions of the mining laws of this state  
3 intended to safeguard life and property shall extend to all  
4 surface mining operations insofar as such laws are appli-  
5 cable thereto. The director of the department of mines  
6 shall have the power and authority to promulgate reason-  
7 able rules and regulations to effectuate the purpose of this  
8 article and to protect the safety of those employed in and  
9 around surface mines.

10 For the administration of mining laws and regulations,  
11 all surface mining operations shall be supervised by the

12 surface mining inspection force as provided in section  
13 eight hereof. All underground mining operations of what-  
14 ever character shall be supervised by the mine inspectors  
15 as provided in section four, article one, chapter twenty-  
16 two of the code of West Virginia, one thousand nine hun-  
17 dred thirty-one, as amended. Oil and gas wells shall be  
18 supervised by the oil and gas division of the depart-  
19 ment of mines.

**Sec. 8. Maps, Plans and Locations.**—Except as other-  
2 wise provided in the code of West Virginia, one thou-  
3 sand nine hundred thirty-one, as amended, applications  
4 shall be accompanied by a United States geological sur-  
5 vey topographic map on which the operator has indi-  
6 cated the location of the operation. A monument as pre-  
7 scribed by the department of mines shall be placed in an  
8 approved location near the operation. If operations under  
9 a single permit are not geographically continuous, the  
10 operator shall locate additional monuments and submit  
11 additional location maps before mining on other areas.  
12 Within sixty days following the anniversary date of the  
13 permit, the operator shall furnish the department of mines

14 five copies of a map, prepared by a registered professional  
15 civil engineer, mining engineer or land surveyor, showing  
16 the area disturbed by operations. Such map shall be  
17 furnished no later than sixty days following the anniver-  
18 sary date of the permit. Such map shall also show com-  
19 pleted reclamation work. Maps shall include a geologic  
20 survey sketch showing the location of the operation and  
21 be properly referenced to a permanent land mark, and  
22 all work shall have an accuracy of not less than one in  
23 three hundred. If no land has been disturbed by oper-  
24 ations during the preceding year, the operator shall  
25 notify the department of mines of this fact. A final map  
26 shall be submitted within three months after completion  
27 of mining operations. Failure to submit maps or notices  
28 at specified times shall cause the permit to be suspended.

**Sec. 9. Surface Mining Supervisor and Inspectors;**  
2 **Appointment and Qualifications; Compensation and Ex-**  
3 **penses.**—Not more than six surface mining inspectors and  
4 a state surface mining supervisor shall be appointed by  
5 the director of the department of mines. All such ap-  
6 pointees shall be citizens of West Virginia in good health,

7 not less than thirty nor more than fifty-five years of age,  
8 of good character and reputation, and temperate in  
9 habits. Each of them shall have had at least five  
10 years practical experience in surface mining in West  
11 Virginia. The surface mining supervisor shall be paid not  
12 less than six thousand six hundred dollars and not more  
13 than seven thousand five hundred dollars per annum, and  
14 the surface mining inspectors shall be paid not less than  
15 six thousand dollars and not more than six thousand  
16 four hundred dollars per annum. Each shall be allowed  
17 reasonable traveling expenses when itemized by the  
18 claimant who shall verify upon oath that such expenses  
19 were actually incurred in the discharge of his official  
20 duties for the department of mines. Within the limits  
21 provided in this section, the salary of the supervisor and  
22 of each inspector shall be fixed by the director of the de-  
23 partment of mines, and in fixing such salaries the director  
24 shall consider ability, performance of duty, responsibility  
25 and experience of each. All such salaries and expenses  
26 shall be paid from the department of mines funds.

**Sec. 10. Duties of Surface Mining Supervisor and In-**

**2 spectors Generally; Eligibility for Permanent Appoint-**  
**3 ment; Tenure; Interest in Mining Operation; Oath and**  
**4 Bond.**—The surface mining supervisor and surface mining  
**5 inspectors shall make all necessary surveys and inspec-**  
**6 tions of surface mining operations, shall effect practical**  
**7 and effective administration and enforcement of all min-**  
**8 ing laws and rules of the state applicable to surface min-**  
**9 ing, and shall perform such other duties and services as**  
**10 may be prescribed by the director of the department of**  
**11 mines.**

**12 No person shall be eligible for permanent appointment**  
**13 as surface mining supervisor or surface mining inspector**  
**14 until he has served in a probationary status for a period**  
**15 of one year to the satisfaction of the director of the de-**  
**16 partment of mines. The surface mining supervisor and**  
**17 the surface mining inspectors serving as such on the ef-**  
**18 fective date of this section shall retain such rights as they**  
**19 have accrued. Any person receiving permanent appoint-**  
**20 ment as surface mining supervisor or surface mining in-**  
**21 spector shall have permanent tenure until he becomes**

22 sixty-five years of age, subject to removal only for phys-  
23 ical or mental impairment, neglect of duty, drunkenness,  
24 malfeasance in office, or official misconduct. No person  
25 serving as surface mining supervisor or surface mining  
26 inspector shall be interested, directly or indirectly, as  
27 owner, operator, or stockholder of any mining operation  
28 in the state of West Virginia, and the existence or ac-  
29 quisition of such interest on the part of any such inspec-  
30 tor shall immediately vacate his position.

31 Before any such supervisor or inspector shall enter  
32 upon the discharge of his duties, he shall take and sub-  
33 scribe to the public official's oath as prescribed by the  
34 constitution of West Virginia, and shall execute a bond  
35 in the penal sum of two thousand dollars with surety  
36 approved by the director of the department of mines and  
37 conditioned upon the faithful discharge of his duties.  
38 Premiums on such bonds shall be paid from department  
39 of mines funds, and all such executed bonds and oaths  
40 shall be filed in the office of the secretary of state.

**Sec. 11. Monthly Report by Operator.**—The operator  
2 of every surface mine shall, on or before the end of each

3 calendar month, file with the director a report covering  
4 the preceding calendar month on forms furnished by the  
5 director. Such reports shall state the number of acci-  
6 dents which have occurred, the number of persons em-  
7 ployed, the days worked and the actual tonnage mined.

**Sec. 12. Offenses; Penalties; Prosecutions.**—Any per-  
2 son, partnership, association, member of such partner-  
3 ship or association, corporation, or trust, who shall con-  
4 duct or allow to be conducted any surface mining oper-  
5 ation, or any part thereof, without a permit or without  
6 having furnished the required bond, or who shall carry  
7 on such operation or be a party thereto on land not  
8 covered by a permit; or who shall fail to submit a  
9 monthly report as required in section eleven hereof, or  
10 who shall falsely represent any material fact in an appli-  
11 cation for a permit or in an application for a renewal  
12 of a permit, and any owner or owners of surface or sur-  
13 face rights or any owner or owners of minerals or mineral  
14 rights who shall violate any provisions of section five  
15 hereof shall be guilty of a misdemeanor, and upon con-  
16 viction thereof, shall be fined an amount not exceeding

17 one thousand dollars for each such offense. It shall  
18 be the duty of the director to institute prosecutions  
19 for the violations of the provisions hereof. Any person  
20 aforesaid, convicted under the provisions of this section,  
21 shall, in addition to any fine imposed, pay to the director  
22 for deposit in the surface mining reclamation fund an  
23 amount sufficient to reclaim the area upon which such  
24 conviction was based in accordance with the provisions  
25 of section four, article six, chapter twenty of the code  
26 of West Virginia, one thousand nine hundred thirty-one,  
27 as amended. The director may institute any suit or other  
28 legal action necessary for the effective administration of  
29 this article.

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

*O Ray Fisher*

Chairman Senate Committee

*Ethel L Cransall*

Chairman House Committee

Originated in the House.

Takes effect July 1, 1963. ~~passage:~~

*Howard Meze*

Clerk of the Senate

*A Blankenship*

Clerk of the House of Delegates

*Howard W Carson*

President of the Senate

*Julius W Singleton Jr.*

Speaker House of Delegates

The within approved this the 14<sup>th</sup>  
day of March, 1963.

*W W Baum*

Governor

