

*Senate Bill #270*

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

~~HOUSE~~ <sup>SENATE</sup> BILL No. 270

(By Mr. Carson, Mr. President, & Mr. Moreland)



PASSED March 11, 1967

In Effect May 1, 1967 ~~Passage~~



FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-20-67

*#270  
Senate Bill*

**ENROLLED**

**Senate Bill No. 270**

(By MR. CARSON, MR. PRESIDENT, and MR. MORELAND)

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[Passed March 11, 1967; in effect May 1, 1967.]

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AN ACT to repeal article eight-a, chapter eleven; chapter thirteen-a; section thirty-seven, article five, chapter eighteen; section thirty, article three, chapter fifty-six, and section thirty-four, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two and fourteen, article three, chapter one; section seven, article one, chapter three; section two, article four, chapter three; sections ten and twenty-one, article five, chapter three; section three, article six, chapter three; sections two, three, four, five and six, article ten, chapter three; sections twelve and twenty-three, article three, chapter five-a; section one, article three, chapter six; sections three-a and three-h, article one, chapter seven; section four, article two, chapter seven; section three, article three, chapter seven; section sixteen, article five, chapter seven; section seven, article eight, chapter seven; section ten, article nine, chapter seven; section twelve, article twelve, chapter seven; sections three, five, fifteen and seventeen, article two, chapter eight; section two, article three, chapter eight; sections ten-j, fourteen, twenty, twenty-one and twenty-seven, article four, chapter eight; sections six and seventeen, article four-a, chap-

ter eight; sections eighteen, forty-four and forty-eight, article five, chapter eight; section seven, article seven, chapter eight; sections eight and eleven, article seven-a, chapter eight; sections three and eight, article eight, chapter eight; sections two, five and six, article nine, chapter eight; section six, article eleven, chapter eight; sections one-a and four, article twelve, chapter eight; section five, article thirteen, chapter eight; sections four, nine, twelve and fifteen-a, article two, chapter eight-a; section ten, article three, chapter eight-a; section twenty-eight, article four, chapter eight-a; sections seven, eleven and twenty-one, article six, chapter eight-a; section six, article two-a, chapter ten; section twenty-four, article three, chapter eleven; sections seventeen and thirty-two, article eight, chapter eleven; section eighty-four, article twelve, chapter eleven; section twenty, article seventeen, chapter eleven; section seven-a, article nineteen, chapter eleven; section eight, article one, chapter eleven-a; sections ten-a, and thirteen, article two, chapter eleven-a; sections two, twenty-four and forty-one, article three, chapter eleven-a; sections twelve and twenty-three, article four, chapter eleven-a; sections eight, twenty-one and twenty-five, article one, chapter thirteen; section seven, article three, chapter thirteen; sections eight and twenty-eight, article one, chapter fourteen; section nine, article one-b, chapter fifteen; section one, article ten, chapter sixteen; sections one, four, nine and eleven, article twelve, chapter sixteen; sections six, sixteen, eighteen-a and twenty-three-a, article thirteen, chapter sixteen; sections two and seven, article thirteen-a, chapter sixteen; section twenty, article fifteen, chapter sixteen; sections six, seven and ten, article eighteen, chapter sixteen; section five, article twenty, chapter sixteen; section nineteen, article four, chapter seventeen; sections eight and nine, article ten, chapter seventeen; section thirteen-g, article two, chapter eighteen; sections two and three-a, article nine, chapter eighteen; section nine, article four, chapter nineteen; section fifteen, article nine, chapter nineteen; section two, article seventeen, chapter nineteen; sections four, six, thirteen, fourteen and twenty-one, article twenty-one, chapter nineteen; section three, article twenty-one-a,

chapter nineteen; section eight, article twenty-three, chapter nineteen; sections one and three, article twenty-four, chapter nineteen; section seven, article one, chapter twenty; section sixteen, article two, chapter twenty; section nineteen, article three, chapter twenty; section seven, article five, chapter twenty-two; section four, article two, chapter twenty-four; section three, article three, chapter twenty-four-a; section thirty-one, article one, chapter twenty-five; section four, article three, chapter twenty-five; section eleven, article five, chapter twenty-eight; section two, article three, chapter twenty-nine-a; sections four-a, nine, thirteen-a, twenty-one, thirty-four, thirty-seven, sixty-three, eighty and eighty-four, article one, chapter thirty-one; section fifteen, article two, chapter thirty-one; section two, article three, chapter thirty-one; sections eight and sixteen, article four, chapter thirty-one; sections ten, eleven, fourteen, twenty-five-a, thirty-two, forty-three and forty-four, article eight, chapter thirty-one; section one, article one, chapter thirty-four; section two, article two, chapter thirty-four; section ten, article one, chapter thirty-five; section two, article five, chapter thirty-five; section twelve-a, article two, chapter thirty-six; sections twelve and seventeen, article eight, chapter thirty-six; section twenty-four, article six, chapter thirty-seven; section three, article thirteen, chapter thirty-seven; sections four and ten, article one, chapter thirty-eight; section fifteen, article two, chapter thirty-eight; section eleven, article three, chapter thirty-eight; section twenty, article four, chapter thirty-eight; section eight, article five, chapter thirty-eight; section fourteen, article eleven, chapter thirty-eight; section three, article twelve, chapter thirty-eight; sections five and nine, article thirteen, chapter thirty-eight; section eleven, article three, chapter thirty-nine; section two, article two, chapter forty-four; section eleven, article four, chapter forty-four; section eight, article eight, chapter forty-four; sections three and nine, article nine, chapter forty-four; sections two, five and seven, article eleven, chapter forty-four; section two, article three, chapter forty-seven; section two, article four, chapter forty-seven; section three, article four, chapter forty-eight; sec-



tion one, article five, chapter forty-eight; section eight, article five, chapter forty-nine; section fourteen, article six, chapter fifty-one; section three, article two, chapter fifty-four; section two, article twelve, chapter fifty-five; section two, article two, chapter fifty-six; sections twenty-four and twenty-eight, article three, chapter fifty-six; section three, article seven, chapter fifty-six; section thirteen, article eight, chapter fifty-six; section ten, article four, chapter sixty; section four, article five, chapter sixty; section twenty-one, article six, chapter sixty; section two, article seven, chapter sixty-one; and section twenty-eight, article ten, chapter sixty-one, all of said code; and to amend chapter fifty-nine of said code by adding thereto a new article, designated article three, relating to county-wide levy for district debt service, public indebtedness not bonded, the authority of boards of education to impose personal school tax, posting notice of election for creation of public service district, licenses to carry weapons, purchasing of commodities and printing produced by nonprofit workshops, air pollution control rules and regulations, the appointment of deputies and local conservators of the peace and the compensation of sheriffs and deputies, the financial statements of municipalities, county courts and county boards of education, the powers of a municipality with respect to an order to cease the pollution of waters, and the publishing and/or posting of notices, advertisements, statements, information and other matters required by law or court to be published and/or posted; defining certain terms and concepts used in said code and elsewhere in law with respect to newspapers, legal advertisements and publication of a newspaper; providing the rates which may be charged and received by a publisher or proprietor of a newspaper for publishing legal and political advertisements; authorizing mandamus to compel publication; providing civil and criminal penalties; relating to construction of other provisions in said code and elsewhere in law relating to newspapers, legal advertisements and publication of a newspaper; and providing a repealer provision and severability clause.

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

“That article eight-a, chapter eleven; chapter thirteen-a; section thirty-seven, article five, chapter eighteen; section thirty, article three, chapter fifty-six, and section thirty-four, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two and fourteen, article three, chapter one; section seven, article one, chapter three; section two, article four, chapter three; sections ten and twenty-one, article five, chapter three; section three, article six, chapter three; sections two, three, four, five and six, article ten, chapter three; sections twelve and twenty-three, article three, chapter five-a; section one, article three, chapter six; sections three-a and three-h, article one, chapter seven; section four, article two, chapter seven; section three, article three, chapter seven; section sixteen, article five, chapter seven; section seven, article eight, chapter seven; section ten, article nine, chapter seven; section twelve, article twelve, chapter seven; sections three, five, fifteen and seventeen, article two, chapter eight; section two, article three, chapter eight; sections ten-j, fourteen, twenty, twenty-one and twenty-seven, article four, chapter eight; sections six and seventeen, article four-a, chapter eight; sections eighteen, forty-four and forty-eight, article five, chapter eight; section seven, article seven, chapter eight; sections eight and eleven, article seven-a, chapter eight; sections three and eight, article eight, chapter eight; sections two, five and six, article nine, chapter eight; section six, article eleven, chapter eight; sections one-a and four, article twelve, chapter eight; section five, article thirteen, chapter eight; sections four, nine, twelve and fifteen-a, article two, chapter eight-a; section ten, article three, chapter eight-a; section twenty-eight, article four, chapter eight-a; sections seven, eleven and twenty-one, article six, chapter eight-a; section six, article two-a, chapter ten; section twenty-four, article three, chapter eleven; sections seventeen and thirty-two, article eight, chapter eleven; section eighty-four, article twelve, chapter eleven; section twenty, article seventeen, chapter eleven; section seven-a, article nineteen, chapter eleven; section eight, article one, chapter eleven-a; sections ten-a and thirteen, article two, chapter eleven-a; sections two, twenty-four and forty-one, article three, chapter eleven-a;

sections twelve and twenty-three, article four, chapter eleven-a; sections eight, twenty-one and twenty-five, article one, chapter thirteen; section seven, article three, chapter thirteen; sections eight and twenty-eight, article one, chapter fourteen; section nine, article one-b, chapter fifteen; section one, article ten, chapter sixteen; sections one, four, nine and eleven, article twelve, chapter sixteen; sections six, sixteen, eighteen-a and twenty-three-a, article thirteen, chapter sixteen; sections two and seven, article thirteen-a, chapter sixteen; section twenty, article fifteen, chapter sixteen; sections six, seven and ten, article eighteen, chapter sixteen; section five, article twenty, chapter sixteen; section nineteen, article four, chapter seventeen; sections eight and nine, article ten, chapter seventeen; section thirteen-g, article two, chapter eighteen; sections two and three-a, article nine, chapter eighteen; section nine, article four, chapter nineteen; section fifteen, article nine, chapter nineteen; section two, article seventeen, chapter nineteen; sections four, six, thirteen, fourteen and twenty-one, article twenty-one, chapter nineteen; section three, article twenty-one-a, chapter nineteen; section eight, article twenty-three, chapter nineteen; sections one and three, article twenty-four, chapter nineteen; section seven, article one, chapter twenty; section sixteen, article two, chapter twenty; section nineteen, article three, chapter twenty; section seven, article five, chapter twenty-two; section four, article two, chapter twenty-four; section three, article three, chapter twenty-four-a; section thirty-one, article one, chapter twenty-five; section four, article three, chapter twenty-five; section eleven, article five, chapter twenty-eight; section two, article three, chapter twenty-nine-a; sections four-a, nine, thirteen-a, twenty-one, thirty-four, thirty-seven, sixty-three, eighty and eighty-four, article one, chapter thirty-one; section fifteen, article two, chapter thirty-one; section two, article three, chapter thirty-one; sections eight and sixteen, article four, chapter thirty-one; sections ten, eleven, fourteen, twenty-five-a, thirty-two, forty-three and forty-four, article eight, chapter thirty-one; section one, article one, chapter thirty-four; section two, article two, chapter thirty-four; section ten, article one, chapter thirty-five; section two, article five, chapter thirty-five; section twelve-a, article two, chapter thirty-six; sections twelve and seventeen, article eight, chapter

thirty-six; section twenty-four, article six, chapter thirty-seven; section three, article thirteen, chapter thirty-seven; sections four and ten, article one, chapter thirty-eight; section fifteen, article two, chapter thirty-eight; section eleven, article three, chapter thirty-eight; section twenty, article four, chapter thirty-eight; section eight, article five, chapter thirty-eight; section fourteen, article eleven, chapter thirty-eight; section three, article twelve, chapter thirty-eight; sections five and nine, article thirteen, chapter thirty-eight; section eleven, article three, chapter thirty-nine; section two, article two, chapter forty-four; section eleven, article four, chapter forty-four; section eight, article eight, chapter forty-four; sections three and nine, article nine, chapter forty-four; sections two, five and seven, article eleven, chapter forty-four; section two, article three, chapter forty-seven; section two, article four, chapter forty-seven; section three, article four, chapter forty-eight; section one, article five, chapter forty-eight; section eight, article five, chapter forty-nine; section fourteen, article six, chapter fifty-one; section three, article two, chapter fifty-four; section two, article twelve, chapter fifty-five; section two, article two, chapter fifty-six; sections twenty-four and twenty-eight, article three, chapter fifty-six; section three, article seven, chapter fifty-six; section thirteen, article eight, chapter fifty-six; section ten, article four, chapter sixty; section four, article five, chapter sixty; section twenty-one, article six, chapter sixty; section two, article seven, chapter sixty-one; and section twenty-eight, article ten, chapter sixty-one, all of said code, be amended and reenacted; and that chapter fifty-nine of said code be amended by adding thereto a new article, designated article three, all to read as follows:".

## **CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.**

### **ARTICLE 3. CREATION OF NEW COUNTY; CHANGE IN COUNTY LINE.**

#### **§1-3-1. Notice of intention to create new county.**

1 When it is intended to apply to the Legislature for  
 2 the passage of an act to create a new county, a notice  
 3 of such intention shall be published as a Class II legal  
 4 advertisement in compliance with the provisions of

5 article three, chapter fifty-nine of this code, and the  
6 publication area for such publication shall be each county  
7 from which any part of such new county is proposed to  
8 be taken.

**§1-3-2. Survey and census; area and population.**

1 The county court of each of the counties out of which  
2 the new county is proposed to be formed, at its first  
3 session after the notice mentioned in the next preceding  
4 section has been published, as required by said section,  
5 shall order a survey of the whole county, and of that  
6 portion thereof proposed to be included in the new  
7 county, to be made by the surveyor of such county, if  
8 there be one, and if not by some other competent sur-  
9 veyor, in order to ascertain the number of square miles  
10 in the county, as well as in that portion thereof pro-  
11 posed to be included in such new county. Such court  
12 shall also appoint some one or more competent person  
13 or persons to take a census of the population of such  
14 county, and of that part thereof proposed to be included  
15 in such new county, in order to ascertain whether or not  
16 there will remain in such county a population of six  
17 thousand after the creation of such new county. It shall  
18 be the duty of the surveyor so directed or appointed  
19 to make such survey, and of the person or persons so  
20 appointed to take the census, as soon as their fees are  
21 paid or secured to be paid in a manner satisfactory to  
22 them to proceed in the shortest time practicable to make  
23 such survey and take such census and make report  
24 thereof to the county court by which they were ap-  
25 pointed; and the surveyor shall return and file with his  
26 report two fair plats and certificates of the survey made  
27 by him, showing the metes and bounds of the county  
28 and the number of square miles of territory contained  
29 therein, and the number of square miles contained within  
30 that portion thereof proposed to be included in the new  
31 county, and the metes and bounds thereof. The return  
32 of such survey and census shall be noted in the records  
33 of the court, and such reports shall be filed and pre-  
34 served by the clerk of such court in his office, and a  
35 notice in writing that such return of the survey and

36 census has been made shall be sent to the county court  
37 of the other county out of which such new county is  
38 proposed to be formed.

**§1-3-14. Notice and survey in case of changing a county line.**

1 When it is proposed to change a county line, a notice  
2 thereof shall be published prior to the application for a  
3 survey of the proposed change as a Class II legal ad-  
4 vertisement in compliance with the provisions of article  
5 three, chapter fifty-nine of this code, and the publication  
6 area for such publication shall be the county from which  
7 any territory is proposed to be taken. At any time after  
8 such notice has been published, the county court of the  
9 county, a part of whose territory is proposed to be at-  
10 tached to another county, shall, on application of any  
11 person interested, and at his expense, cause a survey  
12 of the proposed change of line to be made by the sur-  
13 veyor of the county, or by some competent surveyor  
14 appointed for the purpose. The surveyor so appointed,  
15 or directed, to make such survey shall, as soon as his  
16 fees therefor are paid or secured to be paid to his satis-  
17 faction, proceed to make such survey and return a plat  
18 and report thereof to said court, and the clerk thereof  
19 shall file and preserve the same in his office; and shall,  
20 as provided in section three of this article, make out  
21 and deliver to any person who may demand the same,  
22 a certified copy thereof. Every application to the Legis-  
23 lature for the change of a county line shall be accom-  
24 panied by a duly certified copy of such plat and report.  
25 If the county court of such county refuse to order such  
26 survey to be made, or if the surveyor appointed by such  
27 court to make such survey fail or refuse to do so, then  
28 and in that event the county court of the county to which  
29 such territory is proposed to be added shall, on the appli-  
30 cation of any person interested, and at his expense, order  
31 the survey to be made and appoint a surveyor to make  
32 the same; and the surveyor so appointed shall, as soon  
33 as his fees therefor are paid or secured to be paid to  
34 his satisfaction, make and report such survey to the  
35 county court of his county as hereinbefore required.

**CHAPTER 3. ELECTIONS.****ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§3-1-7. Precinct changes; procedure; precinct record.**

1 Subject to the provisions and limitations of section  
2 five of this article, the county court of any county may  
3 change the boundaries of any precinct within such  
4 county, or divide any precinct into two or more pre-  
5 cincts, or consolidate two or more precincts into one,  
6 or change any place of holding elections, whenever the  
7 public convenience may require it. If by reason of the  
8 destruction of the house or structure at which a voting  
9 place is established, or if for any other reason the elec-  
10 tion cannot be held thereat, and no provision have been  
11 made by the county court for holding the election at  
12 another place, the commissioners of election at such  
13 place may hold the election at the place nearest thereto  
14 which they can secure for the purpose; and in such case  
15 they shall make known by proclamation, to the voters  
16 assembled at such first named place of voting, the place  
17 at which the election will be held. The county court  
18 shall, in such case, establish another place of voting for  
19 said precinct as soon thereafter as practicable. No order  
20 effecting such change, division, or consolidation shall  
21 be made by the county court within ninety days next  
22 preceding an election nor without giving notice thereof  
23 at least one month before such change, division or con-  
24 solidation, by publication of such notice as a Class II-0  
25 legal advertisement in compliance with the provisions  
26 of article three, chapter fifty-nine of this code, and the  
27 publication area for such publication shall be the county  
28 in which such precinct or precincts are located.

29 Such court shall also, within fifteen days after the  
30 date of such order, cause a copy thereof to be published  
31 as aforesaid.

32 Such court shall also, before the next succeeding elec-  
33 tion, cause the voters in the several precincts so af-  
34 fected by such order to be duly registered in the proper  
35 precinct or precincts.

36 The county court shall keep in a well-bound book,  
37 marked "election precinct record", a complete record

38 of all their proceedings hereunder and of every order  
39 made creating a precinct or precincts or establishing a  
40 place of voting therein. Such "election precinct record"  
41 shall be kept by the county court clerk in his office,  
42 and shall, at all reasonable hours, when not actually  
43 in use by the county court, be open to inspection by any  
44 citizen of the county.

#### ARTICLE 4. VOTING MACHINES.

##### §3-4-2. Procedures for adopting voting machines.

1 Voting machines may be adopted for use in general, pri-  
2 mary and special elections in any county by either of the  
3 following procedures, and not otherwise:

4 (1) By a majority of the members of the county court  
5 voting to adopt the same at a meeting regularly called  
6 in regular or special session: *Provided, however,* That  
7 such meeting shall be held not less than six months prior  
8 to a general election or six months prior to a primary  
9 election. If at such meeting, such county court shall enter  
10 an order of its intention to adopt the use of voting ma-  
11 chines, it shall thereafter forthwith cause to be published  
12 a certified copy of such order as a Class II-0 legal adver-  
13 tisement in compliance with the provisions of article  
14 three, chapter fifty-nine of this code, and the publication  
15 area for such publication shall be the county involved.  
16 The first publication of such order shall not be less than  
17 twenty days after the entry of such order. Such county  
18 court shall not adopt the use of voting machines until  
19 ninety days after the entry of such order of its intention to  
20 adopt the same. Promptly after the expiration of ninety  
21 days after the entry of such order of intention to adopt the  
22 use of voting machines, if no petition has theretofore been  
23 filed with such county court requesting a referendum on  
24 the question of adoption of voting machines as hereinafter  
25 provided, such county court shall enter a final order adopt-  
26 ing voting machines, and voting machines shall thereby  
27 be adopted.

28 If five per cent or more of the registered voters of such  
29 county shall sign a petition requesting that voting ma-  
30 chines be not adopted for use in such county and such  
31 petition be filed with the county court of such county



32 within ninety days after the entry of such order of inten-  
 33 tion to adopt the use of voting machines, such county  
 34 court shall submit to the voters of such county at the next  
 35 general or primary election, whichever shall first occur,  
 36 the question: "Shall voting machines be adopted in.....  
 37 ..... County?" If this question be answered  
 38 in the affirmative by a majority of the voters in such  
 39 election upon the question, voting machines shall thereby  
 40 be adopted. If such question shall not be answered in the  
 41 affirmative by such majority, the use of voting machines  
 42 shall not be adopted.

43 (2) By the affirmative vote of a majority of the voters  
 44 of such county voting upon the question of the adoption  
 45 of voting machines in such county. If five per cent or more  
 46 of the registered voters of such county shall sign a peti-  
 47 tion requesting the adoption of voting machines for use in  
 48 such county, and such petition be filed with the county  
 49 court of such county, such county court shall submit to  
 50 the voters of such county at the next general or primary  
 51 election, following by not less than ninety days the date  
 52 of the filing of such petition, the question: "Shall voting  
 53 machines be adopted in ..... County?" If  
 54 this question be answered in the affirmative by a majority  
 55 of the voters of such county voting upon the question,  
 56 voting machines shall thereby be adopted. If such ques-  
 57 tion shall not be answered in the affirmative by such  
 58 majority, the use of voting machines shall not be adopted.

#### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PRO- CEDURES.**

##### **§3-5-10. Publication and printing of ballots; number.**

1 Between the sixtieth and the thirtieth days next prior  
 2 to the date of the primary election, the ballot commis-  
 3 sioners of each county shall prepare from the lists and  
 4 certificates of announcements, as provided in this article,  
 5 a sample official primary ballot for each party, placing  
 6 thereon the names of all the candidates of the political  
 7 party, and, as the case may be, the nonpartisan candidates  
 8 to be voted for at such primary election. During the two  
 9 weeks next preceding the primary election they shall pub-  
 10 lish such sample official primary election ballot as a Class

11 II-0 legal advertisement in compliance with the provisions  
12 of article three, chapter fifty-nine of this code, and the  
13 publication area for such publication shall be the county.  
14 The second publication shall be on the last day upon  
15 which each newspaper is published before the election.

16 The ballot commissioners shall determine the total num-  
17 ber of official ballots required for conducting the primary  
18 election in all of the election precincts of the county and  
19 shall cause same to be printed at least thirty days next  
20 preceding the date of the election and made ready for  
21 delivery to the several precincts along with other election  
22 supplies. The number of official ballots of a political party  
23 prepared for delivery to a precinct shall not exceed one  
24 and one-twentieth times the number of registered voters  
25 of such party in that precinct.

**§3-5-21. Party conventions to nominate presidential electors;  
candidates; organizations; duties.**

1 Candidates for presidential electors shall be nominated  
2 by the delegated representatives of the political party  
3 assembled in a state convention to be held between the  
4 first and fifteenth days of August next preceding any  
5 general election at which presidential electors are to be  
6 elected. The state executive committee of the political  
7 party, by resolution, shall designate the place and fix the  
8 date of such convention, shall prescribe the number of  
9 delegates thereto, and shall apportion the delegates among  
10 the several counties of the state in proportion to the vote  
11 cast in the state for the party's candidate for governor at  
12 the last preceding general election at which a governor  
13 was elected. The state executive committee shall also  
14 ascertain and designate all offices for which candidates  
15 are to be nominated at such convention.

16 At least sixty days prior to the date fixed for holding  
17 any state convention, the chairman of the party's state  
18 executive committee shall cause to be delivered to the  
19 party's county executive committee in each county of the  
20 state a copy of the resolutions fixing the time and place of  
21 holding the state convention and prescribing the number  
22 of delegates from each county to the convention. Within  
23 ten days after receipt of the copy of such resolutions, the

24 party executive committee of each county shall meet and,  
25 by resolution, shall apportion the delegates to the state  
26 convention among the several magisterial districts of the  
27 county, on a basis of the vote received in the county by  
28 the candidate of the party for governor at the last pre-  
29 ceding general election at which a governor was elected,  
30 but in such apportionment of county delegates each magis-  
31 terial district shall be entitled to at least one delegate to  
32 such state convention. The party's county executive com-  
33 mittee shall call a meeting of the members of the political  
34 party in mass convention in the several magisterial dis-  
35 tricts of the county, which district meeting shall be held  
36 at least thirty days prior to the date fixed for the state  
37 convention and at which meeting the members of the  
38 political party in each magisterial district shall elect the  
39 number of delegates to which such district is entitled in  
40 the state convention.

41 The meeting place in the magisterial district shall be  
42 as central and convenient as can reasonably be selected,  
43 and all recognized members of the political party shall be  
44 entitled to participate in any such mass convention and in  
45 the selection of delegates. Notice of the time and place  
46 of holding the several magisterial district mass conven-  
47 tions and of the person who shall act as temporary chair-  
48 man thereof shall be given by publication as a Class II-0  
49 legal advertisement in compliance with the provisions of  
50 article three, chapter fifty-nine of this code, and the pub-  
51 lication area for such publication shall be the county.  
52 The first publication shall be made not more than fifteen  
53 days and the second publication shall be made not less  
54 than five days prior to the date fixed for holding the  
55 convention. The notice published shall specify the num-  
56 ber of delegates which each magisterial district in the  
57 county is entitled to elect to the state convention.

58 Upon assembling, the mass convention of each magis-  
59 terial district shall choose a chairman and a secretary,  
60 who, within five days after the holding of such conven-  
61 tion, shall certify to the chairman of the state executive  
62 committee of the political party and the chairman of the  
63 county committee of the political party, the names and  
64 addresses of the parties selected as delegates to the state  
65 convention.

66 All contests over the selection of delegates to conven-  
 67 tions shall be heard and determined by the party execu-  
 68 tive committee of the county from which the delegates  
 69 are chosen, and such county executive committee shall,  
 70 upon written petition of any contestant, meet for such  
 71 hearings and determinations within ten days after the  
 72 holding of such magisterial district mass convention. The  
 73 circuit court of the county and the supreme court of ap-  
 74 peals of the state shall have concurrent original jurisdic-  
 75 tion to review, by mandamus or other proper proceeding,  
 76 the decision of a county executive committee in any  
 77 contest.

78 The delegates chosen and certified by and from the  
 79 several magisterial districts in the state, and, in the event  
 80 of any contest, those prevailing in the contest, shall make  
 81 up the state convention. The number present of those  
 82 entitled to participate in any convention shall cast the  
 83 entire vote to which the county is entitled in such con-  
 84 vention, and it shall require a majority vote to nominate  
 85 any candidate for office.

86 All nominations made at state conventions shall be  
 87 certified within fifteen days thereafter, by the chairman  
 88 and the secretary of the convention, to the secretary of  
 89 state, who shall certify them to the clerk of the circuit  
 90 court of each county concerned, and the names of the  
 91 persons so nominated shall be printed upon the regular  
 92 ballot to be voted at the ensuing general election, except  
 93 that the names of the presidential elector candidates shall  
 94 not be printed thereon.

95 The delegates to any state convention may formulate  
 96 and promulgate such party platform or declaration of  
 97 party principles as to them shall seem advisable.

#### **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

##### **§3-6-3. Publication of nominations.**

1 At least ten days before an election to fill any public  
 2 office at which the voters of any county are entitled to  
 3 vote, the clerk of the circuit court of such county shall  
 4 cause to be published the nominations for office certified  
 5 to him and filed in his office, excepting nominations for  
 6 office to be filled by the voters of any subdivision less

7 than a county, such nominations to be published as a  
8 Class II-0 legal advertisement in compliance with the  
9 provisions of article three, chapter fifty-nine of this code,  
10 and the publication area for such publication shall be  
11 the county. The second publication shall be on the last  
12 day upon which each newspaper is published before the  
13 election. Whenever it shall appear by affidavit that an  
14 error or omission has occurred in the publication of the  
15 names or description of candidates nominated for public  
16 office, or in the printing of the ballots, the board of ballot  
17 commissioners shall correct such error. The list of  
18 nominations published by clerks of the circuit courts of  
19 the several counties shall be arranged in the order and  
20 form in which they will be printed upon the ballot.

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-2. Vacancy in office of governor.**

1 In case of the death, conviction or impeachment,  
2 failure to qualify, resignation or other disability of the  
3 governor, the president of the senate shall act as gov-  
4 ernor until the vacancy is filled or the disability re-  
5 moved; and if the president of the senate, for any of the  
6 above named causes, shall be or become incapable of  
7 performing the duties of governor, the same shall de-  
8 velop upon the speaker of the house of delegates; and  
9 in all other cases where there is no one to act as gov-  
10 ernor, one shall be chosen by the joint vote of the Legis-  
11 lature. Whenever a vacancy shall occur in the office  
12 of governor before the first three years of the term shall  
13 have expired, a new election for governor shall take  
14 place to fill the vacancy. If the vacancy shall occur  
15 more than thirty days next preceding a general elec-  
16 tion, the vacancy shall be filled at such election and the  
17 acting governor for the time being shall issue a procla-  
18 mation accordingly, which shall be published prior to  
19 such election as a Class II-0 legal advertisement in com-  
20 pliance with the provisions of article three, chapter  
21 fifty-nine of this code, and the publication area for such  
22 publication shall be each county of the state. But if  
23 it shall occur less than thirty days next preceding such  
24 general election, and more than one year before the  
25 expiration of the term, such acting governor shall issue

26 a proclamation, fixing a time for a special election to  
27 fill such vacancy, which shall be published as herein-  
28 before provided.

29 If the vacancy is to be filled at a general election and  
30 shall occur before the primary election to nominate  
31 candidates to be voted for at such general election, can-  
32 didates to fill the vacancy shall be nominated at such  
33 primary election in accordance with the time require-  
34 ments and the provisions and procedures prescribed in  
35 article five of this chapter. When nominations to fill  
36 such vacancy cannot be so accomplished at such primary  
37 election, and in all cases wherein the vacancy is to be  
38 filled at a special election, candidates to be voted for  
39 at such general or special elections shall be nominated  
40 by a state convention to be called, convened and held  
41 under the resolutions, rules and regulations of the po-  
42 litical party executive committees of the state. The laws  
43 prescribing the manner of calling, constituting and hold-  
44 ing conventions to nominate candidates for presiden-  
45 tial electors shall, in so far as applicable, govern conven-  
46 tions to nominate candidates to fill any vacancy in any  
47 office to be filled by the voters of the state as a whole,  
48 except that, in lieu of the magisterial district conven-  
49 tions in the several counties, the county executive com-  
50 mittee shall call and convene a county convention at the  
51 county seat with delegates thereto apportioned to and  
52 representative of the several magisterial districts of the  
53 county as provided in section twenty-one of article five  
54 of this chapter. The county convention shall proceed  
55 to select the county's prescribed number of state con-  
56 vention delegates from the several magisterial districts  
57 thereof and the chairman and secretary of the conven-  
58 tion shall promptly certify the names and addresses of  
59 the persons so selected as delegates to the state conven-  
60 tion to the chairman of the state executive committee  
61 of the political party.

**§3-10-3. State officials, United States senator and judge vacan-  
cies.**

1 Any vacancy occurring in the office of secretary of  
2 state, auditor, treasurer, attorney general, commissioner

3 of agriculture, United States senator, judge of the su-  
4 preme court of appeals, or in any office created or made  
5 elective, to be filled by the voters of the entire state,  
6 or judge of a circuit court, a common pleas, intermedi-  
7 ate, criminal or other inferior court, shall be filled by  
8 the governor of the state by appointment. If the unex-  
9 pired term of a judge of the supreme court of appeals,  
10 or a judge of the cricuit court, a common pleas, inter-  
11 mediate, criminal or other inferior court, be for less than  
12 two years; or if the unexpired term of any other office  
13 named in this section be for a period of less than two  
14 years and six months, the appointment to fill the va-  
15 cancy shall be for the unexpired term. If the unexpired  
16 term of any office be for a longer period than above  
17 specified, the appointment shall be until the next gen-  
18 eral election and until the election and qualification of  
19 a successor to the person appointed, at which election  
20 the vacancy shall be filled by election for the unexpired  
21 term. Proclamation of any election to fill an unexpired  
22 term shall be made by the governor of the state, and,  
23 in the case of an office to be filled by the voters of the  
24 entire state, shall be published prior to such election as  
25 a Class II-0 legal advertisement in compliance with the  
26 provisions of article three, chapter fifty-nine of this code,  
27 and the publication area for such publication shall be  
28 each county of the state. If the election be to fill a  
29 vacancy in the office of judge of a circuit court, the  
30 proclamation shall be published prior to such election  
31 as a Class II-0 legal advertisement in compliance with  
32 the provisions of article three, chapter fifty-nine of this  
33 code, and the publication area for such publication shall  
34 be each county in the judicial circuit. If the election  
35 be to fill a vacancy in the office of judge of a common  
36 pleas, intermediate, criminal or other inferior court, the  
37 proclamation shall be published prior to such election  
38 as a Class II-0 legal advertisement in compliance with  
39 the provisions of article three, chapter fifty-nine of this  
40 code, and the publication area for such publication shall  
41 be the county in which such court is located. Candidates  
42 to fill any vacancy in any office named in this section  
43 shall be nominated in the manner provided in this

44 article for nominating candidates to fill a vacancy in the  
 45 office of governor, to be voted for at a general election,  
 46 but, in selecting candidates for the office of judge to serve  
 47 in a single county, the county executive committee of  
 48 the county shall perform the duties relating thereto,  
 49 and, in selecting candidates for the office of judge of a  
 50 circuit court in circuits embracing more than one county,  
 51 the county executive committees of the counties con-  
 52 cerned shall resolve themselves into a judicial circuit  
 53 committee for discharge of the duties relating to such  
 54 nominations.

**§3-10-4. Congressmen vacancies.**

1 If there be a vacancy in the representation from this  
 2 state in the House of Representatives in the Congress of  
 3 the United States, the governor shall, within ten days  
 4 after the fact comes to his knowledge, give notice thereof  
 5 by proclamation, to be published prior to such election  
 6 as a Class II-0 legal advertisement in compliance with  
 7 the provisions of article three, chapter fifty-nine of this  
 8 code, and the publication area for such publication shall  
 9 be each county in the congressional district. In such  
 10 proclamation he shall appoint some day, not less than  
 11 thirty nor more than seventy-five days from the date  
 12 thereof, for holding the election to fill such vacancy.  
 13 Nominations to fill such vacancy shall be made in the  
 14 manner prescribed for nominating a candidate to fill a  
 15 vacancy in the office of governor, to be voted for at a  
 16 special election. The congressional district executive  
 17 committee of a party shall perform the duties devolving  
 18 upon the state executive committee in filling a state of-  
 19 fice.

**§3-10-5. Vacancies in state legislature.**

1 Any vacancy in the office of state senator or member  
 2 of the House of Delegates shall be filled by appointment by  
 3 the governor, in each instance from a list of three legally  
 4 qualified persons submitted by the county party exec-  
 5 utive committee in the case of a member of the House  
 6 of Delegates who is elected from a county that is not sit-  
 7 uated in a delegate district, by the party executive com-



8 mittee of the delegate district in the case of a member  
 9 of the House of Delegates who is elected from such dele-  
 10 gate district, and by the party executive committee of  
 11 the state senatorial district in the case of a state senator,  
 12 of the party with which the person holding the office im-  
 13 mediately preceding the vacancy was affiliated, and of  
 14 the county, delegate district or state senatorial district,  
 15 respectively, in which he resided at the time of his elec-  
 16 tion or appointment. The appointment to fill a vacancy  
 17 in the House of Delegates shall be for the unexpired term.  
 18 If the unexpired term in the office of the state senator be  
 19 for less than two years and two months, the appointment  
 20 shall be for the unexpired term. If the unexpired term  
 21 be for a period longer than two years and two months,  
 22 the appointment shall be until the next general election  
 23 and until the election and qualification of a successor to  
 24 the person appointed, at which general election the va-  
 25 cancy shall be filled by election for the unexpired term.  
 26 Notice of an election to fill a vacancy in the office of state  
 27 senator shall be given by the governor by proclamation  
 28 and shall be published prior to such election as a Class  
 29 II-0 legal advertisement in compliance with the provi-  
 30 sions of article three, chapter fifty-nine of this code, and  
 31 the publication area for such publication shall be each  
 32 county in the senatorial district. Nominations for can-  
 33 didates to fill such vacancy shall be made in the manner  
 34 prescribed for nominating a candidate to fill a vacancy  
 35 in the office of governor to be voted for at a general elec-  
 36 tion. The state senatorial district executive committee  
 37 of the political party shall discharge the duties incident  
 38 to state senator nominations devolving upon the party  
 39 state executive committee in nominating a candidate for  
 40 a state office.

**§3-10-6. Circuit court clerk vacancies.**

1 When a vacancy occurs in the office of clerk of the cir-  
 2 cuit court, the circuit court, or the judge thereof in vaca-  
 3 tion, shall fill the same by appointment until the next  
 4 general election, and the person so appointed shall hold  
 5 office until his successor is elected and qualified. At such  
 6 general election a clerk shall be elected for the unexpired  
 7 term. The circuit court, or the judge thereof in vacation,

8 shall cause a notice of such election to be published prior  
 9 to such election as a Class II-0 legal advertisement in com-  
 10 pliance with the provisions of article three, chapter fifty-  
 11 nine of this code, and the publication area for such pub-  
 12 lication shall be the county involved. If the vacancy oc-  
 13 curs before the primary election held to nominate can-  
 14 didates to be voted for at the general election, at which  
 15 any such vacancy is to be filled, candidates to fill such  
 16 vacancy shall be nominated at such primary election in  
 17 accordance with the time requirements and the provisions  
 18 and procedures prescribed in article five of this chapter.  
 19 Otherwise, they shall be nominated by the county execu-  
 20 tive committee in the manner provided in section nine-  
 21 teen, article five, of this chapter, as in the case of filling  
 22 vacancies in nominations, and the names of the persons,  
 23 so nominated and certified to the clerk of the circuit court  
 24 of such county, shall be placed upon the ballot to be voted  
 25 at such next general election.

## **CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.**

### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.**

1 The director shall solicit sealed bids for the purchase  
 2 of commodities and printing that is estimated to exceed  
 3 two thousand dollars. No spending unit shall issue a  
 4 series of requisitions which would circumvent this two  
 5 thousand dollar maximum. Bids shall be obtained by  
 6 public notice published as a Class II legal advertisement  
 7 in compliance with the provisions of article three, chapter  
 8 fifty-nine of this code, and the publication area for such  
 9 publication shall be the county where the department or  
 10 agency making the requisition is located. Such notice  
 11 shall be so published within the fourteen days next pre-  
 12 ceding the final date of submitting bids. The notice may  
 13 also be published by any other advertising medium the  
 14 director may deem advisable. The director may also  
 15 solicit sealed bids by sending requests by mail to pros-  
 16 pective suppliers and by posting notice on a bulletin

17 board in his office: *Provided*, That the director shall,  
 18 without competitive bidding, purchase commodities and  
 19 printing produced and offered for sale by nonprofit work-  
 20 shops, as defined in section one of article one of this  
 21 chapter, which are located in this state: *Provided, how-*  
 22 *ever*, That such commodities and printing shall be of a  
 23 price and quality comparable to other commodities and  
 24 printing otherwise available.

**§5A-3-23. Disposition by director of commodities; application  
 of proceeds from sale.**

1 The director shall have the exclusive power and author-  
 2 ity to make disposition of commodities or expendable  
 3 commodities now owned or in the future acquired by the  
 4 state, when any such commodities are or shall become  
 5 obsolete, unusable or are not being used, or need to be  
 6 replaced, and are so reported in writing by the depart-  
 7 ment owning or having custody or control thereof as avail-  
 8 able for the director's disposition.

9 It shall be the duty of the director to determine what  
 10 commodities or expendable commodities should be dis-  
 11 posed of and he shall make such disposition in the man-  
 12 ner which in his opinion will be most advantageous to  
 13 the state, either by transferring the particular commodi-  
 14 ties or expendable commodities between departments,  
 15 by trading in such commodities as a part payment on the  
 16 purchase of new commodities, or by sale thereof to the  
 17 highest bidder by means of public auctions, or sealed bids  
 18 after having first advertised the time, terms and place of  
 19 such sale as a Class II legal advertisement in compliance  
 20 with the provisions of article three, chapter fifty-nine of  
 21 this code, and the publication area for such publication  
 22 shall be the county wherein the sale is to be conducted.  
 23 The sale may also be advertised in such other advertising  
 24 medium as the director may deem advisable. The direc-  
 25 tor shall have the authority to sell to the highest bidder  
 26 or to any one or more of the highest bidders, if there be  
 27 more than one, or, if in his opinion the best interest of  
 28 the state will be served, to reject all bids. Upon the trans-  
 29 fer of commodities or expendable commodities between  
 30 departments, the director shall set the price to be paid

31 by the receiving department with due consideration given  
 32 to current market prices. The proceeds of such sales or  
 33 transfers shall be deposited in the state treasury to the  
 34 credit on a pro rata basis of the fund or funds out of which  
 35 the purchase of the particular commodities or expendable  
 36 commodities was made.

## CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

### ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

#### §6-3-1. Appointment of deputies; conservators of the peace.

1 (a) (1) The clerk of the supreme court of appeals, or  
 2 of any circuit, criminal, common pleas, intermediate or  
 3 county court, or of any tribunal established by law in lieu  
 4 thereof, may, with the consent of the court, or such tri-  
 5 bunal, duly entered of record, appoint any person or per-  
 6 sons his deputy or deputies.

7 (2) A sheriff, surveyor of lands, or assessor may, with  
 8 the consent of the county court duly entered of record,  
 9 appoint any person or persons his deputy or deputies.

10 (3) A sheriff, when in the opinion of the judge of the  
 11 circuit court the public interest requires it, may, with the  
 12 assent of said court, duly entered of record, appoint any  
 13 person or persons his deputy or deputies to perform any  
 14 temporary service or duty.

15 (4) Each deputy so appointed shall take the same oath  
 16 of office required of his principal, and may, during his  
 17 continuance in office, perform and discharge any of the  
 18 official duties of his principal, and any default or misfeas-  
 19 ance in office of the deputy shall constitute a breach of the  
 20 conditions of the official bond of his principal.

21 (5) A sheriff in any county in which there are more  
 22 than four deputies shall devote his full time to the per-  
 23 formance of the services or duties required by law of such  
 24 sheriff, and he shall not receive any compensation or re-  
 25 imbursement, directly or indirectly, from any person,  
 26 firm or corporation for the performance of any private  
 27 or public services or duties: *Provided*, That any such  
 28 sheriff may retain or make any investment and receive  
 29 income therefrom, unless such investment is otherwise

30 prohibited by law or will impair his independence of  
31 judgment in the exercise of, or might reasonably tend  
32 to conflict with the proper discharge of, the services or  
33 duties of his office. A sheriff in any county in which  
34 there are four or fewer deputies, or a deputy sheriff in  
35 any county irrespective of the number of deputies, need  
36 not devote his full time to the services or duties of his  
37 office as sheriff or his employment as deputy sheriff, as  
38 the case may be; but any such sheriff or deputy sheriff  
39 shall not engage in any business or transaction, accept  
40 other employment or make any investment which is oth-  
41 erwise prohibited by law or which will impair his in-  
42 dependence of judgment in the exercise of, or might  
43 reasonably tend to conflict with the proper discharge of,  
44 the services or duties of his offices as sheriff or his em-  
45 ployment as deputy sheriff, as the case may be. A  
46 sheriff and his deputies in any county, irrespective of  
47 the number of deputies, shall receive for the performance  
48 of their public services and duties no compensation or  
49 remuneration except such as may be regularly provided  
50 and paid out of public funds to the amount and in the  
51 manner provided by law. No sheriff or deputy sheriff  
52 in any county, irrespective of the number of deputies,  
53 may receive, directly or indirectly, any gift or donation  
54 from any person, firm or corporation.

55 (6) Except as hereinafter expressly provided by para-  
56 graph (b) of this section no sheriff shall appoint or con-  
57 tinue the appointment of any deputy contrary to the pro-  
58 visions hereof. Any sheriff or deputy sheriff who shall  
59 violate any of the provisions of this section shall be guilty  
60 of a misdemeanor and upon conviction thereof shall be  
61 fined not less than five hundred dollars nor more than  
62 five thousand dollars, or confined in jail not to exceed  
63 one year, or both, in the discretion of the court.

64 (7) Circuit courts shall have jurisdiction in equity and  
65 mandamus, and the supreme court of appeals shall have  
66 jurisdiction in mandamus, upon the filing of a petition  
67 by the prosecuting attorney, the attorney general, or any  
68 three or more citizens of the county, to require any sher-  
69 iff and the county court to vacate the appointment of any  
70 deputy, the appointment of which is made or continued

71 in violation of the provisions hereof. Any such proceed-  
72 ing may be instituted and prosecuted by the attorney  
73 general either in the circuit court of Kanawha county or  
74 in the county for which such appointment was made.

75 (b) (1) Any resident or group of residents of any  
76 unincorporated community, as hereinafter defined, may  
77 petition the sheriff for the appointment of a local con-  
78 servator of the peace and such sheriff, when in his opin-  
79 ion the public interests require it, may with the assent  
80 of said county court and the judge of the circuit court  
81 duly entered of record, either in term or vacation of any  
82 such court, appoint any person or persons a local conser-  
83 vator or conservators of the peace to perform the duties  
84 of a conservator of the peace outside of any incorporated  
85 city, town or village. No person shall be appointed such  
86 local conservator of the peace who has not been a bona  
87 fide resident and taxpayer of the county for at least one  
88 year prior to his appointment. Such local conservator  
89 of the peace during his continuance in office, may perform  
90 and discharge any of the official duties of the sheriff, sub-  
91 ject nevertheless to the provisions of this section. No  
92 local conservator so appointed shall be subject to the  
93 direction or control of any person other than his princi-  
94 pal and he shall not perform any services or duties, either  
95 private or public, except the duties required by law of  
96 conservators of the peace pursuant to the provisions  
97 hereof, for any person, firm, or corporation. No such  
98 local conservator shall be entitled to collect or receive  
99 any fees provided by law to be paid to the sheriff or to  
100 a deputy sheriff, but all fees provided by law for the  
101 sheriff, when such duties and services are rendered by  
102 such local conservator, shall be paid to the sheriff as reg-  
103 ular collections of the sheriff's office. The local conser-  
104 vator shall be paid for the public services performed by  
105 him a salary of not less than seventy-five dollars per  
106 month out of the county treasury from a fund to be paid  
107 into such treasury by a resident or the residents of the  
108 community for which he is appointed, for the sole pur-  
109 pose of compensating such local conservator or conser-  
110 vators and no such local conservator shall receive any  
111 other compensation, directly or indirectly, from any per-

112 son, firm, or corporation, for any private or public serv-  
113 ice, except the salary payable to him for his public serv-  
114 ices and duties and from such fund, except that he shall  
115 be entitled to witness and mileage fees when a witness  
116 in a court of record. Each local conservator so appointed  
117 shall take the same oath of office required of his princi-  
118 pal and any default or misfeasance in the office of such  
119 local conservator shall constitute a breach of the condi-  
120 tions of the official bond of his principal.

121 (2) When the sheriff shall have been petitioned for the  
122 appointment of a local conservator and has determined  
123 that the appointment is proper, he shall select the per-  
124 son whom he proposes to have appointed such conser-  
125 vator and shall notify the county court of the community  
126 for which such conservator is to be appointed and the  
127 name of the person proposed for such appointment. The  
128 county court shall thereupon cause notice that the sher-  
129 iff has recommended the appointment of the person  
130 named as conservator for the community named to be  
131 published as a Class II legal advertisement in complinace  
132 with the provisions of article three, chapter fifty-nine  
133 of this code, and the publication area for such publica-  
134 tion shall be the county. The notice shall designate a  
135 day not less than five days after the date of the last pub-  
136 lication when the county court will act upon the petition  
137 and recommendation. Neither the county court nor the  
138 judge of the circuit court shall assent and approve the  
139 appointment of such local conservator until such pub-  
140 lication has been made. The costs of the publication  
141 shall be paid by the person or persons petitioning for the  
142 appointment of the conservator.

143 No local conservator shall be appointed except it be  
144 made to appear to the satisfaction of the county court  
145 and the judge of the circuit court that because of the lack  
146 of sufficient funds, geographical location of the unincor-  
147 porated community for which such conservator is to be  
148 appointed, or other good reason, the sheriff and his reg-  
149 ular deputies and the constables of the county are not  
150 sufficient to afford proper local policing of such commu-  
151 nity and that the person or persons moving for the ap-  
152 pointment of such local conservator have made satisfac-

153 tory arrangements to compensate him for his services as  
154 such local conservator of the peace.

155 (3) Such local conservator of the peace shall have  
156 all the powers and duties of a regularly appointed dep-  
157 uty sheriff except that he shall not execute any civil  
158 process except such process as may be necessary to bring  
159 parties before the court in any action at law or suit in  
160 equity and subpoenas for witnesses within the unincor-  
161 porated community for which he is appointed and within  
162 a distance of one mile outside the boundaries thereof,  
163 except as hereinafter expressly provided, but he shall  
164 not participate in any strike, unemployment boycott, or  
165 other industrial or labor dispute, nor serve any court  
166 process of any character relating thereto. He shall act  
167 as such local conservator only in the unincorporated  
168 community for which he is appointed, and within a dis-  
169 tance of one mile from the boundaries thereof as fixed  
170 by the county court: *Provided, however,* That the au-  
171 thority of one local conservator shall not extend into any  
172 other unincorporated community for which another local  
173 conservator is appointed and acting, except as otherwise  
174 expressly provided by clause (6) of this paragraph, ex-  
175 cept that in fresh pursuit he may affect arrests anywhere  
176 in the county. He may also exercise the powers of a  
177 regularly appointed deputy anywhere in the county when  
178 required to guard or assist in guarding a payroll, or any  
179 other property of value in transit to or from the unin-  
180 corporated community for which he is appointed. Any  
181 person arrested by such local conservator shall, with all  
182 convenient speed, be turned over to the sheriff, or one  
183 of his regular deputies, or to a regular constable of the  
184 county to be dealt with according to law, and his author-  
185 ity for that purpose shall be co-extensive with the county.

186 (4) Any local conservator appointed to perform the  
187 duties of conservator of the peace shall be a public offi-  
188 cer and the payment, or contribution to the payment of  
189 compensation of such local conservator shall not consti-  
190 tute the person, firm or corporation making such pay-  
191 ment or contribution the employer of such local conser-  
192 vator and no person, firm or corporation paying, or con-  
193 tributing to the payment of compensation to such local



194 conservator shall be answerable in law or in equity for  
195 any damages to person or property resultng from any  
196 official act of such local conservator.

197 (5) No person appointed such local conservator shall  
198 thereby be entitled to carry weapons, but such local con-  
199 servator may carry weapons when he shall be duly li-  
200 censed and shall have given bond as provided by section  
201 two, article seven, chaper sixty-one of the code of West  
202 Virginia, one thousand nine hundred thirty-one.

203 (6) Not more than one local conservator of the peace  
204 shall be appointed, to perform the duties of conservator  
205 of the peace, for each two thousand five hundred inhab-  
206 itants of the county as ascertained by the last regular  
207 decennial census after deducting the number of inhabit-  
208 ants of the county residing in the incorporated cities,  
209 towns and villages in such county. Not more than one  
210 local conservator shall be appointed for any unincorpor-  
211 ated community unless the population thereof exceed  
212 fifteen hundred people and in such case not more than  
213 two conservators shall be appointed for such commu-  
214 nity.

215 (7) The phrase "unincorporated community" within  
216 the meaning of this section shall mean any center of  
217 population wherein three hundred or more persons re-  
218 side within an area of not more than one square mile.

219 (8) The county court and the judge of the circuit  
220 court in approving the appointment of a local conservator  
221 shall enter of record an order making such appointment  
222 and shall show therein the necessity for the appointment,  
223 the persons or persons on whose motion the appointment  
224 is made, the arrangement for the payment of compen-  
225 sation to such local conservator, the unincorporated com-  
226 munity, or communities, for which the appointment is  
227 made, including the general boundary of each unincor-  
228 porated community for which he is appointed.

229 (9) No local conservator shall act as an election offi-  
230 cial or remain in, about or near any voting place or place  
231 of political convention, further than is necessary for him  
232 to promptly cast his vote and retire from the voting  
233 place.

234 (10) Any local conservator violating any of the pro-  
235 visions of clauses (3) and (9) of this paragraph shall  
236 be guilty of a misdemeanor and, upon conviction thereof,  
237 shall be fined not less than fifty dollars nor more than  
238 three hundred dollars, or be confined in the county jail  
239 not more than six months, or both, in the discretion of  
240 the court; and it shall be the duty of the sheriff and the  
241 county court to forthwith revoke his appointment irre-  
242 spective of any criminal prosecution. A proceeding in  
243 mandamus or injunction shall lie in the circuit court  
244 and a proceeding in mandamus shall lie in the supreme  
245 court of appeals at the instance of the prosecuting at-  
246 torney, the attorney general, or of any three or more  
247 citizens of the community for which such conservator is  
248 appointed, to require the performance of such duty by  
249 the sheriff and the county court.

250 (11) Such local conservator shall serve during the  
251 joint will and pleasure of the sheriff and the county court  
252 and his appointment may be revoked by order entered  
253 of record by the county court either with or without the  
254 assignment of cause therefor.

255 A local conservator may be removed by the judge of  
256 the circuit court, either in term or vacation, for drunk-  
257 enness, gross immorality, incompetence, neglect of duty,  
258 or other good cause, upon the petition of three or more  
259 residents of the community for which he has been ap-  
260 pointed. The petition shall set forth the cause or causes  
261 for which such removal is asked and shall show that de-  
262 mand for removal has been made of the sheriff and the  
263 county court and that the sheriff and the county court  
264 have failed to remove the local conservator. At least  
265 three copies of the petition shall be filed, and upon the  
266 filing of the petition the judge shall fix a time and place  
267 for a hearing thereon, which time shall not be less than  
268 ten days after the filing of the petition, and shall cause  
269 a copy thereof to be served upon the sheriff and such  
270 local conservator at least ten days before the hearing  
271 thereon.

**CHAPTER 7. COUNTY COURTS AND OFFICERS.****ARTICLE 1. COUNTY COURTS GENERALLY.**

**§7-1-3a. Powers with respect to construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.**

1 In addition to all other powers and duties now con-  
2 ferred by law upon county courts, such courts are hereby  
3 authorized and empowered to install, construct, repair,  
4 maintain and operate waterworks, water mains, sewer  
5 lines and sewage disposal plants in connection therewith  
6 within their respective counties: *Provided*, That the  
7 county court of Webster is authorized to expend county  
8 funds in the opening of, and upkeep of, a sulphur well  
9 now situate on county property: *Provided*, That such  
10 authority and power herein conferred upon county courts  
11 shall not extend into the territory within any municipal  
12 corporation: *Provided, however*, That any county court  
13 is hereby authorized to enter into contracts or agreements  
14 with any municipality within the county, or with a  
15 municipality in an adjoining county, with reference to  
16 the exercise of the powers vested in such courts by this  
17 section.

18 In addition to the foregoing, the county court shall have  
19 the power to improve streets, sidewalks and alleys and  
20 lay sewers as follows: Upon petition in writing duly  
21 verified, of the persons, firms or corporations owning  
22 not less than sixty per cent of the frontage of the lots  
23 abutting on both sides of any street or alley, between  
24 any two cross-streets, or between a cross-street and an  
25 alley in any unincorporated community, requesting the  
26 county court so to do according to plans and specifications  
27 submitted with such petition and offering to have their  
28 property so abutting assessed not only with their por-  
29 tion of the cost of such improvement abutting upon  
30 their respective properties, but also offering to have  
31 their said properties proportionately assessed with the  
32 total cost of paving, grading and curbing the intersec-  
33 tions of such streets and alleys, the county court may  
34 cause any such street or alley to be improved or paved  
35 or repaved substantially with the materials and accord-

36 ing to such plans and specifications as hereinafter pro-  
37 vided: *Provided, however,* That the county court is  
38 further authorized, if the said county court so deter-  
39 mines by a unanimous vote of its constituted member-  
40 ship, that two or more intersecting streets, sidewalks,  
41 alleys and sewers, should be improved as one project, in  
42 order to satisfy peculiar problems resulting from access  
43 as well as drainage problems, then, in that event, the  
44 said county court may order such improvements as one  
45 single unit and project, upon petition in writing duly  
46 verified of the persons, firms or corporations owning  
47 not less than sixty per cent of the frontage of the lots  
48 abutting on both sides of all streets or alleys, or por-  
49 tions thereof included by said county court in said  
50 unit and project.

51 The total cost including labor and materials, engineer-  
52 ing, and legal service of grading and paving, curbing,  
53 improving any such street or alley (including the cost  
54 of the intersections) and assessing the cost thereof  
55 shall be borne by the owners of the land abutting upon  
56 such street or alley when the work is completed and  
57 accepted according to the following plan, that is to say,  
58 payment is to be made by all landowners on either side  
59 of such street or alley so paved or improved, in such  
60 proportion of the total cost as the frontage in feet of  
61 each owner's land so abutting bears to the total frontage  
62 of all the land so abutting on such street or alley, so  
63 paved or improved as aforesaid, which computation  
64 shall be made by the county engineer or surveyor  
65 and certified by him to the clerk of said court.

66 Upon petition in writing duly verified, of the persons,  
67 firms or corporations owning not less than sixty per  
68 cent of the frontage of the lots abutting on one side  
69 of any street between any two cross-streets or between  
70 a cross-street and an alley in any unincorporated com-  
71 munity requesting the county court so to do according  
72 to plans and specifications submitted with such peti-  
73 tion and offering to have their property so abutting  
74 assessed with the total cost thereof, the county court  
75 may cause any sidewalk to be improved, or paved, or  
76 repaved, substantially with such materials according to  
77 such plans and specifications and the total cost in-

78 cluding labor and materials, engineering and legal service  
79 of improving, grading, paving, or repaving such side-  
80 walk and assessing the cost thereof shall, when the  
81 work is completed and accepted, be assessed against  
82 the owners of the lots or fractional part of lots abutting  
83 on such sidewalk, in such portion of the total cost as  
84 the frontage in feet of each owner's land so abutting  
85 bears to the total frontage of all lots so abutting on such  
86 sidewalk so paved or improved, as aforesaid, which  
87 computation shall be made by the county engineer  
88 or surveyor and certified by him to the clerk of said  
89 court.

90 Upon petition in writing duly verified, of the persons,  
91 firms or corporations owning not less than sixty per  
92 cent of the frontage of the lots abutting on both sides  
93 of any street or alley, in any unincorporated community  
94 requesting the county court so to do according to  
95 plans and specifications submitted with such petition  
96 and offering to have their property so abutting assessed  
97 with the cost, as hereinafter provided, the county court  
98 may lay and construct sanitary sewers in any street  
99 or alley with such materials and substantially accord-  
100 ing to such plans and specifications and when such  
101 sewer is completed and accepted, the county engineer  
102 or surveyor shall report to the county court, in writing,  
103 the total cost of such sewer and a description of the  
104 lots and lands, as to the location, frontage, depth and  
105 ownership liable for such sewer assessment, so far as  
106 the same may be ascertained, together with the amount  
107 chargeable against each lot and owner, calculated in  
108 the following manner: The total cost of constructing  
109 and laying the sewer including labor, materials, legal  
110 and engineering services shall be borne by the owners  
111 of the land abutting upon the streets and alleys, in which  
112 the sewer is laid according to the following plan:  
113 Payment is to be made by each landowner on either  
114 side of such portion of a street or alley in which such  
115 sewer is laid, in such proportions as the frontage of  
116 his land upon said street or alley bears to the total  
117 frontage of all lots so abutting on such street or alley.  
118 In case of a corner lot, frontage is to be measured along  
119 the longest dimensions thereof abutting on such street or

120 alley in which such sewer is laid. Any lot having a depth of  
121 two hundred feet or more, and fronting on two streets,  
122 or alleys, one in the front and one in the rear of said  
123 lot, shall be assessed on both of said streets or alleys  
124 if a sewer is laid in both such streets and alleys.  
125 Where a corner lot has been assessed on the end  
126 it shall not be assessed on the side for the same  
127 sewer and where it has been assessed on the side  
128 it shall not be assessed on the end for the same  
129 sewer.

130 If the petitioners request the improvement of any such  
131 street, alley or sidewalk in a manner which does not  
132 require the permanent paving or repaving thereof, the  
133 county court shall likewise have authority to improve  
134 such street, alley or sidewalk, substantially as re-  
135 quested in such petition, and the total cost thereof in-  
136 cluding labor, materials, engineering and legal services  
137 shall be assessed against the abutting owners in the  
138 proportion which the frontage of their lots abutting  
139 upon such street, alley or sidewalk bears to the total  
140 frontage of all lots abutting upon such street, alley  
141 or sidewalk, so improved.

142 Upon the filing of such petition and before work is  
143 begun, or let to contract, the county court shall fix a  
144 time and place for hearing protests and shall require  
145 the petitioners to post notice of such hearing in at least  
146 two conspicuous places on the street, alley or sidewalk  
147 affected, and to give notice thereof by publication of  
148 such notice as a Class I legal advertisement in com-  
149 pliance with the provisions of article three, chapter  
150 fifty-nine of this code, and the publication area for such  
151 publication shall be the county in which the im-  
152 provement is to be made. The hearing shall be held  
153 not less than ten nor more than thirty days after the filing  
154 of such petition.

155 At the time and place set for hearing protests the  
156 county court may examine witnesses and consider other  
157 evidence to show that said petition was filed in good  
158 faith; that the signatures thereto are genuine; and that  
159 the proposed improvement, paving, repaving, or sewer-  
160 ing, will result in special benefits to all owners of prop-

erty abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The court shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

Any owner of property abutting upon said street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county court by filing within ten days after the entry of such order, a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county court be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county court.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at the rate of six per cent per annum as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county court may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot

203 or fractional part thereof, fronting on such street, alley  
204 or sidewalk which has been improved, paved, or repaved  
205 or in which a sewer has been laid, as aforesaid,  
206 and the holder of said certificate shall have a lien having  
207 priority over all other liens except those for taxes upon  
208 the lot or part of lot fronting on such street, alley or  
209 sidewalk, and such certificate shall likewise draw in-  
210 terest from the date of assessment at the rate of six  
211 per cent per annum, and payment thereof may be en-  
212 forced in the name of the holder of said certificate by  
213 proper civil action in any court having jurisdiction  
214 to enforce such lien.

215 Certificates authorized under this section may be  
216 issued, sold or negotiated to the contractor doing the  
217 work, or to his assignee, or to any person, firm, or cor-  
218 poration: *Provided*, That the county court in issuing  
219 such certificates shall not be held as a guarantor, or  
220 in any way liable for the payment thereof. Certificates  
221 so issued shall contain a provision to the effect that  
222 in the event of default in the payment of any one  
223 or more of said installments, when due, said default  
224 continuing for a period of sixty days, all unpaid install-  
225 ments shall thereupon become due and payable, and  
226 the owner of said certificates may proceed to col-  
227 lect the unpaid balance thereof in the manner here-  
228 inbefore provided.

229 In all cases where petitioners request paving or re-  
230 paving, or the laying of sewers under the provisions of  
231 this section, the county court shall let the work of  
232 grading, paving, curbing or sewerage to contract to the  
233 lowest responsible bidder. In each such case the county  
234 court shall require a bond in the penalty of the contract  
235 price guaranteeing the faithful performance of the work  
236 and each such contract shall require the contractor  
237 to repair any defects due to defective workmanship  
238 or materials discovered within one year after the  
239 completion of the work.

240 Upon presentation to the clerk of the county court  
241 of the certificates evidencing the lien, duly cancelled  
242 and marked paid by the holder thereof, or evidence of  
243 payment of the assessment if not certificates have been  
244 issued, said clerk shall execute and acknowledge a



245 release of the lien which release may be recorded, as  
246 other releases in the office of the clerk of the  
247 county court.

248 The owner of any lot or fractional part of a lot  
249 abutting upon such street, alley or sidewalk so improved,  
250 paved, repaved or sewerred shall have the right to an-  
251 ticipate the payment of any such assessment or certifi-  
252 cate by paying the principal amount due, with interest  
253 accrued thereon to date of payment, and also to pay  
254 the entire amount, without interest at any time,  
255 within thirty days following the date of the as-  
256 sessment.

257 Nothing in this section contained shall be construed  
258 to authorize the county courts of the various counties  
259 to acquire any road construction, ditching, or paving  
260 equipment. The county courts are hereby authorized  
261 to rent from the state road commissioner or any other  
262 person, firm or corporation such equipment as may be  
263 necessary from time to time, to improve any street or  
264 sidewalk which petitioners do not desire to have paved  
265 in a permanent manner, and for such purpose to  
266 employ such labor as may be necessary but no  
267 expense connected therewith shall be charged to  
268 any county funds.

269 No county court shall be under any duty after the  
270 paving, repaving or improvement of any street, alley or  
271 sidewalk or the laying of any sanitary sewer under  
272 the provisions of this section, to maintain or repair  
273 the same, but any such court shall have authority upon  
274 petition duly verified, signed by at least sixty per cent  
275 of the owners of property abutting upon any improve-  
276 ment made under this section, to maintain or repair  
277 such improvement or sewer and to assess the cost thereof  
278 against the owners of such abutting property in the  
279 same manner as the cost of the original improvement.

**§7-1-3h. Authority and procedure for closing unused roads,  
streets and travel ways; notice and hearing; rights of  
landowners.**

1 The county court of any county, upon the verified ap-  
2 plication of any landowner whose land abuts on any  
3 unused road, street, or other travel way designated on

4 any map or plat of a subdivision of land or otherwise  
5 within such county but outside of incorporated towns  
6 or cities thereof, is hereby authorized to close and va-  
7 cate any part or all of any such unused road, street or  
8 other designated travel way by order entered of record  
9 after hearing as hereinafter provided. Before acting to  
10 close and vacate any such road, street or travel way, the  
11 county court shall consider the application and shall  
12 fix a time and place for hearing on such application.  
13 Such hearing shall be held not less than fifteen days after  
14 the hearing date and place have been so fixed. The ap-  
15 plicant shall cause notice of the time and place of such  
16 hearing and the purpose thereof to be published as a  
17 Class I legal advertisement in compliance with the pro-  
18 visions of article three, chapter fifty-nine of this code,  
19 and the publication area for such publication shall be  
20 the county. The notice shall be published at least fifteen  
21 days before such hearing. The applicant shall also cause  
22 to be served, at least fifteen days before such hearing,  
23 in the manner provided by law for the service of notices  
24 and process, a notice showing the time, place and pur-  
25 pose of such hearing, upon every owner of property,  
26 and every person holding a lien thereon, abutting on such  
27 unused road, street or other travel way. The affidavit  
28 of publication of such notice shall be filed with the  
29 county court at or before the hearing as a part of the  
30 record in the proceedings.

31 At the time and place fixed for the hearing, the county  
32 court shall hear any evidence relating to the use of and  
33 rights or claims in or to any such road, street or other  
34 designated travel way sought to be closed and vacated.  
35 If the county court concludes and finds upon the record  
36 and evidence in the proceedings that the use and rights  
37 of no person or persons in such road, street or other  
38 travel way will be impaired or lost by the closing and  
39 vacation thereof, the county court shall proceed to enter  
40 an order closing and vacating such road, street or other  
41 travel way and shall cause a copy of said order to be  
42 prepared and certified for entry of record in the office  
43 of the clerk of such county court. The applicant shall  
44 pay the recording fee thereon.

45 Any person aggrieved by the action of the county  
 46 court in any such case may seek review thereof in the  
 47 circuit court of the county as provided in article three  
 48 of chapter fifty-eight of this code.

**ARTICLE 2. COUNTY AND DISTRICT BOUNDARIES; CHANGE OF  
 COUNTY SEAT AND NAMES OF UNINCORPORATED  
 TOWNS AND OF DISTRICTS.**

**§7-2-4. Change of name of unincorporated town or of district;  
 petition; notice.**

1 When the people of any town or village not incorpo-  
 2 rated, or of a district in a county, are desirous to change  
 3 the name of such town, village or district, they may  
 4 petition the county court, or other tribunal established  
 5 in lieu thereof, of the county wherein such town, village  
 6 or district is situated; and if it appear to such court or  
 7 other tribunal that a majority of the actual resident voters  
 8 of such town, village or district is in favor of such  
 9 change, it shall cause the following described notice to  
 10 be published as a Class I legal advertisement in com-  
 11 pliance with the provisions of article three, chapter  
 12 fifty-nine of this code, and the publication area for such  
 13 publication shall be the town, village or district, as the  
 14 case may be. The notice shall be published at least thirty  
 15 days prior to the sitting of such court or tribunal. The  
 16 notice shall state the fact that a petition has been pre-  
 17 sented to the court or tribunal by the people of such  
 18 town, village or district, praying for such change, and  
 19 that unless those interested in the change appear at the  
 20 next term, or such term as the court or tribunal may  
 21 designate, and show cause why such change should not  
 22 be made, there will be an order rendered granting such  
 23 change, which notice shall be signed by the president  
 24 of the court or tribunal.

**ARTICLE 3. COUNTY PROPERTY.**

**§7-3-3. Sale of county or district property.**

1 In all instances where the county court of a county is  
 2 by law authorized to sell or dispose of any property,  
 3 either real or personal, belonging to the county or held  
 4 by it for the use of any district thereof, the same shall

5 be sold at public auction, at the front door of the court-  
 6 house of the county, and such sale shall be conducted by  
 7 president of the county court, but before making any  
 8 such sale, notice of the time, terms and place of sale,  
 9 together with a brief description of the property to be  
 10 sold, shall be published as a Class II legal advertisement  
 11 in compliance with the provisions of article three, chap-  
 12 ter fifty-nine of this code, and the publication area for  
 13 such publication shall be the county: *Provided, however,*  
 14 That this section shall not apply to the sale of any one  
 15 item of property of less value than one thousand dollars:  
 16 *Provided, further,* That the provisions of this section  
 17 concerning sale at public auction shall not apply to a  
 18 county court selling or disposing of its property for a  
 19 public use to the United States of America, its instru-  
 20 mentalities, agencies or political subdivisions or to the  
 21 state of West Virginia, or its political subdivisions, in-  
 22 cluding county boards of education, for an adequate con-  
 23 sideration without considering alone the present com-  
 24 mercial or market value of the property.

#### **ARTICLE 5. FISCAL AFFAIRS.**

##### **§7-5-16. Preparation, publication, and disposition of financial statements by county courts.**

1 The county court of every county, within four weeks  
 2 after the first session held after the beginning of each  
 3 fiscal year, shall prepare on a form to be prescribed  
 4 by the state tax commissioner, and cause to be published  
 5 a statement revealing (a) the receipts and expenditures  
 6 of the county during the previous fiscal year arranged  
 7 under descriptive headings, (b) the name of each firm,  
 8 corporation, and person who received more than fifty  
 9 dollars from any fund during the previous fiscal year,  
 10 together with the amount received and the purpose for  
 11 which paid, and (c) all debts of the county, the purpose  
 12 for which each debt was contracted, its due date, and  
 13 to what date the interest thereon has been paid. Such  
 14 statement shall be published as a Class I-0 legal advertise-  
 15 ment in compliance with the provisions of article three,  
 16 chapter fifty-nine of this code, and the publication area  
 17 for such publication shall be the county

18 The county court shall transmit to any resident of the  
19 county requesting the same a copy of the published  
20 statement for the fiscal year designated, supplemented  
21 by a list of the names of each firm, corporation, and  
22 person who received less than fifty dollars from any  
23 fund during such fiscal year showing the amount paid  
24 to each and the purpose for which paid.

25 If a county court wilfully fail or refuse to perform the  
26 duties hereinbefore named, every member of such court,  
27 concurring in such failure or refusal, shall be guilty of  
28 a misdemeanor, and, upon conviction thereof, shall be  
29 fined not less than fifty nor more than one hundred dol-  
30 lars; and the prosecuting attorney of any such county  
31 shall, when such failure or refusal shall come to his  
32 knowledge, immediately present the evidence thereof to  
33 the grand jury if in session, and if not in session, he  
34 shall institute proper criminal proceedings before a jus-  
35 tice against any such offender, and cause such failure or  
36 refusal to be investigated by the next succeeding grand  
37 jury.

#### **ARTICLE 8. JAIL AND JAILER.**

##### **§7-8-7. Jail physician; clothing for indigent prisoners.**

1 The county court for every county may appoint a  
2 physician to attend all persons confined in jail as lunatics,  
3 or persons charged with felony or misdemeanor, and such  
4 physician shall furnish all medicines and drugs for, and  
5 give proper attention to, all such persons at a stipu-  
6 lated, fixed and exclusive annual allowance. The appoint-  
7 ment of such physician shall be made in open court. The  
8 court, or president thereof in vacation, shall cause notice  
9 of the days during court when sealed bids will be received  
10 to be published as a Class I legal advertisement in com-  
11 pliance with the provisions of article three, chapter fifty-  
12 nine of this code, and the publication area for such  
13 publication shall be the county. The bids shall be opened  
14 only in court, on the day specified in the notice, if the  
15 court then be in session, and, if not, on the first day of  
16 the session thereafter, and the appointment awarded to  
17 the lowest responsible bidder; and such court shall  
18 have the right to reject any or all bids. The person re-

19 ceiving the appointment shall give bond with sufficient  
 20 surety, to be approved by the court, for the faithful  
 21 performance of the trust and agreement. The court shall  
 22 have power to vacate the appointment for failure or  
 23 neglect of duty; but such vacation shall in no manner  
 24 affect the liability on the bond. All of the proceedings  
 25 shall be entered in the order book of the court. The  
 26 county court may also, after examination, when a per-  
 27 son in its jail charged with or convicted of an offense  
 28 is unable to provide himself with sufficient clothing,  
 29 direct the jailer to provide him clothing, and allow there-  
 30 for not exceeding twenty dollars in one year. Allowances  
 31 under this section, on being certified by the court, shall  
 32 be paid out of the county treasury.

**ARTICLE 9. COUNTY AND CITY WORKHOUSES.**

**§7-9-10. Accounts and reports.**

1 The accounts of the institutions shall be annually closed  
 2 and balanced on the first Monday of January in each  
 3 year. And full reports of the preceding year shall then  
 4 be made and submitted to the city council and county  
 5 commissioners, which shall be published as a Class I  
 6 legal advertisement in compliance with the provisions of  
 7 article three, chapter fifty-nine of this code, and the pub-  
 8 lication area for such publication shall be the county; and  
 9 the city council and county commissioners, or either of  
 10 such bodies, may require such other reports and exhibits  
 11 of the condition and management of such institution as  
 12 they may deem proper.

**ARTICLE 12. COUNTY DEVELOPMENT AUTHORITIES.**

**§7-12-12. Contributions by county courts, municipalities and  
 others; funds and accounts; reports; audits and ex-  
 amination of books, records and accounts.**

1 Contributions may be made to the authority from time  
 2 to time by the county court of the county or any munici-  
 3 pal corporation therein, and by any persons, firms or cor-  
 4 porations which shall desire to do so. All such funds and  
 5 all other funds received by the authority shall be de-  
 6 posited in such bank or banks as the authority may direct  
 7 and shall be withdrawn therefrom in such manner as the  
 8 authority may direct. The authority shall keep strict

9 account of all its receipts and expenditures and shall each  
 10 quarter make a quarterly report to the county court and  
 11 municipalities containing an itemized statement of its  
 12 receipts and disbursements during the preceding quar-  
 13 ter. Within sixty days after the end of each fiscal year,  
 14 the authority shall make an annual report containing an  
 15 itemized statement of its receipts and disbursements for  
 16 the preceding year, and such annual report shall be pub-  
 17 lished as a Class I legal advertisement in compliance with  
 18 the provisions of article three, chapter fifty-nine of this  
 19 code, and the publication area for such publication shall  
 20 be the county in which the county development author-  
 21 ity is located. The books, records and accounts of the  
 22 authority shall be subject to audit and examination by  
 23 the office of the state tax commissioner of West Vir-  
 24 ginia and by any other proper public official or body in  
 25 the manner provided by law.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 2. CREATION, ALTERATION, DISSOLUTION AND POWERS OF MUNICIPAL CORPORATIONS.**

#### **§8-2-3. Hearing on petition; notice; dismissal.**

1 Upon the filing of such petition, the county court shall  
 2 set the same for hearing not sooner than ten days and  
 3 not later than thirty days thereafter, and petitioners shall  
 4 cause notice of the filing of said petition and of the time  
 5 and place of hearing thereon, to be published as a Class  
 6 II legal advertisement in compliance with the provisions  
 7 of article three, chapter fifty-nine of this code, and the  
 8 publication area for such publication shall be the terri-  
 9 tory sought to be incorporated.

10 Upon the day set for hearing, the county court shall  
 11 hear evidence for and against the proposed incorpora-  
 12 tion, and if it shall determine that the requirements of  
 13 sections one and two of this article have not been met,  
 14 it shall forthwith enter an order dismissing said peti-  
 15 tion.

#### **§8-2-5. Election; voting precincts; time for; supplies.**

1 Upon receiving such report of said enumerators, the  
 2 county court shall forthwith fix a day, not later than

3 thirty days thereafter, on which all qualified electors re-  
 4 siding within the territory shall vote upon the question  
 5 of incorporation between such hours as may be fixed  
 6 by order of said court. For the purpose of conducting  
 7 said election, the county court shall divide the territory  
 8 into one or more precincts, consisting of not more than  
 9 five hundred qualified voters in each precinct; shall ar-  
 10 range for and provide at its expense polling places, reg-  
 11 istration books, challenges and other election supplies  
 12 as provided for by law in general elections, and shall  
 13 appoint three commissioners of election and two clerks  
 14 from the qualified electors of said territory for each pre-  
 15 cinct so established dividing the election officials as nearly  
 16 as possible equally between those favoring incorpora-  
 17 tion and those opposed to incorporation, and shall give  
 18 notice of the day and place of election by publication  
 19 of such notice as a Class II-0 legal advertisement in  
 20 compliance with the provisions of article three, chapter  
 21 fifty-nine of this code, and the publication area for such  
 22 publication shall be the territory sought to be incor-  
 23 porated.

**§8-2-15. Same—Hearings and notice.**

1 When it shall have completed its draft of charter, a  
 2 charter board shall conduct a public hearing thereon.  
 3 Notice of the time, place and purpose of the hearing  
 4 shall be given by publication of such notice at least ten  
 5 days prior to the date set for the hearing as a Class I  
 6 legal advertisement in compliance with the provisions  
 7 of article three, chapter fifty-nine of this code, and the  
 8 publication area for such publication shall be the terri-  
 9 tory to be incorporated. The notice shall state where  
 10 copies of the draft of charter may be obtained. The  
 11 hearing may be continued by the charter board by ad-  
 12 journments over a period not exceeding fourteen days.

**§8-2-17. Same—Election; voters; time.**

1 The proposed charter shall be submitted to the voters  
 2 for approval at a special election to be held not less than  
 3 thirty days nor more than ninety days following filing  
 4 of the completed charter with the clerk of the county  
 5 court, at which election the officers provided by said



6 charter shall be voted upon in the manner provided by  
 7 said charter. Notice of the time, place and purpose of a  
 8 charter election shall be given by publication of such  
 9 notice as a Class II-0 legal advertisement in compliance  
 10 with the provisions of article three, chapter fifty-nine  
 11 of this code, and the publication area for such publica-  
 12 tion shall be the territory incorporated. The first of said  
 13 publications shall be made not less than thirty days prior  
 14 to the date fixed for the election. Each such notice of  
 15 election shall state that any qualified voter of said terri-  
 16 tory may obtain a copy of the proposed charter, from a  
 17 designated person and place, upon request.

**ARTICLE 3. ELECTION, APPOINTMENT AND QUALIFICATION  
 OF OFFICERS.**

**§8-3-2. When first election held; notice.**

1 The first election for officers of such corporation shall  
 2 be held within sixty days from the date of the certificate  
 3 mentioned in section eleven, article two of this chap-  
 4 ter, and the commissioners of election appointed at the  
 5 time of such order shall cause notice to be given of the  
 6 time and place of holding such election, which notice  
 7 shall specify the officers to be voted for, and shall be  
 8 published, within fourteen consecutive days next pre-  
 9 ceding the day appointed for such election, as a Class II-0  
 10 legal advertisement in compliance with the provisions of  
 11 article three, chapter fifty-nine of this code, and the pub-  
 12 lication area for such publication shall be such town.

**ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF  
 MUNICIPAL CORPORATIONS, COUNCILS OR OFFI-  
 CERS.**

**§8-4-10j. Adoption of ordinances; notice and procedure.**

1 Except as hereinafter provided in this section, and not-  
 2 withstanding the provisions of any existing municipal  
 3 charter, it shall not be necessary for the governing body  
 4 of a city to publish a proposed ordinance in a newspaper  
 5 prior to adoption thereof. In case of a proposed ordi-  
 6 nance to codify, reenact or enact a comprehensive code  
 7 of ordinances, or in case of a proposed ordinance having  
 8 as its principal object the raising of revenue for the city,  
 9 said governing body shall, at least five days before the

10 meeting at which said ordinance is to be finally adopted,  
11 cause the following described notice of the proposed  
12 adoption to be published as a Class I legal advertisement  
13 in compliance with the provisions of article three, chap-  
14 ter fifty-nine of this code, and the publication area for  
15 such publication shall be the city. The notice shall state  
16 the general title or titles of said ordinance, the time and  
17 place of the proposed final adoption, and the place or  
18 places where, within the city, the entire ordinance will  
19 be available for public inspection; a reasonable number  
20 of copies of the proposed ordinance shall be kept at such  
21 place and be made available for public inspection.

**§8-4-14. Power of council or county court to grant franchises;  
notice; term of franchise.**

1 No franchise shall hereafter be granted by the county  
2 court of any county, or other tribunal acting in lieu  
3 thereof, or by the council of any town incorporated under  
4 the laws of this state where the application for such  
5 franchise has not been filed, with the clerk of such court  
6 or council, at least thirty days prior to the time when it  
7 is to be acted upon by such county court or council, and  
8 where notice of such application, stating the object of  
9 such franchise, has not been given by publication thereof  
10 as a Class II legal advertisement in compliance with the  
11 provisions of article three, chapter fifty-nine of this code,  
12 for which publication the publication area shall be the  
13 county or town, as the case may be, wherein such fran-  
14 chise is to be granted. Nor shall such franchise be  
15 granted within thirty days after the application has been  
16 filed, nor until an opportunity has been given any citizen  
17 or corporation interested in the granting or refusing of  
18 such franchise to be heard. Nor shall any franchise here-  
19 after be granted by any county court, or other tribunal  
20 acting in lieu thereof, or by any council of any such town,  
21 for a longer term than fifty years: *Provided, however,*  
22 *That nothing in this section shall prevent the renewal*  
23 *of any such franchise for a term not exceeding fifty*  
24 *years, when the same shall have expired. No franchise*  
25 *hereafter granted for any longer term than fifty years*  
26 *shall be of any force or validity.*

**§8-4-20. Special charges for municipal services.**

1 The governing authority of every municipal corpora-  
2 tion that furnishes any essential or special municipal  
3 service, including police and fire protection, parking  
4 facilities on the streets or otherwise, recreational facil-  
5 ities, street cleaning, street lighting, sewerage and sew-  
6 age disposal, and the collection and disposal of garbage,  
7 ashes or other waste materials, may by ordinance pro-  
8 vide for the continuance, maintenance, installation or  
9 improvement of such service, may make reasonable  
10 regulations with respect thereto, may impose upon  
11 the users of such service reasonable rates, fees and  
12 charges to be collected in the same manner as munici-  
13 pal taxes are collected or in some other manner speci-  
14 fied in the ordinance, and may provide penalties for  
15 any violation of such ordinance. The municipal cor-  
16 poration shall not, however, have a lien on any  
17 property as security for payments due under such  
18 ordinance: *Provided, however,* That any ordinance  
19 enacted under the provisions of this section shall be  
20 published as a Class II legal advertisement in compli-  
21 ance with the provisions of article three, chapter fifty-  
22 nine of this code, and the publication area for such  
23 publication shall be such municipality. In the event  
24 thirty per cent of the registered voters by written peti-  
25 tion duly signed by them and filed with the municipal  
26 authority within fifteen days after the expiration of  
27 such publishing protest against such ordinance, the  
28 ordinance shall not become effective until it shall be  
29 ratified by a majority of the votes cast by the duly  
30 qualified voters of such municipality at an election duly  
31 and regularly held as provided by the laws and ordinances  
32 of the municipality and the result of such election  
33 ascertained and declared. Such election shall be held  
34 after notice of such submission shall be given by  
35 publication as above provided for the publication of  
36 the ordinance when adopted. The powers hereby given  
37 to such municipalities and to the authorities thereof  
38 are in addition to and supplemental of the powers named  
39 in the respective charters thereof: *Provided,* That  
40 in the event fees and charges herein provided for, shall

41 be imposed by the governing body of any municipal  
42 corporation for the purpose of, and in amounts approxi-  
43 mately sufficient, to replace in its general fund such  
44 amounts as shall be appropriated to be paid out of ad  
45 valorem taxes upon property within the municipality  
46 pursuant to an election duly called and held under the  
47 constitution and laws of the state to authorize the  
48 issuance and sale of general obligation bonds of the  
49 municipality for public improvement purposes, in the  
50 call for which election it shall be stated that the  
51 governing body of the municipality proposes to impose  
52 fees and charges in specified amounts under this section  
53 for the use of one or more of the services above specified,  
54 which shall be related to the public improvement  
55 proposed to be made with the proceeds of the bonds,  
56 no notice, publication of notice, or referendum or  
57 election or other condition or prerequisite to the imposi-  
58 tion of such rates shall be required or necessary other  
59 than the legal requirements for issuance and sale of  
60 such general obligation bonds.

**§8-4-21. Sale or lease of municipal public utility.**

1 In any case where a town shall own a water-works  
2 system, electric light plant or other public utility, and  
3 the council thereof shall deem it for the best interest  
4 of such town that such utility be sold, leased or rented,  
5 it shall be lawful for the council, by ordinance legally  
6 passed, to submit to the legal voters of such municipi-  
7 pality, at any regular election or at any special election  
8 called for that purpose, the question of making such  
9 sale, lease or renting. In such case the council shall,  
10 in the ordinance submitting such question to a vote,  
11 set forth in full the terms of such proposed sale, lease  
12 or renting, the name of the proposed purchaser or lessee,  
13 the date of such election, and such ordinance shall be  
14 published as a Class II-0 legal advertisement in compli-  
15 ance with the provisions of article three, chapter fifty-  
16 nine of this code, and the publication area for such pub-  
17 lication shall be such town. Such election shall be held  
18 in all respects in compliance with the provisions of  
19 chapter three of this code, so far as the same are appli-  
20 cable and not inconsistent herewith. If a majority of

21 the votes cast at such election upon such question be  
22 in favor of the proposed sale, lease or renting of such  
23 utility, the council, upon the ascertainment of the result  
24 of such election, shall have full power and authority  
25 to proceed to execute such sale, lease or renting in  
26 accordance with the terms and conditions prescribed  
27 in the ordinance aforesaid, and shall have power to  
28 do any and all things necessary or incident thereto:  
29 *Provided, however,* That if at any time after such elec-  
30 tion and before the execution of the authority under  
31 the ordinance, any person, firm or corporation should  
32 present to the council and offer to buy such public utility  
33 or plant at a greater price than the sale price which  
34 shall have been so voted upon and authorized or to  
35 lease the same upon terms which the council, in its  
36 discretion, shall consider more advantageous to the  
37 municipality than the terms of the lease which shall  
38 have been authorized by vote as aforesaid, the council  
39 shall have the power to accept such subsequent offer,  
40 and to make such sale or such lease to the person making  
41 the offer, without resubmitting the question to a vote.  
42 But, if a sale shall have been authorized by vote as  
43 aforesaid, and such subsequent proposition be for a  
44 lease, or, if a lease shall have been so authorized, and  
45 the subsequent proposition shall be for a sale, the  
46 council shall have no power to accept the same with-  
47 out submitting the question thereof to a vote of the  
48 people as first above provided. And before any such  
49 second or subsequent proposition shall be submitted to  
50 vote, after a sale or lease shall have been author-  
51 ized at an election held hereunder, the person making  
52 such proposition shall execute bond with security to  
53 be approved by the council, in a penalty of not less  
54 than twenty-five per cent of such proposed bid, con-  
55 ditioned to carry such proposition into execution, if the  
56 same shall be approved at the election to be called  
57 thereon. In any case where such public utility as is  
58 mentioned in this section shall be sold, leased, or rented  
59 by the council as hereinabove provided, no part of the  
60 moneys derived from such sale, lease or renting shall  
61 be applied to the payment of current expenses of

62 the municipality; but the proceeds of such sale or lease  
 63 shall be applied in payment and discharge of any bonded  
 64 indebtedness created in respect to such public utility;  
 65 and in case there be no such bonded indebtedness, the  
 66 council, in its discretion, shall have power to expend  
 67 all such moneys when received in the purchase or  
 68 construction of fire fighting equipment and buildings  
 69 for housing such equipment, a town hall, and the neces-  
 70 sary land upon which to locate the same, or in the con-  
 71 struction of paved streets, sidewalks, sewers and other  
 72 like permanent improvements, and for no other pur-  
 73 poses, or in case there be a surplus after the payment  
 74 of such bonded indebtedness, such surplus may be used  
 75 as aforesaid.

**§8-4-27. Additional powers of municipal corporations.**

1 On and after the effective date of this article every  
 2 municipal corporation in this state shall have all the  
 3 powers and authority conferred by article five, chapter  
 4 eight-a of this code upon home rule cities of the class  
 5 to which such municipal corporations belongs, accord-  
 6 ing to the classification of municipal corporations  
 7 prescribed in section four, article one, chapter eight-a  
 8 of this code: *Provided, however,* That prior to the  
 9 adoption of any ordinance or resolution under the  
 10 authority herein granted pertaining to taxes, the gov-  
 11 erning body of such municipality shall cause a notice  
 12 of such ordinance or resolution to be published as a  
 13 Class II-0 legal advertisement in compliance with the  
 14 provisions of article three, chapter fifty-nine of this  
 15 code, and the publication area for such publication shall  
 16 be such municipality. Such notice shall state the purpose  
 17 of the pending ordinance or resolution and the time,  
 18 place and body before which the same will be con-  
 19 sidered.

**ARTICLE 4A. MUNICIPAL PUBLIC WORKS; BONDS.**

**§8-4A-6. Ordinance or resolution for construction, etc., of works.**

1 Before any municipality shall construct, acquire, im-  
 2 prove or extend any works under this article, the  
 3 municipal authorities shall enact an ordinance or ordi-

4 nances, or shall adopt a proper resolution which shall  
5 (a) set forth a brief and general description of the works,  
6 and if the same are to be constructed, a reference  
7 to the preliminary report or plans and specifications  
8 which shall theretofore have been prepared; (b) set  
9 forth the estimated cost thereof; (c) order the con-  
10 struction, acquisition, extension or improvement of  
11 such works; (d) direct that revenue bonds of the  
12 municipality be issued pursuant to this article, in such  
13 amount as may be found necessary to pay the cost of  
14 the works; and (e) contain such other provisions as  
15 may be necessary or proper in the premises. Before  
16 such ordinance shall become effective, it shall be pub-  
17 lished as a Class II legal advertisement in compliance  
18 with the provisions of article three, chapter fifty-nine  
19 of this code, and the publication area for such publica-  
20 tion shall be such municipality. Said notice shall  
21 specify a time and place for a public hearing, the time  
22 being not less than ten days after the first publication  
23 of said notice at which time and place all parties and  
24 interests may appear before the municipal authorities,  
25 and may be heard as to whether or not said ordinance  
26 shall be put into effect. At such hearing all objections  
27 and suggestions shall be heard and the governing body  
28 shall take such action as it shall deem proper in the  
29 premise: *Provided, however,* That if at such hearing  
30 written protest is filed by thirty per cent or more of  
31 the owners of real estate situate in said municipality,  
32 then the governing body of said municipality shall not  
33 take further action unless four-fifths of the members of  
34 said governing body assent thereto: *Provided further,*  
35 That in case written protest is filed by thirty per cent  
36 or more of owners of real estate as herein provided, the  
37 governing body shall have authority to appoint a com-  
38 mittee to consist of one proponent, one opponent and  
39 the third to be selected by these two, to determine  
40 whether or not thirty per cent of the property owners  
41 have in fact protested and said committee shall report  
42 its findings to the governing body.

**§8-4A-17. Charges for services rendered by works.**

1 Municipal authorities shall have the power and it  
2 shall be their duty, by ordinance or resolution, to estab-  
3 lish and maintain just and equitable rates or charges  
4 for the use and services rendered, or the improvement  
5 or protection of property, provided or afforded by such  
6 works, to be paid by the person using the same,  
7 receiving the services thereof, or owning the property  
8 improved or protected thereby, and may readjust such  
9 rates or charges from time to time. Rates or charges  
10 heretofore or hereafter established and maintained for  
11 the improvement or protection of property, provided  
12 or afforded by a municipal flood control system, to be  
13 paid by the person owning the property improved or  
14 protected thereby, shall be collectible and enforceable  
15 from the time provided in such ordinance or resolution,  
16 any provision of this or any other law to the contrary  
17 notwithstanding, if, at such time, such works, though  
18 not yet fully constructed, are nearing completion and  
19 such municipal authorities are reasonably assured that  
20 such works will be completed and placed in operation  
21 without reasonable delay. Such rates or charges shall  
22 be sufficient in each year for the payment of the proper  
23 and reasonable expenses of operation, repair, replace-  
24 ments and maintenance of the works, and for the  
25 payment of the sums herein required to be paid into  
26 the sinking fund.

27 Revenues collected pursuant to this section shall be  
28 deemed the revenues of the works. No such rates or  
29 charges shall be established until after a public hearing  
30 at which all the users of the works and/or owners of  
31 the property served, or to be served thereby, and others  
32 interested, shall have an opportunity to be heard con-  
33 cerning the proposed rates or charges. After intro-  
34 duction of proposal of the ordinance or resolution fixing  
35 such rates or charges and before the same is finally  
36 enacted or passed, notice of such hearing, setting forth  
37 the proposed schedule of such rates or charges, shall  
38 be given by publishing same as a Class II-0 legal  
39 advertisement in compliance with the provisions of  
40 article three, chapter fifty-nine of this code, and the



41 publication area for such publication shall be such  
42 municipality. The first publication of said notice shall  
43 be at least ten days before the date fixed in such notice  
44 for the hearing, which hearing may be adjourned from  
45 time to time. No other or further notice to parties at  
46 interest shall be required. After such hearing the  
47 ordinance or resolution establishing rates or charges,  
48 either as originally proposed or introduced, or as modi-  
49 fied and amended, shall be passed or adopted and put  
50 into effect. A copy of the schedule of such rates and  
51 charges so established shall be kept on file in the office  
52 of the board having charge of the operation of such  
53 works, and also in the office of the municipal authorities,  
54 and shall be open to inspection by all parties interested.  
55 The rates or charges so established for any class of  
56 users or property served, shall be extended to cover  
57 any additional class of users or property thereafter  
58 served which fall within the same class, without the  
59 necessity of any hearing or notice. Any change or read-  
60 justment of rates may be made in the same manner as  
61 such rates or charges were originally established as  
62 hereinabove provided. The aggregate of the rates or  
63 charges shall always be sufficient for such expense of  
64 operation, repairs and maintenance, and for such sink-  
65 ing fund payments. If any service rate, charge or fee  
66 so established shall not be paid within thirty days after  
67 the same is due, the amount thereof may be recovered  
68 by the board in a civil action in the name of the  
69 municipality, and in the case of charges due for services  
70 rendered, such charges, if not paid when due, may, if  
71 council so provide in the ordinance provided for under  
72 section six of this article, constitute a lien upon the  
73 premises served by such works, which lien may be fore-  
74 closed against such lot, parcel of land or building so  
75 served, in accordance with the laws relating to the fore-  
76 closure of liens on real property. Upon failure of any  
77 person receiving any such service to pay for same when  
78 due, the board may discontinue such service without  
79 notice.

**ARTICLE 5. URBAN AND RURAL PLANNING AND ZONING.**

**§8-5-18. Same—Notice and public hearing.**

1 Prior to the adoption of a comprehensive plan, the com-  
2 mission shall give notice and hold a public hearing on the  
3 plan and a proposed ordinance for its enforcement.

4 At least thirty days prior to the date set for hearing,  
5 the commission shall publish a notice of the time and  
6 place of the hearing as a Class I legal advertisement in  
7 compliance with the provisions of article three, chapter  
8 fifty-nine of this code, and the publication area for such  
9 publication shall be the city or county, as the case may be.

**§8-5-44. Same—Final report; notice and hearing; action.**

1 After the final report has been submitted by the plan-  
2 ning commission the governing body of a city or the  
3 county court shall afford all interested persons an op-  
4 portunity to be heard with reference to it at public hear-  
5 ings convenient for all persons affected to be held at times  
6 and places to be specified in notices to be published, with-  
7 in fourteen consecutive days next preceding the time set  
8 for the hearings, as a Class II legal advertisement in com-  
9 pliance with the provisions of article three, chapter fifty-  
10 nine of this code, and the publication area for such pub-  
11 lication shall be the city or county, as the case may be.  
12 The notices shall state the time and places of the hearings,  
13 that the report contains a comprehensive zoning ordinance  
14 for the city or county, that written objections to the final  
15 report filed with the clerk of the governing body of a city  
16 or with the county clerk at or before the hearings will be  
17 heard and that the hearings will be continued from time  
18 to time as may be found necessary. During the period  
19 between the date of the first publication of the notice and  
20 the date of the hearing, the final report shall be on file  
21 in the office of the planning commission for public ex-  
22 amination. Upon completion of the public hearings, the  
23 governing body of a city or the county court shall proceed  
24 to the consideration of the ordinance.

**§8-5-48. Election on zoning ordinance; procedure.**

1 If within sixty days following the approval of the zoning  
2 ordinance by the county court or the governing body of  
3 the city a petition is filed with the county clerk praying

4 for the submission of such zoning ordinance for approval  
5 or rejection to the electors residing in the area within the  
6 jurisdiction of the city or county planning commission,  
7 such ordinance shall not take effect until the same shall  
8 have been approved by a majority of the electors voting  
9 in said election at any regular or special election called  
10 for that purpose. The petition provided herein may be  
11 in any number of counterparts and must be signed by a  
12 number of registered voters residing in the area affected  
13 by the proposed zoning equal to not less than fifteen per  
14 cent of the total votes cast in the affected area for all  
15 candidates for governor at the last preceding general  
16 election at which a governor was elected. Only registered  
17 voters residing in the area affected by the proposed  
18 ordinance shall be eligible to vote in said election.

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

21 ☐ For zoning.

22 ☐ Against zoning.

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

30 Elections for the purpose of voting upon the question  
31 of zoning may be held at any general, primary or special  
32 election which the governing body of a city or the county  
33 court in its order submitting the same to a vote may  
34 designate.

35 Notice of all zoning elections shall be given by publi-  
36 cation of the order calling such election as a Class II-O  
37 legal advertisement in compliance with the provisions of  
38 article three, chapter fifty-nine of this code, and the pub-  
39 lication area for such publication shall be the area in  
40 which the election is to be held.

41 Elections shall be held at the voting precincts estab-  
42 lished for holding general elections. All the provisions  
43 of the general election laws of this state concerning gen-  
44 eral, primary or special elections, when not in conflict

45 with the provisions of this article, shall apply to elections  
46 hereunder, insofar as practicable.

**ARTICLE 7. TAXATION AND FINANCE.**

**§8-7-7. Preparation, publication, and disposition of financial statements.**

1 Every municipal corporation having a population of  
2 more than two thousand, within four weeks after the  
3 beginning of each fiscal year, shall prepare on a form to  
4 be prescribed by the state tax commissioner, and cause to be  
5 published a sworn statement revealing (a) the receipts and  
6 expenditures of the municipality during the previous fiscal  
7 year arranged under descriptive headings, (b) the name  
8 of each firm, corporation, and person who received more  
9 than fifty dollars from any fund during the previous fiscal  
10 year, together with the amount received and the purpose  
11 for which paid, and (c) all debts of the municipality, the  
12 purpose for which each debt was contracted, its due date,  
13 and to what date the interest thereon has been paid. Such  
14 statement shall be published as a Class I legal advertise-  
15 ment in compliance with the provisions of article three,  
16 chapter fifty-nine of this code, and the publication area  
17 for such publication shall be the municipality.

18 Every municipal corporation having a population of  
19 more than two thousand shall transmit to any resident of  
20 such municipality requesting the same a copy of any pub-  
21 lished statement for the fiscal year designated, supple-  
22 mented by a list of the names of each firm, corporation,  
23 and person who received less than fifty dollars from any  
24 fund during such fiscal year showing the amount paid  
25 to each and the purpose for which paid.

26 Each municipal corporation having a population of  
27 two thousand or less, within four weeks after the begin-  
28 ning of each fiscal year, shall prepare on a form to be  
29 prescribed by the state tax commissioner a sworn state-  
30 ment revealing (a) the receipts and expenditures of the  
31 municipality during the previous fiscal year arranged un-  
32 der decriptive headings, (b) the name of each firm, cor-  
33 poration, and person who received money from any fund  
34 during the previous fiscal year, together with the amount  
35 received and the purpose for which paid, and (c) all debts  
36 of the municipality, the purpose for which each debt was

37 contracted, its due date, and to what date the interest  
38 thereon has been paid.

39 Every municipal corporation subject to the provisions  
40 of the preceding paragraph shall transmit to any resident  
41 of such municipality requesting the same a copy of any  
42 such statement for the fiscal year designated.

43 The statement required under the first paragraph of  
44 this section and the statement required under the third  
45 paragraph of this section shall be sworn to by the re-  
46 corder or clerk of the municipality and the mayor or other  
47 executive head thereof and two members of the govern-  
48 ing body of such municipality. As soon as practicable  
49 following the close of the fiscal year, a copy of any state-  
50 ment herein required shall be filed by the municipality  
51 with the state tax commissioner, the clerk of the county  
52 court and the clerk of the circuit court. If the governing  
53 body fail or refuse to perform any of the duties set forth  
54 in this section, every member of such governing body  
55 and the recorder or clerk thereof concurring in such  
56 failure or refusal shall be guilty of a misdemeanor, and,  
57 upon conviction thereof, shall be fined not less than ten  
58 nor more than one hundred dollars. If any of the pro-  
59 visions of this section are violated, it shall be the duty  
60 of the prosecuting attorney of the county in which such  
61 violations occur to immediately present the evidence  
62 thereof to the grand jury if in session, and if not in ses-  
63 sion, he shall cause such violations to be investigated by  
64 the next succeeding grand jury.

#### **ARTICLE 7A. LOW COST IMPROVEMENTS.**

**§8-7A-8. Procedure when total cost to be apportioned among  
all abutters; notice to abutting owners before author-  
izing improvements; form of notice; protest meeting;  
certificate of publication; notice to railroad or foreign  
corporation; automatic revocation of grant of petition;  
charges upon automatic revocation.**

1 If the petitioner has stated in the petition that he  
2 desires the total cost to be apportioned among all of  
3 the abutters, the council shall, as soon as the petition  
4 is granted, cause notice to be given to all abutters that  
5 the petition has been granted, that the engineer's

6 memorandum, certifying reasonable necessity, plans  
 7 and specifications, and cost estimates, will be recon-  
 8 sidered, before work is started, at a public meeting of  
 9 the council at a time and place named in the notice,  
 10 and that all abutters will be given an opportunity to  
 11 protest or be heard concerning any or all particulars  
 12 of the engineer's memorandum at that meeting or an  
 13 adjournment thereof.

14 The above-mentioned notice to the abutters may be  
 15 by personal service on abutters at least ten days before  
 16 the protest meeting. In lieu of personal service of such  
 17 notice, the following described notice, or one in sub-  
 18 stantially the same form, may be given, and shall be  
 19 deemed to have been served on all such abutters,  
 20 by publication, within fourteen consecutive days next pre-  
 21 ceding said meeting, of the following notice as a Class II  
 22 legal advertisement in compliance with the provisions of  
 23 article three, chapter fifty-nine of this code, and the publi-  
 24 cation area for such publication shall be such municipality:

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

30 A petition has been conditionally granted by the  
 31 \_\_\_\_\_ (common council, board of directors, com-  
 32 missioners or other governing body) of the municipality  
 33 of \_\_\_\_\_ (name of municipality to improve the  
 34 \_\_\_\_\_ (street, alley, public way or easement)  
 35 above described in \_\_\_\_\_ (name of municipality)  
 36 by \_\_\_\_\_ (grading, regrading, constructing storm  
 37 sewers or other general description of the proposed  
 38 improvement), as specifically described in the en-  
 39 gineer's memorandum certifying the reasonable neces-  
 40 sity of the proposed improvement, the plans and speci-  
 41 fications thereof, and the estimate of the items of cost  
 42 thereof, and to apportion the cost of such improvement  
 43 among the owners, as of \_\_\_\_\_ (the date of the  
 44 first publication of this notice), of the abutting prop-  
 45 erty.

46 The engineer's memorandum above described will be  
47 reconsidered by the \_\_\_\_\_ (governing body) at  
48 a public meeting to be held on \_\_\_\_\_ (date) at  
49 \_\_\_\_\_ (time) at \_\_\_\_\_ (place). Any abut-  
50 ting owner or interested party will be given an  
51 opportunity to protest or be heard at said meeting  
52 or an adjournment thereof.

53 \_\_\_\_\_ (name of the clerk or recorder), \_\_\_\_\_  
54 (official position)."

55 An affidavit of publication of the notice, made by the  
56 newspaper publisher, and a copy of the notice shall be  
57 made a part of the minutes of the governing body and  
58 spread on its records of the meeting described in the  
59 notice. The service of said notice upon all persons,  
60 firms or corporations owning any interest in any prop-  
61 erty abutting upon any portion of said street, alley,  
62 public way or easement to be improved shall conclusively  
63 be deemed to have been given when such newspaper  
64 publication shall have been completed: *Provided*, That  
65 where any foreign railroad or other foreign corporation  
66 is the owner of property abutting upon any street, alley,  
67 public way or easement sought to be improved under  
68 the provisions hereof, notice shall be given to such rail-  
69 road or other foreign corporation as prescribed by sec-  
70 tion one, article ten, chapter eight of the code of West  
71 Virginia, one thousand nine hundred thirty-one, before  
72 the adoption of any ordinance or resolution relating  
73 to, and providing for, such improvements.

74 Any part or parts of the engineer's memorandum may  
75 be modified or remodified at the protest meeting in  
76 accordance with the evidence introduced at such meet-  
77 ing, including the extent of the portions of the streets,  
78 alleys, public ways or easements proposed to be im-  
79 proved as designated in the engineer's memorandum.  
80 If, after modification at such protest meeting, the  
81 memorandum indicates that the proposed improvement  
82 is not reasonably necessary and/or that its estimated total  
83 cost is more than one thousand dollars, then the peti-  
84 tion shall be automatically revoked; and the petitioner  
85 shall be charged with all municipal expense in connec-  
86 tion therewith except salaries and wages of regular

87 municipal employees, which charge shall be made by  
 88 ordinance or resolution of the council; and a statement  
 89 of said charge shall be mailed to the petitioner at the  
 90 address listed in the petition unless the petitioner shall  
 91 have notified the council in writing of a change in  
 92 his actual mailing address, in which case the state-  
 93 ment shall be mailed according to such change.

94 If the engineer's memorandum has not been so modi-  
 95 fied at the protest meeting as to render the petition  
 96 automatically revoked as provided above, the council  
 97 shall order by ordinance or resolution the proper municip-  
 98 al authorities to proceed with the accomplishment of  
 99 the improvement according to the plans and specifications  
 100 in the engineer's memorandum, as modified at the pro-  
 101 test meeting in the event that they were modified.

**§8-7A-11. Apportionment among all abutters; limit on total  
 cost chargeable to abutters; engineer's report; notice;  
 hearings; correcting and laying assessments.**

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

15 The total cost shall be personally borne by such abut-  
 16 ters, including the petitioner, as of the date of the first  
 17 publication of the notice described in section eight of  
 18 this article; and the amount of the assessment against  
 19 each shall be apportioned by the engineer on the basis of  
 20 the following formula. Each lot or parcel of land so  
 21 abutting shall be assessed with that portion of the total  
 22 cost of the entire project which is represented by the pro-



23 portion which the abutting frontage in feet of such lot or  
24 parcel bears to the total abutting frontage in feet of all  
25 the lots or parcels of land abutting on the streets, public  
26 ways, alleys or easements so improved: *Provided, how-*  
27 *ever,* That if the character of the improvements shall be  
28 substantially different upon different streets, public ways,  
29 easements or alleys, or portions thereof, the cost may be  
30 equitably apportioned to the respective streets, public  
31 ways, alleys, easements, or portions thereof, in proportion  
32 to the character and cost of the improvements respectively  
33 thereon; and as a part of the cost so apportioned to each  
34 respective street, public way, easement, or alley, or portion  
35 thereof, shall be apportioned to and assessed against the  
36 respective lots or parcels of land abutting thereupon in  
37 the proportion as hereinabove provided: *Provided further,*  
38 That if any part of the street, alley, easement or public  
39 way improved is used by a railway then the cost of the  
40 portion of the improvements between the rails and for  
41 two feet outside said rails shall be assessed against and  
42 wholly borne by the owner of the railway: *Provided*  
43 *further,* That if there be any land or other property abut-  
44 ting on the portion of the street or alley so improved  
45 which it has been determined by the governing body of  
46 the municipality, and, shown in the ordinance or resolu-  
47 tion authorizing the improvement, not to be specially  
48 benefited by the improvement, or for other reasons would  
49 not be liable to assessment for any of the cost of im-  
50 provement, then the cost of the improvements abutting  
51 such part of said street or alley, as is so determined to be  
52 nonassessable shall be apportioned among, assessed and  
53 borne by the remaining property abutting upon the por-  
54 tion of the street, alley, public way or easement improved  
55 in proportion to the frontage of such remaining abutting  
56 property as hereinabove provided: *Provided further,* That  
57 if such improvement includes the construction or recon-  
58 struction of sidewalks on only one side of a street, alley,  
59 public way or easement, then the cost of such sidewalk  
60 shall be assessed only on the property abutting on that  
61 side where the sidewalks are so constructed: *Provided*  
62 *further,* That if there be land or other property abutting  
63 the street, alley, easement or public way so improved

64 which is owned by the United States of America, and for  
65 that reason not legally subject to assessment, then the  
66 municipality shall pay the proportionate part of the cost  
67 of the improvement which otherwise would be assessable  
68 against such federally owned land or property: *Provided*  
69 *further*, That if the actual total cost exceeds one thousand  
70 dollars, the municipality shall be responsible for such  
71 excess over one thousand dollars; and that, notwithstand-  
72 ing that the actual total cost is less than one thousand  
73 dollars, if the actual total cost exceeds the estimated  
74 total cost by more than ten per cent of the latter, the  
75 municipality shall be responsible for such excess over  
76 one hundred ten per cent of the estimated total cost.

77 The engineer shall formulate a report showing the  
78 chargeable total cost to be borne by the abutters, the  
79 names of the abutters (including the petitioner), the sev-  
80 eral frontages owned by said abutters and a brief descrip-  
81 tion thereof, and the proper amount of the chargeable  
82 total cost to be assessed personally against each abutter,  
83 and shall deliver such report to the council. The council  
84 shall thereupon give notice to the abutters to be assessed,  
85 that, on or after a date named in said notice, an assess-  
86 ment may be laid personally against the abutters so em-  
87 bodied in said report. Said notice shall state that the  
88 abutters as named, or other interested party, may on said  
89 date appear before the council to move the correction or  
90 revision of such proposed assessment. Said notice shall  
91 show the same facts embodied in the engineer's report  
92 hereinabove described and shall be published as a Class  
93 II legal advertisement in compliance with the provisions  
94 of article three, chapter fifty-nine of this code, and the  
95 publication area for such publication shall be the county  
96 in which the municipality is located. On or after the  
97 date so advertised, the council may revise, amend, cor-  
98 rect and verify the report according to the evidence in-  
99 troduced by appealing abutters or by the engineer, and  
100 shall thereafter proceed by ordinance or resolution to lay  
101 the assessments, as corrected and verified, against the  
102 abutters personally.

**ARTICLE 8. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS  
AND SEWERS.**

**§8-8-3. Notice to abutting owners before authorizing improvement; form of notice; certificate of publication; notice to railroad or foreign corporation.**

1 Before the adoption of such resolution or ordinance of  
2 necessity or convenience, the governing body shall cause  
3 notice to be given to owners of abutting property that  
4 such resolution or ordinance will be considered before  
5 adoption at a public meeting of the governing body at a  
6 time and place named in the notice and all persons or cor-  
7 porations shall at that meeting, or an adjournment there-  
8 of, be given an opportunity to protest or be heard  
9 concerning the adoption or rejection of said resolution or  
10 ordinance. Such notice to owners of property abutting  
11 on the portion of the street, alley, public way or easement  
12 to be improved may be by personal service on owners at  
13 least ten days before said meeting. In lieu of personal  
14 service of such notice, the following described notice, or  
15 one in substantially the same form, may be given, and  
16 shall be deemed to have been served on all such owners  
17 of abutting property, by publication of such notice as a  
18 Class II legal advertisement in compliance with the pro-  
19 visions of article three, chapter fifty-nine of this code,  
20 and the publication area for such publication shall be  
21 such municipality:

22 "NOTICE TO ALL PERSONS OR CORPORATIONS  
23 OWNING PROPERTY ABUTTING ON.....  
24 ..... (here describe the portion of  
25 the street, alley, public way or easement to be improved)  
26 IN THE ..... (town or city) OF  
27 ..... (name of municipality).

28 Proposals have been made to the .....  
29 (common council, board of directors, commissioners, or  
30 other governing body) of the ..... (town  
31 or city) of ..... (name of municipality)  
32 to permanently improve the portion of the street (alley,  
33 public way or easement) above described in .....  
34 (name of municipality) by ..... (grading,  
35 paving, constructing sanitary or storm sewers, construct-  
36 ing sidewalks, or other general description of the pro-

37 posed improvements) as the ..... (council,  
 38 board of directors, commissioners, or other governing  
 39 body) may deem proper, and to assess the cost of such  
 40 improvements on the property abutting said portion of  
 41 said street (alley, public way or easement).

42 The proposals to make such improvements, and the  
 43 plans, specifications, profiles and estimates will be con-  
 44 sidered by the ..... (governing body) at a pub-  
 45 lic meeting to be held on the ..... day of ..... ,  
 46 19....., at ..... M. at ..... Any abutting  
 47 owner or interested party will be given an opportunity  
 48 to protest or be heard at said meeting or an adjournment  
 49 thereof.

50 .....(name of the clerk or  
 51 recorder) .....(official positions)."

52 An affidavit of publication of the notice, made by the  
 53 newspaper publisher, and a copy of the notice shall be  
 54 made a part of the minutes of the governing body and  
 55 spread on its records of the meeting described in the no-  
 56 tice. The service of said notice upon all persons, firms or  
 57 corporations owning any interest in any property abut-  
 58 ting upon any portion of said street, alley, public way or  
 59 easement to be improved shall conclusively be deemed  
 60 to have been given when such newspaper publication shall  
 61 have been completed: *Provided*, That where any foreign  
 62 railroad or other foreign corporation is the owner of  
 63 property abutting upon any street, alley, public way or  
 64 easement sought to be improved under the provisions  
 65 hereof, notice shall be given to such railroad or other  
 66 foreign corporation as prescribed by section one, article  
 67 ten, chapter eight of the code of West Virginia, one thou-  
 68 sand nine hundred thirty-one, before the adoption of any  
 69 ordinance or resolution relating to, and providing for,  
 70 such improvements.

**§8-8-8. Report on completion; notice to abutting owners of  
 assessments; hearing; correcting and laying assess-  
 ments.**

1 When the improvement of such street, alley, easement,  
 2 or public way has been completed, the governing body  
 3 shall cause the engineer, or other person charged by the  
 4 governing body with the supervision of the work of im-

5 improvement, to make a report showing the several front-  
 6 ages abutting thereon, and the total cost, and showing  
 7 the respective amounts chargeable upon each lot or parcel  
 8 of land assessed abutting thereon, and showing the proper  
 9 amounts to be assessed against the respective abutting  
 10 lots or parcels of land as provided herein, with a descrip-  
 11 tion of the abutting lots and lands as to ownership, front-  
 12 age and location. The governing body of the municipality  
 13 shall thereupon give notice to the owners of the property  
 14 to be assessed that on or after a date named in said notice  
 15 an assessment may be laid against the property so im-  
 16 proved as embodied in said report. Said notice shall  
 17 state that the owner or owners whose property is to be  
 18 assessed, or other interested party, may on said date ap-  
 19 pear before the governing body to move the revision or  
 20 correction of such proposed assessment. Such notice  
 21 shall be published as a Class II legal advertisement in  
 22 compliance with the provisions of article three, chapter  
 23 fifty-nine of this code, and the publication area for such  
 24 publication shall be the county in which the municipality  
 25 is located. The notice shall show the total cost of the  
 26 improvement, the several frontages abutting thereon and  
 27 the respective amounts to be assessed against the abut-  
 28 ting property, with a description of the respective abut-  
 29 ting lots and lands as to ownership, frontage and location.  
 30 On or after the date so advertised, the governing body  
 31 may revise, amend, correct and verify the report and pro-  
 32 ceed by resolution or ordinance to lay the assessments as  
 33 corrected and verified.

**ARTICLE 9. NEW METHOD ASSESSMENTS TO IMPROVE  
STREETS; BOND.**

**§8-9-2. Assessments for paving or other permanent street im-  
provements; liens.**

1 Whenever the council of any such municipal corpora-  
 2 tion shall deem it expedient to cause any street or alley  
 3 in such corporation, or portion thereof, to be curbed, or  
 4 recurbed, paved or repaved, macadamized or remacadam-  
 5 ized or otherwise improved or reimproved in a perma-  
 6 nent manner, upon the petition in writing of persons own-  
 7 ing the greater amount of the frontage of the lots abut-  
 8 ting on both sides of any street or alley, between any two

9 cross streets or between a cross street and an alley, it  
10 shall order the work done in the following manner and  
11 upon the following terms: After due advertisement in  
12 which the council shall reserve the right to reject any  
13 and all bids, the contract for such improvement, if let,  
14 shall be let to the lowest responsible bidder. The con-  
15 tractor shall look only to the town for the payment of the  
16 work, and in no sense to the abutting landowners. Sub-  
17 ject to the provisions of section ten of this article, the  
18 total cost of curbing, grading and paving or otherwise  
19 improving or reimproving any such street or alley, with  
20 the exception, in the case of a street occupied by street-  
21 car tracks or other railways, of the distance between the  
22 rails and two additional feet outside of each rail, which  
23 portion shall, unless otherwise provided by an ordinance  
24 of such town or by the franchise of such streetcar or other  
25 railway company, be borne and paid entirely by the  
26 streetcar or other railway company operating such street-  
27 car or other railway, shall be borne by the owners of land  
28 abutting upon such street, alley or portion thereof, ac-  
29 cording to the following plan: Payment is to be made  
30 by all landowners on either side of such portion of a  
31 street or block so paved or improved, in such portion of  
32 the total cost, less the portion, if any, chargeable to such  
33 streetcar or other railway company, as the frontage in feet  
34 of his land so abutting bears to the total frontage of all  
35 land so abutting on such street, alley or portion thereof  
36 so paved or improved as aforesaid: *Provided, however,*  
37 That where a foreign railroad or other foreign corpora-  
38 tion is the owner of property abutting upon such street  
39 or alley, notice shall be given to such corporation, in the  
40 manner provided in article ten of this chapter, of the in-  
41 tention to improve such street or alley, before the enact-  
42 ment or adoption of any ordinance or resolution relating  
43 to such work.

44 When the paving or repaving of any street, or alley, or  
45 portion thereof, shall have been let to contract, and the  
46 work done as hereinbefore provided, it shall be the duty  
47 of the engineer of such town to cause the several frontages  
48 abutting thereon to be measured and to calculate the as-  
49 sessment upon each and every landowner so abutting and  
50 to certify the same to the council showing the proper

51 amount to be determined as provided in the foregoing  
52 plan. It shall be the duty of the council to examine and  
53 compare such assessment, amounts and names so certi-  
54 fied to it, and thereupon such council shall publish the  
55 following described notice as a Class II-O legal adver-  
56 tisement in compliance with the provisions of article  
57 three, chapter fifty-nine of this code, and the publication  
58 area for such publication shall be the town. The notice  
59 shall state that an assessment under this section is about  
60 to be laid against the abutting property for paving, re-  
61 paving or improvements done on such streets or alleys,  
62 describing the location of such paving, repaving, or im-  
63 provements, and that any owner or owners thereof shall  
64 have the right to appear before such council, within two  
65 weeks from the first publication thereof and move such  
66 council to correct any apportionment or assessment ex-  
67 cessive or improperly made as charged, which corrections  
68 such council shall have the power to make, and if found  
69 to be correct or when corrected by the council, as afore-  
70 said, it shall enter the same together with a description  
71 of the lots of land as to location, frontage, depth and own-  
72 ership, so far as the same may be ascertained, upon its  
73 records and enter in its records that such owners and lots  
74 be assessed and chargeable with the amounts so ascer-  
75 tained to be borne by them, respectively, and when so  
76 approved, certified and entered of record the same shall  
77 be and constitute an assessment against such owners and  
78 lots for such respective amounts. And it shall be the  
79 duty of the council immediately to certify such assess-  
80 ment to the treasurer for collection as herein provided,  
81 and a copy of such order shall be certified by the recorder  
82 to the clerk of the county court of the county wherein  
83 such property is situated, who shall be required to record  
84 and index the same in the proper trust deed book in the  
85 name of each person against whose property assessments  
86 appear therein. The amount so assessed against such  
87 abutting landowners shall be paid in ten payments as fol-  
88 lows: One tenth of such amount, together with interest  
89 on the whole assessment for one year, shall be paid into  
90 the treasury of the town before the first day of May next  
91 after such work is completed and after such assessments  
92 have been certified to the county clerk. And a like one

93 tenth together with interest for one year upon the whole  
94 amount remaining unpaid shall be paid on or before the  
95 first day of May in each succeeding year thereafter until  
96 all has been paid. And each of such installments of one  
97 tenth, beginning with the first, shall, until paid, bear in-  
98 terest on the amount of such installment at six per cent  
99 per annum from the date of the record of same in the  
100 office of the clerk of the county court: *Provided, how-*  
101 *ever,* That any abutting owner so liable for any portion  
102 of the cost of such improvements shall have the right at  
103 any time after the same is certified as aforesaid to the  
104 treasurer for collection to anticipate the payment of any  
105 or all of such assessments and shall be allowed to pay the  
106 face of such assessment with interest at six per cent per  
107 annum only to the time of payment.

108 To each of such installments of assessments remaining  
109 unpaid in the treasurer's hands on the days herein speci-  
110 fied for the payment thereof, a penalty of ten per cent  
111 shall be added, and any assessments so remaining unpaid  
112 in the treasurer's hands on such date shall be taken up  
113 by council, on such settlements had with the treasurer  
114 on such dates, and thereupon such council shall place  
115 such assessments, with the penalty added thereto, in the  
116 hands of the sergeant or other officer of such town whose  
117 duty it is to collect assessments, to be treated and consid-  
118 ered, and payment thereof enforced in all respects as here-  
119 inbefore provided for the collection of taxes due the town,  
120 and they shall be a lien upon the property liable therefor  
121 the same as a lien for taxes, which lien may be enforced  
122 in the same manner as provided for taxes.

123 The liens hereinbefore provided for shall have priority  
124 over all other liens except those for taxes. Whenever all  
125 such assessments for such improvements shall be paid in  
126 full to the treasurer he, on behalf of the municipality,  
127 shall execute and deliver to the party paying the same  
128 a release of the lien therefor, which may be recorded in  
129 the office of the clerk of the county court as other releases  
130 of liens; and whenever any such assessments shall not be  
131 in the hands of the treasurer for collection, but the same  
132 shall be shown, to the satisfaction of the town auditor or  
133 other official performing the duties of auditor, to have



134 been paid in full to any officer entitled to receive the same,  
135 such auditor or the mayor, in cases where the corporation  
136 has no auditor, may in like manner execute such release.

**§8-9-5. Resolution for paving or sewerage; publication; special assessments; assessments nontaxable.**

1 Whenever it is deemed expedient by the council to pro-  
2 vide for grading, paving, curbing, sewerage, macadamiz-  
3 ing or otherwise improving or reimproving any street or  
4 alley therein, to be paid for in whole or in part by special  
5 assessments, such council shall declare by resolution,  
6 three-fifths of the whole number elected thereto concur-  
7 ring, by an aye and no vote, the necessity for such im-  
8 provement. At the time of the passage of such resolu-  
9 tion, the council shall have on file, in the office of the  
10 recorder or clerk of the town, plans, specifications, esti-  
11 mates and profiles of the proposed improvements, show-  
12 ing the proposed grade of the street and the proposed im-  
13 provement, after completion, with reference to the prop-  
14 erty abutting thereon, which plans, specifications, esti-  
15 mates and profiles shall be open to the inspection of all  
16 persons interested. Such resolution shall determine the  
17 general nature of the improvement, what shall be the  
18 grade of the street, alley or other public place to be im-  
19 proved, as well as the grade or elevation of the curbs, and  
20 such council shall approve the plans, specifications, esti-  
21 mates and profiles for the proposed improvement.

22 The council shall also determine in such resolution the  
23 method of paying for the work contemplated in such  
24 plans and specifications, whether by an appropriation  
25 from funds in the treasury unappropriated, or by the is-  
26 suance of certificates as hereinafter provided, or whether  
27 or not the bonds shall be issued in anticipation of the  
28 collection of special assessments to be made against the  
29 abutting property owners, as provided for in section two  
30 of this article. But before any such resolution shall be  
31 passed, providing that improvements shall be made, the  
32 same to be paid for by assessments against abutting prop-  
33 erty, at least thirty days' written notice of the intention  
34 to pass such resolution shall be served on each of the  
35 abutting property owners in the manner provided in sec-  
36 tions one and two, article two, chapter fifty-six of this

37 code: *Provided, however,* That where a foreign railroad  
38 or other foreign corporation is an abutting property  
39 owner, notice to such corporation shall be given in the  
40 manner provided in article ten of this chapter. And such  
41 owner or owners shall have the right to be heard for or  
42 against the passage thereof.

43 Assessments shall be payable in ten installments as  
44 provided for in section two of this article, and shall be  
45 recorded and constitute a lien as provided in sections two  
46 and four of this article. The resolution herein provided  
47 for declaring the necessity for such improvement shall be  
48 published as a Class II-O legal advertisement in compli-  
49 ance with the provisions of article three, chapter fifty-  
50 nine of this code, and the publication area for such pub-  
51 lication shall be the town in which such improvements  
52 are to be made. An affidavit of the publisher showing  
53 publication for such time, together with a copy of such  
54 notice attached, shall be filed with the recorder or clerk  
55 of the council and spread upon the record of the minutes  
56 of the next meeting of the council. Such resolution shall  
57 be in effect from and after the first publication thereof as  
58 herein provided for.

59 In all cases where an assessment is made upon the prop-  
60 erty abutting on the street or alley improved in accord-  
61 ance with the provisions contained in this section and in  
62 sections two and three of this article, the council may be  
63 resolution entered of record by it, sell, assign and trans-  
64 fer to any person or persons, for a cash consideration, all  
65 or any of the assessments perfected as herein provided,  
66 and apply the amount received thereby to the payment  
67 of costs of such improvements. But no such sale and  
68 assignment shall be made until either bonds or certificates  
69 of indebtedness shall have been issued for such assess-  
70 ment, which shall be described in detail in the notice of  
71 the lien thereof to be recorded in the trust deed record in  
72 the office of the clerk of the county court. But no sale  
73 or transfer of such assessment shall be at a greater dis-  
74 count than five per cent of the aggregate sum represented  
75 by such sale. When authorized to do so by the council,  
76 the mayor of such town may make an assignment and  
77 transfer of such assessments, so evidence by such bonds  
78 or certificates of indebtedness as aforesaid; and, when so

79 made and recorded in the trust deed book in the office  
80 where such assessments are recorded, the purchaser of  
81 such assessments shall be and remain until the payment  
82 thereof subrogated to all of the rights and remedies, with-  
83 out recourse on such town, as were obtained by recording  
84 such assessments in the first instance, and such council  
85 may issue against each of the several properties upon  
86 which such assessments have been made, bonds or cer-  
87 tificates of indebtedness corresponding in denomination  
88 and otherwise to the annual sum to be paid on each of the  
89 properties so assessed, and the assessments on such prop-  
90 erties shall, when so made and recorded, remain and be a  
91 lien thereon until all such bonds or certificates of indebt-  
92 ness are discharged. The lien created by such assessment  
93 and by the issuance of any bonds or certificates issued  
94 therefor may be released as provided by law in the case  
95 of other liens, and, in addition thereto, upon presentation  
96 to the clerk of the county court of the county wherein  
97 the real estate subject to such lien is situated all the bonds  
98 or certificates issued thereunder, as to any specific real  
99 estate therein described or located, showing that the same  
100 have all been paid, such clerk is hereby empowered to  
101 release the lien of such assessment as to any such real  
102 estate, by noting a release thereof on the record of the lien  
103 as to such real estate on the margin of the trust deed book,  
104 where the same is recorded, and such annotation by such  
105 clerk shall have the effect to release such real estate from  
106 such lien as effectively as a regularly executed and re-  
107 corded release thereof. The proceeds of the sale of such  
108 bonds or certificates of indebtedness shall be applied to  
109 the payment of the indebtedness incurred in making the  
110 improvements on account of which such bonds or certifi-  
111 cates of indebtedness were issued. Should such govern-  
112 ing body of any town decide to issue bonds or certificates  
113 of indebtedness, as herein provided, it may call upon the  
114 attorney general of this state for a proper form, and it  
115 shall be the attorney general's duty to furnish a proper  
116 form for all such bonds or certificates of indebtedness.  
117 In addition to the methods hereinbefore and hereinafter  
118 prescribed for the payment of the cost of construction  
119 and improvement of streets, sewers and sewer systems,  
120 the council may order any street, alley, or portion thereof,

121 to be graded and paved, repaved, or otherwise perma-  
122 nently improved or reimproved or may order any sewer  
123 constructed and laid in any street, alley or in any right  
124 of way or easement, or portion thereof, and the council  
125 may order to be issued a certificate for each installment  
126 of the amount of the assessment to be paid by the owner  
127 of any lot or fractional part thereof abutting on the street,  
128 or alley so improved, or on the street, alley, right of way  
129 or easement, or portion thereof, in which such sewer is  
130 laid. The amount specified in such assessment shall be  
131 a lien as aforesaid in the hands of the holder of such cer-  
132 tificate upon such abutting lot or part of lot, and such  
133 certificate shall draw interest from the date of such as-  
134 sessment and the payment may be enforced in the name  
135 of the holder of such certificate by proper suit in equity  
136 in any court having jurisdiction to enforce such lien. The  
137 council shall fix the amount of such assessment, adver-  
138 tise for bids and do all other things in connection there-  
139 with as are hereinbefore and hereinafter provided in this  
140 chapter, except (a) that the amount of such certificate  
141 shall include the whole cost of such improvement, includ-  
142 ing the cost of grading, paving and curbing squares at  
143 intersections of streets, the costs of which intersections  
144 shall be apportioned against the several properties abut-  
145 ting upon the street or portion thereof so improved, but  
146 such cost, if any, as is chargeable to street car or railway  
147 companies shall be charged to and paid by such compa-  
148 nies; (b) when a sewer is completed, the cost of which  
149 is to be paid by the issuance of certificates, payment is to  
150 be made by such landowner on either side or such por-  
151 tion of a street, alley, right of way or easement in which  
152 such sewer is laid, in such proportion as such frontage of  
153 his land upon such street, alley, right of way or easement  
154 bears to the total frontage of all lands so abutting on such  
155 street, alley, right of way or easement. In case of a cor-  
156 nor lot, frontage is to be measured along the longest di-  
157 mensions thereof abutting on such street, alley, right of  
158 way or easement in which such sewer is laid. Any lot  
159 having a depth of two hundred feet or more and fronting  
160 on two streets, alleys, rights of way or easements, one in  
161 front and one in the rear of such lot shall be assessed on  
162 both of said streets, alleys, rights of way or easements,

163 if a sewer is constructed in both such streets, alleys, rights  
164 of way or easements. Where a corner lot has been as-  
165 sessed on the end it shall not be assessed on the side, and  
166 where it has been assessed on the side, it shall not be  
167 assessed on the end; (c) the cost of a sewer system shall  
168 be calculated in every respect in the same manner as the  
169 cost of the construction of a single sewer, except that such  
170 a system shall be deemed to include all elements of the  
171 system which serve to drain a definite drainage area as  
172 specified in the order of the council directing the work  
173 to be done, and the owner of property abutting upon  
174 either side of such portion of a street or right of way in  
175 which any part of such system is laid shall be assessed  
176 in the proportion that the frontage of his abutting land  
177 bears to the total frontage of all lands so abutting on such  
178 street or right of way. Paving certificates shall be issued  
179 in the same number of installments and payable at the  
180 same time as other paving assessments provided for in  
181 this chapter. Sewerage certificates shall be issued in  
182 such number of installments as the council may deter-  
183 mine, the aggregate amount of such certificates to be pay-  
184 able in not less than one nor more than five years, and  
185 to be divided in as nearly equal installments as practic-  
186 able. Nothing contained in this section shall be construed  
187 as imposing a time limit upon the enforcement by appro-  
188 priate suit of any lien for public improvements, hereto-  
189 fore or hereafter created.

190 Certificates authorized by this section may be issued,  
191 sold or negotiated to the contractor doing the work, or to  
192 any other person if the council deem it expedient: *Pro-*  
193 *vided*, That the town in issuing such certificates shall not  
194 be held as guarantor or in any way liable for payment  
195 thereof, except upon the direct action of the council ex-  
196 pressed by resolution of record before sale.

197 Certificates so issued shall contain a provision to the  
198 effect that in the event of default in the payment of any  
199 one of such certificates when due, and such default con-  
200 tinuing for a period of sixty days, then all unpaid certifi-

201 cates shall become due and payable and the holder of such  
202 certificates may proceed to collect all of such unpaid cer-  
203 tificates in the manner hereinbefore provided. Certifi-  
204 cates issued in pursuance of this section shall be negoti-  
205 able at any bank in the town by which they are issued.

206 Such certificates or assessment shall be exempt from  
207 state, county, district or municipal taxes.

208 The owner of the land or lot of land assessed under this  
209 section may at any time anticipate and pay such assess-  
210 ment or certificate with accrued interest thereon.

**§8-9-6. Notice of resolution for improvements; how served.**

1 A notice of the passage of the resolution required in the  
2 preceding section embodying a copy of such resolution,  
3 shall be served upon the owner of each piece of property  
4 to be assessed, such service to be made in the manner  
5 provided in section one, article two, chapter fifty-six of  
6 this code: *Provided*, That if any of the owners or per-  
7 sons not residents of the county wherein such improve-  
8 ment is proposed, or if it appears by the return, in any  
9 case, that the owner cannot be found, then a notice of the  
10 passage of such resolution shall be published as a Class  
11 II-0 legal advertisement in compliance with the provi-  
12 sions of article three, chapter fifty-nine of this code, and  
13 the publication area for such publication shall be the  
14 town in which such improvement is proposed to be made.  
15 Such notice, whether by service or publication, shall be  
16 completed at least three days before such improvement  
17 is begun or the assessment is levied, and the return of the  
18 officer serving such notice or a certified copy of such re-  
19 turn, or where published, the certificate of the publisher  
20 of such newspaper, shall be prima facie evidence of the  
21 service of the notice as herein required: *Provided further*,  
22 That if the owner be a railroad company or other corpor-  
23 ation, notice shall be served upon some agent or attorney  
24 for such railroad company or corporation within the  
25 county wherein such town is situate, if there be such agent  
26 or attorney within such county; and such service shall be  
27 made two weeks before such improvement is begun or  
28 the assessment is levied. Notice upon infants may be  
29 served on their guardians and upon insane persons by  
30 service upon their committees.

**ARTICLE 11. AIRPORTS AND AVIGATION.****§8-11-6. The state and political subdivisions empowered to lease airports and grounds.**

1 The state, acting through the aeronautics commission,  
2 or any county, incorporated city, town or village owning,  
3 either severally or jointly with other like governmental  
4 units, an airport and any grounds used or useful in con-  
5 nection therewith may severally or jointly lease the same,  
6 for use as such airport and for any other purposes inci-  
7 dental to and not inconsistent therewith, for a term not  
8 exceeding thirty years: *Provided, however,* That no  
9 lease shall be executed by such owner or owners of any  
10 such airport or grounds unless and until such owner or  
11 owners shall have given notice by publication of the fol-  
12 lowing described notice as a Class II legal advertisement  
13 in compliance with the provisions of article three, chap-  
14 ter fifty-nine of this code, and the publication area for  
15 such publication shall be the state if it is the state which  
16 proposes to make such lease or the political subdivision  
17 or subdivisions involved if it is a political subdivision or  
18 subdivisions which propose to make such lease. The no-  
19 tice shall state its or their intent to lease said airport or  
20 grounds, shall accurately describe what is proposed to be  
21 leased, the purpose or purposes for which it may be used  
22 and the terms of said lease, and shall state the time and  
23 place for the public opening of proposals for such lease,  
24 and shall reserve the right to reject any and all proposals.  
25 Nothing herein contained, however, shall prevent such  
26 owner or owners of such airport or grounds from grant-  
27 ing or renting landing rights for airplanes, hangar space,  
28 gasoline storage, or handling facilities, ticket or general  
29 office space, or any other facilities or rights in connection  
30 with such airport or grounds, covering or affecting less  
31 than the whole thereof, without notice and upon such  
32 terms as such owner or owners may deem advisable. All  
33 income received by a county court, or incorporated city,  
34 town or village under the terms of any such lease or grant  
35 shall be paid to the state sinking fund commission to re-  
36 tire the bonded indebtedness, if any, created for the ac-  
37 quisition, building and construction of such airport or  
38 grounds. And if there be no such outstanding bonded in-

39 debtednes, then such income to be paid into the general  
40 funds of such county, incorporated city, town or village.

**ARTICLE 12. WATERWORKS.**

**§8-12-1a. Municipality of ten thousand population or less prohibited to sell or lease water plant without first submitting question to voters.**

1 The common council of any municipality having a pop-  
2 ulation of less than ten thousand of the state of West Vir-  
3 ginia is hereby prohibited from selling, leasing or dispos-  
4 ing of its municipally-owned water plant, unless upon  
5 submission of the question of the proposed sale or lease to  
6 the voters of said municipality for ratification or rejec-  
7 tion at any general or special election, three-fifths of the  
8 votes cast shall be in favor of ratification. Should any  
9 such municipality desire to sell, lease or dispose of its  
10 water plant, it shall publish the following described no-  
11 tice immediately prior to the general election or the spe-  
12 cial election, as fixed by the council, as a Class II legal  
13 advertisement in compliance with the provisions of ar-  
14 ticle three, chapter fifty-nine of this code, and the publi-  
15 cation area for such publication shall be such municipal-  
16 ity. The notice shall set forth the terms and conditions  
17 of such sale, lease or disposition of said water plant, the  
18 price which has been agreed upon, the name of the pur-  
19 chaser or purchasers or lessee or lessees, and such other  
20 information to the voters of said municipality as the coun-  
21 cil may deem necessary, and at such election each voter  
22 desiring to vote shall deposit a ballot in a ballot box to  
23 be provided for that purpose which ballot shall have writ-  
24 ten or printed thereon the following words:

- 25 ☐ For ratification.  
26 ☐ Against ratification.

27 Such election shall be held under the superintendence  
28 of the commissioners of election appointed by the govern-  
29 ing body of such municipality and the results of such  
30 election shall be certified under oath and returned by said  
31 election commissioners to the governing body of said  
32 municipality as soon as may be after such election. In  
33 the event of a vacancy due to the failure or refusal to act  
34 of any election commissioner, such vacancy may be filled  
35 by the other commissioners.



36 In the event that the sale, lease or disposition of said  
 37 water plant is ratified by three fifths of the voters voting  
 38 at said special or general election, the governing body of  
 39 said municipality having control of such water plant shall  
 40 proceed to consummate the lease or sale to the purchaser  
 41 or purchasers upon the terms and provisions as have been  
 42 agreed upon.

**§8-12-4. Publication and posting of adoption of ordinance;  
 hearing.**

1 After such ordinance shall have been adopted, the or-  
 2 dinance, together with the following described notice,  
 3 shall be published as a Class II legal advertisement in  
 4 compliance with the provisions of article three, chapter  
 5 fifty-nine of this code, and the publication area for such  
 6 publication shall be such municipality. The notice to be  
 7 published with said ordinance shall state that said ordi-  
 8 nance has been adopted, and that the municipality con-  
 9 templates the issuance of the bonds described in the or-  
 10 dinance, and that any person interested may appear be-  
 11 fore the governing body, upon a certain date which shall  
 12 not be less than ten days subsequent to the date of the  
 13 last publication of such ordinance and notice, and present  
 14 protests. At such hearing all objections and suggestions  
 15 shall be heard and the governing body shall take such ac-  
 16 tion as it shall deem proper in the premises: *Provided,*  
 17 *however,* That if at such hearing written protest is filed  
 18 by thirty per cent or more of the owners of real estate  
 19 situate in said municipality, then the governing body of  
 20 said municipality shall not take further action unless four  
 21 fifths of the qualified members of said governing body  
 22 assent thereto.

**ARTICLE 13. COMBINED WATERWORKS AND SEWERAGE  
 SYSTEMS.**

**§8-13-5. Publication of ordinance; posting; petition for referen-  
 dum; election.**

1 After the ordinance for any project under this article  
 2 has been adopted and approved, it shall be published as  
 3 a Class I legal advertisement in compliance with the pro-  
 4 visions of article three, chapter fifty-nine of this code, and  
 5 the publication area for such publication shall be the  
 6 municipality undertaking such project. If no petition is

7 filed with the clerk of the governing body as hereinafter  
 8 provided, within ten days after the publication of such  
 9 ordinance, then after the expiration of such ten-day pe-  
 10 riod such ordinance shall be in full force and effect, but  
 11 if within such period of ten days a petition is filed with  
 12 the clerk of such municipality signed by fifteen per cent  
 13 of the number of voters voting at the last preceding gen-  
 14 eral municipal election, asking that the question of ac-  
 15 quiring, constructing, extending or improving or combin-  
 16 ing such waterworks and sewerage systems as provided  
 17 in such ordinance and the issuance of revenue bonds in  
 18 connection therewith, be submitted to the legal voters of  
 19 the municipality, the governing body of such municipality  
 20 shall call a special election in the manner provided by  
 21 law to vote upon such question. If it appears upon the  
 22 canvass of the election by the governing body that a ma-  
 23 jority of the voters voting upon such question at such  
 24 election voted in favor thereof then such ordinance shall  
 25 be in full force and effect, but if a majority of the votes  
 26 cast are unfavorable, then such municipality shall proceed  
 27 no further under such ordinance.

## **CHAPTER 8A. MUNICIPAL HOME RULE.**

### **ARTICLE 2. HOME RULE PROCEDURE; CHARTER ELECTIONS.**

#### **§8A-2-4. Notice of election.**

1 The notice of an election on the question of whether a  
 2 charter shall be framed shall consist of the initiatory or-  
 3 dinance and a brief prefatory statement setting out the  
 4 purpose and date of the election, naming the candidates,  
 5 if any, nominated by the governing body for membership  
 6 on the charter board and stating how and within what  
 7 time limit other nominations may be made. It shall be  
 8 published as a ClassII-O legal advertisement in compli-  
 9 ance with the provisions of article three, chapter fifty-  
 10 nine of this code, and the publication area for such publi-  
 11 cation shall be the city. The first publication shall be  
 12 made not less than thirty days prior to the date fixed for  
 13 the election.

#### **§8A-2-9. Public hearing on draft of charter.**

1 When it shall have completed its draft of charter a  
 2 charter board shall conduct a public hearing thereon.

3 Notice of the time, place and purpose of the hearing and  
 4 of where copies of a draft of the charter may be obtained  
 5 shall be given by publication of such notice as a Class I  
 6 legal advertisement in compliance with the provisions of  
 7 article three, chapter fifty-nine of this code, and the pub-  
 8 lication area for such publication shall be the city. The  
 9 date of the last publication of notice shall be at least ten  
 10 days prior to the date set for the hearing. The hearing  
 11 may be continued by the charter board by adjournments  
 12 over a period not exceeding fourteen days.

**§8A-2-12. Submission of charter to the voters.**

1 The proposed charter shall be submitted to the voters  
 2 at a special election to be held at the time determined by  
 3 the charter board. Notice of the time, place and purpose  
 4 of a charter election shall be given by publication of such  
 5 notice as a Class II-0 legal advertisement in compliance  
 6 with the provisions of article three, chapter fifty-nine of  
 7 this code, and the publication area for such publication  
 8 shall be the city. The first of said publications shall be  
 9 made not less than thirty days prior to the date fixed for  
 10 the election. Each such notice of election shall state that  
 11 any qualified voter of the city may obtain a copy of the  
 12 proposed charter, from a designated officer and place, upon  
 13 request.

**§8A-2-15a. Charter amendment; alternate plan for class II and class III cities.**

1 Whenever the council of any class II or class III city,  
 2 as defined under section four, article one, chapter eight-a  
 3 of this code, shall deem it expedient to amend the char-  
 4 ter of any such city, either in whole or in part, it shall, by  
 5 ordinance or resolution, set out in its proper record book  
 6 the proposed amendments in full. The council shall set  
 7 a time and place for a public hearing thereon, which date  
 8 shall not be less than thirty days after the date of the  
 9 first publication hereinafter required. The proposed  
 10 amendments, together with a notice of the time and place  
 11 fixed for the hearing thereon, shall be published as a Class  
 12 II legal advertisement in compliance with the provisions  
 13 of article three, chapter fifty-nine of this code, and the

14 publication area for such publication shall be the city.  
15 The notice shall also state that the proposed amendments  
16 will be considered at the time and place fixed by the  
17 council and any elector of the city may appear and file  
18 objections, in writing, and also that if no objections are  
19 filed the said amendment shall become operative on and  
20 after a date to be fixed in the notice, which date shall be  
21 not less than ten days after the date of the hearing. If no  
22 objections are filed, or if objections are filed and with-  
23 drawn at the time of the hearing, or within ten days  
24 thereafter, the council shall, by ordinance, adopt the  
25 amendments as amendment to the charter, and cause a  
26 transcript of the proceedings to be certified to the clerk  
27 of the house of delegates, as keeper of the rolls, and a  
28 copy thereof to be recorded in the office of the clerk of  
29 the county court.

30 If, at the time and place set for the hearing, objections  
31 to the amendments are filed and not withdrawn ten days  
32 thereafter, the council may abandon the proposed amend-  
33 ments to which objections have been filed, or it may sub-  
34 mit the proposed amendments, either as a unit or separ-  
35 ately, at the next regular city election, or at a special elec-  
36 tion, if the date of the regular election shall be more than  
37 six months from such date, for ratification or rejection.  
38 A notice of an election shall set out the proposed amend-  
39 ments at length or state that copies may be obtained by  
40 any qualified voter from a designated officer at a stated  
41 place, upon request. Notice of such election shall be pub-  
42 lished as a Class II-0 legal advertisement in compliance  
43 with the provisions of article three, chapter fifty-nine of  
44 this code, and the publication area for such publication  
45 shall be the city.

46 The amendments, or such of them as may be adopted,  
47 shall take effect on the date that the canvass and declara-  
48 tion of result showing approval by the voters has been  
49 made and entered in the minutes of the governing body.  
50 A transcript of the proceedings shall be filed and recorded  
51 as hereinbefore provided.

52 The method of charter amendment provided by this  
53 section is not in lieu of but in addition to the other meth-  
54 ods prescribed in the preceding section.

**ARTICLE 3. HOME RULE CHARTERS; ORDINANCES.****§8A-3-10. Ordinance procedure.**

1 The governing body shall enact an ordinance in the  
2 cases specified in section nine of this article in accord-  
3 ance with the following requirements:

4 (1) An ordinance shall be read at not less than two  
5 meetings with at least one week intervening between each  
6 meeting;

7 (2) At least five days before the meeting at which such  
8 ordinance is finally adopted the governing body shall  
9 cause notice of the proposed adoption of said ordinance to  
10 published as a Class I legal advertisement in compliance  
11 with the provisions of article three, chapter fifty-nine of  
12 of this code, and the publication area for such publication  
13 shall be the city. The notice shall state the subject mat-  
14 ter of such ordinance and the time and place of the pro-  
15 posed final vote on adoption, and the place or places with-  
16 in the city where such ordinance may be inspected by  
17 the public;

18 (3) An ordinance shall not be finally passed until after  
19 three days from the date of the publication and until all  
20 interested parties have been given an opportunity to at-  
21 ten a meeting of the council and be heard with respect  
22 to such ordinance.

23 (4) An ordinance shall not be materially amended at  
24 same meeting at which finally passed.

25 The governing body of any municipality may adopt  
26 building codes, housing codes, plumbing codes, sanitary  
27 codes, electrical codes, fire prevention codes, or any other  
28 technical codes dealing with general public health, safety  
29 or welfare, or a combination of the same, by ordinance, in  
30 the manner herein prescribed. Before any such code shall  
31 be adopted, it shall be either printed or typewritten and  
32 shall be presented in pamphlet form to the governing  
33 body of the municipality at the regular meeting, and  
34 copies shall be made available for public inspection. The  
35 ordinance adopting such code shall not set out said code  
36 in full, but shall merely identify the same. The vote on  
37 passage of said ordinance shall be the same as on any  
38 other ordinance. After its adoption, such code or codes  
39 shall be certified to by the chief executive officer and

40 shall be filed as a permanent record in the office of the  
 41 clerk, who shall not be required to transcribe and record  
 42 the same in the ordinance book as other ordinances. It  
 43 shall not be necessary that such ordinance adopting such  
 44 code or the code itself be published in full, but before  
 45 final passage of such ordinance, notice of the proposed  
 46 adoption of such code shall be given by publication as  
 47 herein provided for other ordinances, which notice shall  
 48 state where, within the city, the code or codes will be  
 49 available for public inspection.

50 A home rule charter may prescribe a procedure for the  
 51 enactment of ordinances in greater detail than prescribed  
 52 by this section, but the provisions of this section shall be  
 53 required. A governing body may enact an ordinance  
 54 under suspension of the rules prescribed by this section  
 55 only in the case of a pressing public emergency making  
 56 a procedure in accordance with the section dangerous  
 57 to the public health, safety, or morals, and by affirmative  
 58 vote of two thirds of the members elected to the govern-  
 59 ing body. The nature of the emergency shall be set out  
 60 in full in the ordinance.

#### **ARTICLE 4. POWERS OF HOME RULE CITIES.**

##### **§8A-4-28. Franchises.**

1 A city shall have power to grant franchises or rights  
 2 to use the streets, waters, water front, public ways and  
 3 public places in the city. No franchise shall be granted  
 4 for a period in excess of twenty-five years, nor until  
 5 after a public hearing has been held thereon after notice  
 6 of the time, place and purpose of the hearing shall have  
 7 been published as a Class II legal advertisement in com-  
 8 pliance with the provisions of article three, chapter fifty-  
 9 nine of this code, and the publication area for such  
 10 publication shall be the city.

#### **ARTICLE 6. CONSOLIDATION.**

##### **§8A-6-7. Certification by circuit court; filing; publication.**

1 If a majority of the votes cast by the qualified voters  
 2 in each of the municipalities are shown by the county  
 3 court's certificate to have been cast in favor of the con-  
 4 solidation, the circuit court or judge, if satisfied as to  
 5 the correctness of the returns evidenced by that certifi-

6 cate, shall so certify upon the certificate. He shall cause  
7 the same to be filed forthwith in the office of the clerk  
8 of the county court, and to be published as a Class I  
9 legal advertisement in compliance with the provisions of  
10 article three, chapter fifty-nine of this code, and the  
11 publication area for such publication shall be each of the  
12 municipalities so voting.

**§8A-6-11. Commission on wards and election districts.**

1 Within one week after the filing and publication pro-  
2 vided for in section seven of this article, a joint com-  
3 mission shall be formed consisting of the mayor or other  
4 chief executive officer and the clerk or other recording  
5 officer of each municipality to be consolidated, and  
6 three inhabitants thereof appointed by the governing  
7 body.

8 The commission shall be called together by the mayor  
9 or other chief executive of the consolidating municipality  
10 largest in population, at a time and place fixed by him,  
11 but not later than ten days from the formation of the  
12 commission. The commission shall organize by selecting  
13 a chairman and clerk. The clerk shall keep a record  
14 of all proceedings and expenses and shall file the same,  
15 not more than fourteen days after the commission has  
16 filed its report and certificate hereinafter prescribed, in  
17 the office of the clerk of the county court, together  
18 with an affidavit as to the truth and correctness  
19 thereof.

20 The commission shall fix and determine the ward lines  
21 (if the largest municipality is so divided) and election  
22 districts of the new municipality. The commission shall,  
23 within forty-five days from the date of its organization,  
24 make a report and certificate over the signatures of a  
25 majority of its members, and shall file the same in the  
26 office of the clerk of the county court. The certificate  
27 shall set forth and accurately describe the ward lines,  
28 if any, and election district lines fixed by the commission,  
29 and shall contain a proper map of the new municipality  
30 with such lines set out thereon. The clerk of the com-  
31 mission shall cause a copy of the certificate to be  
32 filed in the office of the secretary of state.

33 The lines fixed and determined by the commission shall  
34 be those of the new municipality until changed in ac-  
35 cordance with law. Wards, if any, shall be formed of  
36 contiguous territory. No election district shall be in  
37 more than one ward. In dividing the new municipality  
38 into wards and election districts, the commission shall  
39 have regard for, and shall take into consideration, the  
40 election laws of the state, as well as the area and pop-  
41 ulation in all wards and election districts, and shall  
42 divide and arrange the same so that each will  
43 contain, as nearly as possible, an equal number of  
44 inhabitants.

45 A notice setting forth the ward lines, if any, and  
46 election district lines as fixed by the commission shall  
47 be published by the clerk thereof as a Class I legal adver-  
48 tisement in compliance with the provisions of article  
49 three, chapter fifty-nine of this code, and the publication  
50 area for such publication shall be each of the munici-  
51 palities concerned. The notice shall be published within  
52 seven consecutive days next succeeding the filing of the  
53 certificate with the clerk of the county court. The ex-  
54 penses of the publication shall be paid by the new munici-  
55 pality. Upon the completion of the publication, the wards  
56 and election districts of the consolidating municipalities  
57 shall be superseded. The commission shall appoint, in  
58 accordance with the charter of the new municipality,  
59 election officers to serve at the election provided for by  
60 section twelve of this article.

61 The commission may employ an engineer and an attor-  
62 ney to assist in performing its duties. The commission  
63 may provide for compensation to be allowed to its clerk,  
64 engineer and attorney, which shall be paid by the new  
65 municipality. The commission members shall not receive  
66 compensation for their services, but all expenses incurred  
67 by them in the performance of their duties, when item-  
68 ized and sworn to by the chairman and clerk, shall be  
69 paid by the new municipality.

**§8A-6-21. Petition for annexation.**

1 Ten per cent of the inhabitants of the municipality  
2 may file a petition, in writing and signed by them, with  
3 the governing body, setting forth by metes and bounds



4 the territory proposed to be annexed and asking that a  
 5 vote be taken upon the proposed annexation. Upon the  
 6 filing of the petition, the governing body shall order a  
 7 vote of the qualified voters of the municipality to be  
 8 taken upon the proposed annexation at a time to be  
 9 named in the order, but not less than twenty nor more  
 10 than sixty days from the date of the order. The govern-  
 11 ing body shall, at the same time, order a vote of all the  
 12 qualified voters residing in the contiguous territory, and  
 13 of all the qualified voters owning any part of such ter-  
 14 ritory whether resident thereon or not, to be taken upon  
 15 the question on the same day at some convenient place  
 16 on or near such contiguous territory. The orders shall  
 17 be published, at the cost of the municipality, as a Class  
 18 II-0 legal advertisement in compliance with the provisions  
 19 of article three, chapter fifty-nine of this code, and the  
 20 publication area for such publication shall be the munici-  
 21 pality and the contiguous territory. The first publication  
 22 shall be at least fourteen days prior to the date the vote  
 23 is to be taken. The orders so published shall contain an  
 24 accurate description by metes and bounds of the territory  
 25 proposed to be annexed, and, if practicable, shall contain  
 26 also a popular description of such territory.

## **CHAPTER 10. PUBLIC LIBRARIES, PUBLIC RECREATION, ATHLETIC ESTABLISHMENTS, MONUMENTS AND MEMORIALS.**

### **ARTICLE 2A. ATHLETIC ESTABLISHMENTS.**

#### **§10-2A-6. Resolution for construction, etc., of establishment; notice and hearing.**

1 Before any board shall construct, acquire, improve, ex-  
 2 tend or equip any athletic establishment under this ar-  
 3 ticle, the board shall adopt a resolution which shall (a)  
 4 set forth a brief general description of the athletic estab-  
 5 lishment, and if the same is to be constructed a refer-  
 6 ence to the preliminary report or plans and specifications  
 7 which shall theretofore have been prepared; (b) set forth  
 8 the estimated cost thereof; (c) order the construction,  
 9 acquisition, extension, improvement or equipment of such  
 10 establishment; (d) direct that revenue bonds of the  
 11 county board of education be issued pursuant to this ar-

12 ticle; in such amount as may be found necessary to pay  
 13 the costs of such athletic establishment; and (e) contain  
 14 such other provisions as may be necessary or proper in  
 15 the premises. Before such resolution shall become effec-  
 16 tive it, together with the following described notice, shall  
 17 be published as a Class II legal advertisement in compli-  
 18 ance with the provisions of article three, chapter fifty-nine  
 19 of this code, and the publication area for such publica-  
 20 tion shall be the county in which such board of education  
 21 is located. The notice shall specify a time and place for  
 22 a public hearing, the time being not less than ten days  
 23 after the first publication of said notice; at which time  
 24 and place all parties and interests may appear before  
 25 the board, and may be heard as to whether or not said  
 26 resolution shall be put into effect. At such hearing all  
 27 objections and suggestions shall be heard and the board  
 28 shall take such action as it shall deem proper in the prem-  
 29 ises: *Provided, however,* That if at such hearing a writ-  
 30 ten protest is filed by thirty per cent or more of the own-  
 31 ers of real estate situate in said county, then the board of  
 32 of education shall not take further action unless four  
 33 fifths of the members of said board assent thereto: *And*  
 34 *provided further,* That in case written protest is filed pur-  
 35 porting to have been signed by or on behalf of thirty per  
 36 cent or more of the owners of real estate in said county,  
 37 the board shall have authority to appoint a subcommit-  
 38 tee to consist of one proponent, one opponent and the  
 39 third to be selected by these two, to determine whether  
 40 or not thirty per cent of the property owners have in fact  
 41 protested, and said subcommittee shall report its findings  
 42 to the board.

## CHAPTER 11. TAXATION.

### ARTICLE 3. ASSESSMENTS GENERALLY.

#### §11-3-24. Review and equalization by county court.

1 The county court shall annually, not later than the  
 2 first day of February, meet for the purpose of review-  
 3 ing and equalizing the assessment made by the assessor.  
 4 It shall not adjourn for longer than three days at a  
 5 time until this work is completed, and shall not remain  
 6 in session for a longer period than twenty-eight days.

7 At the first meeting, the assessor shall submit the prop-  
8 erty books for the current year, which shall be com-  
9 plete in every particular, except that the levies shall  
10 not be extended. The assessor and his assistants shall  
11 attend and render every assistance possible in connec-  
12 tion with the value of property assessed by them. The  
13 court shall proceed to examine and review the prop-  
14 erty books, and shall add on the books the names of  
15 persons, the value of personal property and the descrip-  
16 tion and value of real estate liable to assessment which  
17 was omitted by the assessor. They shall correct all  
18 errors in the names of persons, in the description and  
19 valuation of property, and they shall cause to be done  
20 whatever else may be necessary to make the valuation  
21 comply with the provisions of this chapter. But in no  
22 case shall any question of classification or taxability be  
23 considered or reviewed. If the court determine that any  
24 property or interest is assessed at more or less than its  
25 true and actual value, it shall fix it at the true and actual  
26 value. But no assessment shall be increased without  
27 giving the property owner at least five days' notice, in  
28 writing, and signed by the president of the court, of the  
29 intention to make the increase. Service upon the prop-  
30 erty owner shall be sufficient, or upon his agent or attor-  
31 ney in person, or if sent by registered mail to such  
32 property owner, his agent, or attorney, at the last known  
33 place of abode. If he be not found and have no known  
34 place of abode, then notice shall be given by publication  
35 thereof as a Class I legal advertisement in compliance  
36 with the provisions of article three, chapter fifty-nine  
37 of this code, and the publication area for such publica-  
38 tion shall be the county. The date of the publication  
39 shall be at least five days prior to the increase. When  
40 it is desired to increase the entire valuation in any one  
41 district by a general increase, notice shall be given by  
42 publication thereof as a Class II-0 legal advertisement  
43 in compliance with the provisions of article three, chap-  
44 ter fifty-nine of this code, and the publication area for  
45 such publication shall be the county. The date of the  
46 last publication shall be at least five days prior to the  
47 increase in valuation. When an increase is made, the

48 same valuation shall not again be changed unless notice  
49 is again given as heretofore provided.

50 The clerk of the county court shall publish notice of  
51 the time, place and general purpose of the meeting as  
52 a Class II legal advertisement in compliance with the  
53 provisions of article three, chapter fifty-nine of this code,  
54 and the publication area for such publication shall be  
55 the county involved. The expense of publication shall  
56 be paid out of the county treasury.

57 If any person fails to apply for relief at this meeting,  
58 he shall have waived his right to ask for correction in  
59 his assessment list for the current year, and shall not  
60 thereafter be permitted to question the correctness of  
61 his list as finally fixed by the county court, except on  
62 appeal to the circuit court. After the county court com-  
63 pletes the review and equalization of the property books,  
64 a majority of the court shall sign a statement that it is  
65 the completed assessment of the county for the year;  
66 then the property books shall be delivered to the assessor  
67 and the levies extended as provided by law.

#### **ARTICLE 8. LEVIES.**

##### **§11-8-17. Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot.**

1 The local levying body shall publish a notice, calling  
2 the election, as a Class II-0 legal advertisement in com-  
3 pliance with the provisions of article three, chapter  
4 fifty-nine of this code, and the publication area for such  
5 publication shall be the territory in which the election  
6 is held. Such notice shall be so published within four-  
7 teen consecutive days next preceding the election. All  
8 the provisions of the law concerning general elections  
9 shall apply so far as they are practicable, except as  
10 follows: Where a special election is held, the local  
11 levying body, having due regard to the minimum ex-  
12 pense involved, shall determine the number of elec-  
13 tion officials necessary to properly conduct said election,  
14 which number shall in no case be less than three com-  
15 missioners and two clerks, and shall appoint the same  
16 and fix and pay their compensation, but otherwise the

17 election officials shall be such as are appointed to serve  
 18 with respect to the general election held at the same  
 19 time. The local levying body, however, shall provide  
 20 the election supplies necessary for such election and shall  
 21 canvass the returns thereof. A separate ballot shall be  
 22 used at a levy election held in connection with any other  
 23 election. The ballot shall be entitled: "Special election  
 24 to authorize additional levies for the year(s).....  
 25 ..... and for the purpose of .....  
 26 according to the order of the .....  
 27 entered on the ..... day of ....."  
 28 The additional levy shall be on class I property .....  
 29 cents; on class II property ..... cents; on class III  
 30 property (if any) ..... cents; on class IV property  
 31 (if any) ..... cents.

**§11-8-32. Publication.**

1 The requirement of publication under this article shall  
 2 be met by publication as a Class II-O legal advertise-  
 3 ment in compliance with the provisions of article three,  
 4 chapter fifty-nine of this code, and the publication area  
 5 for such publication shall be the taxing unit.

**ARTICLE 12. LICENSE TAXES.**

**§11-12-84. Publication of list of delinquent corporations.**

1 The auditor shall, between the first and fifteenth day  
 2 of the second month of the license tax year in every year,  
 3 publish a list of all corporations failing to pay the license  
 4 tax, or any part thereof, due therefrom on or before the  
 5 first day of the first month of the license tax year, as a  
 6 Class I legal advertisement in compliance with the pro-  
 7 visions of article three, chapter fifty-nine of this code,  
 8 and the publication area for such publication shall be  
 9 the state. Such list shall contain the names of such de-  
 10 linquent corporations, arranged in two classes, domestic  
 11 and foreign. The cost of such publication shall be paid  
 12 by the auditor, when allowed by the board of public  
 13 works, out of the moneys in the treasury. Any such  
 14 delinquent corporation may, on or before the first day  
 15 of the fifth month of the license tax year following or  
 16 at any time before judgment or decree is entered as  
 17 hereinafter provided, pay the amount of such tax and

18 a penalty of one per cent per month for each month or  
19 fractional part thereof that such failure continued, but  
20 the amount of such penalty shall not be less than five  
21 dollars. After the publication of the list of delinquent  
22 corporations by the auditor, he shall mail to the last  
23 known postoffice address of each of such corporations a  
24 supplemental notice, together with a statement of the  
25 total amount of tax and penalties due therefrom, which  
26 notice shall be mailed at least thirty days before the first  
27 day of the fifth month of the license tax year.

**ARTICLE 17. EXCISE TAX ON SALE OF CIGARETTES.**

**§11-17-20. Seizure and sale of cigarettes by commissioner;  
forfeiture; collection of tax.**

1 Whenever the commissioner or any of his deputies  
2 or employees authorized by him for the purpose shall  
3 discover any cigarettes, subject to tax as provided by  
4 this article and upon which the tax has not been paid as  
5 herein required, the commissioner, or such deputy or  
6 employee is hereby authorized and empowered forthwith  
7 to seize and take possession of such cigarettes, which  
8 shall thereupon be deemed to be forfeited to the state  
9 and the commissioner shall within a reasonable time  
10 thereafter sell such forfeited cigarettes, and from the  
11 proceeds of such sale shall collect the tax due thereon  
12 together with a penalty of fifty per centum thereof and  
13 all expenses and costs incurred in such proceedings, and  
14 deduct and pay any other sums due the tax commis-  
15 sioner by the person in possession of said forfeited cigar-  
16 ettes, and pay the balance, if any, to such possessor:  
17 *Provided, however,* That such seizure and sale shall not  
18 be deemed to relieve any person from fine or imprison-  
19 ment provided herein for violation of any provision of  
20 this article. Such sale may be made in any county the  
21 tax commissioner deems most convenient and economi-  
22 cal. Notice of such sale shall be published as a Class I  
23 legal advertisement in compliance with the provisions  
24 of article three, chapter fifty-nine of this code, and the  
25 publication area for such publication shall be the county  
26 wherein such seizure was made and the county wherein  
27 the sale is to take place. Notice shall be published at

28 least five days prior to the sale. All taxes and penalties  
29 collected under the provisions of this section shall be  
30 paid into the state treasury and treated as other taxes  
31 collected under this article.

**ARTICLE 19. SOFT DRINKS TAX.**

**§11-19-7a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.**

1 Whenever the commissioner or any of his duly author-  
2 ized agents shall discover any soft drink syrups, subject  
3 to tax as provided by this article and upon which the  
4 tax has not been paid as herein required, the commis-  
5 sioner or his duly authorized agent is hereby authorized  
6 and empowered forthwith to seize and take possession  
7 of such soft drink syrups, which shall thereupon be  
8 deemed to be forfeited to the state and the commissioner  
9 shall within a reasonable time thereafter sell such for-  
10 feited soft drink syrups; and from the proceeds of such  
11 sale shall collect the tax due thereon together with a  
12 penalty of fifty per cent thereof and the cost incurred  
13 in such proceedings, and pay the balance, if any, to the  
14 person in whose possession such soft drink syrups were  
15 found: *Provided, however,* That such seizure and sale  
16 shall not be deemed to relieve any person from fine or  
17 imprisonment provided herein for violation of any pro-  
18 vision of this article. Such sale shall be made in the  
19 county where most convenient and economical. Notice  
20 of such sale shall be published as a Class I legal adver-  
21 tisement in compliance with the provisions of article  
22 three, chapter fifty-nine of this code, and the publication  
23 area for such publication shall be the county wherein such  
24 seizure was made and the county wherein the sale is  
25 to take place. Notice shall be published at least five  
26 days prior to the sale. All moneys collected under the  
27 provisions of this section shall be paid into the state  
28 treasury and treated as other taxes collected under this  
29 article.

## **CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.**

### **ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.**

#### **§11A-1-8. Notice of time and place for payment.**

1 The sheriff may give notice by posting at not less than  
2 six public places in each magisterial district, for at least  
3 ten days before the time appointed, that between July  
4 fifteenth and August thirty-first he will attend at one  
5 or more of the most public and convenient places in  
6 each district, such places to be specified in the notice,  
7 for the purpose of receiving taxes due by the people  
8 residing or paying taxes in such district. The notice  
9 shall also state that those who pay the first installment  
10 of their taxes on or before September first will be en-  
11 titled to a discount of two and one-half per cent. Like  
12 notice may be given that between January fifteenth and  
13 February twenty-eighth he will again appear in each  
14 district for the collection of taxes, and that those who  
15 pay their second installment on or before March first  
16 will be entitled to the same discount. Failure of the  
17 sheriff to post such lists shall not impair the right of  
18 the state to collect such taxes.

19 The county court of any county may order that the  
20 above notice shall also be given by advertisement. Such  
21 an order, once entered, shall continue in effect until  
22 rescinded by the county court. Upon entry of such order,  
23 the sheriff shall, besides posting as required above, pub-  
24 lish the proper notice as a Class II legal advertisement  
25 in compliance with the provisions of article three, chap-  
26 ter fifty-nine of this code, and the publication area for  
27 such publication shall be the county. Such notice shall  
28 be so published within fourteen consecutive days next  
29 preceding the fifteenth day of July or the fifteenth day of  
30 January as the case may be. For every failure so to  
31 advertise, the sheriff shall forfeit one hundred dollars.

### **ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.**

#### **§11A-2-10a. Notice of delinquency.**

1 On or after April first of each year, the sheriff may  
2 prepare and publish a notice stating in effect that the



3 taxes assessed for the previous year have become de-  
 4 linquent, and that unless paid by April thirtieth will be  
 5 included for publication in the forthcoming delinquent  
 6 lists, which notice, if published, shall be published as a  
 7 Class II-0 legal advertisement in compliance with the  
 8 provisions of article three, chapter fifty-nine of this code,  
 9 and the publication area for such publication shall be  
 10 the county.

**§11A-2-13. Publication and posting of delinquent tax lists.**

1 A copy of each of the delinquent lists shall be posted  
 2 at the front door of the courthouse of the county at least  
 3 two weeks before the session of the county court at which  
 4 they are to be presented for examination. At the same  
 5 time a copy of each list shall be published as a Class I-0  
 6 legal advertisement in compliance with the provisions  
 7 of article three, chapter fifty-nine of this code, and the  
 8 publication area for such publication shall be the county.  
 9 Only the aggregate amount of the taxes owed by each  
 10 person need be published. To cover the costs of  
 11 preparing, publishing and posting the delinquent lists,  
 12 a charge of two dollars and fifty cents shall be added to  
 13 the taxes and interest already due on each item listed.

14 Any person, whose taxes were delinquent on May  
 15 first, may have his name removed from the delinquent  
 16 lists prior to the time the same is delivered to the news-  
 17 papers for publication, by paying to the sheriff the full  
 18 amount of the taxes and costs owed by such person at  
 19 the date of such redemption. The sheriff shall collect  
 20 a charge of only fifty cents if redemption is made before  
 21 the list is delivered for publication. Costs collected by  
 22 the sheriff hereunder which are not expended for pub-  
 23 lication shall be paid into the general county fund.

**ARTICLE 3. SALE OF LAND FOR TAXES.**

**§11A-3-2. Second publication and posting of list of delinquent real estate; notice.**

1 On or before September tenth of each year, the sheriff  
 2 shall prepare a second list of delinquent lands, which  
 3 shall include all real estate in his county remaining  
 4 delinquent as of September first, together with a notice  
 5 of sale, in form or effect as follows:

6 Notice is hereby given that the following described  
 7 tracts or lots of land or undivided interests therein in  
 8 the County of \_\_\_\_\_ which are delinquent for  
 9 the nonpayment of taxes for the year (or years) 19\_\_\_\_\_,  
 10 will be offered for sale by the undersigned sheriff (or  
 11 collector) at public auction at the front door of the  
 12 courthouse of the county, between the hours of ten in  
 13 the morning and four in the afternoon, on the \_\_\_\_\_  
 14 day of \_\_\_\_\_, 19\_\_\_\_\_.

15 Each unredeemed tract or lot, or each unredeemed  
 16 part thereof or undivided interest therein, will be sold  
 17 at public auction to the highest bidder for cash in an  
 18 amount which shall not be less than the taxes, in-  
 19 terest and charges which shall be due thereon to the  
 20 date of sale, as set forth in the following table:

Name of Person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale
---	---------------------	----------------------	---

21 Any of the aforesaid tracts or lots, or part thereof  
 22 or an undivided interest therein, may be redeemed by the  
 23 payment to the undersigned sheriff (or collector) before  
 24 sale, of the total amount of taxes, interest and charges  
 25 due thereon up to the date of redemption.

26 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
 27 19\_\_\_\_\_.

28

29

Sheriff (or collector)

30 The sheriff shall publish the list and notice prior to  
 31 the sale date fixed in the notice as a Class III-0 legal  
 32 advertisement in compliance with the provisions of article  
 33 three, chapter fifty-nine of this code, and the pub-  
 34 lication area for such publication shall be the county.

35 To cover the costs of preparing, publishing and posting  
 36 the delinquent list, a charge of three dollars and fifty  
 37 cents shall be added to the taxes, interest and charges  
 38 already due on each item listed. The sum of the taxes,  
 39 interest to the date of sale, and other charges shall be  
 40 stated in the list as the total amount due.

41 Any person, whose taxes were delinquent on Sep-  
 42 tember first, may have his name removed from the de-

43 linquent list prior to the time the same is delivered to  
44 the newspapers for publication by paying to the sheriff  
45 the full amount of taxes and costs owed by such person  
46 at the date of such redemption. In such case, the sheriff  
47 shall include but fifty cents of the costs provided in this  
48 section in making such redemption. Costs collected by  
49 the sheriff hereunder which are not expended for pub-  
50 lication shall be paid into the general county fund.

**§11A-3-24. Service of notice.**

1 As soon as the clerk has prepared the notice provided  
2 for in the preceding section, he shall cause it to be  
3 served upon the following persons: (1) The person in  
4 whose name the real estate was returned delinquent  
5 and sold, or, in case of his death, his heir or devisee  
6 and his personal representative, if such there be; (2)  
7 any grantee of such person, or his heir or devisee and  
8 his personal representative, if such there be, if a con-  
9 veyance of such real estate is recorded or filed for record  
10 in the office of the clerk; (3) any person having a lien  
11 upon such real estate disclosed by any paper recorded  
12 in the clerk's office; and (4) any other person having  
13 such an interest in the property as would entitle  
14 him to redeem, if the existence of such interest ap-  
15 pears of record.

16 The notice shall be personally served upon all such  
17 persons residing or found in the state in the manner  
18 provided for serving process commencing a suit, on or  
19 before the first day of February following the request  
20 for such notice. If any person entitled to notice is a  
21 nonresident of the state or if his residence is unknown  
22 to the clerk and cannot by due diligence be discovered,  
23 the notice shall be served by publication as a Class III-0  
24 legal advertisement in compliance with the provisions  
25 of article three, chapter fifty-nine of this code, and the  
26 publication area for such publication shall be the county  
27 in which such real estate is located. If service by pub-  
28 lication is necessary, publication shall be commenced  
29 within two weeks after February first, and a copy of  
30 the notice shall at the same time be sent by registered  
31 mail, return receipt requested, to the last known address  
32 of the person served. The return of service of such notice

33 and the affidavit of publication, if any, shall be in the  
 34 manner provided for process generally and shall be filed  
 35 and preserved by the clerk in his office, together with  
 36 any return receipts for notices sent by registered mail.

**§11A-3-41. Publication by sheriff of sales list.**

1 Within one month after completion of the sale, the  
 2 sheriff shall prepare and publish a list of all the sales  
 3 made by him, in form or effect as follows, which list  
 4 shall be published as a Class II-0 legal advertisement  
 5 in compliance with the provisions of article three,  
 6 chapter fifty-nine of this code, and the publication  
 7 area for such publication shall be the county.

8 List of real estate sold in the county of \_\_\_\_\_,  
 9 in the month (or months) of \_\_\_\_\_, 19\_\_\_\_, for  
 10 nonpayment of taxes thereon for the year (or years)  
 11 19\_\_\_\_, and purchased by individuals or by the state of  
 12 West Virginia:

Name of person charged with taxes	Local descrip- tion of lands	Quantity of land of charged	Quantity of land sold	Name of purchaser	Whole amount paid by purchaser
---	--	-----------------------------------	-----------------------------	-------------------------	---

13 The owner of any real estate listed above, or any  
 14 other person entitled to pay the taxes thereon, may,  
 15 however, redeem such real estate as provided by law.

16 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
 17 19\_\_\_\_\_.

18 To cover the costs of preparing, publishing and posting  
 19 such list, a charge of three dollars shall be added to the  
 20 taxes, interest and charges already due on each item  
 21 listed.

**ARTICLE 4. SALE OF LANDS FOR SCHOOL FUND.**

**§11A-4-12. Service of process by publication; failure to name person as defendant; failure to obtain personal service in prior suits.**

1 Upon the institution of a suit as provided in section  
 2 ten of this article, the clerk of the circuit court shall  
 3 enter an order of publication, without the filing of any

4 affidavit by the deputy commissioner as required in  
5 other cases. Such order of publication shall give the  
6 style of the suit, as, state of West Virginia v. A. B., et  
7 al; shall state that the object of the suit is to obtain  
8 a decree of the circuit court ordering the sale for the  
9 benefit of the school fund of all lands included in the  
10 suit; shall list all such lands, setting forth as to each  
11 item its local description, the former owner in whose  
12 name the land was forfeited, or was returned delinquent  
13 and sold, or escheated, as the case may be, and the  
14 names of such other defendants as may be interested  
15 therein; and shall require all the named defendants,  
16 and all unknown parties who are or may be interested  
17 in any of the lands included in the suit to appear within  
18 one month after the date of the first publication  
19 thereof and do what is necessary to protect their  
20 interests.

21 The order shall be published as a Class III-0 legal  
22 advertisement in compliance with the provisions of  
23 article three, chapter fifty-nine of this code, and the  
24 publication area for such publication shall be the  
25 county. The cost of such publication shall be charged  
26 rateably to each item listed in the suit, and shall be  
27 taxed to the state as part of its costs in the suit and  
28 paid as hereinafter provided.

29 In view of the fact that the state has absolute title to  
30 all forfeited land, to all land sold to the state for non-  
31 payment of taxes and become irredeemable, to all  
32 escheated land, and to all waste and unappropriated  
33 land, and must under the constitution have such an  
34 absolute title before the land may be sold for the benefit  
35 of the school fund; and in view of the fact that the for-  
36 mer owner of any such land, or any person claiming  
37 under him, has no further interest therein nor rights  
38 in respect thereto except such privilege of redemption  
39 as may be extended to him by the Legislature as an  
40 act of grace; and in view of the further fact that all  
41 parties known and unknown who may claim an interest  
42 in any of the lands included in the suit are given notice  
43 thereof by the order of publication provided for above;  
44 therefore, the Legislature deems it both expedient and

45 necessary to provide that failure to name any such  
 46 person as a defendant shall in no wise affect the validity  
 47 of any of the proceedings in the suit for the sale of the  
 48 state's title to such land; and in view of the fact that  
 49 the supreme court of appeals in a decision just rendered  
 50 has held that there is no constitutional requirement that  
 51 the former owner or any other interested person be per-  
 52 sonally served with process in a suit for the sale for  
 53 the benefit of the school fund of lands that are and must  
 54 be the absolute property of the state; and in view of the  
 55 further fact that in its last previous enactment of this  
 56 section the Legislature had no intention of requiring that  
 57 personal service of process on named defendants in  
 58 such a suit should be a mandatory condition precedent  
 59 to the validity of any step or proceeding in such suit,  
 60 but on the contrary expressly stated that failure to  
 61 serve the summons on any named defendant should in  
 62 no wise affect the validity thereof; now therefore, the  
 63 Legislature also deems it both expedient and necessary  
 64 to provide that the failure to obtain such personal serv-  
 65 ice on any named defendant in any suit instituted under  
 66 the provisions of this article prior to the effective date  
 67 hereof shall in no way affect the validity of any step or  
 68 proceeding in any such suit or the validity of the title  
 69 acquired by the purchaser of land sold under any decree  
 70 made or to be made in any such suit.

**§11A-4-23. Notice of sale.**

1 In order to encourage attendance and bidding at the  
 2 sale, the deputy commissioner shall, beginning at least  
 3 fifteen days before the day on which the court has or-  
 4 dered that any lands be sold, publish a list of all such  
 5 lands as a Class III-0 legal advertisement in compliance  
 6 with the provisions of article three, chapter fifty-nine  
 7 of this code, and the publication area for such publica-  
 8 tion shall be the county. At the head of the list shall  
 9 be a notice of the sale in form or effect as follows:

10 Notice is hereby given that, pursuant to the order of  
 11 the Circuit Court of \_\_\_\_\_ County, the following  
 12 described tracts or lots of land, or undivided interests  
 13 therein, will unless sooner redeemed be sold for cash  
 14 to the highest bidder. Such sale will be held at

15 \_\_\_\_\_ (here insert place of sale fixed by the  
 16 court) beginning at ten o'clock in the morning on the  
 17 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

18 The list shall set forth as to each item its quantity,  
 19 local description and, except in the case of waste and  
 20 unappropriated lands, the name of the former owner.  
 21 The cost of such publication shall be taxed to the state  
 22 as part of its costs in the suit and shall be paid as here-  
 23 inafter provided.

### **CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

#### **ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.**

##### **§13-1-8. Publication of notice of election.**

1 Notice of all bond elections shall be given by publi-  
 2 cation, within fourteen consecutive days next preceding  
 3 the date of the election, of the order provided for in sec-  
 4 tion four of this article as a Class II-0 legal advertise-  
 5 ment in compliance with the provisions of article three,  
 6 chapter fifty-nine of this code, and the publication area  
 7 for such publication shall be the political division in  
 8 which the election is to be held.

##### **§13-1-21. Advertisement and sale of bonds; purchase by state governmental agency.**

1 The governing body of the political division issuing  
 2 such bonds shall sell the same and collect the proceeds,  
 3 which proceeds shall be deposited with its treasurer.  
 4 Whenever any bonds are to be sold, the body authorized  
 5 to sell the same shall, before offering them to the public,  
 6 offer them in writing to the secretary of state for pur-  
 7 chase by any of the governmental agencies of the state  
 8 authorized by law to purchase such bonds, which offer  
 9 shall be held to be an offer to sell the bonds at their  
 10 par value to the state sinking fund commission and to  
 11 any other of the governmental agencies of the state  
 12 authorized by law to purchase such bonds. If, after such  
 13 offer is made, the governing body of the political divi-  
 14 sion making the offer shall be notified in writing that  
 15 none of such agencies of the state has elected to pur-

16 chase such bonds, or after ten days have elapsed after  
 17 such offer of sale has been made without an acceptance  
 18 by any of such agencies of the state, then the governing  
 19 body of the political division shall advertise such bonds  
 20 for sale, on sealed bids, which advertisement shall be  
 21 published as a Class II legal advertisement in compli-  
 22 ance with the provisions of article three, chapter fifty-  
 23 nine of this code, and the publication area for such pub-  
 24 lication shall be the political division. The first publi-  
 25 cation shall be made at least fourteen days before the  
 26 date fixed for the reception of bids. Such advertisement  
 27 shall also be published in a financial paper published  
 28 either in the city of New York or the city of Chicago, or  
 29 in a newspaper published in a city of this state having  
 30 a population of not less than twenty thousand inhabitants,  
 31 according to the last federal census. The governing body  
 32 may reject any and all bids. If the bonds be not sold  
 33 pursuant to such advertisement, they may, within sixty  
 34 days after the date advertised for the reception of bids,  
 35 be sold by the governing body at private sale, but no  
 36 private sale shall be made at a price less than the highest  
 37 bid which shall have been received. If not sold, such  
 38 bonds shall be readvertised in the manner herein pro-  
 39 vided. In no event shall bonds be sold for less than their  
 40 par value.

**§13-1-25. Copy of proceedings to be transmitted to attorney  
 general for approval or disapproval; publication of  
 approval or disapproval.**

1 The governing body of any political division issuing  
 2 bonds under this article shall, as soon as practicable after  
 3 the result of the election authorizing their issuance shall  
 4 have been officially ascertained, transmit to the attorney  
 5 general a duly certified copy of all orders, ordinances,  
 6 proclamations, notices, advertisements, affidavits, resolu-  
 7 tions and records of all the proceedings connected with  
 8 or pertaining to such bond issue, and any other matters  
 9 relative thereto which the attorney general may require.  
 10 The attorney general shall thereupon either approve or  
 11 disapprove the validity of such bond issue, and shall im-  
 12 mediately notify the governing body of the political divi-



13 sion which authorized the issuance of the bonds of his  
 14 action by mail, and as soon as practicable notify the peo-  
 15 ple of such political division of his approval or disap-  
 16 proval of such bond issue, by causing notice thereof to  
 17 be published as a Class II legal advertisement in com-  
 18 pliance with the provisions of article three, chapter fifty-  
 19 nine of this code, and the publication area for such pub-  
 20 lication shall be the political division.

### **ARTICLE 3. STATE SINKING FUND COMMISSION.**

#### **§13-3-7. Where and how bonds and interest payable; substitute paying agent.**

1 Payment of bonds and interest coupons hereafter issued  
 2 shall be made from funds specified in section eight of  
 3 this article. The place or places of payment of such bonds  
 4 and coupons shall be in accordance with the provisions  
 5 of articles one and two of this chapter. In the event of  
 6 the insolvency, threat of insolvency, death, or discontin-  
 7 uance from business of the paying agent or in the case  
 8 of discontinuance of the place of payment as designated  
 9 by the terms of such bonds, it shall be the duty of the  
 10 sinking fund commission to appoint another paying agent  
 11 or designate another place of payment. Such action by  
 12 the commission shall be valid only if sanctioned by the  
 13 recorded votes of three fourths of the commission's mem-  
 14 bership. Upon appointment of a substitute paying agent,  
 15 it shall be the duty of the commission to publish notice  
 16 of such action as a Class II legal advertisement in com-  
 17 pliance with the provisions of article three, chapter fifty-  
 18 nine of this code, and the publication area for such pub-  
 19 lication shall be the county in which the former paying  
 20 agent had residence. Upon designation of another place  
 21 of payment, publication of notice shall be made in the  
 22 county in which was located the former place of pay-  
 23 ment.

### **CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**

#### **ARTICLE 1. CLAIMS DUE THE STATE.**

#### **§14-1-8. Sale of real estate under execution; notice.**

1 When a levy is so made upon real estate, the officer  
 2 making it shall publish notice thereof and of the time  
 3 and place of sale as a Class III-0 legal advertisement in

4 compliance with the provisions of article three, chapter  
 5 fifty-nine of this code, and the publication area for such  
 6 publication shall be the county. The sale shall take place  
 7 at the premises or at the front door of the courthouse, as  
 8 the officer may deem most advisable.

**§14-1-28. Notice of sale of claims.**

1 The sheriff, after having received a transcript of the  
 2 account which is to be sold, shall give notice by publica-  
 3 tion as a Class III-0 legal advertisement in compliance  
 4 with the provisions of article three, chapter fifty-nine of  
 5 this code, and the publication area for such publication  
 6 shall be the county. Such notice shall be so published  
 7 within the twenty-one consecutive days next preceding  
 8 the date of sale. The notice shall state that he will pro-  
 9 ceed to sell to the highest bidder the claims or accounts  
 10 mentioned in such notice. Such notice shall show the  
 11 name of the sheriff or other officer and his sureties, in  
 12 case there is evidence of his having executed a bond, the  
 13 year or years for which he was indebted to the state, upon  
 14 what account such indebtedness exists, and the amount  
 15 shown to be due thereon by the auditor's books, exclusive  
 16 of interest, as well as the amount appearing to be due,  
 17 with interest calculated to the day of sale.

**CHAPTER 15 PUBLIC SAFETY.**

**ARTICLE 1B. NATIONAL GUARD.**

**§15-1B-9. Discharge of enlisted personnel.**

1 a. Enlisted men may be honorably discharged, dis-  
 2 charged, or discharged dishonorably; but in no case may  
 3 an enlisted man be dishonorably discharged unless by  
 4 sentence of a general courtmartial, except as hereinafter  
 5 provided. No enlisted man shall be honorably discharged  
 6 from service unless he produces the certificate of his im-  
 7 mediate commanding officer that he has turned over or  
 8 satisfactorily accounted for all property issued to him.  
 9 b. Whenever any enlisted man of the national guard  
 10 shall have performed service therein for the term of his  
 11 enlistment or re-enlistment, and has turned into the  
 12 proper officer all state or military property for which he is  
 13 responsible, his commanding officer shall grant him a full

14 and honorable discharge, except in time of insurrection  
 15 or invasion or other emergency declared by the governor,  
 16 when his enlistment shall be automatically extended for  
 17 the period he shall be in the active service of the state,  
 18 and until released therefrom by proper order. Discharge  
 19 for physical disability shall be granted pursuant to ap-  
 20 plicable rules and regulations. The governor may au-  
 21 thorize for sufficient reason, and in his discretion, the dis-  
 22 charge of enlisted men, with or without their consent, at  
 23 any time, upon the recommendation of the commanding  
 24 officer of the unit of organization to which they belong.  
 25 An enlisted man who cannot, after due diligence, be  
 26 found, or who shall remove his residence from the state,  
 27 or to such a distance from the armory of his organization,  
 28 as to render it impracticable for him to perform properly  
 29 military duties, or who shall be convicted of a felony, may  
 30 be discharged by order of the governor.

31 c. A dishonorable discharge from service in the na-  
 32 tional guard shall operate as a complete expulsion from  
 33 the guard, a forfeiture of all exemptions and privileges  
 34 acquired through membership therein, and disqualifica-  
 35 tion for any military office under the state. The names  
 36 of all persons dishonorably discharged shall be published  
 37 in orders by the adjutant general at the time of such dis-  
 38 charge, and as a Class I legal advertisement in compliance  
 39 with the provisions of article three, chapter fifty-nine of  
 40 this code, and the publication area for such publication  
 41 shall be the county in which such dishonorably dis-  
 42 charged person resides. No person so discharged shall  
 43 be admitted to any armory or other meeting place of the  
 44 national guard or to the immediate vicinity of any en-  
 45 campment, drill or parade of troops. All commanding  
 46 officers are hereby required to enforce these prohibitions.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 10. STERILIZATION OF MENTAL DEFECTIVES.**

#### **§16-10-1. Persons subject to sterilization; procedure; order of state board of health.**

1 Whenever the superintendent of any of the following  
 2 state institutions, namely, the Weston State Hospital, the  
 3 Huntington State Hospital, the Spencer State Hospital,

4 the Lakin State Hospital, the West Virginia industrial  
5 school for boys or the West Virginia industrial home for  
6 girls, shall be of the opinion that it is for the best interests  
7 of the inmates of the institution of which he is superinten-  
8 dent and of society that any inmate of such institution who  
9 is afflicted with any hereditary form of insanity that is  
10 recurrent, idiocy, imbecility, feeble-mindedness or epi-  
11 lepsy should be sexually sterilized, such superintendent  
12 shall present to the board of health of this state a written  
13 petition stating the facts of the case and the grounds of  
14 his opinion, verified by his affidavit to the best of his  
15 knowledge and belief, and praying that an order may be  
16 entered by said board requiring him to perform, or to  
17 have performed by some competent physician or surgeon  
18 to be designated by him in his petition or by the board  
19 in its order, upon such inmate named in such petition,  
20 the operation of vasectomy if upon a male and of salping-  
21 ectomy if upon a female.

22 A copy of such petition shall be served upon such in-  
23 mate named therein, together with a notice in writing  
24 designating the time and place in said institution, not  
25 less than thirty days before the presentation of such pe-  
26 tition to the West Virginia Board of health, when and  
27 where the board will hear an act upon such petition.  
28 If such inmate has a parent, child, brother, sister, guard-  
29 ian or committee residing in this state whose name and  
30 place of residence are known to such superintendent,  
31 a copy of such petition and notice shall be served upon  
32 such parent or parents, child, brother, sister, guardian,  
33 or committee. If such notice cannot be so served, the  
34 superintendent shall file a copy of such petition in the  
35 office of the clerk of the county court of the county where  
36 the inmate last resided, and shall cause such notice to be  
37 published as a Class II legal advertisement in compliance  
38 with the provisions of article three, chapter fifty-nine of  
39 this code, and the publication area for such publication  
40 shall be the county in which the inmate last resided.  
41 Such publication shall be completed thirty days be-  
42 fore the presentation of said petition to the Board.  
43 Costs of the publication shall be paid out of the county

44 treasury of the county wherein published. Such notice  
45 shall be in the following form:

46 To the next kin of \_\_\_\_\_, (here name  
47 inmate or inmates if more than one.)

48 Notice is given pursuant to law that the superintendent  
49 of \_\_\_\_\_ (name of the institution  
50 filing the petition) will, on the \_\_\_\_\_ day of \_\_\_\_\_,  
51 19\_\_\_\_\_, file a petition before the West Virginia board of  
52 of health to be heard at \_\_\_\_\_ (name place  
53 of hearing), asking for an order directing the sterilization  
54 of \_\_\_\_\_ (name of inmate), at which  
55 time and place any valid reason for not entering such  
56 order may be offered.

57 A copy of said petition is filed in the office of the clerk  
58 of the county court of this county.

59 \_\_\_\_\_  
60 Superintendent of \_\_\_\_\_

61 Any number of cases from the same county may be  
62 included in the same notice.

63 After the notice required by this article shall have been  
64 given as herein provided, the West Virginia board of  
65 health, at the time and place named therein, with such  
66 reasonable continuances from time to time and from  
67 place to place as the board may determine, shall proceed  
68 to hear and consider the said petition and the evidence  
69 offered in support of and against the same. For every  
70 such inmate the board shall appoint a guardian ad litem  
71 who must be present at the hearing to defend the rights  
72 and interests of such inmate. And the board shall see  
73 to it that such inmate shall have leave and opportunity  
74 to attend such hearings in person, if desired by him, or  
75 by his parent, guardian or committee served with such  
76 petition as aforesaid.

77 The West Virginia board of health may receive and con-  
78 sider as evidence at such hearing the commitment papers  
79 and other records of such inmate in any of the aforesaid  
80 state institutions as certified by the superintendent or  
81 superintendents thereof, together with such other legal  
82 evidence as may be offered by any party to the proceed-  
83 ing. Any member of the board shall have the power to  
84 administer oaths to the witnesses at such hearings. De-

85 positions may be taken by any party after due notice as  
 86 in pending cases and such depositions may be read in  
 87 evidence if pertinent to the issue: *Provided, however,*  
 88 That no deposition shall be read against such inmate,  
 89 except with the consent of his guardian ad litem, unless  
 90 it be taken in the presence of the guardian ad litem or  
 91 upon interrogatories agreed on by him. The board shall  
 92 preserve and keep all record evidence offered at such  
 93 hearings, and shall have all oral evidence heard thereat  
 94 reduced to writing and preserved and kept with its rec-  
 95 ords. Any party to the proceedings shall have the right  
 96 to be represented by counsel at such hearings.

97 The West Virginia board of health may deny the prayer  
 98 of said petition or, if the board shall find that such inmate  
 99 is insane, idiotic, imbecile, feeble-minded or epileptic,  
 100 and by the laws of heredity is the probable potential  
 101 parent of socially inadequate offspring likewise afflicted;  
 102 that such inmate may be sexually sterilized without det-  
 103 riment to his or her general health; and that the welfare  
 104 of such inmate and of society will be promoted by such  
 105 sterilization, it may order such superintendent to per-  
 106 form, or cause to be performed by some competent phy-  
 107 sician or surgeon named in such order, upon such inmate,  
 108 after not less than thirty days from the date of such or-  
 109 der, the operation of vasectomy, if such inmate be a male,  
 110 or of salpingectomy, if such inmate be a female.

#### **ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.**

##### **§16-12-1. Incorporation for sewage disposal; submission to voters; petition and hearing.**

1 That whenever any area of contiguous territory shall  
 2 contain one or more incorporated cities, town and/or vil-  
 3 lages, and shall be so situated that the construction and  
 4 maintenance of a plant or plants for the purification and  
 5 treatment of sewage and the maintenance of one or more  
 6 outlets for the drainage thereof, after having been so  
 7 treated and purified by and through such plant or plants  
 8 will conduce to the preservation of the public health, com-  
 9 fort and convenience, the same may be incorporated as  
 10 a sanitary district under this article in the manner fol-  
 11 lowing, to-wit:

12 Any four hundred legal voters, residents within the  
13 limits of such proposed sanitary district, may petition the  
14 county court of the county in which the proposed sanitary  
15 district, or the major portion thereof, is located, to cause  
16 the question to be submitted to the legal voters of such  
17 proposed sanitary district, whether such proposed terri-  
18 tory shall be organized as a sanitary district under this  
19 article; such petition shall be addressed to the county  
20 court and shall contain a definite description of the bound-  
21 aries of the territory to be embraced in the such sanitary  
22 district, and the name of such proposed sanitary district:  
23 *Provided, however,* That no territory shall be included  
24 within more than one sanitary district organized under  
25 this article.

26 Notice shall be given by such county court within ten  
27 days after receiving the petition, of the time and place  
28 when a hearing on the petition for a sanitary district  
29 will be held, by publication of such notice as a Class II  
30 legal advertisement in compliance with the provisions  
31 of article three, chapter fifty-nine of this code, and the  
32 publication area for such publication shall be the area  
33 of the sanitary district. The first publication shall be made  
34 at least twenty days prior to such hearing. The hearing on  
35 the petition for a sanitary district shall be held not later  
36 than thirty days after the county court receives the said  
37 petition. At such hearing the president of the county court  
38 shall preside, and all persons resident within the limits  
39 of such proposed sanitary district shall have an oppor-  
40 tunity to be heard upon the question of the location and  
41 boundary of such proposed sanitary district, and to make  
42 suggestions regarding the same, and the said county court,  
43 after hearing statements, evidence and suggestions, shall  
44 fix and determine the limits and boundaries of such pro-  
45 posed sanitary district as stated in the original petition un-  
46 less by a vote of the majority of the legal voters resident  
47 within the limits of such proposed sanitary district, present  
48 at the said hearing, it should be decided to alter and amend  
49 such petition to change and redetermine the limits and  
50 boundaries of such proposed sanitary district.

51 After such determination by the county court, the same  
52 shall be incorporated in an order which shall be spread

53 at length upon the records of the county court. Upon  
 54 the entering of such order, the county court shall submit  
 55 to the legal voters of the proposed sanitary district, the  
 56 question of organization and establishment of the pro-  
 57 posed sanitary district as determined by said county  
 58 court, at a special election, to be held within sixty days  
 59 after the entering of such order, notice whereof shall  
 60 be given by the county court at least twenty days prior  
 61 thereto by publication of such notice as a Class II-0 legal  
 62 advertisement in compliance with the provisions of  
 63 article three, chapter fifty-nine of this code, and the pub-  
 64 lication area for such publication shall be the area of  
 65 the proposed sanitary district. Such notice shall specify  
 66 briefly the purpose of such election, with a description  
 67 of such proposed sanitary district, and the time and place  
 68 for holding such election.

69 Each legal voter resident within such proposed sani-  
 70 tary district shall have the right to cast a ballot at such  
 71 election. Ballots at elections held under this section shall  
 72 be in substantially the following form, to-wit:

73 ☐ For sanitary district.

74 ☐ Against sanitary district.

75 The ballots so cast shall be issued, received, returned  
 76 and canvassed in the same manner and by the same  
 77 officers as is provided by law in the case of ballots cast  
 78 for county officers, except as herein modified. The county  
 79 court shall cause a statement of the result of such elec-  
 80 tion to be spread on the records of the county court. If  
 81 a majority of the votes cast upon the question of the  
 82 incorporation of the proposed sanitary district shall be  
 83 in favor of the proposed sanitary district, such proposed  
 84 sanitary district shall thenceforth be deemed an organized  
 85 sanitary district under this article. All courts in this  
 86 state shall take judicial notice of the existence of all  
 87 sanitary districts organized under this article.

88 The expenses of holding said special election shall be  
 89 paid by the county court of said county, in which said  
 90 proposed sanitary district, or the major portion thereof,  
 91 is located, out of the general funds of said county: *Pro-*  
 92 *vided, however,* That in the event such sanitary district  
 93 is established and incorporated under this article, then



94 said sanitary district shall repay to said county the ex-  
95 penses incurred in holding said special election within  
96 two years from the date of incorporating said sanitary  
97 district.

**§16-12-4. Ordinances imposing penalty or making appropriation; ordinances, orders and resolutions as evidence.**

1 All ordinances imposing any penalty or making any  
2 appropriations shall, within one month after they are  
3 passed, be published as a Class II legal advertisement  
4 in compliance with the provisions of article three, chap-  
5 ter fifty-nine of this code, and the publication area for  
6 such publication shall be the sanitary district. No such  
7 ordinance shall take effect until ten days after it is so  
8 published, and all other ordinances, orders and resolu-  
9 tions shall take effect from and after their passage un-  
10 less otherwise provided therein.

11 All ordinances, orders and resolutions, and the date  
12 of publication thereof, may be proven by certificate of  
13 the clerk under the seal of the corporation, and when  
14 printed in book or pamphlet form, and purporting to be  
15 published by the board of trustees, such book or pamphlet  
16 shall be received as evidence of the passage and legal  
17 publication of such ordinances, orders and resolutions,  
18 as of the dates mentioned in such book or pamphlet in  
19 all courts and places without further proof.

**§16-12-9. Borrowing money; issuance of revenue or tax obligation bonds.**

1 Said sanitary district may borrow money for corporate  
2 purposes and may issue revenue and/or tax obligation  
3 bonds therefor, but shall not become indebted in any  
4 manner, or for any purpose whatsoever, beyond an  
5 amount in the aggregate to exceed five per cent of the  
6 valuation of the taxable property within said district,  
7 to be ascertained by the last assessment for state and  
8 county taxes, previous to incurring of said indebtedness.  
9 Whenever the board of trustees of such sanitary district  
10 desires to issue bonds hereunder they shall order an elec-  
11 tion to be held in such sanitary district upon the ques-  
12 tion. Notice of such election shall be given by said  
13 board of trustees by publication of such notice as a

14 Class II-0 legal advertisement in compliance with the  
 15 provisions of article three, chapter fifty-nine of this code,  
 16 and the publication area for such publication shall be  
 17 the sanitary district. The first publication shall be made  
 18 at least twenty days prior to said election. The notices  
 19 of election shall state the amount of bonds to be issued  
 20 and the polling places at which the election shall be held.  
 21 The board of trustees shall appoint judges and clerks for  
 22 such election and the return of such election shall be filed  
 23 with the clerk of the board of trustees and be canvassed  
 24 and the result ascertained by said board and entered upon  
 25 the records of the sanitary district. If it shall appear that  
 26 a majority of the voters voting at said election on said  
 27 question shall have voted in favor of the issue of  
 28 the said bonds, the board of trustees shall order and  
 29 direct the execution of the bonds for and on behalf of  
 30 said sanitary district. All bonds issued hereunder shall  
 31 mature in not exceeding thirty annual installments. The  
 32 ballots at elections held under this section shall be in  
 33 substantially the following form, to-wit:

34 Proposition to issue bonds of .....sanitary  
 35 district to the amount of .....dollars.

36 ☐ Yes.

37 ☐ No.

**§16-12-11. Letting contracts; manner and cost of building  
 additions or extensions.**

1 All contracts for work to be done by such sanitary  
 2 district, the expense of which will exceed five hundred  
 3 dollars, shall be let to the lowest responsible bidder  
 4 therefor. The board of trustees shall cause to be pub-  
 5 lished a notice informing the public and contractors of  
 6 the general nature of the work and of the fact that  
 7 detailed plans, drawings and specifications are on file  
 8 in the office of such board of trustees and calling for  
 9 sealed proposals for the construction of the work to be  
 10 done at a date not earlier than ten days after the last of  
 11 such publications, such notice to be published as a Class II  
 12 legal advertisement in compliance with the provisions  
 13 of article three, chapter fifty-nine of this code, and the  
 14 publication area for such publication shall be the sanitary

15 district. Said board of trustees shall require each bidder to  
 16 deposit with his respective bid a certified check for an  
 17 amount not less than two and one-half per cent of the en-  
 18 gineer's estimate of such work to insure the execution of  
 19 the contract for which such bid is made. The board of  
 20 trustees may impose such conditions as it may deem neces-  
 21 sary upon the bidders with regard to bond and surety,  
 22 guaranteeing the good faith and responsibility of such bid-  
 23 ders, and the faithful performance of such work accord-  
 24 ing to contract, or for any other purpose. The board  
 25 of trustees shall have the right to reject any and all  
 26 bids, but if it does reject all bids, before other bids  
 27 may be received notices shall be published as originally  
 28 required. The board of trustees shall have power to let  
 29 portions of said proposed work under different contracts.

30 Any additions or extensions to any sewage disposal  
 31 plant, or sewers or drains or any other work constructed  
 32 under the provisions of this article, shall be built un-  
 33 der contract entered into under the provisions of this  
 34 section in the same manner as the contract for the origi-  
 35 nal plant or work. The cost of such additions or exten-  
 36 sions, and of any additional lands or rights-of-way ac-  
 37 quired by said board, may be met by the sale of addi-  
 38 tional bonds to be issued and sold by the trustees, and  
 39 the levy of taxes and/or the collection of service charges  
 40 to retire such bonds, all as provided in this article.

**ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS  
 AND SANITARY DISTRICTS.**

**§16-13-6. Publication, posting and hearing upon ordinance.**

1 After such ordinance shall have been adopted, the  
 2 ordinance, together with the following described notice,  
 3 shall be published as a Class II legal advertisement in com-  
 4 pliance with the provisions of article three, chapter fifty-  
 5 nine of this code, and the publication area for such publica-  
 6 tion shall be the municipality. The notice shall state  
 7 that said ordinance has been adopted, and that the  
 8 municipality contemplates the issuance of the bonds de-  
 9 scribed in the ordinance, and that any person interested  
 10 may appear before the governing body upon a certain  
 11 date which shall not be less than ten days subsequent  
 12 to the last date of publication of such ordinance and

13 notice, and present protests. At such hearing all objec-  
14 tions and suggestions shall be heard and the governing  
15 body shall take such action as it shall deem proper in  
16 the premises: *Provided, however,* That if at such a hear-  
17 ing written protest is filed by thirty per cent or more  
18 of the owners of real estate situate in said municipality,  
19 then the governing body of said municipality shall not  
20 take further action unless four fifths of the qualified  
21 members of the said governing body assent thereto.

**§16-13-16. Rates for service; hearing; change or readjustment;  
lien and recovery.**

1 The governing body shall have power, and it shall be  
2 its duty, by ordinance, to establish and maintain just  
3 and equitable rates or charges for the use of and the  
4 service rendered by such works, to be paid by the owner  
5 of each and every lot, parcel of real estate or building  
6 that is connected with and uses such works by or through  
7 any part of the sewerage system of the municipality,  
8 or that in any way uses or is served by such works, and  
9 may change and readjust such rates or charges from time  
10 to time. Such rates or charges shall be sufficient in  
11 each year for the payment of the proper and reasonable  
12 expense of operation, repair, replacements and main-  
13 tenance of the works and for the payment of the sums  
14 herein required to be paid into the sinking fund. Reve-  
15 nues collected pursuant to this section shall be deemed  
16 the revenues of the works. No such rates or charges  
17 shall be established until after a public hearing, at  
18 which all the users of the works and owners of property  
19 served or to be served thereby and others interested  
20 shall have an opportunity to be heard concerning the  
21 proposed rates or charges. After introduction of the  
22 ordinance fixing such rates or charges, and before the  
23 same is finally enacted, notice of such hearing, setting  
24 forth the proposed schedule of such rates or charges,  
25 shall be given by publication as a Class II-O legal adver-  
26 tisement in compliance with the provisions of article  
27 three, chapter fifty-nine of this code, and the publica-  
28 tion area for such publication shall be the munici-  
pality. The first publication shall be made at least ten days

29 before the date fixed in such notice for the hearing. After  
30 such hearing, which may be adjourned from time to time,  
31 the ordinance establishing rates or charges, either as orig-  
32 inally introduced or as modified and amended, shall be  
33 passed and put into effect. A copy of the schedule of such  
34 rates and charges so established shall be kept on file in  
35 the office of the board having charge of the operation of  
36 such works, and also in the office of the clerk of the munic-  
37 ipality, and shall be open to inspection by all parties inter-  
38 ested. The rates or charges so established for any class of  
39 users or property served shall be extended to cover any  
40 additional premises thereafter served which fall within the  
41 same class, without the necessity of any hearing or notice.  
42 Any change or readjustment of such rates or charges may  
43 be made in the same manner as such rates or charges were  
44 originally established as hereinbefore provided: *Provided,*  
45 *however,* That if such change or readjustment be made  
46 substantially pro rata, as to all classes of service, no hear-  
47 ing or notice shall be required. The aggregate of the rates  
48 or charges shall always be sufficient for such expense of  
49 operation, repair and maintenance and for such sinking  
50 fund payments. All such rates or charges, if not paid when  
51 due, shall constitute a lien upon the premises served by  
52 such works. If any service rate or charge so established  
53 shall not be paid within thirty days after the same is due,  
54 the amount thereof, together with a penalty of ten per cent,  
55 and a reasonable attorney's fee, may be recovered by the  
56 board in a civil action in the name of the municipality, and  
57 in connection with such action said lien may be foreclosed  
58 against such lot, parcel or land or building, in accordance  
59 with the laws relating thereto: *Provided, however,* That  
60 where both water and sewer services are furnished by any  
61 municipality to any premises the schedule of charges  
62 may be billed as a single amount or individually itemized  
63 and billed for the aggregate thereof. Whenever any rates,  
64 rentals or charges for services or facilities furnished shall  
65 remain unpaid for a period of thirty days after the  
66 same shall become due and payable, the property and  
67 the owner thereof, as well as the user of the services  
68 and facilities shall be delinquent until such time as all  
69 such rates and charges are fully paid. The board collect-

70 ing such charges shall be obligated under reasonable  
71 rules and regulations, to shut off and discontinue both  
72 water and sewer services to all delinquent users of either  
73 water facilities, or sewer facilities, or both, and shall not  
74 restore either water facilities or sewer facilities to any  
75 delinquent user of either until all delinquent charges  
76 for both water facilities and sewer facilities, including  
77 reasonable interest and penalty charges, have been paid  
78 in full.

**§16-13-18a. Publication of financial statement.**

1 Every sanitary board shall prepare a financial state-  
2 ment and cause the same to be published as a Class I  
3 legal advertisement in compliance with the provisions  
4 of article three, chapter fifty-nine of this code, and the  
5 publication area for such publication shall be the sani-  
6 tary district. Such statement shall contain an item-  
7 ized account of the receipts and expenditures of the  
8 board during the previous fiscal year, showing the source  
9 from which all money was derived, and the name of the  
10 person to whom an order was issued, together with the  
11 amount of such order, and why such order was issued,  
12 arranging the same under distinct heads, and including  
13 all money received and expended from the sale of bonds,  
14 and also a specific statement of the debts of such board,  
15 showing the purpose for which any debt was contracted,  
16 the amount of money in all funds at the end of the  
17 preceding year, and the amount of uncollected service  
18 charges. Such statement shall be prepared and pub-  
19 lished by the board as soon as practicable after the close  
20 of the fiscal year: *Provided*, That such statement for the  
21 fiscal year ending June thirtieth, one thousand nine hun-  
22 dred fifty-six, may be published any time during the  
23 year one thousand nine hundred fifty-seven. The state-  
24 ment shall be sworn to by the chairman and secretary  
25 and treasurer of the board. If a board fails or refuses  
26 to perform the duties hereinbefore named, every member  
27 of the board concurring in such failure or refusal shall  
28 be guilty of a misdemeanor, and, upon conviction there-  
29 of, shall be fined not less than one hundred nor more  
30 than five hundred dollars and the circuit court or crimi-

31 nal court and justices of the peace, of the county where  
32 the offense was committed, shal have concurrent juris-  
33 diction to try such offense.

**§16-13-23a. Acquisition, operation, etc.; alternative method of finance.**

1 Notwithstanding any other provision contained in this  
2 article, and in addition thereto, the governing body of  
3 any municipal corporation which has received or which  
4 hereafter receives an order issued by the chief of the divi-  
5 sion of water resources or the state water resources board  
6 requiring such municipal corporation to cease the pollu-  
7 tion of any stream or waters, is hereby authorized and em-  
8 powered to fix, establish and maintain, by ordinance, just  
9 and equitable rates or charges for the use of the services  
10 and facilities of the existing sewer system of such municipi-  
11 pal corporation, and/or for the use of the services and fa-  
12 cilities to be rendered upon completion of any works and  
13 system necessary by virtue of said order, to be paid by the  
14 owner, tenant or occupant of each and every lot or parcel  
15 of real estate or building that is connected with and uses  
16 any part of such sewer system, or that in any way uses or  
17 is served thereby, and may change and readjust such rates  
18 or charges from time to time. Such rates or charges shall  
19 be sufficient for the payment of all the proper and rea-  
20 sonable costs and expenses of the acquisition and con-  
21 struction of plants, machinery and works for the collec-  
22 tion and/or treatment, purification and disposal of sew-  
23 age, and the repair, alteration and extension of existing  
24 sewer facilities, as may be necessary to comply with such  
25 order of the chief of the division of water resources or the  
26 state water resources board, and for the operation, main-  
27 tenance and repair of the entire works and system; and  
28 the governing body shall create, by ordinance, a sinking  
29 fund to accumulate and hold any part or all of the pro-  
30 ceeds derived from rates or charges until completion of  
31 said construction, to be remitted to and administered by  
32 the state sinking fund commission by expending and pay-  
33 ing said costs and expenses of construction and operation  
34 in the manner as provided by said ordinance; and after  
35 the completion of the construction such rates or charges  
36 shall be sufficient in each year for the payment of the

37 proper and reasonable costs and expenses of operation,  
38 maintenance, repair replacement, and extension from time  
39 to time, of the entire sewer and works. No such rates or  
40 charges shall be established until after a public hearing, at  
41 which all the potential users of the works and owners of  
42 property served or to be served thereby and others inter-  
43 ested shall have an opportunity to be heard concerning the  
44 proposed rates or charges. After introduction of the ordi-  
45 nance fixing such rates or charges, and before the same is  
46 finally enacted, notice of such hearing, setting forth the  
47 proposed schedule of such rates or charges, shall be given  
48 by publication of such notice as a Class II-0 legal adver-  
49 tisement in compliance with the provisions of article three,  
50 chapter fifty-nine of this code, and the publication area  
51 for such publication shall be the municipality. The first  
52 publication shall be made at least ten days before the date  
53 fixed therein for the hearing. After such hearing, which  
54 may be adjourned from time to time, the ordinance estab-  
55 lishing the rates or charges, either as originally introduced  
56 or as modified and amended, may be passed and put into  
57 effect. A copy of the schedule of such rates and charges  
58 so established shall be kept on file in the office of the sani-  
59 tary board having charge of the construction and opera-  
60 tion of such works, and also in the office of the clerk of the  
61 municipality, and shall be open to inspection by all parties  
62 interested. The rates or charges so established for any class  
63 of users or property served shall be extended to cover any  
64 additional premises thereafter served which fall within the  
65 same class, without the necessity of any hearing or notice.  
66 Any change or readjustment of such rates or charges  
67 may be made in the same manner as such rates or charges  
68 were originally established as hereinbefore provided: *Pro-*  
69 *vided, however,* That if such change or readjustment be  
70 made substantially pro rata, as to all classes of service, no  
71 hearing or notice shall be required. If any rate or charge  
72 so established shall not be paid within thirty days after  
73 the same is due, the amount thereof, together with a pen-  
74 alty of ten per cent, and a reasonable attorney's fee, may  
75 be recovered by the sanitary board of such municipal cor-  
76 poration in a civil action in the name of the municipality.  
77 Any municipal corporation exercising the powers given



78 herein shall have authority to construct, acquire, improve,  
 79 equip, operate, repair and maintain any plants, machinery,  
 80 or works necessary to comply with such order of the state  
 81 water resources board, and the authority provided herein  
 82 to establish, maintain and collect rates or charges shall be  
 83 construed as a further additional and alternative method  
 84 of financing such works and matters, and shall be inde-  
 85 pendent of any other provision of this article insofar as  
 86 such article provides for or requires the issuance of  
 87 revenue bonds or the imposition of rates and charges in  
 88 connection with such bonds: *Provided, however,* That  
 89 except for the method of financing such works and mat-  
 90 ters, the construction, acquisition, improvement, equip-  
 91 ment, custody, operation, repair and maintenance of any  
 92 plants, machinery or works in compliance with an order  
 93 of the state water resources board, and the rights, powers,  
 94 and duties of such municipal corporation and the respec-  
 95 tive officers and departments thereof, including the sani-  
 96 tary board, shall be governed by the provisions of this  
 97 article.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND  
SEWERAGE SERVICES.**

**§16-13A-2. Creation of districts by county court; enlarging or  
reducing district; consolidation; agreements, etc.,  
infringing upon powers of county court.**

1 The county court of any county may on its own motion  
 2 by order duly adopted propose the creation of such public  
 3 service district within such county, setting forth in such  
 4 order a description sufficient to identify the territory to  
 5 be embraced therein and the name of such proposed  
 6 district, or any one hundred legal voters resident within  
 7 and owning real property within the limits of such pro-  
 8 posed public service district within one or more counties  
 9 may petition for the creation thereof, which petition  
 10 shall contain a description sufficient to identify the ter-  
 11 ritory to be embraced therein and the name of such  
 12 proposed district. Any territory may be included re-  
 13 gardless of whether or not such territory includes one  
 14 or more cities, incorporated towns or other municipal  
 15 corporations which own and operate any public service  
 16 properties and regardless of whether or not it includes

17 one or more cities, incorporated towns or other municipal  
18 corporations being served by privately owned public  
19 service properties: *Provided, however,* That no terri-  
20 tory shall be included within more than one public  
21 service district organized under this article and the  
22 boundaries shall conform to or follow magisterial district  
23 lines except where less than a whole of any magisterial  
24 district is to be included, in which latter case that part  
25 of any such boundary shall conform to other natural  
26 boundary lines, or the lines of a fixed survey: And  
27 *provided further,* That no city, incorporated town or other  
28 municipal corporation shall be included within the  
29 boundaries of such proposed district except upon the  
30 adoption of a resolution of the governing body of such  
31 city, incorporated town or other municipal corpora-  
32 tion consenting thereto.

33 Such petition shall be filed in the office of the clerk  
34 of the county court of the county in which the territory  
35 to constitute the proposed district is situated, and if such  
36 territory is situated in more than one county then such  
37 petition shall be filed in the office of the clerk of the  
38 county court of the county in which the major portion  
39 of such territory extends, and a copy thereof (omitting  
40 signatures) shall be filed with each of the clerks of the  
41 county courts of the other county or counties into  
42 which the territory extends. It shall be the duty of the  
43 clerk of the county court receiving such petition to pre-  
44 sent same to the county court of such county at  
45 the first regular meeting after such filing or at a special  
46 meeting called for the consideration thereof.

47 When the county clerk of any county enters an order  
48 on its own motion proposing the creation of a public  
49 service district, as aforesaid, or when a petition for such  
50 creation is presented, as aforesaid, the county court shall  
51 at the same session fix a date of hearing in such county  
52 on the creation of the proposed public service district,  
53 which date so fixed shall be not more than forty days  
54 nor less than twenty days from the date of such action.  
55 If the territory proposed to be included is situated  
56 in more than one county, the county court, when  
57 fixing a date of hearing, shall provide for notifying the

58 county court and clerk thereof of each of the other coun-  
59 ties into which the territory extends of the date so  
60 fixed. The clerk of the county court of each county  
61 in which any territory in the proposed public service  
62 district is located shall cause notice of such hearing and  
63 the time and place thereof, and setting forth a descrip-  
64 tion of all of the territory proposed to be included  
65 therein to be given by publication as a Class I legal ad-  
66 vertisement in compliance with the provisions of article  
67 three, chapter fifty-nine of this code, and the pub-  
68 lication area for such publication shall be each county  
69 in which any territory in the proposed public service  
70 district is located. The publication shall be at least ten  
71 days prior to such hearing. In all cases where proceed-  
72 ings for the creation of such public service districts are  
73 initiated by petition as aforesaid the person filing  
74 the petition shall advance or satisfactorily indemnify  
75 the payment of the costs and expenses of publishing the  
76 hearing notice, and otherwise the costs and expenses of  
77 such notice shall be paid in the first instance by  
78 the county court out of contingent funds or any other  
79 funds available or made available for that pur-  
80 pose. In addition to the notice required herein to be pub-  
81 lished, there shall also be posted in at least five conspicu-  
82 ous places in the proposed public service district, a notice  
83 containing the same information as is contained in the  
84 published notice. The posted notices shall be posted not  
85 less than ten days before said hearing.

86 All persons residing in or owning or having any in-  
87 terest in property in such proposed public service district  
88 shall have an opportunity to be heard for and against  
89 its creation. At such hearing the county court be-  
90 fore which the hearing is conducted shall consider  
91 and determine the feasibility of the creation of the pro-  
92 posed district. When it shall have been thus determined  
93 that the construction or acquisition by purchase or  
94 otherwise, and maintenance, operation, improvement,  
95 and extension of public service properties by such public  
96 service district will be conducive to the preservation  
97 of public health, comfort and convenience of such area,  
98 then such county court shall by order create such public

99 service district, and such order shall be conclusive and  
100 final in that regard. If the court shall, after due con-  
101 sideration, determine that the proposed district will not  
102 be conducive to the preservation of public health, com-  
103 fort or convenience of such area, or that the creation  
104 of the proposed district as set forth and described in  
105 the petition or order is not feasible, it may refuse to  
106 enter an order creating the same, or it may enter an  
107 order amending the description of the proposed dis-  
108 trict, and create said district as amended. The clerk of  
109 the county court of each county into which any part  
110 of such district extends shall retain in his office an  
111 authentic copy of the order creating the same: *Provided,*  
112 *however,* That if at such hearing written protest is filed  
113 by thirty per cent or more of the qualified voters reg-  
114 istered and residing within said district, then the county  
115 court shall not take any further action in creating such  
116 district unless the creation of such district shall be  
117 approved by a majority vote of the qualified registered  
118 voters voting at a referendum to be called by the  
119 county court for such purpose. Such referendum shall  
120 be called and held in the manner provided in the general  
121 election laws of the state of West Virginia applicable  
122 thereto and the funds therefor shall be supplied from any  
123 county funds available for such purpose, or from funds  
124 supplied from the persons who petitioned for the creation  
125 of such district. If a majority of the qualified registered  
126 electors participating in said election shall vote against  
127 the creation of said district, then such district shall not be  
128 created. If, however, a majority of the qualified registered  
129 voters participating in such referendum vote in favor of  
130 the creation of such district, then the county court shall  
131 duly enter its order creating such district.

132 After the creation of such district the county court  
133 may, if in its discretion it deems it necessary, feasible  
134 and proper, enlarge the said district to include additional  
135 areas, reduce the area of said district, where facilities,  
136 equipment, service or materials have not been extended,  
137 or establish or consolidate two or more such districts:  
138 *Provided,* That where the county court determines on its  
139 own motion by order entered of record, or there is a

140 petition, to enlarge the district or reduce the area of  
141 the district, all of the applicable provisions of this article  
142 providing for hearing, notice of hearing and protest shall  
143 apply with like effect as if a district were being created.  
144 The districts may not enter into any agreement, con-  
145 tract or covenant that infringes upon, impairs, abridges or  
146 usurps the duties, rights or powers of the county court,  
147 as set forth in this article, or conflicts with any provision  
148 of this article.

**§16-13A-7. Acquisition and operation of district properties.**

1 The board of such districts shall have the supervision  
2 and control of all public service properties acquired or  
3 constructed by the district and shall have power, and it  
4 shall be its duty, to maintain, operate, extend and im-  
5 prove the same. All contracts involving the expendi-  
6 ture by the district of more than two thousand dollars  
7 for construction work or for the purchase of equipment  
8 and improvements, extensions or replacements, shall be  
9 entered into only after notice inviting bids shall have  
10 been published as a Class I legal advertisement in com-  
11 pliance with the provisions of article three, chapter fifty-  
12 nine of this code, and the publication area for such publi-  
13 cation shall be the district. The publication shall not be  
14 less than ten days prior to the making of any such con-  
15 tract. Any obligations incurred of any kind or character  
16 shall not in any event constitute or be deemed an in-  
17 debtedness within the meaning of any of the provisions or  
18 limitations of the constitution but all such obligations  
19 shall be payable solely and only out of revenues derived  
20 from the operation of the public service properties of the  
21 district or from proceeds of bonds issued as hereinafter  
22 provided. No continuing contract for the purchase of  
23 materials or supplies or for furnishing the district with  
24 electrical energy or power shall be entered into for a  
25 longer period than fifteen years.

**ARTICLE 15. STATE HOUSING LAW.**

**§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.**

1 Bonds of an authority shall be authorized by its reso-  
2 lution and may be issued in one or more series and shall  
3 bear such date or dates, mature at such time or times,  
4 bear interest at such rate or rates, not exceeding six  
5 per cent per annum, be in such denomination or denomi-  
6 nations, be in such form, either coupon or registered,  
7 carry such conversion or registration privileges, have  
8 such rank or priority, be executed in such manner, be  
9 payable in such medium of payment, at such place or  
10 places, and be subject to such terms of redemption (with  
11 or without premium) as such resolution, its trust inden-  
12 ture or mortgage may provide.

13 The bonds shall be sold at not less than par at pub-  
14 lic sale held after notice published as a Class I legal  
15 advertisement in compliance with the provisions of arti-  
16 cle three, chapter fifty-nine of this code, and the publica-  
17 tion area for such publication shall be the city or county,  
18 as the case may be. The notice shall be published at  
19 least five days prior to such sale. The notice shall also  
20 be published in a financial newspaper published in the  
21 city of New York, New York: *Provided, however,* That  
22 such bonds may be sold to the federal government at  
23 private sale at not less than par and, in the event less  
24 than all of the bonds authorized in connection with any  
25 project or projects are sold to the federal government,  
26 the balance of such bonds may be sold at private sale  
27 at not less than par at an interest cost to the authority  
28 of not to exceed the interest cost to the authority of the  
29 portion of the bonds sold to the federal government.

30 In case any of the commissioners or officers of the  
31 authority whose signatures appear on any bonds or  
32 coupons shall cease to be such commissioners or officers  
33 before the delivery of such bonds, such signatures shall,  
34 nevertheless, be valid and sufficient for all purposes, the

35 same as if they had remained in office until such deliv-  
 36 ery. Any provisions of any law to the contrary notwith-  
 37 standing, any bonds issued pursuant to this article shall  
 38 be negotiable.

39 In any suit, action or proceedings involving the valid-  
 40 ity or enforceability of any bond of an authority or the  
 41 security therefor, any such bond reciting in substance  
 42 that it has been issued by the authority to aid in financ-  
 43 ing a housing project to provide dwelling accommoda-  
 44 tions for persons of low income shall be conclusively  
 45 deemed to have been issued for a housing project of such  
 46 character, and said project shall be conclusively deemed  
 47 to have been planned, located and constructed in accord-  
 48 ance with the purposes and provisions of this article.

#### **ARTICLE 18. SLUM CLEARANCE.**

##### **§16-18-6. Preparation and approval of redevelopment plans.**

1 (a) An authority shall not acquire real property for  
 2 a redevelopment project unless the governing body of  
 3 the community in which the redevelopment project area  
 4 is located has approved the redevelopment plans, as  
 5 prescribed in subsection (i) below.

6 (b) An authority shall not prepare a redevelopment  
 7 plan for a redevelopment project area unless the govern-  
 8 ing body of the community in which such area is located  
 9 has, by resolution, declared such area to be a slum  
 10 or blighted area in need of redevelopment.

11 (c) An authority shall not recommend a redevel-  
 12 opment plan to the governing body of the community in  
 13 which the redevelopment project area is located until  
 14 a general plan for the development of the community  
 15 has been prepared.

16 (d) The authority may itself prepare or cause to be  
 17 prepared a redevelopment plan or any person or agency,  
 18 public or private, may submit such a plan to an author-  
 19 ity. A redevelopment plan shall be sufficiently complete  
 20 to indicate its relationship to definite local objectives  
 21 as to appropriate land uses, improved traffic, public  
 22 transportation, public utilities, recreational and com-  
 23 munity facilities and other public improvements and the  
 24 proposed land uses and building requirements in the

25 redevelopment project area, and shall include without  
26 being limited to:

27 (1) The boundaries of the redevelopment project  
28 area, with a map showing the existing uses and condi-  
29 tions of the real property therein;

30 (2) A land use plan showing proposed uses of the  
31 area;

32 (3) Information showing the standards of population  
33 densities, land coverage and building intensities in the  
34 area after redevelopment;

35 (4) A statement of the proposed changes, if any, in  
36 zoning ordinances or maps, street layouts, street levels  
37 or grades, building codes and ordinances;

38 (5) A site plan of the area; and

39 (6) A statement as to the kind and number of addi-  
40 tional public facilities or utilities which will be required  
41 to support the new land uses in the area after rede-  
42 velopment.

43 (e) Prior to recommending a redevelopment plan  
44 to the governing body for approval, an authority shall  
45 submit such plan to the planning commission of the  
46 community in which the redevelopment project area is  
47 located for review and recommendations as to its con-  
48 formity with the general plan for the development of  
49 the community as a whole. The planning commission  
50 shall submit its written recommendations with respect  
51 to the proposed redevelopment plan to the authority  
52 within thirty days after receipt of the plan for review.  
53 Upon receipt of the recommendations of the planning  
54 commission or, if no recommendations are received within  
55 said thirty days, then without such recommendations,  
56 an authority may recommend the redevelopment  
57 plan to the governing body of the community for ap-  
58 proval.

59 (f) Prior to recommending a redevelopment plan  
60 to the governing body for approval, an authority shall  
61 consider whether the proposed land uses and building  
62 requirements in the redevelopment project area are  
63 designed with the general purpose of accomplishing, in  
64 conformance with the general plan, a coordinated, ad-  
65 justed and harmonious development of the community



66 and its environs which will, in accordance with present  
67 and future needs, promote health, safety, morals, order,  
68 convenience, prosperity and the general welfare, as well  
69 as efficiency and economy in the process of development;  
70 including, among other things, adequate provision for  
71 traffic, vehicular parking, the promotion of safety from  
72 fire, panic and other dangers, adequate provision for light  
73 and air, the promotion of the healthful and convenient  
74 distribution of population, the provision of adequate  
75 transportation, water, sewerage and other public utilities,  
76 schools, parks, recreational and community facilities and  
77 other public requirements, the promotion of sound  
78 design and arrangement, the wise and efficient expendi-  
79 ture of public funds, the prevention of the recurrence  
80 of insanitary or unsafe dwelling accommodations, slums,  
81 or conditions of blight, and the provision of adequate,  
82 safe and sanitary dwelling accommodations.

83 (g) The recommendation of a redevelopment plan  
84 by an authority to the governing body shall be accom-  
85 panied by the recommendations, if any, of the planning  
86 commission concerning the redevelopment plan; a state-  
87 ment of the proposed method and estimated cost of  
88 the acquisition and preparation for redevelopment of  
89 the redevelopment project area and the estimated  
90 proceeds or revenues from its disposal to redevel-  
91 opers; a statement of the proposed method of fi-  
92 nancing the redevelopment project; and a statement of  
93 a feasible method proposed for the relocation of families  
94 to be displaced from the redevelopment project  
95 area.

96 (h) The governing body of the community shall hold  
97 a public hearing on any redevelopment plan or sub-  
98 stantial modification thereof recommended by the au-  
99 thority, after public notice thereof by publication as a  
100 Class II legal advertisement in compliance with the  
101 provisions of article three, chapter fifty-nine of this code,  
102 and the publication area for such publication shall be  
103 the community. The last publication shall be at least  
104 ten days prior to the date set for the hearing. The  
105 notice shall describe the time, date, place and purpose  
106 of the hearing and shall also generally identify the area

107 to be redeveloped under the plan. All interested parties  
 108 shall be afforded at such public hearing a reasonable  
 109 opportunity to express their views respecting the pro-  
 110 posed redevelopment plan.

111 (i) Following such hearing, the governing body may  
 112 approve a redevelopment plan if it finds that said plan  
 113 is feasible and in conformity with the general plan for  
 114 the development of the community as a whole: *Pro-*  
 115 *vided*, That if the redevelopment project area is a blighted  
 116 area, the governing body must also find that a shortage  
 117 of housing of sound standards and designs, adequate  
 118 for family life, exists in the community; the need for  
 119 housing accommodations has been or will be increased  
 120 as a result of the clearance of slums in other areas under  
 121 redevelopment; the conditions of blight in the redevelop-  
 122 ment project area and the shortage of decent, safe and  
 123 sanitary housing cause or contribute to an increase  
 124 in and spread of disease and crime and constitute a  
 125 menace to the public health, safety, morals or welfare;  
 126 and that the development of the blighted area for pre-  
 127 dominantly residential uses is an integral part of and  
 128 essential to the program of the community for the elimi-  
 129 nation of slum areas. A redevelopment plan which has  
 130 not been approved by the governing body when recom-  
 131 mended by the authority may again be recommended  
 132 to it with any modifications deemed advisable.

133 (j) A redevelopment plan may be modified at any  
 134 time by the authority: *Provided*, That if modified after  
 135 the lease or sale of real property in the redevelopment  
 136 project area, the modification must be consented to by  
 137 the redeveloper or redevelopers of such real property  
 138 or his successor, or their successors in interest affected  
 139 by the proposed modification. Where the proposed  
 140 modification will substantially change the redevelopment  
 141 plan as previously approved by the governing body the  
 142 modification must similarly be approved by the govern-  
 143 ing body.

**§16-18-7. Disposal of property in redevelopment project.**

- 1 (a) An authority may sell, lease, exchange or other-
- 2 wise transfer real property or any interest therein in

3 a redevelopment project area to any redeveloper for  
4 residential, recreational, commercial, industrial or other  
5 uses or for public use in accordance with the redevelop-  
6 ment plan, subject to such covenants, conditions and  
7 restrictions as it may deem to be in the public interest  
8 or to carry out the purposes of this article: *Provided,*  
9 That such sale, lease, exchange or other transfer, and  
10 any agreement relating thereto, may be made only after,  
11 or subject to, the approval of the redevelopment plan  
12 by the governing body of the community. Such real  
13 property shall be sold, leased or transferred at its fair  
14 value for uses in accordance with the redevelopment  
15 plan notwithstanding such value may be less than the  
16 cost of acquiring and preparing such property for rede-  
17 velopment. In determining the fair value of real prop-  
18 erty for uses in accordance with the redevelopment plan,  
19 an authority shall take into account and give consider-  
20 ation to the uses and purposes required by such plan;  
21 the restrictions upon, and the covenants, conditions and  
22 obligations assumed by the redeveloper of, such prop-  
23 erty; the objectives of the redevelopment plan for the  
24 prevention of the recurrence of slum or blighted areas;  
25 and such other matters as the authority shall specify  
26 as being appropriate. In fixing rentals and selling prices,  
27 an authority shall give consideration to appraisals of the  
28 property for such uses made by land experts em-  
29 ployed by the authority.

30 (b) An authority shall publish the following notice  
31 as a Class II legal advertisement in compliance with the  
32 provisions of article three, chapter fifty-nine of this code,  
33 and the publication area for such publication shall be  
34 the community. The notice shall be published prior to  
35 the consideration of any redevelopment contract proposal,  
36 and shall invite proposals from, and make available all  
37 pertinent information to private redevelopers or any  
38 persons interested in undertaking the redevelopment of  
39 an area, or any part thereof, which the governing body  
40 has declared to be in need of redevelopment. Such notice  
41 shall identify the area, and shall state that such further  
42 information as is available may be obtained at the office  
43 of the authority. The authority shall consider all rede-

44 velopment proposals and the financial and legal ability  
45 of the prospective redevelopers to carry out their pro-  
46 posals and may negotiate with any redevelopers for pro-  
47 posals for the purchase or lease of any real property in  
48 the redevelopment project area. The authority may  
49 accept such redevelopment contract proposal as it deems  
50 to be in the public interest and in furtherance of the  
51 purposes of this article: *Provided*, That the authority  
52 has, not less than thirty days prior thereto, notified the  
53 governing body in writing of its intention to accept such  
54 redevelopment contract proposal. Thereafter, the au-  
55 thority may execute such redevelopment contract in ac-  
56 cordance with the provisions of subsection (a) and de-  
57 liver deeds, leases and other instruments and take all  
58 steps necessary to effectuate such redevelopment con-  
59 tract. In its discretion, the authority may, without re-  
60 gard to the foregoing provisions of this paragraph, dis-  
61 pose of real property in a redevelopment project area  
62 to private redevelopers for redevelopment under such  
63 reasonable competitive bidding procedures as it shall  
64 prescribe, subject to the provisions of subsection  
65 (a).

66 (c) In carrying out a redevelopment project, an  
67 authority may:

68 (1) Convey to the community in which the project  
69 is located, such real property as, in accordance with the  
70 redevelopment plan, is to be laid out into streets, alleys,  
71 and public ways;

72 (2) Grant servitudes, easements and rights of way,  
73 for public utilities, sewers, streets and other similar  
74 facilities, in accordance with the redevelopment plan;  
75 and

76 (3) Convey to the municipality, county or other ap-  
77 propriate public body, such real property as, in accordance  
78 with the redevelopment plan, is to be used for parks,  
79 schools, public buildings, facilities or other public  
80 purposes.

81 (d) An authority may temporarily operate and main-  
82 tain real property in a redevelopment project area pend-  
83 ing the disposition of the property for redevelopment,  
84 without regard to the provisions of subsections (a) and

85 (b) above, for such uses and purposes as may be deemed  
86 desirable even though not in conformity with the rede-  
87 velopment plan.

**§16-18-10. Bonds.**

1 (a) An authority shall have power to issue bonds  
2 from time to time in its discretion for any of its cor-  
3 porate purposes including the payment of principal and  
4 interest upon any advances for surveys and plans for  
5 redevelopment projects. An authority shall also have  
6 power to issue refunding bonds for the purpose of pay-  
7 ing or retiring or in exchange for bonds previously is-  
8 sued by it. An authority may issue such types of bonds  
9 as it may determine, including (without limiting the  
10 generality of the foregoing) bonds on which the prin-  
11 cipal and interest are payable:

12 (1) Exclusively from the income, proceeds and reve-  
13 nues of the redevelopment project financed with the pro-  
14 ceeds of such bonds; or

15 (2) Exclusively from the income, proceeds, and  
16 revenues of any of its redevelopment projects whether  
17 or not they are financed in whole or in part with the  
18 proceeds of such bonds: *Provided*, That any such bonds  
19 may be additionally secured by a pledge of any loan,  
20 grant or contributions, or parts thereof, from the federal  
21 government or other sources, or a mortgage of any rede-  
22 velopment project or projects of the authority.

23 (b) Neither the commissioners of an authority nor  
24 nor any person executing the bonds shall be liable per-  
25 sonally on the bonds by reason of the issuance thereof.  
26 The bonds and other obligations of the authority (and  
27 such bonds and obligations shall so state on their face)  
28 shall not be a debt of the municipality, the county, or  
29 the state and neither the municipality, the county, nor  
30 the state shall be liable thereon, nor in any event shall  
31 such bonds or obligations be payable out of any funds  
32 or properties other than those of said authority acquired  
33 for the purposes of this article. The bonds shall not  
34 constitute an indebtedness within the meaning of any  
35 constitutional or statutory debt limitation or restriction.  
36 Bonds of an authority are declared to be issued for an

37 essential public and governmental purpose and to be  
38 public instrumentalities and, together with interest there-  
39 on and income therefrom, shall be exempt from all taxes.  
40 Such bonds need not be offered by the authority to  
41 the state sinking fund commission at any time and  
42 an authority shall not be required to turn over  
43 any surplus or sinking funds to the state sinking  
44 fund commission.

45 (c) Bonds of an authority shall be authorized by its  
46 resolution and may be issued in one or more series and  
47 shall bear such date or dates, be payable upon demand or  
48 mature at such time or times, bear interest at such rate  
49 or rates, not exceeding six per centum per annum, be  
50 in such denomination or denominations, be in such form  
51 either coupon or registered, carry such conversion or  
52 registration privileges, have such rank or priority, be  
53 executed in such manner, be payable in such medium  
54 of payment, at such place or places, and be subject to  
55 such terms of redemption (with or without premium)  
56 as such resolution, its trust indenture or mortgage may  
57 provide.

58 (d) The bonds shall be sold at not less than par at  
59 public sale held after notice published as a Class I legal  
60 advertisement in compliance with the provisions of arti-  
61 cle three, chapter fifty-nine of this code, and the pub-  
62 lication area for such publication shall be the area of  
63 operation. Such publication shall be made at least ten days  
64 prior to such sale. The notice may be published in such  
65 other medium of publication as the authority may deter-  
66 mine: *Provided*, That such bonds may be sold to the fed-  
67 eral government at private sale at not less than par, and,  
68 in the event less than all of the bonds authorized in con-  
69 nection with any project or projects are sold to the federal  
70 government, the balance of such bonds may be sold at pri-  
71 vate sale at not less than par at an interest cost to the au-  
72 thority of not to exceed the interest cost to the authority of  
73 the portion of the bonds sold to the federal government.

74 (e) In case any of the commissioners or officers of  
75 the authority whose signatures appear on any bonds or  
76 coupons shall cease to be such commissioners or officers  
77 before the delivery of such bonds, such signatures shall,

78 nevertheless, be valid and sufficient for all purposes,  
 79 the same as if such commissioners or officers had re-  
 80 mained in office until such delivery. Any provision of  
 81 any law to the contrary notwithstanding, any bonds  
 82 issued pursuant to this article shall be fully nego-  
 83 tiable.

84 (f) In any suit, action or proceedings involving the  
 85 validity or enforceability of any bond of an authority  
 86 or the security therefor, any such bond reciting in sub-  
 87 stance that it has been issued by the authority to aid  
 88 in financing a redevelopment project, as herein defined,  
 89 shall be conclusively deemed to have been issued for  
 90 such purpose and such project shall be conclusively  
 91 deemed to have been planned, located and carried out in  
 92 accordance with the purposes and provisions of this  
 93 article.

#### ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation  
 3 and control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other agen-  
 5 cies of the state, political subdivisions of the state, other  
 6 states, agencies of the federal government, industries,  
 7 and with affected groups in furtherance of the declared  
 8 purposes of this article;

9 (3) To encourage and conduct such studies and re-  
 10 search relating to air pollution and its control and abate-  
 11 ment as the commission may deem advisable and  
 12 necessary;

13 (4) To adopt and to promulgate reasonable regula-  
 14 tions, not inconsistent with the provisions of this article,  
 15 relating to the control of air pollution: *Provided*, That  
 16 no rule or regulation of the commission shall specify  
 17 the design of equipment, type of construction, or par-  
 18 ticular method which a person shall use to reduce the  
 19 discharge of air pollutants, nor shall any such rule or  
 20 regulation apply to any aspect of an employer-employee  
 21 relationship;

22 (5) To enter orders requiring compliance with the  
23 provisions of this article and the regulations lawfully  
24 promulgated hereunder;

25 (6) To consider complaints, subpoena witnesses, ad-  
26 minister oaths, make investigations, and hold hearings  
27 relevant to the promulgation of regulations and the  
28 entry of compliance orders hereunder;

29 (7) To encourage voluntary cooperation by munici-  
30 palities, counties, industries and others in preserving the  
31 purity of the air within the state;

32 (8) To employ personnel, including specialists and  
33 consultants, purchase materials and supplies, and enter  
34 into contracts necessary, incident or convenient to the  
35 accomplishment of the purposes of this article;

36 (9) To enter at reasonable times upon any private  
37 or public property for the purpose of investigating an  
38 alleged statutory air pollution: *Provided, however, That*  
39 *no such investigation shall extend to information re-*  
40 *lating to secret processes or methods of manufacturing*  
41 *or production;*

42 (10) Upon reasonable evidence of a violation of this  
43 article, which presents an imminent and serious hazard  
44 to public health, to give notice to the public or to that  
45 portion of the public which is in danger by any and all  
46 appropriate means;

47 (11) To cooperate with, receive and expend money  
48 from the federal government and other sources;

49 (12) To represent the state in any and all matters  
50 pertaining to plans, procedures and negotiations for  
51 interstate compacts in relation to the control of air pol-  
52 lution; and

53 (13) To appoint technical advisory councils from such  
54 areas of the state as it may determine. Each such coun-  
55 cil so appointed shall consist of not more than five  
56 members for each area so designated, at least two of  
57 whom shall be truly representative of industries op-  
58 erating within such area, and may advise and consult  
59 with the commission about all matters pertaining to  
60 the regulation, control and abatement of air pollution  
61 within such area.



62 The attorney general and his assistants and the prose-  
 63 cuting attorneys of the several counties shall render to  
 64 the commission without additional compensation such  
 65 legal services as the commission may require of them to  
 66 enforce the provisions of this article.

67 No rule or regulation of the commission pertaining to  
 68 the control, reduction or abatement of air pollution shall  
 69 become effective until after at least one public hearing  
 70 thereon shall have been held by the commission within  
 71 the state. Notice to the public of the time and place  
 72 of any such hearing shall be given by the commission  
 73 at least thirty days prior to the scheduled date of such  
 74 hearing by advertisement published as a Class II legal  
 75 advertisement in compliance with the provisions of arti-  
 76 cle three, chapter fifty-nine of this code, and the publi-  
 77 cation area for such publication shall be the county  
 78 wherein such hearing is to be held. Full opportunity  
 79 to be heard shall be accorded to all persons in attendance  
 80 and any person, whether or not in attendance at such  
 81 hearing, may submit in writing his views with respect  
 82 to any such rule or regulation to the commission within  
 83 thirty days after such hearing. After such thirty-day  
 84 period, no views or comments shall be received in writing  
 85 or otherwise, unless formally solicited by the commission.  
 86 The proceedings at the hearing before the commission  
 87 shall be recorded by mechanical means or otherwise as  
 88 may be prescribed by the commission. Such record of  
 89 proceedings need not be transcribed unless requested by  
 90 an interested party, in which event the prevailing rates  
 91 for such transcripts will be required from such interested  
 92 party.

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 4. STATE ROAD SYSTEM; PRIMARY AND SECONDARY ROADS.**

#### **§17-4-19. Contracts for work and materials; advertising and bids; services by state road forces and prison labor.**

1 All work of construction and reconstruction of state  
 2 roads and bridges, and the furnishing of all materials and  
 3 supplies therefor, and for the repair thereof shall be done

4 and furnished pursuant to contract except that the com-  
5 missioner shall not be required to award any contract  
6 for work, which can be done advantageously, economi-  
7 cally and practicably by commission forces or prison  
8 labor and by use of state road equipment, or for mate-  
9 rials and supplies, which are manufactured, processed  
10 or assembled by the commissioner: *Provided, however,*  
11 That the commissioner shall not be required to award  
12 any contract for work, materials or supplies for an  
13 amount less than three thousand dollars. In all such  
14 work, the commissioner shall utilize state road forces or  
15 prison labor and state road equipment and shall manu-  
16 facture, process and assemble all such materials and  
17 supplies for such work whenever and wherever the com-  
18 missioner, in his discretion, finds such work and services  
19 advantageous, economical and practicable in the state  
20 road program.

21 When the commissioner is about to construct, recon-  
22 struct, or improve any road or highway, he shall cause  
23 to be filed with the clerk of the county court, or of the  
24 municipality, as the case may be, in which such road  
25 lies, a certified copy of the plans and specifications there-  
26 for, and a notice that the commissioner is about to enter  
27 upon and proceed with the work in question. If the  
28 work is to be done, or the materials therefor are to be  
29 furnished by contract, the commissioner shall thereupon  
30 publish the following described advertisement as a  
31 Class II legal advertisement in compliance with the pro-  
32 visions of article three, chapter fifty-nine of this code,  
33 and the publication area for such publication shall be  
34 the county or municipality in which the road lies. Such  
35 advertisement shall also be published at least once in  
36 at least one daily newspaper published in the city of  
37 Charleston and in such other journals or magazines as  
38 may to the commissioner seem advisable. The advertise-  
39 ment shall solicit sealed proposals for the construction  
40 or other improvement of such road, and for the furnish-  
41 ing of materials therefor, accurately describing the same,  
42 and stating the time and place for opening such pro-  
43 posals and reserving the right to reject any and all pro-  
44 posals: *Provided, however,* That whenever the esti-

45 mated amount of any contract for work or for materials  
46 or supplies is less than three thousand dollars, the com-  
47 missioner shall not be required to advertise the letting  
48 of said contract in newspapers as above required, but  
49 may award the contract to the lowest responsible bidder,  
50 when two or more sealed proposals or bids have been  
51 received by him without such advertisement, but such  
52 contract shall not be so awarded unless the bid of the  
53 successful bidder is three thousand dollars or less. The  
54 commissioner shall have the power to prescribe proper  
55 prequalifications of contractors bidding on state road  
56 construction work. To all sealed proposals there shall  
57 be attached the certified check of the bidder or bidder's  
58 bond acceptable to the commissioner, in such amount  
59 as the commissioner shall specify in the advertisement,  
60 but not to exceed five per cent of the aggregate amount  
61 of the bid; but such amount shall never be less than  
62 five hundred dollars. Such proposals shall be publicly  
63 opened and read at the time and place specified in the  
64 advertisement, and the contract for such work, or for  
65 the supplies or materials required therefor shall, if let,  
66 be awarded by the commissioner to the lowest respon-  
67 sible bidder for the type of construction selected. In  
68 case all bids be rejected, the commissioner may there-  
69 after do the work with commission forces or with prison  
70 labor, or may readvertise in the same manner as before  
71 and let a contract for such work pursuant thereto.

**ARTICLE 10. COUNTY COURTS; GENERAL AUTHORITY AND  
DUTIES AS TO ROADS.**

**§17-10-8. Advertisement of contracts.**

1 In case the county court desires to contract for the  
2 construction, reconstruction or maintenance of a road  
3 or bridge or for the purchase of supplies and equip-  
4 ment, it shall advertise for the letting of the contract  
5 by publishing such advertisement as a Class II legal  
6 advertisement in compliance with the provisions of article  
7 three, chapter fifty-nine of this code, and the publication  
8 area for such publication shall be the county. Such pub-  
9 lication shall be so made within fourteen consecutive days  
10 next preceding the date of the letting of the contract.

**§17-10-9. Letting road and bridge work to contract.**

1 All bids for work to be done by contract on roads  
2 and bridges under the control of the county court shall  
3 be received at the courthouse of the county at the time  
4 specified in the advertisement, and shall be opened only  
5 in open court, and the amount and items comprising  
6 each bid shall be publicly announced, and the contract,  
7 if let, shall be awarded to the lowest bidder for the type  
8 of construction selected. The contractor shall give bond  
9 with security to be approved by the court in an amount  
10 equal to fifty per cent of the contract price, conditioned  
11 for the faithful performance of the contract.

12 After such bids have been opened the county court  
13 shall publish immediately the names of all persons bid-  
14 ding on such contract, together with the itemized amount  
15 of their respective bids, designating the person to whom  
16 such contract was awarded, if awarded, together with  
17 the amount of his bid. Such information shall be pub-  
18 lished as a Class II legal advertisement in compliance  
19 with the provisions of article three, chapter fifty-nine  
20 of this code, and the publication area for such publication  
21 shall be the county.

22 The court may reject any and all bids, and may there-  
23 after have the work done in any other manner that it  
24 may deem advisable. If there be two bids of the same  
25 amount for any section of road, or for any other im-  
26 provement thereon, the court shall have the power to  
27 accept either of such bids.

28 The court may reserve from payment not more than  
29 twenty per cent of the amount accruing on the contract  
30 until the work has been completed and approved.

31 Any person who shall open any of the bids at any  
32 other time or place than herein provided, or shall make  
33 known the name of the bidder, or the amount of his  
34 bid, otherwise than as herein provided, shall be guilty  
35 of a misdemeanor, and, upon conviction thereof, shall  
36 be fined not less than fifty nor more than two hundred  
37 dollars, and be imprisoned in the county jail not less than  
38 one nor more than six months. Any member of the  
39 county court who shall violate any of the provisions of  
40 this section shall be deemed guilty of a misdemeanor,

41 and upon conviction, shall in addition to the penalties  
42 provided above forfeit his office.

## CHAPTER 18. EDUCATION.

### ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13g. Procedure for contracting with insurers; licensing of insurer; exemption of certain insurers from premium and annuity taxes.

1 In contracting for the group insurance provided for  
2 in section thirteen-c and for the supplemental retire-  
3 ment benefits provided for in section thirteen-f of this  
4 article, as well as for other insurance benefits for any  
5 and all persons employed by it at institutions of higher  
6 learning under its control, the state board of education  
7 shall solicit proposals for the coverage sought, which  
8 proposals shall be obtained by public notice published  
9 as a Class II legal advertisement in compliance with the  
10 provisions of article three, chapter fifty-nine of this  
11 code, and the publication area for such publication shall  
12 be the state. Such notice shall be so published within  
13 fourteen consecutive days next preceding the final date for  
14 submitting proposals. The board may also solicit proposals  
15 by sending requests by mail to prospective insurers. Upon  
16 receipt and consideration of such proposals as may be  
17 submitted the board shall have the authority to accept  
18 the proposal of and contract with the insurer offering  
19 the insurance program or programs determined by the  
20 board, in its judgment, to be the most desirable to the  
21 beneficiaries thereof, whether such insurer be then  
22 licensed as an insurance company in this state or not:  
23 *Provided*, That no contract shall be made effective un-  
24 less and until the insurance company becomes licensed  
25 as a life insurance company in accordance with article  
26 three, chapter thirty-three of this code, as amended:  
27 *Provided further*, That if such insurer shall be a life  
28 insurance company organized and operated without  
29 profit to any private shareholder or individual exclu-  
30 sively for the purpose of aiding and strengthening non-  
31 profit institutions or foundations engaged primarily in  
32 education or research, by issuing insurance and annuity  
33 contracts only to or for the benefit of such institutions

34 and to individuals engaged in the service of such insti-  
 35 tutions, it shall be exempt from the payment of premium  
 36 and annuity taxes provided for by sections fourteen,  
 37 fourteen-a and fifteen, article three, and any other perti-  
 38 nent premium tax sections, of chapter thirty-three of this  
 39 code, as amended, as to all annuity or insurance con-  
 40 tracts made with educational institutions located within,  
 41 or relative to subjects of insurance resident in, West  
 42 Virginia.

#### **ARTICLE 9. SCHOOL FINANCES.**

##### **§18-9-2. Elections under this chapter; how held.**

1 Any and all elections authorized by this chapter for  
 2 school purposes may, unless otherwise provided, be held  
 3 separately or in connection with any general or special  
 4 election. Notice of any such election shall be given by  
 5 the publication of the order of the board calling the  
 6 same as a Class II-0 legal advertisement in compliance  
 7 with the provisions of article three, chapter fifty-nine  
 8 of this code, and the publication area for such publication  
 9 shall be the territory in which the election is to be held.  
 10 The order shall be so published within fourteen con-  
 11 secutive days next preceding the day of election.  
 12 All provisions of the law concerning general and  
 13 special elections shall apply in such elections in so far  
 14 as is practicable, except that in cases of special elections  
 15 the board calling the election shall appoint necessary  
 16 election officers and shall canvass the returns, and  
 17 the secretary of the board shall procure and furnish  
 18 to the election commissioners at each place of voting  
 19 the ballots, poll books, tally sheets and other things  
 20 needed. In calling elections, district and county boards  
 21 of education shall follow the forms to be prescribed by  
 22 the attorney general.

##### **§18-9-3a. Preparation, publication, and disposition of financial statements by county boards of education.**

1 The county board of education of every county, within  
 2 four weeks after the beginning of each fiscal year, shall  
 3 prepare on a form to be prescribed by the state tax  
 4 commissioner and the state superintendent of free schools,  
 5 and cause to be published a statement revealing (a)

6 the receipts and expenditures of the board during the  
 7 previous fiscal year arranged under descriptive headings,  
 8 (b) the name of each firm, corporation, and person who  
 9 received more than fifty dollars in the aggregate from all  
 10 funds during the previous fiscal year, together with the  
 11 aggregate amount received from all funds and the pur-  
 12 pose for which paid: *Provided*, That such statement  
 13 shall not include the name of any person who has entered  
 14 into a contract with this board pursuant to the provisions  
 15 of section one, article seven of this chapter and is regu-  
 16 larly employed by such board for instructional purposes,  
 17 and (c) all debts of the board, the purpose for which  
 18 each debt was contracted, its due date, and to what date  
 19 the interest thereon has been paid. Such statement  
 20 shall be published as a Class I-0 legal advertisement in  
 21 compliance with the provisions of article three, chapter  
 22 fifty-nine of this code, and the publication area for such  
 23 publication shall be the county. The county board of  
 24 education shall pay the cost of publishing such statement  
 25 from the maintenance fund of the board.

26 As soon as is practicable following the close of the  
 27 fiscal year, a copy of the published statement herein  
 28 required shall be filed by the county board of education  
 29 with the state tax commissioner and with the state  
 30 superintendent of free schools.

31 The county board of education shall transmit to any  
 32 resident of the county requesting the same a copy of  
 33 the published statement for the fiscal year designated,  
 34 supplemented by a list of the names of all teachers em-  
 35 ployed by the board during such fiscal year showing  
 36 the amount paid to each, and a list of the names of each  
 37 firm, corporation, and person who received less than  
 38 fifty dollars from any fund during such fiscal year show-  
 39 ing the amount paid to each and the purpose for which  
 40 paid.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 4. COOPERATIVE ASSOCIATIONS.

#### §19-4-9. General and special meetings.

1 In its by-laws, each association shall provide for one  
 2 or more regular meetings annually. The board of direc-

3 tors shall have the right to call a special meeting at  
4 any time; and ten per cent of the members or stock-  
5 holders may file a petition stating the specific business  
6 to be brought before the association and demand a special  
7 meeting at any time. Such meeting must thereupon be  
8 called by the directors. Notice of all meetings, together  
9 with a statement of the purposes thereof, shall be mailed  
10 to each member at least ten days prior to the meeting:  
11 *Provided, however,* That the by-laws may require in-  
12 stead that such notice may be given as provided by this  
13 section, namely, as a Class I legal advertisement in com-  
14 pliance with the provisions of article three, chapter  
15 fifty-nine of this code, and the publication area for such  
16 publication shall be the county in which the principal  
17 place of business of the association is located.

#### **ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.**

##### **§19-9-15. Establishment of general quarantine.**

1 A general quarantine may be established and main-  
2 tained whenever any communicable disease of domestic  
3 animals shall exist in any locality in the state larger  
4 in extent than that which may be included in a  
5 special quarantine. A general quarantine shall be estab-  
6 lished and maintained by order of the commissioner  
7 only; but in establishing and maintaining such quarantine  
8 the commissioner may act through and by an officer or  
9 agent employed by him, to whom such power is delegated,  
10 and the establishment and maintenance of such quar-  
11 antine by any officer, agent or employee of the com-  
12 missioner shall be prima facie the establishment and  
13 maintenance of quarantine by the commissioner. Such  
14 quarantine shall include such premises, locality or ter-  
15 ritorial district, and such animals, and shall continue  
16 for such time, as may be deemed necessary by the com-  
17 missioner. Whenever any premises or any locality or  
18 territorial district shall be placed under a general quar-  
19 antine, it shall be the duty of the officer, agent or em-  
20 ployee by whom the order of quarantine is executed, to  
21 post at least ten notices in the most public places within  
22 the premises, locality or territorial district quarantined,  
23 declaring the quarantine and the duration thereof,



24 the extent and limits of the premises, locality, or ter-  
 25 ritorial district so quarantined, and the animals subject  
 26 thereto. A copy of such notice shall be published as a  
 27 Class I legal advertisement in compliance with the pro-  
 28 visions of article three, chapter fifty-nine of this code,  
 29 and the publication area for such publication shall  
 30 be the quarantined area. If the quarantine shall be for  
 31 the purpose of preventing the spread of rabies or  
 32 hydrophobia, and in the case of other communicable dis-  
 33 eases, if the commissioner deems such action necessary,  
 34 the notice shall require all dogs within the quarantined  
 35 area to be confined by their owners.

**ARTICLE 17. FENCES.**

**§19-17-2. Rivers and streams as lawful fences; establishment or discontinuance.**

1 All rivers and streams, and parts thereof, within this  
 2 state, which are lawful fences at the time this code takes  
 3 effect, under existing laws, shall continue such until  
 4 otherwise ordered by the county court of the county.  
 5 The county court of any county, upon the written ap-  
 6 plication of any owner or tenant of lands on any river  
 7 or stream in such county, or which constitutes a bound-  
 8 ary line thereof, may, in its discretion, by order entered  
 9 of record, declare and establish such river or stream,  
 10 or any part of either, a lawful fence as to any stock  
 11 named in section one of this article. Notice of the appli-  
 12 cation shall be given by publishing the same as a  
 13 Class II legal advertisement in compliance with the  
 14 provisions of article three, chapter fifty-nine of this  
 15 code, and the publication area for such publication  
 16 shall be the county. Any person interested may ap-  
 17 pear and oppose such application.

18 The county court may, upon like application and notice  
 19 of any person, annul or amend any order made by said  
 20 court establishing any river or stream, or any part of  
 21 either, as a lawful fence; but such order shall not be  
 22 made within one year from the date of the order sought  
 23 to be annulled or amended, and shall not take effect  
 24 until six months after it is made.

**ARTICLE 21. DRAINAGE DISTRICTS.****§19-21-4. Appointment of engineer; duties and compensation; publication of notice.**

1 Immediately after such petition shall have been filed  
2 it shall be the duty of the court, or the judge thereof in  
3 vacation, to enter upon its records an order appointing  
4 an engineer to be selected by the petitioners, provided  
5 the engineer whom they select is a qualified and suit-  
6 able person. If the engineer designated by the petitioners  
7 is, in the opinion of the court, not a proper person, the  
8 court shall appoint such other engineer as it may deem  
9 qualified to perform the duties imposed upon him by  
10 this article. Such engineer shall forthwith proceed to  
11 ascertain in a general manner the limits of the region  
12 which will be benefited by the proposed improvements,  
13 and the names of the landowners and the approximate  
14 acreage of each landowner's holdings, as nearly as they  
15 can be determined without actual survey, and file a  
16 report of his findings with the clerk of the circuit court  
17 at the earliest date practicable. In his report the engi-  
18 neer shall give a general idea of the improvements re-  
19 quired and an approximate estimate of their cost, to-  
20 gether with such other suggestions as he may think will  
21 be of service to the court in passing on the prayer of  
22 the petitioners. For service rendered in this connection  
23 the compensation of the engineer shall be fixed by the  
24 court.

25 Immediately upon the filing of the engineer's report,  
26 the clerk of the circuit court shall give notice by causing  
27 publication to be made as a Class II legal advertise-  
28 ment in compliance with the provisions of article three,  
29 chapter fifty-nine of this code, and the publication area  
30 for such publication shall be each county in which are  
31 situated lands of the proposed district. The last publi-  
32 cation shall be made at least fifteen days prior to the  
33 first day of the next regular or special term of the circuit  
34 court at which such petition is to be heard. Such notice  
35 shall be substantially in the following form which shall  
36 be deemed sufficient for all purposes of this article:

NOTICE OF APPLICATION TO FORM  
DRAINAGE DISTRICT.

Notice is hereby given to all persons interested in the following described real estate in \_\_\_\_\_ county of West Virginia (here describe the property as set out in the petition) that a petition asking that the foregoing lands and other property be formed into a drainage district under the provisions of the statutes of West Virginia, and that the lands and other property above described will be affected by the formation of such drainage district and be rendered liable for taxation for the purposes of paying the expenses of organizing, making and maintaining the improvements that may be found necessary to drain, protect and reclaim the lands and other property in said district, and you and each of you are hereby notified to appear at a term of the circuit court of \_\_\_\_\_ county, to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the courthouse thereof, and show cause, if any there be, why such drainage district, as set forth in the petition, should not be organized.

Clerk of the Circuit Court \_\_\_\_\_ County.

The circuit court of the county in which the petition shall have been filed shall thereafter maintain and have original and exclusive jurisdiction coextensive with the boundaries and limits of such district, without regard to county lines, for all purposes of this article.

**§19-21-6. Meeting of owners; election of board of supervisors.**

Within thirty days after any drainage district shall have been organized and established under the provisions of this article the circuit clerk of the court organizing such district shall call a meeting of the owners of real estate or other property situate in such district, at a day and hour specified, in some public place in the county in which the district was organized, for the purpose of electing a board of three supervisors, to be composed of owners of real estate in such district, two of whom at least shall be residents of the county or counties in which such district is situate, or some adjoining counties. Notice of such meeting shall be given by such clerk

13 by causing publication thereof to be made as a Class II  
14 legal advertisement in compliance with the provisions  
15 of article three, chapter fifty-nine of this code, and the  
16 publication area for such publication shall be each county  
17 in which lands of the district are situate. The last publi-  
18 cation shall be at least ten days before the day of such  
19 meeting. The landowners, when assembled, shall organ-  
20 ize by the election of a chairman and a secretary of the  
21 meeting who shall conduct the election. At such election  
22 each owner shall be entitled to one vote in person or by  
23 proxy for every acre of land or mile of right of way  
24 owned by him in such district, and the three persons  
25 receiving the highest number of votes shall be declared  
26 elected as supervisors. Such supervisors shall immedi-  
27 ately by lot determine the terms of their office, which  
28 shall be respectively one, two and three years, and they  
29 shall serve until their successors shall have been elected  
30 and qualified.

**§19-21-13. Assessment of benefits and damages; extension of  
district to include other lands; report of appraisers;  
compensation.**

1 Within thirty days after qualifying, as provided in the  
2 previous section, the appraisers shall begin their duties;  
3 and the chief engineer or one of his assistants shall  
4 accompany such appraisers at all times and shall render his  
5 opinion in writing when called for. The appraisers shall  
6 proceed to view the premises and determine the value of  
7 all land and other property, within or without the dis-  
8 trict, to be acquired and used for rights of way or other  
9 works set out in the "plan for reclamation" and shall  
10 assess the amount of benefits, and the amount of dam-  
11 ages, if any, that will accrue to each parcel of land,  
12 public highway, railroad and other right of way, rail-  
13 road, roadway and other property, from carrying out  
14 and putting into effect the "plan for reclamation" hereto-  
15 fore adopted. The appraisers, in assessing the benefits  
16 to rights of way, railroad, roadway and other rights of  
17 way, railroad, roadway and other property not traversed  
18 by such works and improvements as provided for in  
19 "the plan for reclamation", shall not consider what  
20 benefits will be derived by such property after other

21 drains, ditches, improvements or other plans for reclama-  
22 tion shall have been constructed, but they shall assess  
23 only such benefits as will be derived from the construc-  
24 tion of the works and improvements set out in "the plan  
25 for reclamation", or as the same may afford protection  
26 from overflow to such property. The appraisers shall  
27 give due consideration and credit to any other ditch  
28 or other systems of reclamation, which may have already  
29 been constructed and which afford partial or complete  
30 protection to any tract or parcel of land in the new  
31 district, and if the appraisers shall find that any drain or  
32 other works have been constructed under any general  
33 or special law of this state, which can be used in making  
34 the drains and improvements herein contemplated, they  
35 shall include the same in their report, and thereafter  
36 the board of supervisors may order such drains or such  
37 works to be used, so far as they extend, for the purpose  
38 of the drainage district in which they are situated, and  
39 that the district or other owners of such drains or other  
40 improvements or persons having an interest therein by  
41 virtue of having contributed money, material or labor in  
42 the construction of the same, shall be allowed, in pro-  
43 portion to the interest held or owned in said drains or  
44 improvements, a compensation which shall not exceed  
45 the amount of such drainage district's indebtedness as  
46 evidenced by outstanding script, bonds or other evi-  
47 dences of indebtedness. The railroad and other rights  
48 of way, railroad and other property shall be assessed  
49 according to the increased physical efficiency and de-  
50 creased maintenance cost by reason of the protection to  
51 be derived from the proposed works and improvements.  
52 The appraisers shall also assess all damages that will  
53 accrue to any landowner by reason of the proposed  
54 improvement, including all injury to lands taken or  
55 damaged; and when they returned no such assessment  
56 of damages as to any tract of land, it shall be deemed  
57 a finding by them that no damage will be sustained.  
58 If the board of appraisers finds that other lands not  
59 embraced within the boundaries of the district will be  
60 affected by the proposed improvement, they shall assess  
61 the estimated benefits and damages to such land and

62 shall specifically report to the court the assessments  
63 which they have made on the lands beyond the bound-  
64 aries of the district as already established. It shall then  
65 be the duty of the clerk of the circuit court to give the  
66 following described notice by publication as a Class II-0  
67 legal advertisement in compliance with the provisions  
68 of article three, chapter fifty-nine of this code, and the  
69 publication area for such publication shall be the county  
70 where such lands lie. The notice shall describe the lands  
71 which have been assessed, and the owners of real prop-  
72 erty so assessed shall be allowed twenty days after the  
73 publication of such notice to file with the clerk of the  
74 circuit court their protest against being included within  
75 the district. The circuit court shall at its next session  
76 investigate the question whether the lands beyond the  
77 boundaries of the district so assessed by the appraisers  
78 will in fact be benefited or damaged by the making of  
79 the improvement; and from its findings in that regard  
80 either the property owners affected by the assessment of  
81 the appraisers or the district may within twenty days  
82 file an appeal. If the finding is in favor of the district,  
83 the limits of the district shall be extended so as to em-  
84 brace any lands that may be affected by the making of  
85 the improvements, and such lands shall be subject to the  
86 taxes provided for in section eleven of this article. The  
87 appraisers shall have no power to change "the plan of  
88 reclamation" heretofore provided for.

89 The board of appraisers shall prepare a report of  
90 their findings, which shall be arranged in tabular form,  
91 the columns of which shall be headed as follows: Column  
92 one, "owner of property assessed"; column two, "descrip-  
93 tion of property assessed"; column three, "number of  
94 acres assessed"; column four, "amount of benefits assessed  
95 expressed in dollars and cents"; column five, "number  
96 of acres taken for right of way"; column six, "value of  
97 property taken"; column seven, "damages assessed".  
98 They shall also, by and with the advice of the engineer  
99 of the district, estimate the cost of works set out in  
100 "the plan of reclamation," which estimate shall include  
101 the cost of property required for rights of way and dam-  
102 ages and the actual expenses of organization and ad-

103 ministration, as estimated by the board of supervisors,  
 104 and shall itemize and tabulate the same. Such reports  
 105 shall be signed by at least a majority of the appraisers  
 106 and filed in the office of the circuit clerk in which the  
 107 petition was filed. The secretary of the board of super-  
 108 visors, or his deputy, shall accompany such appraisers  
 109 while engaged in their duties, and shall perform all the  
 110 clerical work of such board; he shall also, under the  
 111 advice, supervision and direction of the attorney for the  
 112 district, prepare their report. The board of appraisers  
 113 shall report to the board of supervisors the number of  
 114 days each had been employed and the actual expenses  
 115 incurred. Each appraiser shall be paid five dollars per  
 116 day for his services, and necessary expenses in addition  
 117 thereto.

**§19-21-14. Publication of appraisers' report.**

1 Upon the filing of the report of the appraisers, the  
 2 clerk of such court shall give notice thereof by causing  
 3 publication of such report to be made as a Class II-0  
 4 legal advertisement in compliance with the provisions  
 5 of article three, chapter fifty-nine of this code, and the  
 6 publication area for such publication shall be each  
 7 county in the district. Notice shall be in form as  
 8 follows:

9 NOTICE OF FILING OF APPRAISERS'  
 10 REPORT

11 For \_\_\_\_\_ Drainage District.

12 Notice is hereby given to all persons interested in any  
 13 land and property included within \_\_\_\_\_ Drain-  
 14 age District in \_\_\_\_\_ county (or counties),  
 15 West Virginia, that the appraisers heretofore appointed  
 16 to assess benefits and damages to the property and lands  
 17 situated in such drainage district and to appraise the  
 18 cash value of the land necessary to be taken for rights  
 19 of way and other works of such district, within or with-  
 20 out the limits of such district, filed their report in this  
 21 office on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, as follows:  
 22 (Here insert report of appraisers.) And you and each  
 23 of you are hereby notified that you may examine such

24 report and file exceptions to all or any part thereof, as  
25 provided by law.

26  
27 Clerk of the Circuit Court of \_\_\_\_\_ County, West  
28 Virginia.

29 *Provided*, That where lands in different counties are  
30 contained in such report, it shall not be necessary to  
31 publish in each county the appraisers' report on all of  
32 such lands in such district, but only that part relating  
33 to property situate in the respective counties.

**§19-21-21. Dates when taxes payable; suit to collect delinquent  
taxes; suit by bondholder.**

1 All taxes levied under the terms of this article shall  
2 be payable between the first day of October and the  
3 last day of December of each year; and if any taxes  
4 levied by the board of supervisors in pursuance to this  
5 article are not paid at maturity, the sheriff shall not  
6 embrace such taxes in the taxes for which he shall sell  
7 the lands, but he shall report such delinquencies  
8 to the board of supervisors of such district, who  
9 shall add to the amount of the tax a penalty of  
10 twenty-five per cent. The board of supervisors shall  
11 enforce the collection of such delinquent taxes by chan-  
12 cery proceedings in the circuit court of the county in  
13 which the lands are situated; and said court shall give  
14 judgment against such lands, or other property, for the  
15 amount of such taxes and the penalty of twenty-five  
16 per cent, and interest on the same, from the end of the  
17 period allowed for the collection thereof, at the rate  
18 of six per cent per annum, and all costs of the  
19 proceedings. Such judgment shall provide for the sale  
20 of such delinquent lands for cash, by a commissioner  
21 of the court, after advertisement hereinafter set out.  
22 Such proceeds and judgment shall be in the nature  
23 of proceedings in rem, and it shall be immaterial  
24 that the ownership of such lands be incorrectly alleged  
25 in such proceedings, and such judgment shall be en-  
26 forced wholly against such lands or other property so  
27 assessed, and not against any other property or estate  
28 of the defendant. All or any part of such delinquent



29 lands or other property for each of such counties may be  
 30 included in one suit for each county, instituted for the  
 31 collection of such delinquent taxes, together with  
 32 interest, penalties and costs, as aforesaid; and notice  
 33 of the pendency of such suit shall be given by pub-  
 34 lication before judgment is entered for the sale of  
 35 such lands or other property, which notice shall be  
 36 published as a Class III-0 legal advertisement in com-  
 37 pliance with the provisions of article three, chapter  
 38 fifty-nine of this code, and the publication area for such  
 39 publication shall be the county where such suits may  
 40 be pending. The public notice may be in the following  
 41 terms:

42 Board of Supervisors, ..... Drainage District  
 43 v.  
 44 Delinquent lands.

45 All persons having or claiming an interest in any of  
 46 the following described lands are hereby notified that  
 47 suit is pending in the circuit court of .....  
 48 county, West Virginia, to enforce the collection of certain  
 49 drainage taxes on the subjoined list of lands, the name  
 50 of each supposed owner having been set opposite his or  
 51 her or its lands, together with the amounts severally due  
 52 from each, to-wit:

53 (Then shall follow a list of supposed owners, with a  
 54 descriptive list of such delinquent lands, and the  
 55 amounts due thereon respective as aforesaid, and  
 56 such public notice may conclude in the following  
 57 form:)

58 All persons and corporations interested in such lands  
 59 are hereby notified that they are required by law to  
 60 appear within thirty days after the first publication  
 61 hereof and make defense to such suit, or the same will  
 62 be taken for confessed and final judgment will be  
 63 entered directing the sale of such lands for the purpose  
 64 of collecting such taxes, together with the payment of  
 65 interest, penalty and costs allowed by law.

66

67

.....  
 Clerk of said Court.

68 Such suit shall be set for trial at the first term of  
 69 court after the completion of such publication, unless

70 a continuance be granted for good cause shown, within  
71 the discretion of the court; and such continuance may  
72 be granted as to a part of such lands or defendants,  
73 without affecting the duty of the court to dispose finally  
74 of the others as to whom no continuance may be granted,  
75 and in all cases where notice has been properly given  
76 as aforesaid, and where no answer has been filed, or if  
77 filed, and the cause decided for the plaintiff, the court  
78 by its decree shall grant the relief as prayed for in the  
79 complaint and shall direct such commissioner to sell the  
80 lands or other property described in the complaint  
81 at the front door of the courthouse of the county  
82 wherein the decree is entered, at public outcry, to the  
83 highest and best bidder for cash in hand, after having  
84 first advertised such sale (such advertisement may in-  
85 clude all the lands described in the decree) as a Class  
86 III-0 legal advertisement in compliance with the provi-  
87 sions of article three, chapter fifty-nine of this code, and  
88 the publication area for such publication shall be the  
89 county. If all the lands or other property be not sold  
90 on the day as advertised, such sale shall continue from  
91 day to day until completed. The commissioner shall  
92 sell such lands as directed, and the court, upon approval  
93 and confirmation of such sale, shall appoint a commis-  
94 sioner to execute proper deeds conveying to the pur-  
95 chaser the lands and other property so sold, and the title  
96 to such lands and other property shall thereupon become  
97 vested in such purchaser as against all others whomso-  
98 ever, saving to infants and to insane persons having no  
99 guardian or committee the right they now have by law  
100 to appear and except to such proceedings within three  
101 years after their disabilities are removed.

102 In all suits brought under this section a reasonable  
103 attorney's fee shall be taxed in favor of the attorney for  
104 the plaintiff, which fee shall be added to the amount  
105 of the costs.

106 In case the supervisors shall fail to commence suit  
107 within sixty days after the taxes become delinquent,  
108 the holder of any bond issued by the district shall have  
109 right to bring suit for collection of the delinquent as-  
110 sessments, and the proceedings in such suit brought by

111 the bondholder shall in all respects be governed by the  
112 provisions applicable to suits by the supervisors.

**ARTICLE 21A. SOIL CONSERVATION DISTRICTS.**

**§19-21A-3. Definitions.**

1 Wherever used or referred to in this article, unless  
2 a different meaning clearly appears from the context:

3 (1) "District" or "soil conservation district" means  
4 a subdivision of this state, organized in accordance with  
5 the provisions of this article, for the purposes, with the  
6 powers, and subject to the restrictions hereinafter set  
7 forth.

8 (2) "Supervisor" means one of the members of the  
9 governing body of a district, elected or appointed in ac-  
10 cordance with the provisions of this article.

11 (3) "Committee" or "state soil conservation com-  
12 mittee" means the agency created in section four of this  
13 article.

14 (4) "Petition" means a petition filed under the pro-  
15 visions of subsection-a of section five of this article for  
16 the creation of a district.

17 (5) "State" means the state of West Virginia.

18 (6) "Agency of this state" includes the government  
19 of this state and any subdivision, agency, or instru-  
20 mentality, corporate or otherwise, of the government of  
21 this state.

22 (7) "United States" or "agencies of the United States"  
23 includes the United States of America, the soil conserva-  
24 tion service of the United States department of agricul-  
25 ture, and any other agency or instrumentality, corporate  
26 or otherwise, of the United States of America.

27 (8) "Land owners" or "owners of land" includes any  
28 person or persons, firm, or corporation who shall hold  
29 title to three or more acres of any lands lying within a  
30 district organized under the provisions of this article.

31 (9) "Land occupier" or "occupier of land" includes  
32 any person, firm, or corporation who shall hold title to,  
33 or shall be in possession of, any lands lying within a  
34 district organized under the provisions of this article,  
35 whether as owner, lessee, renter, or tenant.

36 (10) "Due notice" means notice published as a Class  
 37 II legal advertisement in compliance with the provisions  
 38 of article three, chapter fifty-nine of this code, and the  
 39 publication area for such publication shall be the county  
 40 in which is located the appropriate area. At any hearing  
 41 held pursuant to such notice at the time and place desig-  
 42 nated in such notice, adjournment may be made from  
 43 time to time without the necessity of renewing such  
 44 notice for such adjournment dates.

45 (11) Th terms "soil conservation", "erosion control",  
 46 or "erosion prevention projects", when used throughout  
 47 the article, shall denote those projects that have been  
 48 established by federal agencies in cooperation with state  
 49 agencies for the purpose of demonstrating soil erosion  
 50 control and water conservation practices.

51 (12) The term "governing body" means the super-  
 52 visors of any soil conservation district, town or city,  
 53 council, city commission, county court, or body acting  
 54 in lieu of a county court, in this state, and the term "gov-  
 55 ernmental division" means any soil conservation district,  
 56 town, city, or county in this state.

57 (13) "Works of improvement" means such structures  
 58 as may be necessary or convenient for flood prevention  
 59 or the conservation, development, utilization or disposal  
 60 of water.

#### **ARTICLE 23. HORSE RACING.**

##### **§19-23-8. Disposition of funds for payment of outstanding parimutuel tickets; awards to resident owners, etc., of winning horses.**

1 All moneys held by any licensee for payment of out-  
 2 standing parimutuel tickets, if not claimed within ninety  
 3 days after the close of any race meeting, shall be turned  
 4 over by the licensee to the commission within fifteen  
 5 days after the expiration of such ninety-day period, and  
 6 the licensee shall give such information as the com-  
 7 mission may require concerning such outstanding and  
 8 unredeemed tickets. All such moneys shall be deposited  
 9 by the commission and kept by it in a special account  
 10 to be known as "West Virginia Racing Commission Spe-  
 11 cial Account—Unredeemed Pari-Mutuel Tickets." Notice

12 of the amount, time and place of such deposit shall be  
13 given by the commission, in writing, to the state treasurer.  
14 The commission shall cause to be published a notice to  
15 the holders of such unredeemed tickets, notifying them  
16 to present such tickets for the payment at the office of  
17 the commission in the city of Charleston within ninety  
18 days from the date of the publication of such notice.  
19 Such notice shall be published in the week following  
20 the close of any race meeting as a Class I legal adver-  
21 tisement in compliance with the provisions of article  
22 three, chapter fifty-nine of this code, and the publication  
23 area for such publication shall be the county in which  
24 such race meeting was held.

25 Any such tickets that shall not be presented for pay-  
26 ment within ninety days from the date of the publication  
27 of the notice shall thereafter be irredeemable, and the  
28 moneys theretofore held for the redemption of such  
29 tickets shall become the property of the commission, and  
30 be deposited, as aforesaid, and be expended as follows:

31 To the owner of the winning horse in any horse race,  
32 at any horse race track licensed in this state, provided  
33 that the owner of such horse is at the time, of such  
34 race, a bona fide resident of this state, a sum equal to  
35 ten per cent of the purse won by such horse.

36 To the breeder, that is the owner of the mare, of the  
37 winning horse in any horse race, at any horse race track  
38 licensed in this state, provided, that such breeder was,  
39 at the time such winning horse was foaled, a bona fide  
40 resident of this state, a sum equal to ten per cent of the  
41 purse won by such horse.

42 To the owner of the stallion which sired the winning  
43 horse in any horse race, at any horse race track licensed  
44 in this state, provided, that the mare which foaled such  
45 winning horse, was served by such stallion in this state,  
46 and the owner of such stallion, was, at the time of such  
47 service, a bona fide resident of this state, a sum equal to  
48 ten per cent of the purse won by such horse.

49 One person may qualify for any one or all of the  
50 awards aforesaid.

51 The cost for the publication of the notice provided for  
52 by this section shall be paid from the funds in the hands

53 of the state treasurer collected from the license tax on  
54 pari-mutuel wagering, when not otherwise provided in  
55 the budget; but no such costs shall be paid unless an  
56 itemized account thereof, under oath, be first filed with  
57 the state auditor.

**ARTICLE 24. RACE TRACKS.**

**§19-24-1. Race track construction applications and permits;  
action by racing commission; review.**

1 No person, after the date on which this article becomes  
2 effective, shall construct a race track where horse race  
3 meetings are to be held and the pari-mutuel system of  
4 wagering conducted, as provided in article twenty-three  
5 of this chapter, unless and until such person shall first  
6 have applied for and obtained from the West Virginia  
7 racing commission a construction permit which may be  
8 issued by said commission in strict accordance with the  
9 provisions of this article, and not otherwise. Any person  
10 desiring to obtain such construction permit shall prepare  
11 and file with the West Virginia racing commission an  
12 application therefor in such form and to such effect as  
13 said commission may require or approve. Among other  
14 things, said application shall specify:

15 (1) The names and addresses of all persons who are  
16 financially interested in the proposed race track, includ-  
17 ing the names of all partners, if the applicant be a part-  
18 nership, and of all stockholders, if the applicant be a cor-  
19 poration, and the names of any persons who have agreed  
20 to lend the applicant money for use in connection with  
21 such race track;

22 (2) The county where the race track is to be estab-  
23 lished; and

24 (3) Plans showing, in such detail as the commission  
25 may require, the proposed race track and all buildings and  
26 improvements to be used in connection therewith. The  
27 commission shall prescribe blank forms for use in making  
28 such application.

29 When such application shall have been prepared and  
30 filed in accordance with the foregoing requirements, the  
31 commission shall consider the same, and if the commis-  
32 sion be of opinion that the applicant intends to proceed  
33 in good faith to establish a race track complying in all

34 particulars with the laws of this state, that the plans  
35 therefor are adequate and have been prepared with due  
36 regard to the safety of all persons who will use such race  
37 track, and that the applicant is financially able to com-  
38 plete such race track in accordance with the plans shown  
39 on such application, the commission shall enter an order  
40 giving its tentative approval to such application, or, if  
41 the commission be not satisfied in the particulars above  
42 set forth, it shall refuse such application.

43 If such application be refused, the commission shall en-  
44 ter an order on its records specifying the reasons for its  
45 refusal thereof and such order shall be attached to said  
46 application and both the application and such order shall  
47 be open to inspection, upon application to the commission,  
48 of anyone desiring to inspect the same. The action of the  
49 commission in refusing any application shall be subject  
50 to review by mandamus in any court of this state having  
51 jurisdiction, with the right of appeal to the supreme court  
52 of appeals in the manner prescribed by law.

53 If the commission shall give tentative approval to such  
54 application, it shall prepare and publish a notice to the  
55 public that the commission has given tentative approval  
56 to the application and that the commission will confirm  
57 such tentative approval and issue a construction permit  
58 to the applicant at the expiration of sixty days from the  
59 date of the first publication of such notice (which date  
60 shall be specified in said notice), unless within said time  
61 an application for a local option election shall have been  
62 filed with the county court of the county in which said  
63 race track is proposed to be established in accordance  
64 with the provisions of this article. Such notice shall be  
65 published as a Class II legal advertisement in compliance  
66 with the provisions of article three, chapter fifty-nine of  
67 this code, and the publication area for such publication  
68 shall be the county in which such race track is to be es-  
69 tablished.

#### **§19-24-3. Local option election procedure.**

1 Upon the filing of a petition for a local option election  
2 in accordance with the provisions of the next preceding  
3 section, the county court shall enter an order calling a  
4 local option election and providing that the same shall

5 be held at the same time and as a part of the next primary  
6 or general election to be held in said county. A copy of  
7 the order so entered by the county court shall be served  
8 upon the West Virginia racing commission and that com-  
9 mission shall take no further action in connection with  
10 the issuance of such construction permit until said local  
11 option election shall be held. Said county court shall  
12 give notice of such local option election by publication  
13 of such notice as a Class II-0 legal advertisement in com-  
14 pliance with the provisions of article three, chapter fifty-  
15 nine of this code, and the publication area for such pub-  
16 lication shall be the county. Such notice shall be so pub-  
17 lished within fourteen consecutive days next preceding  
18 the date of said election.

19 Each person qualified to vote in said county at said  
20 primary or general election shall likewise be qualified  
21 to vote at the local option election. The elections officers  
22 appointed and qualified to serve as such at said primary  
23 or general election shall conduct said local option elec-  
24 tion in connection with and as a part of said primary or  
25 general election. The ballots in said local option election  
26 shall be counted and returns made by the election offi-  
27 cers and the results certified by the commissioners of  
28 election to said county court which shall canvass the bal-  
29 lots, all in accordance with the laws of the state of West  
30 Virginia relating to primary and general elections inso-  
31 far as the same are applicable. The county court shall,  
32 without delay, canvass the ballots cast at such local op-  
33 tion election and certify the results thereof to the West  
34 Virginia racing commission and thereupon said commis-  
35 sion shall issue or refuse to issue the construction permit  
36 in accordance with the results of such local option elec-  
37 tion.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

#### **§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibil-  
2 ities granted and assigned to the director in this chapter  
3 and elsewhere by law, the director is hereby authorized  
4 and empowered to:



5 (1) With the advice of the commission, prepare and  
6 administer, through the various divisions created by this  
7 chapter, a long-range comprehensive program for the  
8 conservation of the natural resources of the state which  
9 best effectuates the purpose of this chapter and which  
10 makes adequate provisions for the natural resources laws  
11 of the state;

12 (2) Sign and execute in the name of the state by the  
13 "department of natural resources" any contract or agree-  
14 ment with the federal government or its departments or  
15 agencies, subdivisions of the state, corporations, associa-  
16 tions, partnerships or individuals;

17 (3) Conduct research in improved conservation meth-  
18 ods and disseminate information matters to the residents  
19 of the state;

20 (4) Conduct a continuous study and investigation of  
21 the habits of wildlife, and for purposes of control and pro-  
22 tection to classify by regulation the various species into  
23 such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and  
25 method by which the various species of wildlife may be  
26 taken, or chased, unless otherwise specified by this chap-  
27 ter;

28 (6) Fix by regulation the open seasons and the bag,  
29 creel, size, age, weight and sex limits with respect to wild-  
30 life in this state;

31 (7) Hold at least six meetings each year at such times  
32 and at such points within the state, as in the discretion  
33 of the director may appear to be necessary and proper  
34 for the purpose of giving interested persons in the vari-  
35 ous sections of the state an opportunity to be heard con-  
36 cerning open seasons for their respective areas, before  
37 such seasons and bag limits are fixed;

38 (8) Suspend open hunting seasons upon any or all wild-  
39 life in any or all counties of the state with the prior ap-  
40 proval of the governor in case of an emergency such as  
41 a drought, forest fire hazard or epizootic of disease among  
42 wildlife. The suspension shall continue during the ex-  
43 istence of the emergency and until rescinded by the  
44 director. Suspension, or reopening after such suspension,  
45 of open seasons may be made upon twenty-four hours'

46 notice by delivery of a copy of the order of suspension  
47 or reopening to the wire press agencies at the state cap-  
48 itol;

49 (9) Supervise the fiscal affairs and responsibilities of  
50 the department;

51 (10) Designate such localities as he shall determine to  
52 be necessary and desirable for the perpetuation of any  
53 species of wildlife;

54 (11) Enter private lands to make surveys or inspec-  
55 tions for conservation purposes, to investigate for viola-  
56 tions of provisions of this chapter, to serve and execute  
57 warrants and processes, to make arrests and to otherwise  
58 effectively enforce the provisions of this chapter;

59 (12) Acquire for the state in the name of the "depart-  
60 ment of natural resources" by purchase, condemnation,  
61 lease or agreement, or accept or reject for the state, in  
62 in the name of the department of natural resources, gifts,  
63 donations, contributions, bequests or devises of money,  
64 security or property, both real and personal, and any in-  
65 terest in such property, including lands and waters, which  
66 he deems suitable for the following purposes:

67 (a) For state forests for the purpose of growing tim-  
68 ber, demonstrating forestry, furnishing or protecting wa-  
69 tersheds or providing public recreation;

70 (b) For state parks or recreation areas for the purpose  
71 of preserving scenic, esthetic, scientific, cultural, archae-  
72 ological or historical values or natural wonders, or pro-  
73 viding public recreation;

74 (c) For public hunting, trapping, or fishing grounds or  
75 waters for the purpose of providing areas in which the  
76 public may hunt, trap or fish, as permitted by the pro-  
77 visions of this chapter, and the rules and regulations is-  
78 sued hereunder;

79 (d) For fish hatcheries, game farms, wildlife research  
80 areas and feeding stations;

81 (e) For the extension and consolidation of lands or  
82 waters suitable for the above purposes by exchange of  
83 other lands or waters under his supervision;

84 (f) For such other purposes as may be necessary to  
85 carry out the provisions of this chapter;

86 (13) Capture, propagate, transport, sell or exchange  
87 any species of wildlife as may be necessary to carry out  
88 the provisions of this chapter;

89 (14) Sell, with the approval in writing of the governor,  
90 timber for not less than the value thereof, as appraised  
91 by a qualified appraiser appointed by the director, from  
92 all lands under the jurisdiction and control of the direc-  
93 tor, except those lands that are designated as state parks.  
94 The appraisal shall be made within a reasonable time  
95 prior to any sale, reduced to writing, filed in the office  
96 of the director and shall be available for public inspec-  
97 tion. When the appraised value of the timber to be sold  
98 is more than five hundred dollars, the director, before  
99 making sale thereof, shall receive sealed bids therefor,  
100 after notice by publication as a Class II legal advertise-  
101 ment in compliance with the provisions of article three,  
102 chapter fifty-nine of this code, and the publication area  
103 for such publication shall be each county in which the  
104 timber is located. The timber so advertised shall be sold  
105 at not less than the appraised value to the highest respon-  
106 sible bidder, who shall give bond for the proper per-  
107 formance of the sales contract as the director shall desig-  
108 nate; but the director shall have the right to reject any  
109 and all bids and to readvertise for bids. If the foregoing  
110 provisions of this section have been complied with, and  
111 no bid equal to or in excess of the appraised value of  
112 the timber is received, the director may, at any time, dur-  
113 ing a period of six months after the opening of the bids,  
114 sell the timber in such manner as he deems appropriate,  
115 but the sale price shall not be less than the appraised  
116 value of the timber advertised. No contract for sale of  
117 timber made pursuant to this section shall extend for a  
118 period of more than ten years. And all contracts hereto-  
119 fore entered into by the state for the sale of timber shall  
120 not be validated by this section if the same be otherwise  
121 invalid. The proceeds arising from the sale of the tim-  
122 ber so sold, shall be paid to the treasurer of the state of  
123 West Virginia, and shall be credited to the department  
124 and used exclusively for the purposes of this chapter;  
125 (15) Sell, with the approval in writing of the governor,  
126 or lease coal, oil, gas, sand, gravel and any other min-  
127 erals that may be found in the lands under the jurisdic-

tion and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performances of the sales contract or lease as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise the bids. The proceeds arising from any such sale or lease shall be paid to the treasurer of the state of West Virginia and shall be credited to the department and used exclusively for the purposes of this chapter;

(16) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(17) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(18) Report to the governor each year all information relative to the operation and functions of his department and he shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the department of each fiscal year, and he shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(19) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office, except as otherwise provided by law;

169 (20) Offer and pay, in his discretion, rewards for in-  
170 formation respecting the violation, or for the apprehen-  
171 sion and conviction of any violators, of any of the pro-  
172 visions of this chapter;

173 (21) Require such reports as he may deem to be nec-  
174 essary from any person issued a license or permit under  
175 the provisions of this chapter, but no person shall be re-  
176 quired to disclose secret processes or confidential data of  
177 competitive significance;

178 (22) Purchase as provided by law all equipment neces-  
179 sary for the conduct of his department;

180 (23) Conduct and encourage research designed to fur-  
181 ther new and more extensive uses of the natural resources  
182 of this state and to publicize the findings of such re-  
183 search;

184 (24) Encourage and cooperate with other public and  
185 private organizations or groups in their efforts to pub-  
186 licize the attractions of the state;

187 (25) Accept and expend, without the necessity of ap-  
188 propriation by the legislature, any gift or grant of money  
189 made to the department for any and all purposes speci-  
190 fied in this chapter, and he shall account for and report  
191 on all such receipts and expenditures to the governor;

192 (26) Cooperate with the state historian and other ap-  
193 propriate state agencies in conducting research with ref-  
194 erence to the establishment of state parks and monu-  
195 ments of historic, scenic and recreational value, and to  
196 take such steps as may be necessary in establishing such  
197 monuments or parks as he deems advisable;

198 (27) Maintain in his office at all times, properly in-  
199 dexed by subject matter, and also, in chronological se-  
200 quence, all rules and regulations made or issued under  
201 the authority of this chapter. Such records shall be avail-  
202 able for public inspection on all business days during the  
203 business hours of working days as prescribed by the state  
204 board of public works;

205 (28) Delegate the powers and duties of his office, ex-  
206 cept the power to execute contracts, to appointees and  
207 employees of the department, who shall act under the

208 direction and supervision of the director and for whose  
209 acts he shall be responsible;

210 (29) Conduct schools, institutes and other educational  
211 programs, apart from or in cooperation with other gov-  
212 ernmental agencies, for instruction and training in all  
213 phases of the natural resources programs of the state;  
214 and

215 (30) Promulgate rules and regulations, in accordance  
216 with the provisions of chapter twenty-nine-a of this code,  
217 to implement and make effective the powers and duties  
218 vested in him by the provisions of this chapter and take  
219 such other steps as may be necessary in his discretion for  
220 the proper and effective enforcement of the provisions of  
221 of this chapter: *Provided*, That all rules and regula-  
222 tions relating to articles five and five-a of this chapter  
223 shall be promulgated by the water resources board.

## ARTICLE 2. GAME AND FISH.

### §20-2-16. Dogs chasing deer.

1 No person shall permit his dog to hunt or chase deer.  
2 A conservation officer shall take into possession any dog  
3 known to have hunted or chased deer and the director  
4 shall advertise that such dog is in his possession, giving  
5 a description of the dog and stating the circumstances  
6 under which it was taken. Such notice shall be published  
7 as a Class I legal advertisement in compliance with the  
8 provisions of article three, chapter fifty-nine of this code,  
9 and the publication area for such publication shall be the  
10 county. He shall hold the dog for a period of ten days  
11 after the date of the publication. If, within ten days, the  
12 owner does not claim the dog, the director shall destroy  
13 it. In this event the cost of keeping and advertising shall  
14 be paid by the director. If, within ten days, the owner  
15 claims the dog, he may repossess it on the payment of  
16 costs of advertising and the cost of keep, not exceeding  
17 fifty cents per day. A conservation officer, or any officer  
18 or employee of the director authorized to enforce the pro-  
19 visions of this section, after a bona fide but unsuccessful  
20 effort to capture dogs detected chasing or pursuing deer,  
21 may kill such dogs.

**ARTICLE 3. FORESTS AND WILDLIFE AREAS.****§20-3-19. Protection of forests against destructive insects and diseases; purposes and intent of section.**

1 In order to protect and preserve forest resources of the  
2 state of West Virginia from ravages of bark beetles, de-  
3 foliators, rusts, blights, wilts and other destructive forest  
4 pests and diseases, and thereby enhance the growth and  
5 maintenance of forests; promote the stability of forest-  
6 using industries and employment associated therewith;  
7 reduce the fire risk created by dying and dead trees in-  
8 jured or killed by insects or diseases; conserve forest  
9 cover on watersheds and protect recreational and other  
10 forest values, it shall be the policy of the state of West  
11 Virginia independently and through cooperation with  
12 adjoining states, the federal government, and private tim-  
13 ber owners and other private organizations, to prevent,  
14 retard, control, suppress, or eradicate incipient, potential  
15 or emergency outbreaks of destructive insects and dis-  
16 eases on, or threatening, all forest land irrespective of  
17 ownership.

18 (a) *Authority.*—The director is authorized either di-  
19 rectly or in cooperation with other agencies, subject to  
20 such conditions as he may deem necessary and using such  
21 funds as have been, or may hereafter be made available  
22 for those purposes, to conduct surveys on any forest land  
23 to detect and appraise infestations of forest insect pests  
24 and tree diseases, to determine the measures which should  
25 be applied on such lands, in order to prevent, retard, con-  
26 trol, suppress or eradicate incipient, threatening, poten-  
27 tial or emergency outbreaks of such insects or disease  
28 pests, and to plan, organize, direct and carry out such  
29 measures as he may deem necessary to accomplish the  
30 objectives and provisions of this section: *Provided, That*  
31 actual control measures shall be conducted with the co-  
32 operation and consent of the quarantine and regulatory  
33 official of the department of agriculture.

34 (b) *Establishing control zone; notice to landowners.*—  
35 Where an insect infestation or disease infection is be-  
36 lieved to exist on a forest land within this state, the di-  
37 rector shall investigate the condition. Whenever he finds  
38 that an infestation or infection exists, he shall request

39 the quarantine officials of the state department of agri-  
40 culture to declare the same a public nuisance. When  
41 same has been declared a public nuisance he shall estab-  
42 lish a control zone of the forest land wherein the same  
43 is found, and shall give notice thereof by publication as  
44 a Class II legal advertisement in compliance with the pro-  
45 visions of article three, chapter fifty-nine of this code,  
46 and the publication area for such publication shall be  
47 each county in which the area or areas are located in  
48 which the control zone is established. Such notice shall  
49 also be given by mail or otherwise to forest landowners  
50 within the control zone, advising them of the nature of  
51 the infestation or infection, recommending control meas-  
52 ures and offering technical advice on methods of carry-  
53 ing out the control measures.

54 (c) *Institution of control measures.*—If, after notifica-  
55 tion by the director, any landowner fails, neglects, or is  
56 unable to carry out the control measures recommended  
57 by the director as set forth in subsection (b), the direc-  
58 tor may, through his agents, institute and carry out such  
59 control measures.

60 (d) *Appeals.*—Any person damaged or aggrieved by  
61 any action of any officer or employee of the department  
62 under the provisions of this section shall have the right  
63 to appeal from such action to the director and then to the  
64 the circuit court of the county in which such person resides  
65 in which he owns forest land affected by such action. The  
66 court, after hearing the evidence in the case, may make  
67 such orders as may be appropriate to protect the inter-  
68 ests of the appellant, adjacent forest landowners, or the  
69 state.

70 (e) *Cooperation with individuals and public agencies.*  
71 The director is authorized to cooperate with landowners  
72 and appropriate authorities of town, city, county, adjoining  
73 state and the United States government, and other  
74 agencies having jurisdiction of state lands, concerning  
75 forest tree insect and disease investigation and control,  
76 and to accept money, gifts and donations, and to disburse  
77 the same for the purpose of carrying out the provisions  
78 of this section.



79 (f) *Annual appropriation; forest pest control fund.*—

80 There is hereby created in the state treasury a special  
81 fund to be known as the forest pest control fund. Such  
82 fund shall consist of all moneys appropriated thereto by  
83 the Legislature and all moneys received and deposited  
84 with the state treasurer under the provisions of this sec-  
85 tion. All such funds are hereby appropriated to the de-  
86 partment of natural resources to be used to carry out the  
87 purposes of this section.

88 (g) *Definitions.*—As used in this section, unless the con-  
89 text clearly requires otherwise:

90 (1) "Forest trees" means only those trees which are a  
91 part of and constitute a stand of potential, immature, or  
92 mature commercial timber trees: *Provided*, That the  
93 term "forest trees" shall be deemed to include shade trees  
94 of any species around houses, along highways and within  
95 cities and towns if the same constitute an insect or disease  
96 menace to nearby timber trees or timber stands;

97 (2) "Forest land" means land on which forest trees  
98 occur;

99 (3) "Control zone" means an area of potential or actual  
100 infestation or infection, the boundaries of which are fixed  
101 and clearly described in a manner to definitely identify  
102 the zone;

103 (4) "Infestation" means infestation by means of any  
104 insect in any stage of growth which is determined to be  
105 dangerously injurious to forest trees; and

106 (5) "Infection" means infection by any disease affect-  
107 ing forest trees which is determined to be dangerously  
108 injurious thereto.

## CHAPTER 22. MINES AND MINERALS.

### ARTICLE 5. TRANSPORTATION OF OILS.

#### §22-5-7. Further provisions concerning such orders and certificates.

1 No receipt, certificate, accepted order or other voucher  
2 shall be issued or put in circulation, nor shall any order  
3 be accepted or liability incurred for the delivery of any  
4 petroleum, crude or refined, unless the amount of such  
5 petroleum represented in or by such receipt, certificate,  
6 accepted order, or other voucher or liability, shall have

7 been actually received by and shall then be in the tanks  
8 and lines, custody and control of the company issuing or  
9 putting in circulation such receipt, certificate, accepted  
10 order or voucher, or written evidence of liability. No  
11 duplicate receipt, certificate, accepted order or other  
12 voucher shall be issued or put in circulation, or any lia-  
13 bility incurred for any petroleum, crude or refined, while  
14 any former liability remains in force, or any former re-  
15 ceipt, certificate, accepted order or other voucher shall  
16 be outstanding and uncanceled, except such original pa-  
17 pers shall have been lost, in which case a duplicate, plain-  
18 ly marked "duplicate" upon the face, and dated and  
19 numbered as the lost original was dated and numbered,  
20 may be issued. No receipt, voucher, accepted order, cer-  
21 tificate or written evidence of liability of such company  
22 on which petroleum, crude or refined, has been delivered,  
23 shall be reissued, used or put in circulation. No petrol-  
24 eum, crude or refined, for which a receipt, voucher, ac-  
25 cepted order, certificate or liability incurred, shall have  
26 been issued or put in circulation, shall be delivered, ex-  
27 cept upon the surrender of the receipt, voucher order or  
28 liability representing such petroleum, except upon affi-  
29 davit of loss of such instrument made by the former  
30 holder thereof. No duplicate receipt, certificate, voucher,  
31 accepted order or other evidence of liability, shall be  
32 made, issued or put in circulation until after notice of the  
33 loss of the original, and of the intention to apply for a  
34 duplicate thereof, shall have been given by advertisement  
35 over the signature of the owner thereof as a Class II legal  
36 advertisement in compliance with the provisions of ar-  
37 ticle three, chapter fifty-nine of this code, and the pub-  
38 lication area for such publication shall be the county  
39 where such duplicate is to be issued. Every receipt,  
40 voucher, accepted order, certificate or evidence of liabil-  
41 ity, when surrendered or the petroleum represented  
42 thereby delivered, shall be immediately canceled by  
43 stamping and punching the same across the face in large  
44 and legible letters with the word "canceled," and giving  
45 the date of such cancellation; and it shall then be filed and  
46 preserved in the principal office of such company for a  
47 period of six years.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.****ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.****§24-2-4. Procedure for changing rates.**

1 No public utility subject to this chapter shall change,  
2 suspend or annul any rate, joint rate, charge, rental or  
3 classification except after thirty days' notice to the com-  
4 mission and the public, which notice shall plainly state  
5 the changes proposed to be made in the schedule then  
6 in force and the time when the changed rates or charges  
7 shall go into effect. But the commission may enter an  
8 order suspending the proposed rate as hereinafter pro-  
9 vided. The proposed changes shall be shown by print-  
10 ing new schedules, or shall be plainly indicated upon  
11 the schedules in force at the time, and kept open to  
12 public inspection: *Provided, however,* That the com-  
13 mission may, in its discretion, and for good cause shown,  
14 allow changes upon less time than the notice herein  
15 specified, or may modify the requirements of this sec-  
16 tion in respect to publishing, posting and filing of tariffs,  
17 either by particular instructions or by general order.

18 Whenever there shall be filed with the commission  
19 any schedule stating a change in the rates or charges,  
20 or joint rates or charges, or stating a new individual  
21 or joint rate or charge or joint classification or any new  
22 individual or joint regulation or practice affecting any  
23 rate or charge, the commission shall have authority,  
24 either upon complaint or upon its own initiative with-  
25 out complaint, to enter upon a hearing concerning the  
26 propriety of such rate, charge, classification, regulation  
27 or practice; and, if the commission so orders, it may  
28 proceed without answer or other form of pleading by  
29 the interested parties, but upon reasonable notice, and,  
30 pending such hearing and the decision thereon, the com-  
31 mission, upon filing with such schedule and delivering  
32 to the public utility affected thereby a statement in  
33 writing of its reasons for such suspension, may suspend  
34 the operation of such schedule and defer the use of such  
35 rate, charge, classification, regulation or practice, but not  
36 for a longer period than one hundred and twenty days

37 beyond the time when such rate, charge, classification,  
38 regulation or practice would otherwise go into effect;  
39 and after full hearing, whether completed before or  
40 after the rate, charge, classification, regulation or prac-  
41 tice goes into effect, the commission may make such or-  
42 der in reference to such rate, charge, classification, regu-  
43 lation or practice as would be proper in a proceeding  
44 initiated after the rate, charge, classification, regulation  
45 or practice had become effective: *Provided*, That if any  
46 such hearing and decision thereon cannot be concluded  
47 within the period of suspension, as above stated, such  
48 rate, charge, classification, regulation or practice shall  
49 go into effect at the end of such period. In such case  
50 the commission may require such public utility to enter  
51 into a bond in an amount deemed by the commission  
52 to be reasonable and conditioned for the refund to the  
53 persons or parties entitled thereto of the amount of the  
54 excess, plus interest at the rate of six per cent per an-  
55 num, if such rates so put into effect are subsequently  
56 determined to be higher than those finally fixed for such  
57 utility. No such accrued interest paid shall be deemed  
58 part of the cost of doing business in a subsequent appli-  
59 cation for changing rates or any decision thereon. At  
60 any hearing involving a rate sought to be increased or  
61 involving the change of any fare, charge, classification,  
62 regulation or practice, the burden of proof to show that  
63 the increased rate or proposed increased rate, or the  
64 proposed change of fare, charge, classification, regula-  
65 tion or practice is just and reasonable shall be upon the  
66 public utility making application for such change. When  
67 in any case pending before the commission all evidence  
68 shall have been taken, and the hearing completed, the  
69 commission shall, within three months, render a deci-  
70 sion in such case.

71 Where more than twenty members of the public are  
72 affected by a proposed change in rates, it shall be a  
73 sufficient notice to the public within the meaning of  
74 this section if such notice is published as a Class II legal  
75 advertisement in compliance with the provisions of arti-  
76 cle three, chapter fifty-nine of this code, and the publi-  
77 cation area for such publication shall be the community

78 where the majority of the resident members of the public  
 79 affected by such change reside or, in case of non-residents,  
 80 have their principal place of business within this state.

## CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

### ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.

#### §24A-3-3. Permit.

1     (a) *Required; application; hearing; granting.*—It shall  
 2 be unlawful for any contract carrier by motor vehicle  
 3 to operate within this state without first having obtained  
 4 from the commission a permit. Upon the filing of an  
 5 application for such permit, the commission shall fix a  
 6 time and place for hearing thereon: *Provided, however,*  
 7 That the commission may, after giving notice as herein-  
 8 after provided and if no protest is received, waive formal  
 9 hearing on such application. Said notice shall be by  
 10 publication which shall state that formal hearing may  
 11 be waived in the absence of protest to such application.  
 12 Such notice shall be published as a Class I legal adver-  
 13 tisement in compliance with the provisions of article  
 14 three, chapter fifty-nine of this code, and the publication  
 15 area for such publication shall be the area of operation.  
 16 Such notice shall be published at least ten days prior to  
 17 the date of hearing. After hearing or waiver of hearing as  
 18 aforesaid, as the case may be, the commission shall grant  
 19 or deny the permit prayed for or grant it for the partial  
 20 exercise only of the privilege sought, and may attach to  
 21 the exercise of the privilege granted by such permit such  
 22 terms and conditions as in its judgment are proper and  
 23 will carry out the purposes of this chapter. No permit  
 24 shall be granted unless the applicant has established to the  
 25 satisfaction of the commission that the privilege sought  
 26 will not endanger the safety of the public or unduly inter-  
 27 fere with the use of the highways or impair unduly the  
 28 condition or unduly increase the maintenance cost of such  
 29 highways, directly or indirectly, or impair the efficient  
 30 public service of any authorized common carrier or com-  
 31 mon carriers adequately serving the same territory.

32     (b) *Rules and regulations; evidence at hearing.*—The  
 33 commission shall prescribe such rules and regulations as

34 it may deem proper for the enforcement of the provisions  
 35 of this section and may designate any of its employees  
 36 to take evidence at the hearing on any application for  
 37 a permit and submit findings of fact as a part of report or  
 38 reports to be made to the commission.

39 (c) *Permit not franchise, etc.; assignment or transfer.*

40 —No permit issued in accordance with the terms of this  
 41 chapter shall be construed to be either a franchise or  
 42 irrevocable or to confer any proprietary or property  
 43 rights in the use of the public highways. No permit  
 44 issued under this chapter shall be assigned or otherwise  
 45 transferred without the approval of the commission.  
 46 Upon the death of a person holding a permit, his personal  
 47 representative or representatives may operate under  
 48 such permit while the same remains in force and effect  
 49 and, with the consent of the commission, may transfer  
 50 such permit.

51 (d) *Suspension, revocation or amendment.*—The com-  
 52 mission may at any time, for good cause, suspend and,  
 53 upon not less than fifteen days' notice to the grantee of  
 54 any permit and an opportunity to be heard, revoke or  
 55 amend any permit.

56 (e) *Notice of cessation or abandonment.*—Every con-  
 57 tract carrier by motor vehicle who shall cease operation  
 58 or abandon his rights under a permit issued shall notify  
 59 the commission within thirty days of such cessation or  
 60 abandonment.

## CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

### ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTI- TUTIONS.

**§25-1-31. State debt not permitted; acceptance of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.**

1 Nothing in these sections dealing with dormitories,  
 2 homes or refectories shall be so construed or interpreted  
 3 as to authorize or permit the incurring of state debt of  
 4 any kind or nature as contemplated by the constitution  
 5 of this state in relation to the state debt. The dormitories,  
 6 homes or refectories herein are of the character described

7 as self-liquidating projects under the laws of the United  
8 States.

9 Any state agency authorized to issue bonds under the  
10 provisions of this article is authorized and empowered  
11 to accept loans or grants or temporary advances for the  
12 purpose of paying part or all of the cost of construction  
13 of the dormitories, homes or refectories and the other  
14 purposes herein authorized, from the United States of  
15 America or such federal or public agency or department  
16 of the United States or any private agency, corporation  
17 or individual, which temporary advances may be repaid  
18 out of the proceeds of the bonds authorized to be issued  
19 under the provisions of this article and to enter into the  
20 necessary contracts and agreements to carry out the  
21 purposes hereof with the United States of America or  
22 such federal or public agency or department of the United  
23 States, or with any private agency, corporation or indi-  
24 vidual: *Provided, however,* That if such bonds are  
25 not sold to and purchased by the United States of Amer-  
26 ica or any such federal or public agency or department,  
27 then the state agency shall advertise such bonds for  
28 sale, on sealed bids, which advertisement shall be pub-  
29 lished as a Class II legal advertisement in compliance  
30 with the provisions of article three, chapter fifty-nine of  
31 this code, and the publication area for such publication  
32 shall be the state. Such advertisement shall be so pub-  
33 lished within the fourteen consecutive days next pre-  
34 ceding the date fixed for the reception of bids. Such ad-  
35 vertisement shall also be published in a financial paper  
36 published either in the city of New York in the state of  
37 New York, or the city of Chicago, in the state of Illinois.  
38 The state agency may reject any and all bids. If the bonds  
39 be not sold pursuant to such advertisement, they may,  
40 within sixty days after the date advertised for the recep-  
41 tion of bids, be sold by the state agency at private sale,  
42 but no private sale shall be made at a price less than the  
43 highest bid which shall have been received pursuant to  
44 such advertisement. If not sold, such bonds shall be re-  
45 advertised in the manner herein provided.

46 The provisions and parts of this act are separable and  
47 are not matters of mutual essential inducement, and it

48 is the intention to confer the whole or any part of the  
 49 powers herein provided for, and if any of the sections or  
 50 provisions, or parts thereof, are for any reason illegal or  
 51 invalid, it is the intention that the remaining sections  
 52 and provisions or parts thereof shall remain in full force  
 53 and effect.

**ARTICLE 3. CLAIMS OF CITIZENS AGAINST U. S. GOVERN-  
 MENT FOR ILLEGAL TAX PAYMENTS.**

**§25-3-4. Notice to claimants.**

1 Upon receipt of such funds from the United States by  
 2 the treasurer of this state, it shall be the duty of the state  
 3 commissioner of public institutions to give notice to all  
 4 claimants thereof by publication as a Class II legal adver-  
 5 tisement in compliance with the provisions of article three,  
 6 chapter fifty-nine of this code, and the publication area for  
 7 such publication shall be each county of the state. Such  
 8 notices shall set forth that such moneys have been col-  
 9 lected and shall notify all claimants of the same to pro-  
 10 pound their claims in writing by filing them with said  
 11 commissioner, and the commissioner shall warn all claim-  
 12 ants and persons interested therein that a failure so to file  
 13 their respective claims within a period of two years from  
 14 the date on which such moneys were paid into the treasury  
 15 of this state shall forever bar their respective rights to  
 16 such funds, or any part thereof, and that in default of the  
 17 filing of such claims such funds shall escheat to and be-  
 18 come the absolute property of this state.

**CHAPTER 28. STATE CORRECTIONAL AND  
 PENAL INSTITUTIONS.**

**ARTICLE 5. THE PENITENTIARY.**

**§28-5-11. Employment of convicts by contract; advertisement.**

1 In order to provide employment for convicts not em-  
 2 ployed as provided in the two preceding sections, the  
 3 state commissioner of public institutions may let and hire  
 4 the labor of such convicts, on the piece price system or  
 5 otherwise, in such branches of business, and for the manu-  
 6 facture of such articles, as in his judgment will best ac-  
 7 complish the ends and subserve the interests of the state.  
 8 Such letting and hiring shall be advertised by the com-



9 commissioner of public institutions as a Class II legal adver-  
10 tisement in compliance with the provisions of article  
11 three, chapter fifty-nine of this code, and the publication  
12 area for such publication shall be the state. The letting  
13 and hiring may also be advertised in such other manner  
14 as said commissioner may determine. The advertisement  
15 shall specify the number of convicts to be let, the length  
16 of time of the hiring or letting, which shall not exceed  
17 five years, the last day, at twelve o'clock meridian, on  
18 which bids will be received and such other information as  
19 the commissioner may desire. The commissioner may in  
20 his discretion designate what article or class of articles  
21 shall be manufactured.

## **CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.**

### **ARTICLE 3. RULE MAKING.**

#### **§29A-3-2. Notice by mail of proposed rule; requests for noti- fication; fee; notice by publication.**

1 On and after the effective date of this chapter,  
2 no agency shall make any rule unless and until  
3 notice thereof has been given to all persons who, in the  
4 manner hereinafter provided in this section, have request-  
5 ed notice of any proposed rule. The notice shall either  
6 contain the express terms of the proposed rule, or shall  
7 contain an informative summary thereof. The notice  
8 shall be given by mail as specified in section two, article  
9 seven of this chapter. The notice shall include a state-  
10 ment of the time, date and place at which interested  
11 persons may submit data, objections, suggested amend-  
12 ments, views, evidence and arguments orally or in writ-  
13 ing concerning the proposed rule, and such notice must  
14 be given not less than thirty nor more than sixty days  
15 prior to the date fixed. The request by any person to  
16 receive notice shall be in writing and shall request the  
17 agency to notify him of any rule proposed by such agency  
18 during the calendar year in which the request is made.  
19 Each agency by rule may prescribe the form of such  
20 written request for notification, and may require an  
21 annual fee in an amount not to exceed one dollar to  
22 accompany each such written request. All such fees

23 shall be deposited in the state treasury to the credit of  
 24 the state general fund. An agency may, in its discre-  
 25 tion, also publish the required notice, at the expense of  
 26 the agency. If an agency determines to give notice also  
 27 by publication, the notice shall be published as a Class I  
 28 legal advertisement in compliance with the provisions  
 29 of article three, chapter fifty-nine of this code, and the  
 30 publication area for such publication shall be the state,  
 31 or, if the rule has only local application, the publication  
 32 area for such publication shall be the locality to which  
 33 it applies. No rule hereafter adopted is valid unless  
 34 adopted in substantial compliance with the provisions  
 35 of this section.

## **CHAPTER 31. CORPORATIONS.**

### **ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS GENERALLY.**

#### **§31-1-4a. Special provisions as to nonstock corporations.**

1 Nonstock corporations have no capital stock, no shares  
 2 of stock, and no stockholders, and various provisions  
 3 of this article are not appropriate for nonstock corpora-  
 4 tions where the interest of the members are equal and  
 5 not determined by the number of shares owned, and  
 6 where numerous persons may be technically members  
 7 but have no real interest in the management of the  
 8 corporation, and this article does not make provision for  
 9 certain other situations peculiar to nonstock corpora-  
 10 tions, and for these and other reasons the following  
 11 provisions are made, relating only to nonstock corpora-  
 12 tions:

13 (1) The charter of any nonstock corporation may  
 14 provide: (i) For the division of its members into classes  
 15 with varying qualifications and requirements and with  
 16 varying voting and other rights and privileges; and  
 17 (ii) the number or proportion of its members or of a  
 18 specified class or classes of its members, whose presence  
 19 in person or by proxy shall be necessary to constitute  
 20 a quorum at any meeting of members of the corpora-  
 21 tion; and (iii) that any specified action may be taken  
 22 or authorized upon the concurrence of a specified num-

23 ber or proportion of the votes of all members or of all  
24 of a specified class or classes of members. Such provi-  
25 sions may be different from what is otherwise required  
26 under this article; and any action taken or authorized  
27 in accordance with any such charter provisions shall be  
28 valid and effective.

29 (2) In any case in which the charter of any nonstock  
30 corporation does not provide for members thereof as  
31 such and such corporation has in fact no members other  
32 than the members of its governing body (by whatever  
33 names they or it may be called), the members for the  
34 time being of its governing body shall, for the purposes  
35 of any statutory provision or rule of law relating to  
36 members of a nonstock corporation, be considered to be  
37 the members of such corporation, as well as members of  
38 such governing body, and may meet as members of such  
39 corporation and exercise all of the rights and powers  
40 of members thereof.

41 (3) In any case in which the charter of any nonstock  
42 corporation provides for a definite minimum number  
43 of members, whenever the membership is reduced be-  
44 low the prescribed number the corporation shall not  
45 on that account be dissolved, but the vacancies shall  
46 be filled either in the manner provided in its charter or  
47 by the surviving or continuing members, so long as the  
48 number thereof is one or more.

49 (4) A member of a nonstock corporation who  
50 is entitled to vote on any matter shall have but  
51 one vote, and shall not be entitled to cumulate his  
52 vote in the election of members of its governing  
53 body.

54 (5) In any case in which there shall be doubt con-  
55 cerning the number and identity of the persons, firms  
56 and corporations entitled to membership or to member-  
57 ship in a class or classes of members, in a nonstock  
58 corporation, and the determination of those so entitled  
59 is deemed necessary by its governing body, the circuit  
60 court of the county in which the principal office of a  
61 nonstock corporation is located, or the judge thereof  
62 in vacation, shall have jurisdiction in equity, on applica-  
63 tion by the corporation by petition in a summary way,

64 notice of the hearing on the application having been  
65 given as directed by the court or judge, to determine  
66 who are at that time members of the corporation or of  
67 such class or classes of members, and to make such orders  
68 and decrees as may seem reasonable and proper.

69 (6) If a meeting of the members of any nonstock  
70 corporation shall be duly called for any lawful purpose  
71 and at such meeting there is not present in person or by  
72 proxy the number of members entitled to vote required  
73 by the charter (or, in the absence of an applicable char-  
74 ter provision, by the provisions of this article) to consti-  
75 tute a quorum or to take the proposed action, then, if  
76 the notice of such meeting states that the procedure  
77 authorized by this subsection may be invoked, the mem-  
78 bers entitled to vote who are present at such meeting  
79 in person or by proxy may by majority vote call a fur-  
80 ther meeting of the members for the same purpose. A  
81 notice of the time, place and purpose of such further  
82 meeting shall be given by publication of such notice as  
83 a Class II legal advertisement in compliance with the  
84 provisions of article three, chapter fifty-nine of this code,  
85 and the publication area for such publication shall be  
86 the county of the principal office of the corporation. At  
87 such further meeting the members entitled to vote  
88 who are present in person or by proxy shall constitute  
89 a quorum, and by majority vote may take the proposed  
90 action and may also take any other action which might  
91 have been taken at the original meeting if a sufficient  
92 number of members entitled to vote had been present;  
93 and the notice of such further meeting shall so state.

94 (7) The charter of a nonstock corporation may pro-  
95 vide for the disposition of its assets upon its dissolu-  
96 tion. In any case in which a resolution to dissolve has  
97 been adopted by the members of a nonstock corporation  
98 entitled to vote thereon, or in any case in which a non-  
99 stock corporation has been inactive for ten years except  
100 for the holding of assets, or in any case in which the  
101 purpose, for which a nonstock corporation has been  
102 formed, has been attained, then in any such case the  
103 circuit court of the county in which its principal office  
104 is located; or the judge thereof in vacation, shall have

105 jurisdiction in equity, on the application by petition in  
106 a summary way of the corporation or of any member  
107 thereof or of the attorney general, notice of the hearing  
108 on the application having been given as directed by the  
109 court or judge, to determine the assets and liabilities  
110 of the corporation; to provide for the payment of the  
111 liabilities, to direct the disposition of the assets, to dis-  
112 solve the corporation, and to make such orders and de-  
113 crees as may seem reasonable and proper. The court  
114 shall consider the purposes for which the corporation  
115 was formed, any charter provision for the disposition  
116 of its assets upon dissolution, and the circumstances  
117 which have occurred since its incorporation. The clerk  
118 of such court shall promptly send to the secretary of  
119 state a certified copy of each order and decree made in  
120 such proceeding.

121 (8) Insofar as the provisions of this section are in-  
122 consistent with the provisions of any other law, the pro-  
123 visions of this section shall be controlling as to non-  
124 stock corporations. The provisions of this section are  
125 severable, and the unconstitutionality or invalidity of  
126 one portion shall not affect any other portion.

**§31-1-9. Time of organization.**

1 When a certificate of incorporation is issued hereunder,  
2 the incorporators named in the agreement, or a majority  
3 of them, shall appoint the time and place for holding  
4 a general meeting of the stockholders or members, as  
5 the case may be, to elect a board of directors or other  
6 managing body, make by-laws, and transact any other  
7 business which may lawfully be done by such stock-  
8 holders or members in general meeting. The time ap-  
9 pointed for such meeting shall not be more than six  
10 months from the date of the certificate and at least two  
11 weeks' notice shall be given by mailing a copy to each  
12 subscriber, or by advertisement, as hereinafter provided,  
13 unless notice is waived as hereinafter provided. If notice  
14 is given by advertisement, such notice shall be published  
15 as a Class II legal advertisement in compliance with the  
16 provisions of article three, chapter fifty-nine of this  
17 code, and the publication area for such publication shall

18 be the county in which the principal office of the corpo-  
19 ration is located.

**§31-1-13a. Reduction of capital by resolution of stockholders.**

1 Every corporation of this state heretofore or hereafter  
2 incorporated may reduce its capital at any time and in  
3 the manner herein provided, by a resolution or resolu-  
4 tions adopted by a majority vote of all of the shares of  
5 capital stock of the corporation entitled to vote, at a  
6 meeting of the stockholders called for that purpose by  
7 notice given as provided by the by-laws of the corpo-  
8 ration, or in the absence of a provision in the by-laws  
9 for such notice, in the manner provided in this article.  
10 The president or a vice president of the corporation,  
11 under his signature and the seal of the corporation, shall  
12 certify the resolution or resolutions and the fact and  
13 manner of the adoption of the same, and of the assenting  
14 of all stockholders, the consent of whom is required  
15 under this section for such reduction of capital, to  
16 the secretary of state, who shall issue his certificate  
17 reciting such resolution, corporate action and facts certi-  
18 fied in like manner as an original certificate of in-  
19 corporation and transmit the same to the corporation.  
20 Such certificate or a certified copy thereof shall be re-  
21 corded and received in evidence as provided for the re-  
22 cordation and admission in evidence of an original certi-  
23 ficate of incorporation or a certified copy of such original.  
24 Such certificate shall declare the reduction of capital as  
25 in effect from the date thereof. No such reduction, how-  
26 ever, shall be made in the capital of the corporation un-  
27 less the assets of the corporation remaining after such  
28 reduction are sufficient to pay any debts, the payment  
29 of which shall not have been otherwise provided for and  
30 the certification of said president and vice president  
31 shall so state.

32 Such reduction of the capital of the corporation may be  
33 effected by retiring or reducing the outstanding shares  
34 of any class or by drawing the necessary number of the  
35 outstanding shares of any class by lot for retirement,  
36 or by the exchange by the holders of outstanding shares  
37 of any class of the shares of such class held by them

38 for a decreased number of shares of stock of the same  
39 or of a different class of stock, or by the exchange of  
40 shares having par value for share having no par value,  
41 or of shares without par value for shares with par  
42 value, or by reducing (in conjunction with appropriate  
43 action under section eleven of this article) the par value  
44 of the shares of any class of stock having par value, or  
45 where the amount of capital represented by shares of  
46 stock having par value exceeds such par value, by re-  
47 ducing the amount of capital represented by such shares  
48 by an amount not greater than such excess, or by re-  
49 ducing the amount of capital represented by shares of  
50 stock having no par value, or, in case the capital shall  
51 have been increased by the transfer thereto from surplus  
52 and the transfer shall not have been made in respect of  
53 any designated class or classes of stock, by retransferring  
54 to surplus all or any part of the amount by which capital  
55 shall have been so increased, or by the purchase of shares  
56 for retirement, either pro rata from all holders of shares  
57 of that class of stock or by purchasing such shares from  
58 time to time in the open market or at private sale in  
59 both cases at not exceeding such price or prices as may  
60 be fixed or approved by the stockholders entitled to vote  
61 upon the reduction of capital to be effected in that  
62 manner, or by retiring shares owned by the corporation.  
63 If such reduction of capital of the corporation be effected  
64 by retiring shares, then, if the resolution or resolutions  
65 of stockholders above referred to shall so provide, an  
66 amount not exceeding that part of the capital of the  
67 corporation represented by such shares may be charged  
68 against or paid out of the capital of the corporation in  
69 respect of such shares.

70 When any corporation shall decrease the amount of  
71 its capital as hereinbefore provided, the above-mentioned  
72 certificate of the secretary of state shall be published  
73 by the corporation as a Class II legal advertisement  
74 in compliance with the provisions of article three, chapter  
75 fifty-nine of this code, and the publication area for such  
76 publication shall be the county in which the principal  
77 office of the corporation is located. The first publication  
78 shall be made within fifteen days after the issuance of

79 such certificate. In default thereof the directors of the  
 80 corporation shall be jointly and severally liable to any  
 81 creditors of the corporation who shall suffer loss by  
 82 reason of the non-compliance with the provisions of this  
 83 section and the stockholders shall be similarly liable up  
 84 to the amount of such sums as they may respectively  
 85 receive of the amount so reduced: *Provided*, That no such  
 86 decrease of capital shall release the liability of any stock-  
 87 holder, whose shares have not been fully paid, for debts  
 88 of the corporation theretofore contracted.

89 If the principal office of any corporation mentioned in  
 90 this section is not located within West Virginia, the  
 91 publication area for the notice provided by the fore-  
 92 going paragraph shall be any county in this state in  
 93 which it has an office or does business; and if it neither  
 94 has any office nor does any business in any county in  
 95 this state, then the publication area for such notice shall  
 96 be the county of this state wherein the seat of govern-  
 97 ment is located.

**§31-1-21. Time and place of corporate meetings; notice; quo-  
 rum.**

1 The stockholders and/or directors of any corporation  
 2 created under the laws of this state may hold all regu-  
 3 lar, annual and special meetings for the transaction of  
 4 the lawful business of the corporation, including the first  
 5 general meeting for purposes of organization, and keep  
 6 the principal office of such corporation, either in or out  
 7 of this state. Regular meetings of the stockholders shall  
 8 be held at such time and place as the by-laws may pre-  
 9 scribe, or if there be no such by-laws, then annually on  
 10 the fourth Tuesday of January, at eleven o'clock in the  
 11 forenoon, at the principal office of the company. Notice  
 12 of regular and special meetings shall be given as re-  
 13 quired by the by-laws, and if none is prescribed therein,  
 14 then by mailing to each stockholder, at least ten days  
 15 prior to the date of the meeting, a written notice thereof;  
 16 or by publication of such notice as a Class II legal adver-  
 17 tisement in compliance with the provisions of article  
 18 three, chapter fifty-nine of this code, and the publication  
 19 area for such publication shall be the county of the prin-  
 20 cipal office or place of business of the corporation. Special



21 meetings may be held at such places and after such  
 22 notice as the by-laws prescribe, or, if none, then at the  
 23 same place and after the same notice as a regular meet-  
 24 ing. Special meetings of the stockholders may be called  
 25 by the board of directors, the president and secretary,  
 26 or any number of stockholders owning in the aggregate  
 27 at least one tenth of the number of shares outstanding.  
 28 The notice of special meetings shall state the business  
 29 to be transacted, and no business other than that included  
 30 in the notice or incidental thereto shall be transacted at  
 31 such meeting.

32 Regular meetings of the board of directors may be  
 33 held at such time and place as the by-laws may pre-  
 34 scribe, or the board may from time to time designate  
 35 by resolution.

36 Special meetings of the board of directors may be  
 37 called by the president, vice president, any two direc-  
 38 tors of a stock or nonstock corporation, or by any two  
 39 members of a nonstock corporation. Notice of such  
 40 meetings shall be given as required by the by-laws, and  
 41 if none is prescribed therein, then by mailing a written  
 42 notice to each director at his last known postoffice ad-  
 43 dress at least five days before the time of the meeting.

44 A quorum of the stockholders shall consist of at least  
 45 a majority of all of the shares of stock entitled to vote.  
 46 Unless otherwise prescribed in the by-laws, or provided  
 47 in the charter, a quorum of the directors shall consist of  
 48 a majority of the board of directors. Any number less  
 49 than a quorum present may adjourn any stockholders'  
 50 or directors' meeting until a quorum is present: *Provided,*  
 51 *however,* That a quorum of the stockholders or members  
 52 of a cooperative association organized under the pro-  
 53 visions of this chapter shall consist of at least fifteen per  
 54 cent of such stockholders or members.

#### §31-1-34. Forfeiture of stock and amount paid.

1 When any stockholder fails to pay any installment or  
 2 call upon his stock which may have been properly as-  
 3 sessed thereon by the directors, at the time when such  
 4 payment is due, the directors may collect the amount  
 5 of such installment or call, or any balance thereof re-

6 maining unpaid, from the stockholder by an action at  
 7 law, or they may sell at public sale such part of the  
 8 shares of such delinquent stockholder as will pay all  
 9 assessments then due from him with interest and all in-  
 10 cidental expenses, and shall transfer the shares so sold  
 11 to the purchaser, who, upon payment of the same, shall  
 12 be entitled to a certificate therefor. Notice of the time  
 13 and place of such sale and of the sum due on each share  
 14 shall be given by publication thereof as a Class II legal  
 15 advertisement in compliance with the provisions of  
 16 article three, chapter fifty-nine of this code, and the pub-  
 17 lication area for such publication shall be the county  
 18 wherein the principal office or place of business of such  
 19 corporation is located. Such notice shall be so published  
 20 within fourteen consecutive days next preceding the sale.  
 21 Such notice shall also be mailed by the treasurer of the  
 22 corporation to such delinquent stockholder at his last  
 23 known postoffice address at least twenty days before such  
 24 sale. If no bidder can be had to pay the amount due on  
 25 the stock, and if the amount is not collected by an action  
 26 at law, brought within the county or city wherein the  
 27 principal office of such corporation is located, or in which  
 28 the delinquent stockholder resides, within six months  
 29 from the date of the bringing of such action at law, such  
 30 stock shall be forfeited to the corporation and the amount  
 31 previously paid in by the delinquent on the stock shall be  
 32 forfeited to the corporation. A sale of the shares of stock  
 33 may be made without resorting to the action at law  
 34 authorized in this section.

**§31-1-37. Certificate for stock; lost or destroyed certificate.**

1 Every holder of stock in a corporation shall be entitled  
 2 to have a certificate, signed by, or in the name of the  
 3 corporation by, the president or a vice president and  
 4 the treasurer or an assistant treasurer, or the secretary  
 5 or an assistant secretary of such corporation, certifying  
 6 the number of shares owned by him in such corpora-  
 7 tion: *Provided, however,* That, where such certificate is  
 8 signed by a transfer agent or an assistant transfer agent  
 9 or by a transfer clerk acting on behalf of such corpora-  
 10 tion and a registrar, the signature of any such president,  
 11 vice president, treasurer, assistant treasurer, secretary

12 or assistant secretary may be facsimile. In case any  
13 officer or officers who shall have signed, or whose fac-  
14 simile signature or signatures shall have been used on,  
15 any such certificate or certificates shall cease to be such  
16 officer or officers of such corporation, whether because  
17 of death, resignation or otherwise, before such certificate  
18 or certificates shall have been delivered by such corpo-  
19 ration, such certificate or certificates may nevertheless be  
20 adopted by such corporation and be issued and delivered  
21 as though the person or persons who signed such certifi-  
22 cate or certificates or whose facsimile signature shall  
23 have been used thereon had not ceased to be such officer  
24 or officers of such corporation.

25 All certificates for stock which is given any preference,  
26 priority or preferred rights over any other shares as to  
27 dividends or otherwise, or which contains any limitation  
28 or restriction of voting or other rights, shall contain  
29 an accurate statement of all such preferences, priorities  
30 or preferred rights, restrictions and limitations. No  
31 certificate for any share of stock shall be issued or de-  
32 livered to the stockholder until his subscription or sale  
33 price for such share is paid in full.

34 A certificate may be issued in lieu of a certificate lost  
35 or destroyed upon such terms and conditions as may  
36 be prescribed by the by-laws of the corporation, upon  
37 compliance with such terms and conditions by the per-  
38 son who appears by the books of the corporation to be  
39 the owner of the lost or destroyed certificate; and the  
40 owner may require the officers of the corporation to  
41 issue a certificate in the place and stead of one lost or  
42 destroyed upon the following conditions: (a) He shall  
43 file with the officers of the corporation, first, an affidavit  
44 setting forth the time, place and circumstances of the  
45 loss to the best of his knowledge and belief; second,  
46 proof of his having advertised the loss as a Class II legal  
47 advertisement in compliance with the provisions of article  
48 three, chapter fifty-nine of this code, for which adver-  
49 tisement the publication area shall be the county in  
50 which is located the principal office of the corporation;  
51 (b) he shall execute and deliver to the corporation a  
52 bond with good security in a penalty of at least the value

53 of the shares of stock represented by the lost or destroyed  
54 certificate conditioned to indemnify the corporation and  
55 all persons whose rights may be affected by the issuance  
56 of the new certificate against any loss in consequence  
57 of the new certificate being issued: *Provided, however,*  
58 That a new certificate may be issued in lieu of the one  
59 lost, in the discretion of the board of directors, without  
60 requiring the publication of the above notice or the giving  
61 of a bond.

62 Whenever a certificate for shares of the capital stock  
63 of a corporation of this state which has heretofore been  
64 or may hereafter be issued to a person as agent or trustee,  
65 and as to which the stock ledger of such corporation does  
66 not disclose the principal or cestui que trust, is lost or  
67 destroyed, and no person, except the administrator of  
68 the person to whom such certificate was issued as agent  
69 or trustee, has made claim to it against the corporation  
70 for more than twenty-five years, and such corporation  
71 has been a going concern for more than ten years during  
72 such period of twenty-five years, and has declared five  
73 or more dividends upon its capital stock during the  
74 last twenty-five years, and such dividends declared upon  
75 the shares of stock alleged to be lost or destroyed have  
76 not been paid to any person, and such agent or trustee,  
77 the holder of such certificate, is dead, then, and in such  
78 case, the administrator of the person to whom the  
79 alleged lost or destroyed certificate was issued as agent  
80 or trustee aforesaid, and who is still the owner of record  
81 of such certificate, shall, after ten days' written notice to  
82 such corporation demanding the issuance of a new  
83 certificate of stock to him as such administrator, be  
84 entitled to receive, in his name as administrator, such  
85 new certificate in place of the one alleged to be  
86 lost or destroyed, and such administrator shall be en-  
87 titled to receive all dividends that may have been de-  
88 clared upon such certificate or number of shares  
89 of stock alleged to be lost or destroyed and remaining  
90 unpaid, under and upon the following conditions: (a)  
91 If such administrator of such holder of record as agent  
92 or trustee of such certificate of stock has given the afore-  
93 said ten days' notice in writing to the corporation, he

94 shall cause to be advertised, as hereinafter provided,  
95 the fact that he gave to such corporation the required  
96 ten days' notice in writing; that more than twenty-five  
97 years prior thereto a certificate for the number of shares  
98 of the capital stock of such corporation was issued to  
99 his intestate as agent or trustee; that it is unknown to  
100 him who such principal or cestui que trust may be;  
101 that no person except the administrator of such agent  
102 or trustee has made claim to such certificate for more  
103 than twenty-five years; that such certificate has been  
104 lost or destroyed; that such stock represented by the  
105 certificate lost or destroyed and all dividends payable  
106 in respect thereto are claimed by such administrator  
107 for the purpose of distributing and accounting for the  
108 same to the person or persons entitled thereto; that at  
109 least two weeks after the last publication thereof such  
110 administrator, unless such corporation issues and delivers  
111 unto him such new certificate in the place of the one  
112 lost or destroyed and pays over and delivers to him as  
113 such administrator all dividends payable in respect  
114 thereto, will institute suit for the same; and such notice  
115 shall warn any and all persons, except such administrator,  
116 to produce to such corporation, on or before the ex-  
117 piration of two weeks after the last publication thereof  
118 as aforesaid, a statement in writing under oath of such  
119 claimant or his administrator, of the origin, circumstances  
120 and grounds upon which his claim as principal or cestui  
121 que trust to such stock and dividends is asserted, as well  
122 as the reasons for his delay in asserting title thereto;  
123 (b) if within such period of time for producing such  
124 certificate to such corporation such statement, satisfac-  
125 tory to such corporation, be not forthcoming, such  
126 corporation shall issue and deliver to such admin-  
127 istrator a new certificate of stock in the place and  
128 stead of that alleged to be lost or destroyed and also  
129 deliver and pay over to him all dividends payable in  
130 respect thereto. The notice required to be published  
131 by this paragraph shall be published as a Class II legal  
132 advertisement in compliance with the provisions of  
133 article three, chapter fifty-nine of this code, and the  
134 publication area for such publication shall be the

135 county wherein he was granted his letters of admin-  
136 istration.

137 Such issuance and delivery of a new certificate and  
138 the payment of such dividends by the corporation to  
139 such administrator shall relieve such corporation from  
140 any and all liability whatsoever to any person claiming  
141 in any capacity such shares of stock represented by the  
142 certificates lost or destroyed or such dividends in respect  
143 thereto.

144 The procedure provided in this section is cumulative  
145 and not exclusive, and nothing herein contained shall  
146 be taken or construed as limiting in any way the right  
147 of any party who claims to be entitled to a new certifi-  
148 cate of stock in the place of a lost or destroyed certificate,  
149 or the accumulated dividends thereon, which was issued  
150 in the manner hereinbefore provided, to have his or its  
151 rights to such new certificate and dividends determined  
152 and adjudicated without regard to this section by resort  
153 to any court of law or equity having jurisdiction to  
154 determine and adjudicate such rights, before the corpo-  
155 ration shall have paid such dividends and issued a new  
156 certificate under the requirements of this section. The  
157 right to prosecute any suit pending at the time this  
158 article takes effect and growing out of the loss of a cer-  
159 tificate of stock issued in the name of the trustee or  
160 agent shall not be impaired by anything herein contained.

**§31-1-63. Consolidation or merger; proceedings for.**

1 Any two or more corporations organized under the  
2 provisions of this chapter, or existing under the laws  
3 of this state, for the purpose of carrying on any kind of  
4 business, may consolidate or merge into a single corpo-  
5 ration which may be any one of such constituent cor-  
6 porations or a new corporation to be formed by means  
7 of such consolidation or merger as shall be specified  
8 in the agreement hereinafter required. The directors,  
9 or a majority of them, of such corporations as desire  
10 to consolidate or merge, may enter into an agreement  
11 signed by them and under the corporate seals of the  
12 respective corporations, prescribing the terms and condi-  
13 tions of consolidation or merger, the mode of carrying

14 the same into effect, and stating such other facts re-  
15 quired or permitted by the provisions of this article  
16 to be set out in an agreement of incorporation, as can  
17 be stated in the case of a consolidation or merger, stated  
18 in such altered form as the circumstances of the case  
19 require, as well as the manner of converting the shares  
20 of each of the constituent corporations into shares of  
21 the consolidated or merged corporation, with such other  
22 details and provisions as are deemed necessary.

23 Such agreement shall be submitted to the stockholders  
24 of each constituent corporation, at a meeting thereof,  
25 called separately for the purpose of taking the same  
26 into consideration; of the time, place and object of which  
27 meeting due notice shall be given by publication as a  
28 Class II legal advertisement in compliance with the pro-  
29 visions of article three, chapter fifty-nine of this code,  
30 and the publication area for such publication shall be the  
31 county wherein each such corporation either has its  
32 principal office or conducts its business. A copy of such  
33 notice shall also be mailed to the last known postoffice  
34 address of each stockholder of each such corporation,  
35 at least twenty days prior to the date of such meeting:  
36 *Provided, however,* That in the consolidation or merger  
37 of banking institutions as defined in this chapter, in  
38 the case of emergency, and upon the order of the com-  
39 missioner of banking, the meeting may be held upon  
40 at least twelve hours' notice sent by mail or telegraph  
41 to the last known postoffice address of each stockholder,  
42 and without publication.

43 At any such stockholders' meeting of any corporation  
44 said agreement shall be considered and a vote by ballot,  
45 in person or by proxy, taken for the adoption or rejec-  
46 tion of the same, each share entitling the holder thereof  
47 to one vote; and if the votes of stockholders of each such  
48 corporation representing two thirds of the total num-  
49 ber of shares of its capital stock then issued and out-  
50 standing shall be for the adoption of such agreement,  
51 then that fact shall be certified on such agreement by  
52 the secretary of each such corporation under the seal  
53 thereof; and the agreement so adopted and certified  
54 shall be signed by the president and secretary of each

55 of such corporation under the corporate seals thereof and  
56 acknowledged by the president of each of such corpo-  
57 rations before any officer authorized by the laws of this  
58 state to take acknowledgments of deeds to be the re-  
59 spective act, deed and agreement of each of such corpo-  
60 rations, and the agreement so certified and acknowledged  
61 shall be filed in the office of the secretary of state, and  
62 shall thence be taken and deemed to be the agreement  
63 and act of consolidation or merger of the said corporations;  
64 and a copy of such agreement and act of consolidation  
65 or merger, duly certified by the secretary of state under  
66 the seal of his office, shall also be recorded in the offices  
67 of the clerks of the county courts of the counties of this  
68 state in which the respective corporations so consolidat-  
69 ing or merging shall have their original certificates of  
70 incorporation recorded, if any, or if any of the corpo-  
71 rations shall have been specially created by a public  
72 act of the legislature, then such agreement shall be  
73 recorded in the county where such corporation shall have  
74 had its principal place of business, if any, and such rec-  
75 ord, or a certified copy thereof, shall be evidence of the  
76 agreement and act of consolidation or merger of such  
77 corporations, and of the observance and performance  
78 of all acts and conditions necessary to have been ob-  
79 served and performed precedent to such consolidation  
80 or merger.

81 When an agreement shall have been signed, acknowl-  
82 edged, filed and recorded as herein required, for all  
83 purposes of the laws of this state, the separate exist-  
84 ence of all the constituent corporations, parties to said  
85 agreement, or of all such constituent corporations except  
86 the one into which the other or others of such constit-  
87 uent corporations have been merged, or consolidated,  
88 as the case may be, shall cease and the constituent  
89 corporations shall become a new corporation, or be  
90 merged into one of such corporations, as the case may  
91 be, in accordance with the provisions of said agreement,  
92 possessing all the rights, privileges, powers, franchises  
93 and trust and fiduciary duties, powers and obligations,  
94 as well of a public as of a private nature, and being sub-  
95 ject to all the restrictions, disabilities and duties of each



96 of such corporations so consolidated or merged, and all  
97 and singular the rights, privileges, powers, franchises,  
98 and trust and fiduciary rights, powers, duties and obli-  
99 gations, of each of said corporations; and all property,  
100 real, personal and mixed, and all debts due to any of  
101 said constituent corporations on whatever account, as  
102 well for stock subscriptions as all other things in action  
103 or belonging to each of such corporations shall be vested  
104 in the corporation resulting from or surviving such  
105 consolidation or merger; and all property, rights, privi-  
106 leges, powers, and franchises, and all and every other  
107 interest shall be thereafter as effectually the property  
108 of the resulting or surviving corporation as they were  
109 of the several and respective constituent corporations;  
110 and the title to any real estate, whether vested by deed  
111 or otherwise, under the laws of this state, vested in any  
112 of such constituent corporations, shall not revert or be  
113 in any way impaired by reason of this chapter: *Provided,*  
114 *however,* That all rights of creditors and all liens upon  
115 any property of any of said constituent corporations  
116 shall be preserved unimpaired, and all debts, liabilities  
117 and duties of the respective constituent corporations shall  
118 thenceforth attach to said resulting or surviving cor-  
119 poration, and may be enforced against it to the same  
120 extent as if said debts, liabilities and duties had been  
121 incurred or contracted by it.

**§31-1-80. Procedure upon voluntary dissolution of domestic corporation.**

1 At any time during the fiscal year in which any cor-  
2 poration may be created and before it engages in the  
3 transaction of business and acquires any property other  
4 than the amounts paid in on subscriptions to its stock,  
5 the incorporators may abandon the corporation and by  
6 indorsing and signing a statement of the intention so to  
7 do on the certificate and returning the same to the secre-  
8 tary of state, the secretary of state on receipt thereof  
9 shall cancel and preserve such certificate of incorpora-  
10 tion and the corporation created thereby shall be dis-  
11 solved. If such charter shall have been recorded in the  
12 office of the clerk of the county court of any county in

13 the state, the incorporators shall execute and acknowl-  
14 edge a writing setting forth the facts of the surrender  
15 and dissolution of the corporation and cause such writing  
16 to be recorded in the office of the clerk of the county  
17 court in which the certificate of incorporation is re-  
18 corded, and the clerk shall note on the margin of the  
19 record book in which the certificate of incorporation is  
20 engrossed the fact of the dissolution of the corporation.

21 The stockholders at any time may resolve to discon-  
22 tinue the business of the corporation, at least sixty per  
23 cent of the shares of capital stock entitled to vote being  
24 present at the meeting and voting in favor of such dis-  
25 continuance, and may divide the property and assets  
26 among those entitled thereto after paying all the debts  
27 and liabilities of the corporation. A copy of the resolu-  
28 tion shall be certified by the president, or a vice presi-  
29 dent under his hand and the seal of the corporation, to  
30 the secretary of state, who shall file the same in his  
31 office and shall issue a certificate under his hand and  
32 the great seal of the state reciting such resolution and  
33 certifying the dissolution of the corporation, but such  
34 certificate of dissolution shall not be issued unless and  
35 until the corporation has paid into the state treasury any  
36 amount it may owe as license tax, including interests  
37 and penalties. The officers of the corporation shall cause  
38 the certificate of dissolution to be recorded in the office  
39 of the clerk of each county court of the state in which  
40 the certificate of incorporation is recorded and the clerk  
41 of the court shall note on the margin of the record book  
42 in which the certificate of incorporation is engrossed the  
43 fact and the date of the dissolution of the corporation.  
44 As soon as practicable after the passage of such resolu-  
45 tion the directors and officers of the corporation shall  
46 cause the corporate assets to be applied to the payment  
47 of the corporate debts and liabilities, and no division of  
48 the assets among the stockholders shall be made until  
49 ample provision has been made for the payment of all  
50 the debts and liabilities and until notice of the resolution  
51 of dissolution shall have been published as a Class II legal  
52 advertisement in compliance with the provisions of ar-  
53 ticle three, chapter fifty-nine of this code, and the publi-

54 cation area for such publication shall be the county in  
 55 which the principal office or place of business of the cor-  
 56 poration is located. The right of the state or of any  
 57 county, district or city therein for any license taxes ac-  
 58 crued unto the date of dissolution, or any other taxes or  
 59 claims, or the remedies for the collection thereof, shall  
 60 not be impaired by the dissolution of the corporation.

**§31-1-84. Surrender by foreign corporation of authority to do business.**

1 If any foreign corporation desires no longer to hold  
 2 property and transact business in this state, it may sur-  
 3 render to the state its authority therefor, in the follow-  
 4 ing manner: It shall publish a notice of its intention to  
 5 withdraw from the state, such notice to be published as  
 6 a Class II legal advertisement in compliance with the  
 7 provisions of article three, chapter fifty-nine of this code,  
 8 and the publication area for such publication shall be  
 9 some county in the state where it carries on its business.  
 10 After such publication it shall make application to the  
 11 secretary of state for a certificate of withdrawal, which  
 12 application shall be signed by the president of the cor-  
 13 poration, sealed with its corporate seal, and attested by  
 14 its secretary, and be accompanied by a copy of such  
 15 notice and the publisher's certificate of such publication.  
 16 The secretary of state shall file the same in his office  
 17 and issue to such corporation a certificate of withdrawal;  
 18 but such certificate of withdrawal shall not be issued  
 19 unless and until the corporation has paid into the state  
 20 treasury any amount it may owe as license tax, includ-  
 21 ing all interest and penalties. The issuance of such cer-  
 22 tificate of withdrawal shall not relieve the corporation  
 23 of any debt or obligation due from it to the state or any  
 24 resident thereof.

**ARTICLE 2. RAILROAD COMPANIES.**

**§31-2-15. Effect of such sale.**

1 The corporation created by or in consequence of such  
 2 sale and conveyance shall succeed to all such franchises,  
 3 rights and privileges, but not immunity from taxation,  
 4 and perform all such duties as would have been had, or

5 should have been performed by the first company, but  
 6 for such sale and conveyance; save only, that the cor-  
 7 poration so created shall not be entitled to debts due to  
 8 the first company, and shall not be liable for any debts  
 9 of, or claims against the first company, which may not  
 10 be expressly assumed in the contract of purchase; and  
 11 that the whole profits of the business done by such cor-  
 12 poration shall belong to such purchaser and his assigns.  
 13 His interest in the corporation shall be personal estate,  
 14 and he or his assigns may create so many shares of stock  
 15 therein as he or they may think proper, not exceeding  
 16 together the amount of stock in the first company at the  
 17 time of the sale, and assign the same in a book kept for  
 18 that purpose. Such shares shall thereupon be on the  
 19 footing of shares in corporations generally, except only  
 20 that the first meeting of the stockholders shall be held  
 21 on such day and at such place as shall be fixed by such  
 22 purchaser, of which notice shall be published as a Class  
 23 II legal advertisement in compliance with the provisions  
 24 of article three, chapter fifty-nine of this code, and the  
 25 publication area for such publication shall be each county  
 26 in the state wherein such corporation may do business.

### **ARTICLE 3. BOOM COMPANIES.**

#### **§31-3-2. Powers; boomage; lien; sale for tolls; free passage of logs.**

1 Every such corporation shall, after erecting its boom,  
 2 have the exclusive privilege of maintaining a suitable  
 3 boom or booms, with or without piers, dam or dams,  
 4 across the stream designated, within two miles above its  
 5 principal boom, for the purpose of stopping and securing  
 6 boats, rafts, saw logs and other timber of value, but such  
 7 boom or booms shall be so constructed as to permit boats,  
 8 rafts and other timber, when desired by the owner, to pass  
 9 them without unavoidable delay and without paying toll,  
 10 boomage or other charges, and may erect their booms  
 11 on the rivers and other streams, and may dredge and  
 12 clear the channels thereof, and remove obstructions  
 13 therefrom; and such corporation may build sawmills on  
 14 lands acquired in any other way than by condemnation;  
 15 and may manufacture and sell lumber and construct

16 tram-railways and dams, and do such other work as may  
17 be necessary for the purpose of getting logs and lumber  
18 to, down and from the river and its branches, on which  
19 such boom is located; and, in the event the lands neces-  
20 sary for such tram-railways can not be purchased from  
21 the owner or owners thereof at a reasonable price, then  
22 such corporation may have the same condemned for such  
23 purpose in the manner now provided by law for cases  
24 of a similar nature: *Provided*, That nothing in this sec-  
25 tion shall be so construed as to prevent any boom com-  
26 pany from using water surface for two miles below its  
27 boom for assorting and bunching its own and other boats,  
28 rafts, saw logs and other timber of value, and that no  
29 company shall so construct its boom as to deprive another  
30 company of such right, nor shall any boom company which  
31 may construct a boom within two miles below a boom  
32 heretofore constructed have exclusive privileges of the  
33 water or stream above such other boom.

34 Boomage or toll shall be charged at a rate not less than  
35 twenty-five cents nor more than one dollar per thousand  
36 feet board measure; or not less than twenty nor more  
37 than eighty cents per one hundred cubic feet, except as  
38 hereinafter provided, which rate shall be determined by  
39 a commission in the manner following, to-wit: The cir-  
40 cuit court of each county, the timber of which can be  
41 floated into the boom, or the judge of such court in va-  
42 cation, shall appoint one person, and such corporation  
43 shall appoint a person and if such persons are unable  
44 to agree, they shall choose another person. None of the  
45 persons so selected shall be a stockholder or interested  
46 in such corporation. The persons so appointed and chosen  
47 shall be versed in the timber and lumber business, and  
48 be qualified to make such measurements and calculations  
49 as may be necessary. Persons so appointed or chosen  
50 shall constitute a commission, whose duty it shall be to  
51 fix the rates of boomage which the corporation may  
52 charge; and in determining this rate they shall take into  
53 consideration the ease or difficulty, as the case may be,  
54 of booming logs, etc., in such boom, and also any extra-  
55 ordinary expenditure of money which the corporation  
56 may have made to facilitate its business; and such com-

57 missioner shall fix a rate, which shall be in their judg-  
58 ment a fair and just compensation to the corporation for  
59 the capital invested and labor performed in booming  
60 logs, timber, etc., in the limits above described. And  
61 such commissioners may, in their discretion, or when  
62 requested to do so by parties interested, fix the separate  
63 rate which shall be charged for logs, ties, lumber, staves,  
64 or any other specific kind of lumber or timber which  
65 may be floated in such boom, by the hundred, thousand,  
66 or by bulk, as the case may be. The report of such com-  
67 missioners shall be filed in the office of the clerk of the  
68 circuit court of each county in which a commissioner  
69 was appointed, and published within ten days after the  
70 report has been agreed upon as a Class I legal adver-  
71 tisement in compliance with the provisions of article  
72 three, chapter fifty-nine of this code, and the publication  
73 area for such publication shall be each county interested  
74 in such boom. Should the corporation or any interested  
75 party not be satisfied with the report of the commission-  
76 ers, they may take exceptions thereto, which exceptions  
77 may be heard by the judge of the circuit court of any  
78 county interested, in term time or in vacation, and, if  
79 it appear to the court or judge that the rates established  
80 by the commissioners are unjust, either to the corpora-  
81 tion or private persons, such report may be set aside and  
82 a new commission appointed. But unless exceptions are  
83 taken to the report of such commissioners within sixty  
84 days after the filing of the same, the report shall be taken  
85 as confirmed, and be binding upon all parties interested.  
86 Any boom company organized under the provisions of  
87 this chapter, or any party interested, may, if it so desire,  
88 ask for a commission once every five years, to revise the  
89 rate of boomage; such commission to be constituted as  
90 provided for in this section. When the stream boomed  
91 lies wholly in one county, there shall be two commis-  
92 sioners appointed by the circuit court of that county,  
93 who, together with the one appointed by the corporation,  
94 as hereinbefore provided, shall constitute such commis-  
95 sion. If any controversy shall arise between such cor-  
96 poration and any person or persons having timber or  
97 other lumber in such boom, on account of such lumber,

98 or the rates of boomage, the commissioners authorized  
99 to be appointed by this section may, if the parties inter-  
100 ested and such corporation so desire it, act as arbitrators  
101 to settle the same in such manner and with such result  
102 as the law provides in other cases of arbitration. The  
103 commissioners appointed under this section shall receive  
104 three dollars per day for their services, to be paid by  
105 such corporation, except that, after the rates have been  
106 fixed, any subsequent commission shall be paid by the  
107 party asking it.

108 Such corporation shall have a lien on all saw logs and  
109 other timber and lumber thus boomed for the payment  
110 of all tolls for booming, until the same shall be paid.

111 If any timber shall have been boomed securely, as  
112 aforesaid, and no person shall appear to claim the same,  
113 and pay the tolls thereon, within ninety days, it shall  
114 be lawful for the corporation, after advertising the same  
115 as hereinafter provided, reciting the marks, if any, to  
116 make application to any justice of the peace of such  
117 county, whose duty it shall be, upon proper proof of the  
118 publication of such notice, to direct a sale of such tim-  
119 ber, and designate some officer or other person to make  
120 such sale, either by public auction or by private sale,  
121 as to the justice shall seem most advantageous to the  
122 parties interested; and at any time within a year from  
123 such sale, the owner shall be entitled to receive the pro-  
124 ceeds thereof, after deducting the toll and expenses; but  
125 if not claimed within one year, the proceeds shall inure  
126 to and be vested in the general school fund. Such ad-  
127 vertisement shall be published as a Class II legal adver-  
128 tisement in compliance with the provisions of article  
129 three, chapter fifty-nine of this code, and the publication  
130 area for such publication shall be each county in which  
131 such boom or booms are located.

132 Where several companies are operating on the same  
133 stream, the upper companies shall pass free of charge  
134 through or around their booms, with as little delay as  
135 possible, all logs, lumber, etc., distinctly marked as be-  
136 longing to or in care of the boom or booms below them.

**ARTICLE 4. BANKING INSTITUTIONS.****§31-4-8. Certificate as to capital to be filed annually before exercising trust powers; penalty; notice of failure to comply.**

1 No banking institution shall exercise any of the trust  
 2 powers mentioned in the preceding section until it shall  
 3 have filed with the secretary of state a duly authenticated  
 4 certificate, showing the unimpaired capital of such com-  
 5 pany to be at least one hundred thousand dollars and  
 6 a like duly authenticated certificate shall be filed with  
 7 the secretary of state and a copy thereof with the com-  
 8 missioner of banking in the month of January of each  
 9 year thereafter. If any banking institution shall exer-  
 10 cise, or attempt to exercise, any such powers or rights  
 11 without having complied with the requirements of this  
 12 section as to the filing of such certificate, it shall be guilty  
 13 of a misdemeanor, and, upon conviction thereof, shall  
 14 be fined not more than five hundred dollars; and in every  
 15 such case, whether or not there shall have been a prose-  
 16 cution or conviction of the company so offending, the  
 17 commissioner of banking, being satisfied of the facts,  
 18 may publish a notice of the fact that it has failed to  
 19 comply with the requirements of this section and is  
 20 therefore not entitled to exercise the trust powers and  
 21 rights mentioned in the preceding section. In the event  
 22 a notice is published as aforesaid, it shall be published  
 23 as a Class II legal advertisement in compliance with the  
 24 provisions of article three, chapter fifty-nine of this code,  
 25 and the publication area for such publication shall be  
 26 the county in which such institution is located.

**§31-4-16. Liability of stockholders.**

1 Each stockholder of any banking institution, organized  
 2 under the laws of this state, in addition to the liability  
 3 imposed upon him as a stockholder of a corporation under  
 4 the provisions of article one of this chapter, shall be liable  
 5 to the creditors of the banking institution, on obligations  
 6 accruing while he is a shareholder, to an amount equal  
 7 to the par value of the shares of stock held by him;  
 8 and no sale or transfer of the shares of stock  
 9 made by any such stockholder, after the liability of



10 the banking institution originated or accrued, shall  
11 relieve the stockholder from the liability imposed by  
12 this section. Any proceeding in equity to enforce the  
13 liability of stockholders imposed by this section may be  
14 prosecuted severally against any one stockholder or  
15 jointly against any number of stockholders: *Provided*,  
16 That the additional liability imposed upon such stock-  
17 holders by this section shall not apply on and after the  
18 first day of July, one thousand nine hundred thirty-nine,  
19 with respect to any such institution, so long as such insti-  
20 tution, in pursuance of the provisions of chapter seven-  
21 teen, acts of the Legislature, one thousand nine hundred  
22 thirty-five, has its deposits insured by the federal deposit  
23 insurance corporation, or by any other similar federal  
24 instrumentality that may be hereafter created, provided  
25 there shall be such instrumentality in existence and avail-  
26 able for the purpose: *Provided further*, That such addi-  
27 tional liability shall not apply on and after the first day  
28 of July, one thousand nine hundred thirty-nine, with  
29 respect to any banking institution from and after the  
30 time it shall obtain from the commissioner of banking  
31 a certificate setting forth that such institution has, as  
32 ascertained by him, an unimpaired surplus equal to at  
33 least fifty per cent of the authorized capital of such in-  
34 stitution. Upon application by any banking institution  
35 to the commissioner of banking for such certificate, the  
36 commissioner shall ascertain whether such institution has  
37 in fact such unimpaired surplus, and if such unimpaired  
38 surplus be found by him to exist, then he shall issue  
39 such certificate. If impairment of such surplus shall  
40 thereafter occur, such impairment shall not impose fur-  
41 ther or additional liability upon the stockholders of such  
42 institution: *And provided further*, That not less than  
43 three months prior to the first day of July, one thousand  
44 nine hundred thirty-nine, such institution shall have  
45 caused notices of such prospective termination of liabil-  
46 ity to be published as a Class I legal advertisement in  
47 compliance with the provisions of article three, chapter  
48 fifty-nine of this code, and the publication area for such  
49 publication shall be the county in which such institu-  
50 tion is located. If the institution fails to give such notice,

51 as and when above provided, a termination of such addi-  
 52 tional liability may thereafter be accomplished as of the  
 53 date three months subsequent to publication of the notice  
 54 in the manner above provided.

55 Nothing in this section shall affect or impair the author-  
 56 ity of the officers and directors of a banking institution  
 57 to cause to be made good any impairment of the capital  
 58 of such institution, under the provisions of section four-  
 59 teen, article eight of this chapter.

**ARTICLE 8. BUSINESS OPERATIONS AND SUPERVISION OF  
 BANKING INSTITUTIONS, INDUSTRIAL LOAN COM-  
 PANIES AND BUILDING AND LOAN ACCOCIATIONS.**

**§31-8-10. Periodical reports of industrial loan companies and  
 building and loan associations; publication.**

1 Every industrial loan company and building and loan  
 2 association and every other corporation by law placed  
 3 under the supervision of the department of banking and  
 4 not covered in the next following section, engaged in busi-  
 5 ness in this state shall, at least twice a year, at the re-  
 6 quest of the commissioner of banking and as of a date  
 7 named by him, furnish, within fifteen days after such  
 8 request, a statement, verified by its president or secre-  
 9 tary, and approved by three of its directors, in such form  
 10 as may be prescribed by the commissioner of banking,  
 11 showing in detail the actual financial condition and the  
 12 amount of the assets and liabilities of such corporation,  
 13 and shall furnish such other information as to its busi-  
 14 ness and affairs as the commissioner of banking may re-  
 15 quire, which reports, in the same form in which they  
 16 are transmitted to the commissioner of banking, shall  
 17 be printed and circulated among all of the stockholders  
 18 of the corporation or published as a Class I legal adver-  
 19 tisement in compliance with the provisions of article  
 20 three, chapter fifty-nine of this code, and the publica-  
 21 tion area for such publication shall be the county in which  
 22 the corporation is located.

**§31-8-11. Periodical reports of banking institutions; publica-  
 tion.**

1 Every banking institution organized and authorized to  
 2 transact business under this chapter shall make at least

3 four reports each year to the commissioner of banking.  
4 Such reports shall be called for as nearly as conveniently  
5 may be on the dates on which the comptroller of the cur-  
6 rency shall call for reports by national banking associa-  
7 tions, and be of such form and contain such details as  
8 shall be prescribed by the commissioner of banking;  
9 which reports shall be verified by oath of the president  
10 or active vice president and cashier, and attested by the  
11 signature of at least three directors of the banking institu-  
12 tion. Each report shall show in detail, under appropriate  
13 heads, the resources and liabilities of the banking insti-  
14 tution at the close of the business on the date specified  
15 by the banking commissioner, and shall be transmitted  
16 to the office of the department of banking and super-  
17 vision within five days from the receipt of the request  
18 for the same.

19 Such report, in the same form in which it is made  
20 to the commissioner of banking, shall be published  
21 as a Class I legal advertisement in compliance with  
22 the provisions of article three, chapter fifty-nine of  
23 this code, and the publication area for such publication  
24 shall be the county in which the banking institution  
25 is located.

26 In lieu of such report and publication, the commis-  
27 sioner of banking shall have discretion to accept from a  
28 banking institution which is a member of the federal  
29 reserve system a report, and the publication thereof re-  
30 quired of such banking institution by the federal reserve  
31 board or by its agency: *Provided*, That such report shall  
32 show in detail, under appropriate heads, the resources  
33 and liabilities of the banking institution at the close of  
34 business on the day specified by the federal reserve board,  
35 or by its agency, and shall contain such further details  
36 as may be deemed necessary or desirable by the commis-  
37 sioner of banking.

38 Any report and the publication thereof shall be at  
39 the expense of the banking institution, and it shall furnish  
40 to the commissioner of banking such proof of the publica-  
41 tion as may be required by him.

**§31-8-14. Impairment of capital of banking institution forbidden; how remedied.**

1 The officers and directors of a banking institution  
2 organized and authorized to transact business under this  
3 chapter shall not pay out, disburse or withdraw, or per-  
4 mit to be paid out, disburse or withdrawn, in any man-  
5 ner whatever, any part of the capital of the corporation  
6 except in case of merger or consolidation, as hereinafter  
7 provided. Whenever, from any cause, the capital of such  
8 banking institution shall become impaired, it shall be  
9 the duty of the officers and directors of such institution,  
10 forthwith, to cause any such impairment to be made good,  
11 by assessing the amount of the deficiency pro rata on  
12 the shares of the capital stock outstanding, which assess-  
13 ments shall be paid within thirty days after notice  
14 thereof. If any stockholder shall neglect or refuse to  
15 pay the assessment on his shares after thirty days' notice,  
16 it shall be the duty of the board of directors to cause  
17 a sufficient number of his shares of stock to be sold for  
18 cash, at public outcry at the banking room of the banking  
19 institution, to pay the amount of such assessment and  
20 expenses of making the sale. Notice of such sale shall  
21 be published as a Class II legal advertisement in com-  
22 pliance with the provisions of article three, chapter fifty-  
23 nine of this code, and the publication area for such  
24 publication shall be the county in which the banking  
25 institution is located. The first publication shall be made  
26 at least ten days before the date of such sale. Any surplus  
27 from the sale of any share shall be paid to the defaulting  
28 stockholder and should such stock not sell for a sum  
29 sufficient to pay such assessment and expense of making  
30 such sale, the banking institution may recover the de-  
31 ficiency by action at law from the stockholder whose  
32 stock was so sold. A sale of stock as provided in this sec-  
33 tion, shall effect an absolute cancellation of the outstand-  
34 ing certificate, or certificates, evidencing the stock so sold,  
35 and shall make such certificate null and void, and a new  
36 certificate shall be issued by the bank to the purchaser  
37 of such stock.

**§31-8-25a. Permissive closing of banking institution on fixed weekday; procedure.**

1 Any banking institution or trust company in this state,  
2 or combined banking institution and trust company, in-  
3 cluding national banking associations, may remain closed  
4 on any one fixed weekday or portion of such day in each  
5 calendar week, other than Sunday, which may be desig-  
6 nated by the adoption of a resolution by the board of  
7 directors thereof. Not less than fifteen nor more than  
8 thirty days in advance of closing of any such weekday  
9 or portion thereof, such banking institution shall post  
10 a notice in a conspicuous place in its banking room  
11 stating that on or after a day certain and until further  
12 notice given in like manner, such banking institution  
13 will remain closed on a fixed weekday or portion thereof.  
14 Concurrently with the posting of such notice, such bank-  
15 ing institution shall cause a notice to be published as  
16 a Class II legal advertisement in compliance with the  
17 provisions of article three, chapter fifty-nine of this code,  
18 and the publication area for such publication shall be  
19 the county in which the principal office of such bank is  
20 located. Such notice shall set forth the weekday or por-  
21 tion thereof on which said bank will remain closed and  
22 the date when such closing becomes effective. A certified  
23 copy of such resolution certified by the cashier or sec-  
24 retary of such banking institution, together with an  
25 affidavit of posting and proof of publication of the notice  
26 herein required shall be filed with the commissioner  
27 of banking.

28 Any fixed weekday or portion thereof on which any  
29 banking institution shall elect to close pursuant to the  
30 authority of this section shall constitute a legal holiday  
31 or partial legal holiday with respect to such banking in-  
32 stitution and not a business day for the purposes of the  
33 law relating to negotiable instruments, and any act or  
34 contract authorized, required or permitted to be carried  
35 out or performed at, by or with respect to such banking  
36 institution may be performed on the next business day,  
37 and no liability or loss of rights on the part of any  
38 person or banking institution shall result therefrom.

**§31-8-32. Banking institutions and other corporations with impaired capital or insolvent; liquidation.**

1 If the commissioner of banking shall ascertain from  
2 any source that the capital of any banking institution  
3 or other corporation by law placed under the supervi-  
4 sion of the department of banking is substantially im-  
5 paired, and that such institution or other corporation,  
6 upon notice from him, does not promptly make good  
7 such impairment, or that any banking institution or such  
8 other corporation in this state is insolvent, he shall have  
9 authority to appoint an employee of the department of  
10 banking receiver of such banking institution or other  
11 corporation to take charge of the papers, books, records,  
12 moneys and assets of every description of such institu-  
13 tion or other corporation; and immediately upon taking  
14 charge of any such institution or other corporation, the  
15 commissioner of banking shall make in duplicate a com-  
16 plete inventory of all assets and an itemized list of all  
17 liabilities of such institution or other corporation. The  
18 original and copy of such list shall be subscribed and  
19 sworn to by the persons making the same and the orig-  
20 inal shall be filed with the department of banking and  
21 one copy shall be furnished such receiver, and such re-  
22 ceiver, upon assuming office, shall open and keep such  
23 books and records as are prescribed by the commissioner  
24 of banking.

25 Such receiver shall have all the powers vested in spe-  
26 cial receivers by general law. The receiver, under the  
27 authority of the commissioner of banking, shall institute  
28 and prosecute any suit or suits necessary to obtain pos-  
29 session of any property and to sell and dispose of the  
30 same and to collect all obligations due such institution  
31 or other corporation. The receiver in such suit, or by  
32 separate suits, under the authority of the commissioner  
33 of banking, shall enforce against the officers, directors  
34 and stockholders any liability incurred by them and ex-  
35 isting in favor of the creditors of such institution or other  
36 corporation, and collect from such officers, directors and  
37 stockholders any sums for which they are liable as afore-  
38 said.

39 If it shall appear that the assets of such insolvent in-  
40 stitution or other corporation are not sufficient to pay  
41 in full all of its creditors and depositors, without wait-  
42 ing to administer the assets of such institution or cor-  
43 poration, or delaying for any other cause, in the same  
44 suit or in separate suits, to be forthwith instituted in the  
45 same or any other jurisdiction in his name, the receiver,  
46 under the authority of the commissioner of banking,  
47 shall collect from each of the several stockholders of such  
48 institution or other corporation all sums for which they  
49 are severally liable to such institution or other corpor-  
50 ation, for the benefit of its creditors.

51 If it shall be necessary to institute any suit against  
52 any stockholder in the courts of any other state, the same  
53 may be either instituted and prosecuted in the name of  
54 the commissioner of banking, or, at his election, in the  
55 name of the receiver or the corporate name of the in-  
56 stitution or other corporation which is in process of  
57 liquidation, and any such receiver may bring a suit in  
58 the circuit of the county where such institution or other  
59 corporation is located, to ascertain the several depositors  
60 and creditors of such institution or other corporation and  
61 the amounts and priorities of their respective claims.  
62 Such banking institution or other corporation and the  
63 stockholders of such banking institution or other cor-  
64 poration, residing in this state, shall be made defend-  
65 ants to such suit, and all persons who shall file proofs  
66 of claim shall be deemed parties thereto as though they  
67 had been named as defendants. The court shall refer  
68 the cause to a commissioner in chancery, and such com-  
69 missioner shall thereupon cause to be published a notice  
70 to all depositors and creditors of such banking institu-  
71 tion or other corporation, requesting them to present  
72 their claims to such commissioner for allowance. Such  
73 notice shall be published as a Class II legal advertise-  
74 ment in compliance with the provisions of article three,  
75 chapter fifty-nine of this code, and the publication area  
76 for such publication shall be the county wherein the  
77 suit is pending. After publication of such notice is com-  
78 pleted, such commissioner in chancery shall proceed as  
79 promptly as possible to ascertain and report the several

80 depositors and creditors of such banking institution or  
81 other corporation and the amounts and priorities of their  
82 respective claims, if any, proven before him. All claims  
83 as shall have been duly proved and allowed by the re-  
84 ceiver or the commissioner of banking, before the de-  
85 cree of reference, may be allowed and reported by the  
86 commissioner in chancery without further proof, unless  
87 the same shall be contested and disallowed for proper  
88 cause. The commissioner in chancery shall also ascer-  
89 tain and report what funds and assets of such banking  
90 institution or other corporation have come into the hands  
91 of the receiver, what disposition has been made of such  
92 assets, and what dividends, if any, have been paid, and  
93 settle the accounts of such receiver. When the report  
94 of such commissioner is confirmed, the court shall enter  
95 such orders and decrees and take such proceedings as  
96 are proper to ascertain the several depositors and cred-  
97 itors of such banking institution or other corporation,  
98 and adjudicate their respective rights and direct the dis-  
99 tribution of the assets and funds in the hands of the re-  
100 ceiver and confirm any distribution made under orders  
101 of the commissioner of banking, and may confirm any  
102 and all sales made by such receiver, of property and  
103 assets of such banking institution or other corporation.  
104 Any creditor whose claim is not presented and allowed  
105 before any decree of distribution becomes final shall be  
106 forever barred from participating in the funds distrib-  
107 uted under such decree, or theretofore distributed and  
108 confirmed by such decree, and shall have no claim by  
109 reason of such distribution against any creditor sharing  
110 therein or against the commissioner of banking, the re-  
111 ceiver, or any surety upon the receiver's bond. Any  
112 claim which shall have been proved and allowed after  
113 any dividend or distribution has been made by the re-  
114 ceiver, shall be paid dividends equal or proportionate in  
115 amount to those already received by the other creditors  
116 of the same rank and priority, if the funds and assets  
117 in the hands of the receiver are sufficient therefor, be-  
118 fore such other creditors receive any further dividend  
119 or distribution.



120 In any such suit brought by the receiver for the pur-  
121 pose of ascertaining the several depositors and creditors  
122 of such institution or other corporation, as hereinbefore  
123 provided, the receiver may also proceed against the offi-  
124 cers, directors and stockholders of the banking institu-  
125 tion or other corporation to enforce their individual lia-  
126 bilities as hereinabove provided, or for the adjudication  
127 of any other pertinent matter involved in the adminis-  
128 tration of the assets and affairs of such institution or  
129 other corporation.

130 All of the assets of any such insolvent institution or  
131 other corporation shall be administered under, applied  
132 and paid out through the orders of the commissioner of  
133 banking, as herein provided. The costs and expenses of  
134 the receivership and of any suit or suits brought by the  
135 receiver under the direction of the commissioner of bank-  
136 ing shall be entitled to priority of payment out of the  
137 assets of such institution or other corporation.

138 The receiver shall, by proper proceedings, ascertain  
139 the several creditors and the amounts and priorities of  
140 their respective claims against such institution or other  
141 corporation, and shall, from time to time, as the assets  
142 of such institution or other corporation are reduced to  
143 possession, and converted into cash, pay the same to the  
144 several creditors in the order and the manner in which  
145 they are respectively entitled to payment: *Provided,*  
146 *however,* That without regard to priority, the receiver  
147 may at any time pay in full the claim of any creditor  
148 which is less than five dollars.

149 If the assets of any such institution or other corpora-  
150 tion, including any sums collected from the stockhold-  
151 ers, shall more than suffice to pay all of the creditors  
152 of such institution or other corporation who have pre-  
153 sented and proved, or caused to be allowed, their several  
154 demands, the surplus shall be disbursed as follows:  
155 First, in the case of a banking institution, to the stock-  
156 holders, who have paid in any sums upon their extra-  
157 ordinary liability as stockholders, pro rata up to the re-  
158 spective amounts paid by each of them. Second, if any-  
159 thing shall remain thereafter it shall be paid to the stock-

160 holders of the institution or other corporation, in pro-  
161 portion to the number of shares owned by them respec-  
162 tively.

163 The salary of such receiver for the time devoted to  
164 such receivership and all expenses incurred by such re-  
165 ceiver in the discharge of his duties, including reason-  
166 able fees paid for legal services, shall be paid out of the  
167 assets of such institution or other corporation as a part  
168 of the costs of the receivership. No other compensation  
169 shall be paid to such officer for acting as receiver for  
170 such institution or other corporation.

171 The receiver of any such insolvent institution or other  
172 corporation, before entering upon the discharge of his  
173 duties, or receiving into his possession any of the assets  
174 of such insolvent institution or corporation, shall enter  
175 into bond in favor of the state of West Virginia, in a  
176 penalty fixed by and with corporate surety approved by  
177 the governor, conditioned for the faithful discharge of  
178 his duties as receiver, and for accounting for and pay-  
179 ing for and paying over, as required by law, all proper-  
180 ties, moneys and funds which shall come into the hands  
181 of such receiver, his agents, attorneys or representa-  
182 tives. The bond and certificate of appointment of such  
183 receiver shall be recorded in the office of the clerk of  
184 the county court of the county in which such banking  
185 institution or other corporation is situated, and a cer-  
186 tified copy thereof shall be forthwith transmitted by the  
187 receiver to the commissioner of banking.

188 Upon the appointment of a receiver for a banking in-  
189 stitution engaged in business in this state and author-  
190 ized to exercise trust powers, such trust powers and au-  
191 thority shall end, and for every case where such banking  
192 institution has acted as fiduciary, such receiver shall im-  
193 mediately make a final settlement before the court in  
194 which such banking institution qualified as such fiduci-  
195 ary, which settlement shall cover all matters not included  
196 in a prior settlement, if any. Thereupon such court shall  
197 proceed as is provided in section six, article five, chapter  
198 forty-four of this code, and no formal revoking or an-  
199 nulling order shall be necessary.

200 Nothing in this section shall impair the right of any  
201 court of chancery in any suit, on a proper showing, to  
202 appoint a receiver for any such institution or other cor-  
203 poration, in cases where the commissioner of banking has  
204 failed, refused or neglected to act.

**§31-8-43. Appointment and duties of conservators for banking institutions; withdrawals and deposits during conservatorship; termination of conservatorship; reorganization.**

1 Whenever the commissioner of banking shall deem it  
2 necessary, in order to conserve the assets of any bank-  
3 ing institution for the benefit of the depositors and other  
4 creditors thereof, he may appoint a conservator for such  
5 banking institution. The conservator may be an em-  
6 ployee of the department of banking, and may be re-  
7 quired to give such bond and security as the commis-  
8 sioner deems proper.

9 The conservator, under the direction of the commis-  
10 sioner of banking, shall take possession of the papers,  
11 books, records and assets of every description of such  
12 banking institution and take such action as may be  
13 necessary to conserve such assets pending further dispo-  
14 sition of the business of such institution.

15 The conservator shall have all the rights, powers and  
16 privileges now possessed by or hereafter given receivers  
17 of insolvent banking institutions and shall be subject to  
18 all the liabilities, obligations and penalties, not incon-  
19 sistent with the provisions of this article, to which re-  
20 ceivers are now or may hereafter become subject.

21 During the period that such conservator remains in  
22 possession of such banking institution, the legal rela-  
23 tions of all parties with respect thereto shall, subject to  
24 the other provisions of this section, be the same as if a re-  
25 ceiver had been appointed therefor.

26 All expenses of any such conservatorship shall be paid  
27 out of the assets of such banking institution and shall be  
28 a lien thereon, which shall be prior to any other lien.  
29 The conservator shall receive a reasonable compensa-  
30 tion for his services to be fixed by the commissioner  
31 of banking for his services to be fixed by the commissioner

32 of banking, but in no event shall such compensation  
33 exceed that paid to employees of the department of bank-  
34 ing for similar services.

35 (a) Immediately upon taking charge of such bank-  
36 ing institution, the conservator, in conjunction with a  
37 representative of the bank designated by the directors  
38 thereof, shall make in duplicate a complete inventory of  
39 all assets and an itemized list of all liabilities of such in-  
40 stitution. The original and copy of such list shall be  
41 subscribed and sworn to by the persons making the same  
42 and the original shall be filed with the department of  
43 banking as soon as practicable, and the copy shall be  
44 retained by the conservator.

45 (b) If the commissioner of banking becomes satisfied  
46 that such a course of action may be pursued safely and  
47 that it will be in the public interest, he may, in his dis-  
48 cretion, terminate the conservatorship and permit such  
49 banking institution to resume the transaction of its busi-  
50 ness subject to such terms, conditions, restrictions, and  
51 limitations as he may prescribe.

52 (c) While such banking institution is in the hands  
53 of the conservator, the commissioner of banking may  
54 require such conservator to set aside and make avail-  
55 able for withdrawal by depositors and payment to other  
56 creditors, on a ratable basis, such amounts as in the  
57 opinion of the commissioner may be used safely for this  
58 purpose, subject to such priorities and preferences as  
59 are provided by law. The commissioner may, in his  
60 discretion, permit the conservator to receive deposits.  
61 Such deposits shall not be subject to any limitation as  
62 to payment or withdrawal. The deposits shall be segre-  
63 gated and shall not be used either to liquidate any in-  
64 debtedness of such banking institution existing at the  
65 time that a conservator was appointed for it or any sub-  
66 sequent indebtedness incurred for the purpose of liqui-  
67 dating any indebtedness of such banking institution  
68 existing at the time such conservator was appointed.

69 Deposits received while the banking institution is in  
70 the hands of a conservator shall: (1) Be kept on hand  
71 in cash or, (2) be deposited with a federal reserve bank

72 or deposited with such banking institution organized  
73 under the United States National Bank Act, or the law  
74 of this state as the commissioner of banking may, in  
75 his discretion, designate or, (3) be invested in the direct  
76 obligations of the United States or the state of West  
77 Virginia or the funded obligations of any political sub-  
78 division of this state approved by the commissioner of  
79 banking.

80 (d) In any reorganization of any banking institu-  
81 tion under a plan of a kind which, by its own terms or  
82 under existing law, requires the consent, as the case may  
83 be, (a) of depositors and other creditors; or (b) of stock-  
84 holders; or (c) of both depositors and other creditors, and  
85 stockholders, such reorganization shall become effective  
86 only (1) when the commissioner of banking shall be  
87 satisfied that the plan of reorganization is fair and equita-  
88 ble to all depositors, other creditors and stockholders,  
89 and that the plan is in the public interest and when he  
90 shall have approved the plan subject to such conditions,  
91 restrictions and limitations as he may prescribe; and  
92 (2) when, after reasonable notice of such reorganization,  
93 as the case may require, (a) depositors and other credi-  
94 tors of such banking institution representing at least  
95 seventy-five per cent in amount of its total deposits and  
96 other liabilities; or (b) stockholders owning at least two  
97 thirds in amount of its outstanding capital stock; or  
98 (c) both depositors and other creditors representing at  
99 least seventy-five per cent in amount of the total deposits  
100 and other liabilities and stockholders owning at least  
101 two thirds in amount of its outstanding capital stock,  
102 shall, as the plan may require, have consented in writ-  
103 ing to the plan of reorganization. Claims of depositors  
104 or other creditors which will be satisfied in full under  
105 the plan of reorganization shall not be included among  
106 the total deposits and other liabilities of said banking  
107 institution in determining the seventy-five per cent there-  
108 of as above provided.

109 When such reorganization becomes effective, all books,  
110 records, and assets of the bank shall be disposed of in  
111 accordance with the provisions of the plan and the affairs

112 of the bank shall be conducted by its board of directors  
113 in the manner provided by the plan and under the condi-  
114 tions, restrictions and limitations which may have been  
115 prescribed by the banking commissioner. In any re-  
116 organization which shall have been approved and shall  
117 have become effective as provided herein, all deposi-  
118 tors and other creditors and stockholders of such bank,  
119 whether or not they shall have consented to such plan  
120 of reorganization, shall be fully and in all respects sub-  
121 ject to and bound by its provisions, and claims of all  
122 depositors and other creditors shall be treated as if they  
123 had consented to such plan of reorganization.

124 (e) Fifteen days after the affairs of a banking institu-  
125 tion shall have been turned back to its board of direc-  
126 tors by the conservator, either with or without a reorgan-  
127 ization as provided in subsection (d) hereof, the provi-  
128 sions of subsection (c) hereof shall no longer be effec-  
129 tive. Before the conservator shall turn back the affairs  
130 of the institution to its board of directors he shall pub-  
131 lish a notice in form approved by the commissioner,  
132 stating the date on which the affairs of the banking in-  
133 stitution will be returned to its board of directors and  
134 that the said provisions of subsection (c) will not be  
135 effective fifteen days after such date. Such notice shall  
136 be published as a Class I legal advertisement in com-  
137 pliance with the provisions of article three, chapter  
138 fifty-nine of this code, and the publication area for such  
139 publication shall be the county in which such bank is  
140 located. On the date of the publication of such notice  
141 the conservator shall send a copy of such notice by regis-  
142 tered mail to the last-known address of every person  
143 who is a depositor as shown by the records of the insti-  
144 tution. The conservator shall send a similar notice in  
145 like manner to every person making deposit in such in-  
146 stitution under subsection (c) after the date of such  
147 newspaper publication and before the time when the  
148 affairs of the bank are returned to its directors.

149 (f) Nothing in this section shall be construed to im-  
150 pair in any manner any powers of the governor or the  
151 commissioner of banking.

152 (g) The commissioner of banking is hereby author-  
153 ized to prescribe such rules and regulations as he may  
154 deem necessary in order to carry out the provisions of  
155 this section.

**§31-8-44. Appraisal of assets of banking institutions in conservatorship or receivership.**

1 Within sixty days after an inventory shall have been  
2 made of the assets of a banking institution in receiver-  
3 ship its assets shall be appraised in the manner herein  
4 provided and a copy filed with the commissioner of bank-  
5 ing. The banking commissioner shall not approve or  
6 consent to the reorganization, consolidation, merger or  
7 sale of the business of a banking institution in conserva-  
8 torship or receivership until an appraisal shall have been  
9 made and published as provided in this section. Appraisal  
10 shall be made on the basis of present true and actual  
11 value by three appraisers: The conservator or receiver,  
12 a representative of the banking institution designated by  
13 its board of directors and a representative of the deposi-  
14 tors, who was a depositor at the time the conservator  
15 or receiver was appointed and shall not have disposed  
16 of his claim, to be designated by the commissioner of  
17 banking upon the nomination in writing of a majority  
18 in amount of depositors or assigns if filed with the  
19 commissioner not later than two weeks after inventory  
20 in receivership or conservatorship. If no such nomina-  
21 tion is made the commissioner shall designate the de-  
22 positors' representative in his discretion. In the event  
23 of disagreement as to a valuation the determination of  
24 any two of the appraisers shall be final. A completed  
25 appraisal shall be published, in form approved by the  
26 commissioner of banking, as a Class I legal advertise-  
27 ment in compliance with the provisions of article three,  
28 chapter fifty-nine of this code, and the publication area  
29 for such publication shall be the county in which the  
30 banking institution is located. A copy of the appraisal  
31 shall also be filed with the banking commissioner. The  
32 expense of appraisal and publication shall be deemed  
33 part of the cost of the conservatorship or receivership  
34 and shall include reasonable compensation allowed the

35 appraisers, other than a conservator or receiver, by the  
36 commissioner of banking.

## **CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.**

### **ARTICLE 1. ESTRAYS AND DRIFT PROPERTY.**

#### **§34-1-1. Taking up estray or boat.**

1 Any person may take up an estray found on his land,  
2 or a boat or vessel adrift. He shall immediately post  
3 notices at three public places in the district wherein the  
4 property is so found, giving a description of the prop-  
5 erty and stating when the the same was so taken up;  
6 and if the owner of such property shall not appear and  
7 claim the same within two weeks from the posting of  
8 such notice, then the person so taking such property up  
9 shall cause a like notice to be published as a Class II  
10 legal advertisement in compliance with the provisions  
11 of article three, chapter fifty-nine of this code, and the  
12 publication area for such publication shall be the county  
13 where the property was taken up. In either case the  
14 owner may have possession of such property upon pay-  
15 ing the costs of such posting and publishing of such no-  
16 tice and of keeping the property; and if the owner shall  
17 not appear and claim such property within three weeks  
18 from the date of the first publication of such notice in  
19 a newspaper, the person taking the same up shall imme-  
20 diately inform a justice of the district thereof, who  
21 shall issue his warrant to three freeholders, requiring  
22 them under oath to view and appraise such estray, or  
23 boat or vessel, and certify the result, with a description  
24 of the kind, marks, brand, stature, color and age of the  
25 animal, or kind, burden and build of the boat or vessel.

### **ARTICLE 2. DERELICT PROPERTY.**

#### **§34-2-2. Notice of suit.**

1 When any such suit as is mentioned in the preceding  
2 section is instituted, the court shall cause a publication  
3 to be made setting forth the nature of the claim, the  
4 name and nativity (when known) of the deceased per-  
5 son, or of the former owner of the property, if known,



6 as the case may be, and describing the property or estate  
 7 claimed, and requiring all persons claiming an interest  
 8 therein to appear and make themselves defendants, by a  
 9 given day of an ensuing term. Such publication shall  
 10 be made as a Class II legal advertisement in compliance  
 11 with the provisions of article three, chapter fifty-nine of  
 12 this code, and the publication area for such publication  
 13 shall be the county in which the seat of state govern-  
 14 ment may be.

## **CHAPTER 35. PROPERTY OF RELIGIOUS, EDUCA- TIONAL AND CHARITABLE ORGANIZATIONS.**

### **ARTICLE 1. RELIGIOUS ORGANIZATIONS.**

#### **§35-1-10. Notice of conveyance or lien to be first given; proof thereof.**

1 Before any such conveyance of real estate or instrument  
 2 creating a lien thereon shall be made, the proper author-  
 3 ties of such church, religious sect, society, or denomina-  
 4 tion, or of any individual church, parish, congregation  
 5 or branch, shall cause to be published a notice describ-  
 6 ing the real estate and stating that the same will be sold  
 7 and conveyed, or subjected to a lien, as the case may  
 8 be, on or following a designated date. Such notice shall  
 9 be published as a Class II legal advertisement in compli-  
 10 ance with the provisions of article three, chapter fifty-  
 11 nine of this code, and the publication area for such publi-  
 12 cation shall be the county where the land is situated.  
 13 In lieu of such publication, the notice may be read at  
 14 the principal services of such church, parish, congregation  
 15 or branch, on at least two separate occasions during a  
 16 period of two weeks. No conveyance or instrument cre-  
 17 ating a lien shall be made or become effective until such  
 18 notice shall be published or read, as aforesaid. An affi-  
 19 davit setting forth the facts regarding such publication  
 20 or reading, shall accompany, and be recorded with, any  
 21 deed of conveyance or instrument creating a lien, and  
 22 shall be sufficient proof of the facts therein set forth.

**ARTICLE 5. CEMETERIES.****§35-5-2. Sale of part of cemetery; prohibitions.**

1 The trustees of any burial grounds, or any incorporated  
 2 cemetery association whenever it is deemed advisable by  
 3 such trustees or association, and is not prohibited by  
 4 the terms of the conveyance, dedication or devise of such  
 5 grounds, may sell and convey any part of such burial  
 6 grounds or land of such association, without restriction  
 7 as to its use, if such sale and conveyance will not render  
 8 any lot previously sold for burial purposes inaccessible  
 9 for such purposes, or detach it from the main body of  
 10 the cemetery. But no such sale shall be made by such  
 11 trustees or such association unless authorized by a major-  
 12 ity of the lot owners present and voting at a general  
 13 meeting or special meeting, of which meeting and its  
 14 object previous notice shall be given by advertising the  
 15 same as a Class II legal advertisement in compliance  
 16 with the provisions of article three, chapter fifty-nine of  
 17 this code, and the publication area for such publication  
 18 shall be the county in which the cemetery is situated.  
 19 No desecration shall be made of any grave or monu-  
 20 ment, or any of the walks, drives, trees, or shrubbery  
 21 within the inclosure of any burial grounds; nor shall  
 22 any shaft or entry be made within the inclosure of such  
 23 burial grounds, or any building be erected therein for  
 24 any purpose whatever other than cemetery purposes.

**CHAPTER 36. ESTATES IN PROPERTY.****ARTICLE 2. DISPOSITION OF ESTATES SUBJECT TO FUTURE INTERESTS.****§36-2-12a. Summary proceedings for sale or lease; petition.**

1 In addition to the proceedings authorized by the first  
 2 section of this article, any person having any interest  
 3 mentioned in section two of this article in the personal  
 4 property, land, timber, oil, gas, coal or other minerals  
 5 sought to be sold, leased or otherwise conveyed, may  
 6 apply by petition, in a summary way, to the circuit court,  
 7 or to the judge thereof in vacation, or to any court of  
 8 concurrent jurisdiction with the circuit court, or to the  
 9 judge thereof in vacation, of the county in which the

10 estate proposed to be sold, leased or otherwise conveyed,  
 11 or some part thereof, may be. Such petitions shall de-  
 12 scribe the property sought to be sold, leased or other-  
 13 wise conveyed with reasonable certainty and shall set  
 14 forth the names of all persons interested in such prop-  
 15 erty, together with their respective interests or estates,  
 16 either vested, contingent or executory, so far as is known  
 17 by the plaintiff. Such petition shall also set forth the  
 18 facts which, in the opinion of the plaintiff, would jus-  
 19 tify the sale, lease or other conveyance of such property.  
 20 The petition shall be verified by the oath of the plain-  
 21 tiff or one of the plaintiffs, and all persons interested  
 22 shall be made defendants, and ten days' notice shall be  
 23 given to such defendants before such petition can be  
 24 heard: *Provided, however,* That in the case of nonresident  
 25 defendants and/or unknown or unascertainable parties  
 26 an order of publication may be entered, on proper affi-  
 27 davit as in any other chancery proceeding, requiring  
 28 publication of such notice, with respect to any nonresi-  
 29 dent defendants and/or any unknown or unascertainable  
 30 parties who may have or claim any interest or estate in  
 31 such property, as a Class III-0 legal advertisement in com-  
 32 pliance with the provisions of article three, chapter fifty-  
 33 nine of this code, and the publication area for such pub-  
 34 lication shall be the county in which the property or the  
 35 greater part of the property concerned is situate. Such  
 36 published notice, with the certificate of publication, when  
 37 filed with the record in said proceedings, shall be and  
 38 constitute valid and sufficient notice herein. All other  
 39 provisions of this article not inconsistent herewith shall  
 40 apply to and implement the procedures provided in this  
 41 section.

**ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.**

**§36-8-12. Notice and publication of lists of abandoned property.**

1 (a) Within one hundred twenty days from the filing of  
 2 the report required by section eleven, the state treasurer  
 3 shall cause notice to be published as a Class I legal ad-  
 4 vertisement in compliance with the provisions of article

5 three, chapter fifty-nine of this code, and the publication  
6 area for such publication shall be the county in this state  
7 in which is located the last known address of any per-  
8 son to be named in the notice. If no address is listed or  
9 if the address is outside this state, the publication area for  
10 the notice shall be the county in which the holder of  
11 the abandoned property has his principal place of busi-  
12 ness within this state.

13 (b) The published notice shall be entitled "Notice of  
14 Names of Persons Appearing to Be Owners of Abandoned  
15 Property," and shall contain:

16 (1) The names in alphabetical order and last known  
17 addresses, if any, of persons listed in the report and  
18 entitled to notice within the county as hereinbefore speci-  
19 fied.

20 (2) A statement that information concernng the  
21 amount or description of the property and the name and  
22 address of the holder may be obtained by any persons  
23 possessing an interest in the property by addressing an  
24 inquiry to the state treasurer.

25 (3) A statement that if proof of claim is not presented  
26 by the owner to the holder and if the owner's right to  
27 receive the property is not established to the holder's  
28 satisfaction within sixty-five days from the date of the  
29 second published notice, the abandoned property shall  
30 be placed in the custody of the state treasurer, to whom  
31 all further claims must thereafter be directed.

32 (c) The state treasurer is not required to publish in  
33 such notice any item of less than fifty dollars unless he  
34 deems such publication to be in the public interest.

35 (d) Within ten days after the first publication of the  
36 notice required by subsection (a) of this section, the state  
37 treasurer shall mail a notice to each person having an  
38 address listed therein who appears to be entitled to prop-  
39 erty of the value of fifty dollars or more presumed aban-  
40 doned under this article.

41 (e) The mailed notice shall contain:

42 (1) A statement that, according to a report filed with  
43 the state treasurer, property is being held to which the  
44 addressee appears entitled.

45       (2) The name and address of the person holding the  
46 property and any necessary information regarding  
47 changes of name and address of the holder.

48       (3) A statement that, if satisfactory proof of claim is  
49 not presented by the owner to the holder by the date  
50 specified in the published notice, the property will be  
51 placed in the custody of the state treasurer, to whom all  
52 further claims must be directed.

53       (f) Within five days after the date specified in the  
54 published notice, the state treasurer shall mail to each  
55 holder a notice specifying the date on which the holder's  
56 payment or delivery of abandoned property is due to the  
57 state treasurer.

**§36-8-17. Sale of abandoned property.**

1       (a) All abandoned property other than money deliv-  
2 ered to the state treasurer under this article shall within  
3 one year after the delivery be sold by him to the highest  
4 bidder at public sale in whatever city in the state affords  
5 in his judgment the most favorable market for the prop-  
6 erty involved. The state treasurer may decline the high-  
7 est bid and reoffer the property for sale if he considers  
8 the price bid insufficient. He need not offer any prop-  
9 erty for sale if, in his opinion, the probable cost of sale  
10 exceeds the value of the property.

11       (b) Any sale held under this section shall be pre-  
12 ceded by a publication of notice thereof as a Class I legal  
13 advertisement in compliance with the provisions of arti-  
14 cle three, chapter fifty-nine of this code, and the publi-  
15 cation area for such publication shall be the county where  
16 the property is to be sold. The publication shall be at  
17 least three weeks in advance of sale.

18       (c) The purchaser at any sale conducted by the state  
19 treasurer pursuant to this article shall receive title to  
20 the property purchased, free from all claims of the owner  
21 or prior holder thereof and of all persons claiming through  
22 or under them. The state treasurer shall execute all  
23 documents necessary to complete the transfer of title.

## CHAPTER 37. REAL PROPERTY.

### ARTICLE 6. LANDLORD AND TENANT.

#### §37-6-24. Record of re-entry; publication of certificate.

1 Where actual re-entry shall be made, the party, by or  
 2 for whom the same shall be made, shall return a writ-  
 3 ten act of re-entry, sworn to by the sheriff or other officer  
 4 acting therein, to the clerk of the county court of the  
 5 county wherein the lands or tenements shall be, who shall  
 6 record the same in the deed book, and shall deliver, to  
 7 the party making the re-entry, a certificate setting forth  
 8 the substance of such written act, and that the same  
 9 had been left in his office to be recorded, which certifi-  
 10 cate shall be published as a Class II legal advertisement  
 11 in compliance with the provisions of article three, chapter  
 12 fifty-nine of this code, and the publication area for such  
 13 publication shall be such county. Such publication shall  
 14 be proved by affidavit to the satisfaction of such clerk,  
 15 who shall note the fact on the margin of the deed book  
 16 against the record of the act of re-entry in the words,  
 17 "Publication made and proved according to law, A.....  
 18 ..... B ....., Clerk,"  
 19 and shall return the original act of re-entry to the party  
 20 entitled thereto. Such written act of re-entry, when re-  
 21 corded, and the record thereof, or a duly certified copy  
 22 from such record, shall be evidence in all cases of the  
 23 facts therein set forth.

### ARTICLE 13. REMOVAL, TRANSFER AND DISPOSITION OF RE- MAINS IN GRAVES LOCATED UPON PRIVATELY- OWNED LANDS.

#### §37-13-3. Parties; notice.

1 All owners, lessees and other persons having an inter-  
 2 est in such lands, other than plaintiffs, and also the  
 3 surviving next-of-kin, heirs-at-law, administrator, execu-  
 4 tor, or personal representative of each deceased, so far  
 5 as can be determined through reasonable and diligent  
 6 effort, shall be made defendants in such action. Insofar  
 7 as possible all defendants shall be served with notice of  
 8 the institution of the action and the date of the first hear-  
 9 ing upon the same, such service to be made in the same  
 10 manner provided by law for the service of process in other

11 civil actions. If the address of any defendant be unknown,  
 12 or, if there be any unknown next-of-kin, heirs-at-law,  
 13 administrator, executor or personal representative of any  
 14 known or unknown person whose remains may be in-  
 15 terred within any such grave, then, in such event, a copy  
 16 of said notice shall be published prior to the hearing  
 17 upon the same as a Class II legal advertisement in com-  
 18 pliance with the provisions of article three, chapter fifty-  
 19 nine of this code, and the publication area for such publi-  
 20 cation shall be the county.

## CHAPTER 38. LIENS.

### ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

#### §38-1-4. Notice of sale.

1 When any property is about to be sold under a trust  
 2 deed, the trustee shall, unless it be otherwise provided  
 3 in such trust deed, or in the opinion of the trustee the  
 4 property to be sold be of less value than three hundred  
 5 dollars, publish a notice of such sale as a Class III-0 legal  
 6 advertisement in compliance with the provisions of arti-  
 7 cle three, chapter fifty-nine of this code, and the publi-  
 8 cation area for such publication shall be the county where  
 9 the property is located. Such notice shall be so pub-  
 10 lished within twenty-one consecutive days next preceding  
 11 the day of sale. If, in the opinion of the trustee, the prop-  
 12 erty be of less value than three hundred dollars, such  
 13 notice of sale shall be posted at least twenty days prior  
 14 thereto at the front door of the courthouse of the county  
 15 in which the property to be sold is, and three other  
 16 public places at least in the county, one of which shall be  
 17 as near the premises to be sold (in case the sale be of  
 18 real estate) as practicable; and in all cases whether the  
 19 notice be published or not, a copy of such notice shall be  
 20 served on the grantor in such trust deed, or his agent or  
 21 personal representative, if he or they be within the  
 22 county, at least twenty days prior to the sale. Every  
 23 notice of sale by a trustee under a trust deed shall show  
 24 the following particulars: (2) The time and place of  
 25 sale; (b) the names of the parties to the deed under which  
 26 it will be made; (c) the date of the deed; (d) the office

27 and book in which it is recorded; (e) the quantity and  
 28 description of the land or other property, or both, con-  
 29 veyed thereby; and (f) the terms of sale.

**§38-1-10. Who may require trustee to give bond; new trustee on failure to give notice.**

1 The grantor or his assignee, or any cestui que trust, may  
 2 at any time after the execution of the trust deed, by no-  
 3 tice in writing, require any trustee to give the bond  
 4 mentioned in the following section of this article, and,  
 5 upon his failure to do so for twenty days after such notice,  
 6 the power of such trustee shall cease and another trust-  
 7 tee may be appointed by the circuit court of any county  
 8 wherein such deed of trust is recorded, or by the judge  
 9 thereof in vacation, to execute such trust, upon the appli-  
 10 cation of any cestui que trust, or the grantor or any  
 11 assignee of the grantor, if, upon the hearing of such  
 12 application, the failure of the trustee to give such bond  
 13 be made to appear to the satisfaction of such court or  
 14 judge, by affidavits or otherwise. At least ten days' no-  
 15 tice in writing of such application shall be given to the  
 16 trustee, grantor, or assignee of the grantor, and to all  
 17 cestuis que trust in such deed if they be residents of the  
 18 county, stating the court or judge before whom such  
 19 application is to be made. If such trustee and grantor  
 20 or assignee of the grantor, or either of them, are not  
 21 residents of such county, the notice as to them, or the  
 22 one not a resident, may be published as a Class II legal  
 23 advertisement in compliance with the provisions of arti-  
 24 cle three, chapter fifty-nine of this code, and the publi-  
 25 cation area for such publication shall be such county.

**ARTICLE 2. MECHANICS' LIENS.**

**§38-2-15. Publication and posting of notice to nonresident owner or owner not found.**

1 In the event that any owner, upon whose real estate  
 2 or improvement thereof it is desired to take a lien under  
 3 this article, should be a nonresident of this state, or in  
 4 the event that any officer of this state authorized by law  
 5 to execute legal process should make return "not found"  
 6 upon any notice of a mechanic's lien which may be pre-  
 7 sented to him for service, then it shall be sufficient service



8 of any such notice of mechanic's lien upon such non-  
 9 resident owner, or upon such owner as to whom any such  
 10 return, of "not found" shall be made by any such officer,  
 11 to publish a copy of such notice as a Class II legal ad-  
 12 vertisement in compliance with the provisions of article  
 13 three, chapter fifty-nine of this code, and the publication  
 14 area for such publication shall be the county wherein the  
 15 real estate lies. A copy of such notice shall also be posted  
 16 in a conspicuous place upon the property sought to be  
 17 charged thereby, which publishing and posting shall be  
 18 sufficient, if commenced within the period provided by  
 19 this article for the filing of such notice. The costs of such  
 20 publication may be added to the account for which the  
 21 lien is claimed, and, if included in the amount mentioned  
 22 in the recorded notice, the lien shall cover such costs.

### ARTICLE 3. JUDGMENT LIENS.

#### §38-3-11. Notice to lienholders.

1 No decree for the distribution of the proceeds of real  
 2 estate in a suit in equity to enforce a judgment shall be  
 3 made until a notice to all persons holding liens on the  
 4 real estate of the judgment debtor be published, under  
 5 a decree of the court, as hereinafter provided. Such no-  
 6 tice shall be sufficient if it be in form or effect as follows:

7 To all persons holding liens by judgment or otherwise,  
 8 on the real estate, or any part thereof, of A.....  
 9 B.....:

10 In pursuance of a decree of the circuit court of.....  
 11 ..... county, made in a cause therein pending, to  
 12 subject the real estate of the said A.....  
 13 B..... to the satisfaction of the liens thereon,  
 14 you are hereby required to present all claims held by  
 15 you and each of you against the said A.....  
 16 B....., which are liens on his real estate,  
 17 or any part of it, for adjudication to me, at my office in  
 18 the county (or city, town or village, as the case may be)  
 19 of ..... on or before the ..... day of  
 20 .....

21 C ..... D ....., Commissioner.

22 Such notice shall be published as a Class II legal ad-  
 23 vertisement in compliance with the provisions of article

24 three, chapter fifty-nine of this code, and the publica-  
 25 tion area for such publication shall be the county. Pub-  
 26 lishing of such notice shall be equivalent to the personal  
 27 service thereof on all persons holding liens, on any such  
 28 real estate, unless the court shall, in the decree directing  
 29 such notice to be so published, otherwise order.

#### **ARTICLE 4. EXECUTIONS.**

##### **§38-4-20. Time and place for sale of personal property under distraint, levy or order of court; posting or publish- ing notice; conduct and terms of sale.**

1 In any case where an officer shall distrain or levy upon  
 2 personal property, otherwise than under an execution  
 3 or order issued by a justice, or under an attachment, and  
 4 in any case in which he may be directed to sell personal  
 5 property by an order of a court or judge, unless such order  
 6 prescribes a different course, he shall fix upon a time  
 7 and place for the sale thereof, and publish notice of such  
 8 sale at least ten days by posting the same at the door of  
 9 the courthouse of his county and some other conspicuous  
 10 place near the residence of the owner, if he resides in  
 11 the county: *Provided*, That any sheriff or other officer  
 12 preceeding to sell under a writ of fieri facias or vendi-  
 13 tioni exponas, if the property be of the value of five hun-  
 14 dred dollars or more, shall advertise the sale as a Class  
 15 II-0 legal advertisement in compliance with the provisions  
 16 of article three, chapter fifty-nine of this code, and the  
 17 publication area for such publication shall be the county.  
 18 If the property be perishable or expensive to keep, it  
 19 may be sold by order of the court, or the judge thereof  
 20 in vacation, upon such notice as the court or judge may  
 21 direct.

22 At the time and place so appointed the officer shall sell  
 23 to the highest bidder for cash, except as hereinafter pro-  
 24 vided in section twenty-three of this article, such personal  
 25 property, or so much thereof as may be necessary.

#### **ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROG- ATORIES; SUGGESTION.**

##### **§38-5-8. Sale of real estate conveyed to officer.**

1 Real estate conveyed to an officer under this article  
 2 shall, unless such court direct otherwise, be sold, after

3 giving at least thirty days' notice, by posting the same  
 4 at the door of the courthouse of such officer's county and  
 5 some other conspicuous place, near the residence of the  
 6 owner, if he be a resident of the county, and by publishing  
 7 the same as a Class II legal advertisement in compliance  
 8 with the provisions of article three, chapter fifty-nine  
 9 of this code, and the publication area for such publication  
 10 shall be the county. The real estate shall be conveyed to  
 11 the purchaser by the officer or his deputy.

**ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.**

**§38-11-14. Enforcement of lien or pledge; sale of property.**

1 Any person holding personal property in his possession  
 2 under a lien or pledge may satisfy such lien in any man-  
 3 ner agreed upon between the owner and the lienor, or, if  
 4 there be no such agreement, in the following manner:

5 The lienor or pledgee shall give a written notice to  
 6 the person on whose account the goods are held, and to  
 7 any other person known by the lienor to claim an interest  
 8 in the goods. Such notice shall be given by delivery in  
 9 person or by registered letter addressed to the last-  
 10 known place of business or abode of the person to be  
 11 notified. The notice shall contain:

12 (a) An itemized statement of the lienor's or pledgee's  
 13 claim, showing the sum due at the time of the notice and  
 14 the date or dates when it became due;

15 (b) A brief description of the goods against which  
 16 the lien or pledge exists;

17 (c) A demand that the amount of the claim as stated  
 18 in the notice, and of such further claim as shall accrue,  
 19 shall be paid on or before a day mentioned, not less than  
 20 ten days from the delivery of the notice if it is personally  
 21 delivered, or from the time when the notice should reach  
 22 its destination, according to the due course of the post,  
 23 if the notice is sent by mail; and

24 (d) A statement that unless the claim is paid within  
 25 the time specified the goods will be advertised for sale  
 26 and sold by auction at a specified time and place.

27 In accordance with the terms of a notice so given, a  
 28 sale of the goods by auction may be had to satisfy any  
 29 valid claim of the lienor or pledgee for which he has a

30 lien or pledge on the goods. The sale shall be had in the  
31 place where the lien or pledge was acquired, or, if such  
32 place is manifestly unsuitable for the purpose, at the  
33 nearest suitable place. After the time for the payment of  
34 the claim specified in the notice to the depositor has  
35 elapsed, an advertisement of the sale, describing the  
36 goods to be sold, and stating the name of the owner or  
37 person on whose account the good are held, and the time  
38 and place of the sale, shall be published as a Class II  
39 legal advertisement in compliance with the provisions of  
40 article three, chapter fifty-nine of this code, and the pub-  
41 lication area for such publication shall be the place where  
42 such sale is to be made. The sale shall not be held less  
43 than fifteen days from the time of the first publication:  
44 *Provided, however,* That if the property to be sold is of  
45 the value of less than five hundred dollars, then it shall  
46 not be necessary to advertise the sale in a newspaper as  
47 hereinbefore provided, but notice of the sale may be  
48 published by posting the same at least ten days before  
49 such sale in three conspicuous places therein, one of  
50 which places shall be the premises where the property is  
51 sold.

52 From the proceeds of such sale or pledge the lienor or  
53 pledgee shall satisfy his lien, including the reasonable  
54 charges of notice, advertisement and sale. The balance,  
55 if any, of such proceeds shall be held by the lienor or  
56 pledgee and delivered on demand to the person to whom  
57 he would have been bound to deliver or justified in  
58 delivering the goods.

59 At any time before the goods are so sold any person  
60 claiming a right of property or possession therein may  
61 pay the lienor or pledgee the amount necessary to satisfy  
62 his lien or pledge and to pay the reasonable expenses  
63 and liabilities incurred in serving notices and advertising  
64 and preparing for the sale up to the time of such pay-  
65 ment. The lienor or pledgee shall deliver the goods to the  
66 person making such payment, if he is a person entitled  
67 to the possession of the goods or payment of charges  
68 thereon. Otherwise the lienor or pledgee shall retain  
69 possession of the goods according to the terms of the  
70 original contract of deposit.

**ARTICLE 12. RELEASE AND ASSIGNMENT OF LIENS.****§38-12-3. Release by trustee when un-named persons are secured; publication; effect.**

1 If a trustee in a trust deed which secures persons  
 2 not named in the trust deed shall publish, as herein-  
 3 after provided, a notice that he will, on a day named in  
 4 such notice, such day to be not more than thirty nor  
 5 less than ten days after the last publication of such no-  
 6 tice, release such trust deed, such trustee may execute  
 7 such release and make distribution of any funds in his  
 8 hands as such trustee without any liability to any per-  
 9 son not named in the trust deed nor known to the trust-  
 10 tee to be a beneficiary of the trust. Such notice shall be  
 11 published as a Class II legal advertisement in compli-  
 12 ance with the provisions of article three, chapter fifty-  
 13 nine of this code, and the publication area for such publi-  
 14 cation shall be the county in which such trust deed is  
 15 recorded.

**ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF ALL CREDITORS.****§38-13-5. Notice by trustee to creditors; publication and mailing.**

1 Within ten days after the filing of the schedule the  
 2 trustee shall cause to be published a notice reading sub-  
 3 stantially as follows:

4 "To the Creditors of.....:

5 Take notice that a general assignment for the benefit  
 6 of creditors was made by the above named debtor to  
 7 ....., Trustee, on.....  
 8 and that said assignment has been duly recorded in the  
 9 office of the Clerk of the County Court of.....  
 10 County.

11 All persons having claims against the said debtor are  
 12 hereby notified that the same shall be presented to the  
 13 undersigned trustee on or before..... The  
 14 estate has been referred to....., Commis-  
 15 sioner of Accounts, and the first meeting of the creditors  
 16 will be held in his office at....., in  
 17 .....County, West Virginia, on.....,

18 at \_\_\_\_\_ o'clock \_\_\_\_\_ M. Dated this \_\_\_\_\_ day of  
 19 \_\_\_\_\_.

20 (Signed) \_\_\_\_\_, Trustee  
 21 (Address of Trustee) \_\_\_\_\_."

22 Said notice shall be published as a Class II legal ad-  
 23 vertisement in compliance with the provisions of article  
 24 three, chapter fifty-nine of this code, and the publica-  
 25 tion area for such publication shall be the county in which  
 26 the assignment, conveyance or transfer was recorded.

27 A copy of the said notice shall be mailed by the trus-  
 28 tee on or before the date of the first publication thereof  
 29 to every creditor whose name appears in the schedule  
 30 or of whom the trustee has notice, to the assignor and  
 31 to the commissioner of accounts, and an affidavit evi-  
 32 dencing such mailing and publication shall be filed by  
 33 the trustee with the commissioner.

**§38-13-9. Sales by trustee; creditors may prescribe manner  
 and terms; powers of commissioner; compromising  
 claims; continuing operation of business.**

1 At the first meeting of creditors a majority in number  
 2 and amount of the creditors present may prescribe in  
 3 what manner and on what terms the property belonging  
 4 to the estate shall be sold, and the trustee shall not sell,  
 5 or otherwise dispose of, any property belonging to the  
 6 estate prior to the first meeting of the creditors, unless  
 7 expressly authorized to do so by the commissioner of  
 8 accounts after good cause therefor has been shown. The  
 9 trustee shall not sell or otherwise dispose of, the prop-  
 10 erty belonging to the estate for less than seventy-five  
 11 per cent of its appraised value without the approval of  
 12 the commissioner. The trustee may compromise or com-  
 13 pound any claim or debt belonging to the estate with the  
 14 approval of the commissioner. All sales by the trustee  
 15 shall be made at public auction, unless otherwise ordered  
 16 by the commissioner or authorized by the creditors. The  
 17 trustees shall give at least ten days' notice by mail to  
 18 all of the creditors of the time and place of sale of any  
 19 property belonging to the estate of the value of five  
 20 hundred dollars, or more, and shall advertise the sale

21 as a Class II legal advertisement in compliance with the  
 22 provisions of article three, chapter fifty-nine of this  
 23 code, and the publication area for such publication shall  
 24 be the county. Such notice and advertisement may be  
 25 waived by the creditors at their first meeting. Upon ap-  
 26 plication to the commissioner, and for good cause shown,  
 27 the trustee may be authorized to sell any portion of the  
 28 estate at private sale, in which case he shall keep an  
 29 accurate record of each article sold, the price received  
 30 therefor and to whom sold, which account he shall file  
 31 with the commissioner. Upon application by the trustee  
 32 or a creditor setting forth that a part or the whole of the  
 33 estate is perishable, the nature and location of such perish-  
 34 able property, and that there will be loss if the same is  
 35 not sold immediately, the commissioner, if satisfied, of  
 36 the facts stated and that the sale is required in the in-  
 37 terests of the estate, may order the same to be sold with-  
 38 out notice or with such notice as he may direct. Upon  
 39 application by the trustee or a creditor setting forth that  
 40 it is for the best interest of the estate that the trustee  
 41 continue to operate the business, the commissioner may  
 42 authorize the trustee to operate the business until the  
 43 in number and amount of the creditors present shall de-  
 44 termine whether such operation is to be continued there-  
 45 after.

## **CHAPTER 39. RECORDS AND PAPERS.**

### **ARTICLE 3. RECONSTRUCTION OF LOST RECORDS AND PAPERS.**

#### **§39-3-11. Publication of notice.**

1 Such clerk shall give notice, as hereinafter provided, of  
 2 the time and place of the commencement of taking such  
 3 testimony. A copy of which notice, together with the affi-  
 4 davit of publication, shall be recorded in the book afore-  
 5 said. Such notice shall be published as a Class II legal  
 6 advertisement in compliance with the provisions of ar-  
 7 ticle three, chapter fifty-nine of this code, and the publi-  
 8 cation area for such publication shall be the county. The  
 9 costs of publishing such notice shall be paid by the  
 10 county.

## CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

### ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

#### §44-2-2. Commissioner to publish notice of time for receiving claims against decedents' estates.

1 Each month the commissioner of accounts shall pub-  
2 lish a notice designating a convenient time and place  
3 when and where claims against the estate or estates  
4 referred to him during the previous calendar month may  
5 be presented, examined and allowed. The time so desig-  
6 nated by the commissioner shall not be less than four  
7 months nor more than six months from the date of the  
8 first publication of the notice hereinafter set forth. The  
9 notice shall be to the following effect:

10 To the Creditors and Beneficiaries of the Estate(s) of  
11 \_\_\_\_\_: (Naming the decedent or de-  
12 cedents, as the case may be)

13 All persons having claims against the estate(s) of the  
14 said \_\_\_\_\_, (Naming the de-  
15 cedent or decedents, as the case may be) deceased,  
16 whether due or not, are notified to exhibit same, with  
17 the voucher thereof, legally verified, to the undersigned,  
18 at (designating the place) on or before the \_\_\_\_\_ day of  
19 \_\_\_\_\_, 19\_\_\_\_; otherwise they may by law  
20 be excluded from all benefit of said estate(s). All bene-  
21 ficiaries of said estate(s) may appear on or before said  
22 day to examine said claims and otherwise protect their  
23 interests.

24 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
25 19\_\_\_\_\_.

26 \_\_\_\_\_,  
27 Commissioner of Accounts,  
28 County of \_\_\_\_\_.

29 Such notice shall be published as a Class II legal ad-  
30 vertisement in compliance with the provisions of arti-  
31 cle three, chapter fifty-nine of this code, and the publica-  
32 tion area for such publication shall be the county. The  
33 publication of such notice shall be equivalent to per-  
34 sonal service on the creditors, distributees and legatees,  
35 or any of them.



**ARTICLE 4. ACCOUNTING BY FIDUCIARIES.****§44-4-11. Publication and posting of list of fiduciaries prior to settlements.**

1 Every commissioner of accounts shall, on the first  
2 Monday of every month, prepare a list of the fiduciaries  
3 whose accounts are at the date of such list before him  
4 for settlement, except those that may have been men-  
5 tioned in some previous list, stating the names of such  
6 fiduciaries, the nature of their accounts, whether as  
7 personal representative, guardian, curator, committee, or  
8 trustee, and the names of their decedents, or of the per-  
9 sons for whom they are guardians, curators, or committees  
10 or under whose deed or other instrument of trust they  
11 are acting; and shall also publish such list each month  
12 as a Class II legal advertisement in compliance with  
13 the provisions of article three, chapter fifty-nine of this  
14 code, and the publication area for such publication shall  
15 be the county. The first publication of such list shall be  
16 made on said first Monday of the month, or on some fol-  
17 lowing day of the same week. No account of any fiduciary  
18 shall be completed by any commissioner until it shall have  
19 been mentioned in such a list, nor until the completion of  
20 such publication. Any commissioner of accounts who fails  
21 to publish such list shall be fined twenty dollars. The  
22 cost of the publication of such list shall be borne by  
23 the commissioner, but he may charge to, and collect from,  
24 each of the fiduciaries in the list his proportionate part  
25 of the cost thereof as and when the commissioner col-  
26 lects his fees for settling the accounts of such fiduciary.

**ARTICLE 8. REAL ESTATE OF DECEDENTS.****§44-8-8. Reference to a commissioner and publication of notice to creditors in such suit.**

1 No decree for the distribution of the proceeds of the  
2 real estate of such deceased person among his creditors  
3 shall be made until there shall have been a reference  
4 to a commissioner in chancery to ascertain and report  
5 all the liens on the real estate or any part thereof, the  
6 holders of such liens, the amount due to each, and the  
7 priorities thereof, and report made of all general claims  
8 and the priorities of the same, and until a notice to all

9 creditors to present and prove their claims shall have  
 10 been published as hereafter provided, which notice shall  
 11 be in the following form or to the following effect:

12 To all creditors of A \_\_\_\_\_ B \_\_\_\_\_,  
 13 deceased, including those holding liens by judgment or  
 14 otherwise on his real estate, or any part thereof.

15 In pursuance of a decree of the \_\_\_\_\_ court, of  
 16 the county of \_\_\_\_\_, made in a cause there-  
 17 in pending, to subject the real estate of the said  
 18 A \_\_\_\_\_ B \_\_\_\_\_ to the payment of  
 19 his debts, including those which are liens on such real  
 20 estate, or any part of it, you are hereby required to  
 21 present your claims to the undersigned for adjudica-  
 22 tion, at (designating place) on or before the \_\_\_\_\_ day  
 23 of \_\_\_\_\_; otherwise you may by law be  
 24 excluded from all benefit of such real estate.

25 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
 26 19\_\_\_\_.

27 C \_\_\_\_\_ D \_\_\_\_\_,  
 28 Commissioner in chancery.

29 Such notice shall be published as a Class II legal ad-  
 30 vertisement in compliance with the provisions of article  
 31 three, chapter fifty-nine of this code, and the publica-  
 32 tion area for such publication shall be the county in  
 33 which the action is pending. The court shall designate  
 34 the newspaper in which such notice shall be published.  
 35 The court may direct such other notice to be given  
 36 as it may deem proper. Such publication of such no-  
 37 tice shall be equivalent to personal service thereof on all  
 38 creditors, including those holding liens on such real  
 39 estate, unless the court shall in the order directing  
 40 publication otherwise order. Any creditor who may  
 41 have filed his claim before a commissioner of accounts  
 42 may withdraw the same and the proof thereof made  
 43 before such commissioner, and may file such claim and  
 44 proof before the commissioner in chancery, and such  
 45 commissioner in chancery shall, unless there be objec-  
 46 tion by any party to the suit, accept such proof for what  
 47 the same may legally show. No other publication to  
 48 creditors than the one provided by this section shall  
 49 be necessary, and when any notice of the reference is

50 required by law or by the court to be published, such  
 51 notice of the reference shall be included in the above  
 52 notice, so that there may be but one publication.

**ARTICLE 9. PERSONS PRESUMED TO BE DEAD AND THEIR ESTATES.**

**§44-9-3. Application for probate or administration, and publication of notice thereof.**

1 Whenever letters testamentary or of administration  
 2 are applied for on the estate of any person supposed  
 3 to be dead on account of the existence of facts giving  
 4 rise to the presumption of death, the county court or  
 5 clerk thereof, if satisfied that the person applying there-  
 6 for, or presenting a will or codicil of the supposed de-  
 7 cedent for probate, would be entitled to such letters,  
 8 or to such probate, if the supposed decedent were in fact  
 9 dead, shall cause to be published, as hereinafter pro-  
 10 vided, a notice that such application has been made and  
 11 that on a day certain, which shall not be less than two  
 12 weeks after the last publication of such notice, the court  
 13 will hear evidence concerning the alleged absence of  
 14 the supposed decedent and the circumstances and dura-  
 15 tion thereof. Such notice shall be published as a Class II  
 16 legal advertisement in compliance with the provisions  
 17 article three, chapter fifty-nine of this code, and the publi-  
 18 cation area for such publication shall be the county.

**§44-9-9. Publication in such suit.**

1 Such personal representative, upon the institution of  
 2 such suit, shall cause notice to the supposed decedent  
 3 to be issued by the clerk of the circuit court, that such  
 4 suit has been instituted and that such supposed de-  
 5 cent, if alive, is required to appear on a certain day of  
 6 a regular or special term of said court not less than three  
 7 nor more than six months from the date of the first  
 8 publication of such notice as hereinafter required. Such  
 9 notice shall be published as a Class II legal advertise-  
 10 ment in compliance with the provisions of article three,  
 11 chapter fifty-nine of this code, and the publication area  
 12 for such publication shall be the county where the suit  
 13 is brought. When practicable, such notice shall also  
 14 be published once a week for two successive weeks in a

15 newspaper published at or near the place where such  
 16 supposed decedent was last known to reside beyond this  
 17 state, or in this state, if the supposed decedent was not  
 18 known to have left the same and such place is in a  
 19 county other than the one where the suit is pending.

**ARTICLE 11. TRANSFER OF PROPERTY OF NONRESIDENTS.**

**§44-11-2. Affidavit as to publication of notice.**

1 There shall be filed, with such officer or agent as is  
 2 mentioned in the preceding section, the affidavit of some  
 3 credible person that notice of the proposed transfer has  
 4 been published as a Class II legal advertisement in com-  
 5 pliance with the provisions of article three, chapter fifty-  
 6 nine of this code, and the publication area for such publi-  
 7 cation shall be the county in which are kept the books  
 8 upon which the transfer is proposed to be made. But if,  
 9 before such transfer be actually made, a notice in writ-  
 10 ing forbidding the same be served on such officer or  
 11 agent, such transfer only shall be made as would have  
 12 been lawful if this and the preceding section had not  
 13 been enacted.

**§44-11-5. Notice of application and evidence required before order of transfer made.**

1 No such order as is mentioned in the two preceding  
 2 sections shall be made until notice of the application  
 3 shall have been published as a Class II legal advertise-  
 4 ment in compliance with the provisions of article three,  
 5 chapter fifty-nine of this code, and the publication area  
 6 for such publication shall be the county in and which  
 7 the petition is filed; nor until it shall be shown by authen-  
 8 tic documentary evidence that such foreign guardian.  
 9 committee or trustee has, where he qualified, given bond,  
 10 with surety sufficient to insure his accountability for  
 11 the whole amount of the estate of such infant, insane  
 12 person, or cestui que trust in his hands, or which will  
 13 probably be received by him as such guardian, committee  
 14 or trustee; nor until the court shall be satisfied that the  
 15 removal of such money or property from this state will  
 16 not impair the rights or be prejudicial to the interests  
 17 of such infant, insane person or cestui que trust or of any  
 18 other person.

**§44-11-7. What notice and evidence required before such transfer made.**

1 No such order as is mentioned in the preceding sec-  
 2 tion shall, when applied for by petition, be made until  
 3 notice of the application shall have been given to all  
 4 persons interested in such trust estate, either by per-  
 5 sonal service or by publication of such notice as a Class II  
 6 legal advertisement in compliance with the provisions  
 7 of article three, chapter fifty-nine of this code, and the  
 8 publication area for such publication shall be the county  
 9 wherein the petition is filed. Whether the application  
 10 be by petition or bill in equity, such order shall not  
 11 be made until the court shall be satisfied by authentic  
 12 documentary evidence that the nonresident trustee, ad-  
 13 ministrator, or executor, appointed as aforesaid, has given  
 14 bond with sufficient security for the faithful execution of  
 15 the trust, nor until it is satisfied that the payment and  
 16 removal of such estate out of the state will not prejudice  
 17 the right of any person interested or to become interested  
 18 therein.

**CHAPTER 47. REGULATION OF TRADE.**

**ARTICLE 3. TRADE-MARKS OF DEALERS IN LIQUIDS.**

**§47-3-2. Manner of adoption of such trade-mark.**

1 Every such bottler desiring to adopt a trade-mark may  
 2 do so by the execution of a writing in form or effect as  
 3 follows:

4 Notice is hereby given that I (or we, etc., as the case  
 5 may be), have adopted the following trade-mark to be  
 6 used in my (or our, etc.,) business as a bottler, to-wit:  
 7 (Here insert the words, letters, figures, etc., constitut-  
 8 ing the trade-mark, or if it be any device other than words,  
 9 letters or figures, etc., insert a facsimile thereon).

10 Dated this.....day of....., 19.....

11 (signed) A..... B.....

12 Such writing shall be acknowledged or proved for rec-  
 13 ord in the same manner as deeds are acknowledged or  
 14 proved for record, and shall be recorded in the office of  
 15 the clerk of the county court of the county where the  
 16 principal office or place of business of such bottler may  
 17 be, and also in the office of the secretary of state, and a

18 copy thereof shall be published as a Class II legal adver-  
 19 tisement in compliance with the provisions of article  
 20 three, chapter fifty-nine of this code, and the publica-  
 21 tion area for such publication shall be said county.

#### **ARTICLE 4. BRANDS OF TIMBER DEALERS.**

##### **§47-4-2. Manner of adoption of such brand.**

1 Every such dealer desiring to adopt a brand may do  
 2 so by the execution of a writing in form or effect as  
 3 follows:

4 Notice is hereby given that I (or we, etc., as the case  
 5 may be) have adopted the following brand to be used  
 6 in my (or our, etc.), business as timber dealer (or dealers),  
 7 to-wit: (Here insert the words, letters, figures, etc., con-  
 8 stituting the brand, or if it be any device other than  
 9 words, letters or figures, insert a facsimile thereof).

10 Dated this.....day of ....., nineteen

11 \_\_\_\_\_  
 12 A..... B.....

13 Such writing shall be acknowledged or proved for rec-  
 14 ord in the same manner as deeds are acknowledged or  
 15 proved, and shall be recorded in the office of the clerk of  
 16 the county court of the county in which the principal  
 17 office or place of business of such timber dealer may be,  
 18 and also in the office of the secretary of state, and a copy  
 19 thereof shall be published as a Class II legal advertise-  
 20 ment in compliance with the provisions of article three,  
 21 chapter fifty-nine of this code, and the publication area  
 22 for such publication shall be said county.

#### **CHAPTER 48. DOMESTIC RELATIONS.**

##### **ARTICLE 4. ADOPTION.**

##### **§48-4-3. Proceedings on petition; appointment of next friend; contents of decree.**

1 Upon the presentation of such petition to the court,  
 2 or judge thereof in vacation, the same shall be ordered  
 3 filed with the clerk of such court, and the court or judge  
 4 thereof shall appoint a day for the hearing of such petition  
 5 and the examination under oath of the parties in interest.  
 6 And the court or judge thereof may adjourn the hear-

7 ing of such petition or the examination of the parties  
8 in interest from time to time, as the nature of the case  
9 may require. Between the time of the filing of the  
10 petition for adoption and the hearing thereon, the court  
11 may cause a discreet inquiry to be made respecting  
12 the child, for the purpose of ascertaining whether such  
13 child is a proper subject for adoption and shall cause a  
14 discreet inquiry to be made respecting the home of the  
15 petitioner or petitioners to determine whether it is a  
16 suitable home for such child. Such inquiry shall be made  
17 by any suitable person or agency designated by the  
18 court, and the results thereof shall be embodied in a full  
19 written report and shall be submitted to the court at or  
20 prior to the hearing upon the petition and shall be filed  
21 with the records of the proceeding and become a part  
22 thereof. If it shall be necessary, under the provisions  
23 of this article, that a discreet and suitable person shall  
24 be appointed to act as the next friend of the child sought  
25 to be adopted, then and in that case the court or judge  
26 thereof shall order a notice of the petition and of the  
27 time and place when and where the appointment of  
28 next friend will be made, to be published as a Class II  
29 legal advertisement in compliance with the provisions  
30 of article three, chapter fifty-nine of this code, and the  
31 publication area for such publication shall be the county  
32 where such court is located. At the time and place so  
33 named and upon due proof of the publication of such  
34 notice, the court or judge thereof shall make such appoint-  
35 ment, and shall thereupon assign a day for the hear-  
36 ing of such petition and the examination of the parties  
37 interested. Upon the day so appointed the court or  
38 judge thereof shall proceed to a full hearing of the peti-  
39 tion and examination of the parties in interest, under  
40 oath and of such other witnesses as the court or the judge  
41 thereof may deem necessary to fully develop the stand-  
42 ing of the petitioners and their responsibility, and the  
43 status of the child sought to be adopted; and if the court  
44 or judge thereof shall be of the opinion from the testi-  
45 mony that the facts stated in the petition are true, and  
46 if upon examination the court or the judge thereof is  
47 satisfied that the petitioner is, or the petitioners are, of

48 good moral character, and of respectable standing in the  
49 community, and are able properly to maintain and edu-  
50 cate the child sought to be adopted, and that the best  
51 interests of the child would be promoted by such adop-  
52 tion, then and in such case the court or judge thereof  
53 shall make a decree reciting at length the facts proved  
54 and the name by which the child shall thereafter be  
55 known, and declaring and adjudging that from the date  
56 of such decree, the rights, duties, privileges and relations  
57 existing between the child and his or her parents, shall  
58 be in all respects at an end, excepting the right of in-  
59 heritance, and that the rights, duties, privileges and rela-  
60 tions between the child and his or her parent or parents  
61 by adoption shall thenceforth in all respects be the same,  
62 including the right of inheritance, as if the child had  
63 been born to such adopting parent or parents in law-  
64 ful wedlock, except only as otherwise provided in this  
65 article.

#### **ARTICLE 5. CHANGE OF NAME.**

##### **§48-5-1. Petition to circuit court for change of name; contents thereof; notice of application.**

1 Any person desiring a change of his own name, or  
2 that of his child or ward, may apply therefor to the  
3 circuit court of the county in which he resides, or judge  
4 thereof in vacation, by petition setting forth that he has  
5 been a bona fide resident of such county for at least  
6 one year prior to the filing of the petition, the cause  
7 for which the change of name is sought, and the new  
8 name desired; and previous to the filing of such peti-  
9 tion such person shall cause to be published a notice of  
10 the time and place that such application will be made,  
11 which notice shall be published as a Class I legal adver-  
12 tisement in compliance with the provisions of article  
13 three, chapter fifty-nine of this code, and the publica-  
14 tion area for such publication shall be the county.



## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 5. JUVENILE COURTS.**

#### **§49-5-8. Same—Service of summons.**

1 A person named in the petition shall be made a de-  
 2 fendant and shall be notified of the proceedings by per-  
 3 sonal service of summons, which shall require the per-  
 4 son to appear with the child at the time and place set  
 5 for the proceedings. If the defendant cannot be found,  
 6 service may be by publication as a Class II legal adver-  
 7 tisement in compliance with the provisions of article  
 8 three, chapter fifty-nine of this code, and the publica-  
 9 tion area for such publication shall be the county.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 6. GENERAL RECEIVERS.**

#### **§51-6-14. Application of unclaimed funds in hands of general receiver of circuit court.**

1 Whenever it shall appear to any circuit court  
 2 that any fund in its charge and in the hands of its gen-  
 3 eral receiver, for a period of at least twenty years, will,  
 4 in all probability never be claimed by any one entitled  
 5 thereto, the court may order such fund applied to any  
 6 loss of or shrinkage in the investments of such gen-  
 7 eral receiver due to economic condition, and may re-  
 8 lease such general receiver from any further liability on  
 9 account of such fund so in his hands.

10 But before entering any such order, the court shall  
 11 cause a notice of such intention to be given by the clerk  
 12 of said court by publication thereof as a Class II legal  
 13 advertisement in compliance with the provisions of arti-  
 14 cle three, chapter fifty-nine of this code, and the publi-  
 15 cation area for such publication shall be said county. If  
 16 no claimant shall appear and establish a right to said fund  
 17 within one year from the date of the last publication  
 18 thereof, the court may take said facts to have been fully  
 19 established, and shall so apply said fund.

## **CHAPTER 54. EMINENT DOMAIN.**

### **ARTICLE 2. PROCEDURE.**

#### **§54-2-3. Notice; riparian owner affected by taking of water.**

1 Of such application ten days' notice shall be served  
 2 on the owners, claimants and persons holding liens,

3 whose interests the applicant seeks to condemn, and  
4 the notice may be given either before the petition is  
5 presented or afterwards. But where the owners of the  
6 real estate proposed to be taken or the persons hold-  
7 ing such liens or conflicting claims, or any of them, are  
8 nonresidents of the state or their whereabouts is un-  
9 known, or they are unknown to the applicant, or there  
10 be any persons made parties defendant by the general  
11 description of parties unknown as provided in section  
12 two of this article, the notice as to them, instead of be-  
13 ing thus served, may be given by advertisement contain-  
14 ing (by reference to a plat filed for the purpose in the  
15 office of the clerk of the circuit court or otherwise) a  
16 specific description of the property in which they are  
17 interested that is proposed to be taken, and stating the  
18 purpose to which it is intended to be appropriated, and  
19 the time and place at which a hearing will be asked  
20 upon the application, which advertisement shall be pub-  
21 lished as a Class II legal advertisement in compliance  
22 with the provisions of article three, chapter fifty-nine  
23 of this code, and the publication area for such publica-  
24 tion shall be the county.

25 Where water is to be taken as authorized in section  
26 ten, article one of this chapter, notice to riparian owners  
27 having lands below the point at which the water is  
28 proposed to be taken, and likely to be affected thereby,  
29 shall be given by publishing the same as a Class II  
30 legal advertisement in compliance with the provisions  
31 of article three, chapter fifty-nine of this code, and the  
32 publication area for such publication shall be the county.  
33 Any such riparian owner may come into court or be-  
34 fore the judge of such court in vacation, on the return  
35 day of the notice and publication, make himself a party  
36 to the proceedings and have his rights passed upon by  
37 the commissioner and his damage, if any, ascertained,  
38 allowed and paid as in this chapter provided for the tak-  
39 ing of lands.

## CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALES.

### ARTICLE 12. JUDICIAL SALES.

#### §55-12-2. Notice of sale; contents; publication.

1 Whenever a court shall decree the sale of real estate,  
2 if it appear to the court that such real estate is of the  
3 value of five hundred dollars or more, it shall prescribe  
4 in the decree that such sale shall be advertised in a  
5 newspaper by the commissioner or person appointed to  
6 make the sale. It shall always be advertised as a Class  
7 III-0 legal advertisement in compliance with the provi-  
8 sions of article three, chapter fifty-nine of this code, and  
9 the publication area for such publication shall be the  
10 county where the real estate to be sold is situate. In the ad-  
11 vertisement the commissioner shall state the time, terms  
12 and place of sale, together with a description of the  
13 property to be sold: *Provided, however,* That nothing  
14 herein shall be construed to limit the power of the court  
15 to direct sales of lands to be advertised in newspapers  
16 where the value may be less than five hundred dollars.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 2. NOTICES AND MOTIONS.

#### §56-2-2. Service by publication.

1 Any such notice to a person not residing in this state  
2 may be served by the publication thereof as a Class II  
3 legal advertisement in compliance with the provisions  
4 of article three, chapter fifty-nine of this code, and the  
5 publication area for such publication shall be the county  
6 in which the suit or action is pending.

### ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

#### §56-3-24. Contents of order of publication; publishing.

1 Every order of publication shall give the style of the  
2 suit, state briefly its object, and require the defendants  
3 against whom it is entered, or the unknown parties,  
4 to appear within one month after the date of the first  
5 publication thereof and do what is necessary to protect  
6 their interests. It shall be published as a Class II legal  
7 advertisement in compliance with the provisions of article

8 three, chapter fifty-nine of this code, and the publica-  
 9 tion area for such publication shall be the county in  
 10 which the order is made or directed. The newspaper  
 11 shall be designated by the party directing such order  
 12 or his attorney, but if no paper be so designated, then  
 13 in such paper as the court may direct, or if the court  
 14 make no direction, then as the clerk of the court may  
 15 prescribe. It shall be deemed to have been published  
 16 on the date of the second publication thereof.

**§56-3-28. Requisites of publication in such court.**

1 Such order of publication shall be entered by the clerk  
 2 in a suitable book kept by him for the purpose and signed  
 3 by him, and a certified copy of such order shall be pub-  
 4 lished as a Class II legal advertisement in compliance  
 5 with the provisions of article three, chapter fifty-nine  
 6 of this code. Both the newspaper and the publication  
 7 area shall be designated in the order of publication.  
 8 When it shall appear that such order of publication has  
 9 been duly published as aforesaid, the court may proceed  
 10 to hear and decide such cause in the same manner as  
 11 if such parties had been personally served with process:  
 12 *Provided, however,* That the order of publication shall  
 13 have been executed, as aforesaid, at least ten days be-  
 14 fore the day on which any such cause may be called for  
 15 hearing.

**ARTICLE 7. PROCEDURE ON ORDERS OF REFERENCE.**

**§56-7-3. Notice by commissioner.**

1 The court ordering an account to be taken may direct  
 2 that the time and place of taking the same be pub-  
 3 lished as a Class II legal advertisement in compliance  
 4 with the provisions of article three, chapter fifty-nine  
 5 of this code, and the publication area for such publication  
 6 shall be the county. The newspaper shall be designated  
 7 by the party at whose instance such publication is made  
 8 or his attorney, and if no newspaper be so designated,  
 9 then the court shall designate the newspaper. Such pub-  
 10 lication shall be equivalent to personal service on the  
 11 parties or any of them. In any case where all persons  
 12 whose interests may be affected by the proceedings be-

13 fore a commissioner are known, it shall be sufficient that,  
 14 in lieu of such publication of the notice as aforesaid, such  
 15 persons, or their counsel (or one of their counsel, if there  
 16 be more than one), be served with such notice in the man-  
 17 ner provided by section one, article two of this chapter.

**ARTICLE 8. ABATEMENT, REVIVAL, DISCONTINUANCE, REIN-  
 STATEMENT OF SUITS, SUBSTITUTION OF  
 PARTIES.**

**§56-8-13. Further proceedings after reinstatement of case.**

1 All causes in which orders of dismissal have been  
 2 made, or orders of non-suit entered, which orders have  
 3 been set aside and causes reinstated, shall remain upon  
 4 the docket and be proceeded with in the same manner  
 5 as if the order had never been made. But no such cause  
 6 shall be the county. The newspaper shall be designated  
 7 fendant therein shall have had at least twenty days'  
 8 personal notice in writing, or, if he be a nonresident, by  
 9 publication that such cause has been reinstated on the  
 10 docket as a Class II legal advertisement in compliance  
 11 with the provisions of article three, chapter fifty-nine  
 12 of this code, and the publication area for such publication  
 13 shall be the county in which the action is pending.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
 NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.**

**§59-3-1. Definitions and general provisions.**

- 1 (a) As used in this article, elsewhere in this code  
 2 or in any other provision of law:
- 3 (1) "Legal advertisement" means any notice, adver-  
 4 tisement, statement, information or other matter re-  
 5 quired by law or court to be published.
- 6 (2) "Publication area" means the area or areas for  
 7 which a legal advertisement is required by law or court  
 8 to be made.
- 9 (3) "Once a week for two successive weeks" means  
 10 two publications of a legal advertisement in a qualified  
 11 newspaper occurring within a period of fourteen con-  
 12 secutive days with at least an interval of six full days

13 within such period between the date of the first publi-  
14 cation and the date of the second publication.

15 (4) "Once a week for three successive weeks" means  
16 three publications of a legal advertisement in a qualified  
17 newspaper occurring within a period of twenty-one con-  
18 secutive days with at least an interval of six full days  
19 within such period between the date of the first publi-  
20 cation and the date of the second publication and with  
21 at least an interval of six full days within such period  
22 between the date of the second publication and the date  
23 of the third publication.

24 (5) "Publication date" means the date on which a  
25 qualified newspapers is first placed in circulation.

26 (6) "General circulation" means not only a newspa-  
27 per meeting the other qualifications specified in subsec-  
28 tion (b) of this section and circulated among and of in-  
29 terest to the general public in the area in which it circu-  
30 lates, but also a newspaper meeting said other qualifica-  
31 tions, the actual circulation of which throughout the pub-  
32 lication area is large enough to give basis for a reason-  
33 able belief that publication of a legal advertisement  
34 therein will give effective notice to the residents of the  
35 publication area.

36 (b) Wherever the term "qualified newspaper" or  
37 "qualified newspapers" is used in this article, or the term  
38 "newspaper" or "newspapers" is used elsewhere in this  
39 code or in any other provision of law in connection with  
40 a legal advertisement as herein defined, the terms shall  
41 be taken to mean only a newspaper or newspapers, as the  
42 case may be, published (unless otherwise expressly pro-  
43 vided) in the state of West Virginia, and which meet the  
44 following qualifications:

45 (1) Any such newspaper must be of regular issue and  
46 must have a bona fide, general circulation in the publi-  
47 cation area. A newspaper shall be deemed to be of reg-  
48 ular issue if it is published regularly, as frequently as  
49 once a week, for at least fifty weeks during the calendar  
50 year as prescribed by its mailing permit, and has been  
51 so published for at least one year immediately preceding  
52 the date on which the legal advertisement is delivered  
53 to the newspaper for publication. A newspaper shall be

54 deemed to be of bona fide, general circulation in the pub-  
 55 lication area if it meets the definition of "general circu-  
 56 lation" as defined above and is circulated to the general  
 57 public at a definite price or consideration. And

58 (2) Any such newspaper must bear a title or name,  
 59 consist of not less than four pages without a cover, and  
 60 be a newspaper to which the general public resorts for  
 61 passing events of a political, religious, commercial and  
 62 social nature, and for current happenings, announcements,  
 63 miscellaneous reading matters, advertisements, and other  
 64 notices.

65 (c) Notwithstanding any other provision of this code  
 66 or law to the contrary, a qualified newspaper shall for all  
 67 purposes be considered to be published where it is first  
 68 placed in circulation.

**§59-3-2. Designation of newspapers; frequency of publication;  
 posting.**

1 (a) A Class I legal advertisement shall be published  
 2 one time, a Class II legal advertisement shall be pub-  
 3 lished once a week for two successive weeks, and a Class  
 4 III legal advertisement shall be published once a week  
 5 for three successive weeks, in a qualified newspaper  
 6 published in the publication area; or if there is no quali-  
 7 fied newspaper published in the publication area or if  
 8 no qualified newspaper published in the publication  
 9 area will publish the legal advertisement at the rates  
 10 specified in section three of this article, the legal adver-  
 11 tisement shall be published in a qualified newspaper  
 12 published outside the publication area; or if no qualified  
 13 newspapaer is published outside the publication area or  
 14 if no qualified newspaper published outside the publica-  
 15 tion area will publish the legal advertisement at the  
 16 rates specified in section three of this article, the legal  
 17 advertisement shall be posted in at least three public  
 18 places in the publication area, one of which postings shall  
 19 be in the county courthouse, at or near the front door  
 20 thereof, if a county courthouse is located in the pub-  
 21 lication area and one of which postings shall be in the  
 22 municipal office building or municipal office or offices,  
 23 at or near the front door thereof, if the publication area  
 24 is a municipality.

25 (b) A Class I-0 legal advertisement shall be pub-  
26 lished one time, a Class II-0 legal advertisement shall  
27 be published once a week for two successive weeks, and  
28 a Class III-0 legal advertisement shall be published once  
29 a week for three successive weeks, in two qualified news-  
30 papers of opposite politics published in the publication  
31 area; or if two qualified newspapers of opposite politics  
32 are not published in the publication area or if two quali-  
33 fied newspapers of opposite politics published in the pub-  
34 lication area will not publish the legal advertisement  
35 at the rates specified in section three of this article, the  
36 legal advertisement shall be published in one qualified  
37 newspaper published in the publication area; or if there  
38 is no qualified newspaper published in the publication  
39 area or if no qualified newspaper published in the pub-  
40 lication area will publish the legal advertisement at the  
41 rates specified in section three of this article, the legal  
42 advertisement shall be published in one qualified news-  
43 paper published outside the publication area; or if no  
44 qualified newspaper is published outside the publication  
45 area or if no qualified newspaper published outside the  
46 publication area will publish the legal advertisement  
47 at the rates specified in section three of this article, the  
48 legal advertisement shall be posted in at least three pub-  
49 lic places in the publication area, one of which postings  
50 shall be in the county courthouse, at or near the front  
51 door thereof, if a county courthouse is located in the  
52 publication area and one of which postings shall be in  
53 the municipal office building or municipal office or offices,  
54 at or near the front door thereof, if the publication area  
55 is a municipality.

56 (c) A legal advertisement may be published in a  
57 qualified newspaper published on any day of the week  
58 except Sunday.

59 (d) All legal advertisements shall be published to-  
60 gether in continuous columns on one page of the news-  
61 paper publishing same under a general heading styled  
62 "Legal Advertisement", unless the number or size of such  
63 legal advertisements requires the use of more than one  
64 page, in which event such legal advertisements shall be



65 published in continuous columns on as many pages as  
66 necessary under the same heading as above required.

**§59-3-3. Rates.**

1 (a) The rates which a publisher or proprietor of a  
2 qualified newspaper in West Virginia may charge and  
3 receive for a single or first publication of any legal ad-  
4 vertisement set solid shall depend upon the bona fide  
5 circulation of such newspaper, as follows:

6 (1) Four cents per word if the qualified newspaper  
7 has a bona fide circulation of ten thousand or less; or

8 (2) Five cents per word if the qualified newspaper  
9 has a bona fide circulation of more than ten thousand  
10 but less than forty thousand; or

11 (3) Five and three-fourths cents per word if the  
12 qualified newspaper has a bona fide circulation of forty  
13 thousand or more.

14 (b) In computing the number of words in a legal  
15 advertisement, not set solid, the basis shall be upon the  
16 size of type in which legal advertising is set by the qual-  
17 ified newspaper making the publication, and shall be com-  
18 puted at the legal rate as though the matter was solid  
19 type, that is to say, on the basis of eighty-four words to  
20 the single column inch in six point type, and fifty-four  
21 words to the single column inch in eight point type, and  
22 any other size type in proportion.

23 (c) In determining the cost of a legal advertisement  
24 which is to appear more than once in the same qualified  
25 newspaper, the cost for the first publication shall be com-  
26 puted as specified in subsections (a) and (b) of this sec-  
27 tion, and the cost of the second and each subsequent pub-  
28 lication shall be sixty per cent of the cost of the first  
29 publication computed as aforesaid.

30 (d) In determining the cost of a legal advertisement  
31 which is to appear within the same calendar week in  
32 two qualified newspapers published in the same county  
33 by the use of the same composition and press facilities  
34 in the county, the cost shall be the cost, computed as  
35 specified in subsections (a) and (b) of this section, for  
36 publication of the legal advertisement in the qualified  
37 newspaper with the highest bona fide circulation and

38 forty per cent of the cost, computed as specified in sub-  
39 sections (a) and (b) of this section for publication of the  
40 legal advertisement in the other qualified newspaper.

41 (e) The rates provided for in this section may be  
42 charged on and after the first day of July, one thousand  
43 nine hundred sixty-seven. Between the effective date of  
44 this act and said the first day of July, one thousand nine  
45 hundred sixty-seven, the rates for publishing legal adver-  
46 tisements shall be those in effect immediately prior to the  
47 effective date of this act. The average bona fide circula-  
48 tion stated by each qualified newspaper in the statement  
49 filed by such newspaper with the United States post office  
50 department in October, one thousand nine hundred sixty-  
51 six, shall control the rate circulation classification of such  
52 qualified newspaper for the period from the first day of  
53 July, one thousand nine hundred sixty-seven, until the  
54 first day of July, one thousand nine hundred sixty-eight.  
55 On or before the first day of March, one thousand nine  
56 hundred sixty-eight, the publisher or proprietor of each  
57 newspaper desiring to publish any legal advertisement  
58 during the ensuing fiscal year shall file with the secretary  
59 of state an affidavit stating the average bona fide circula-  
60 tion of such newspaper during the preceding calendar  
61 year, and sufficient facts shall be set forth in the affidavit  
62 to show whether such newspaper is a qualified news-  
63 paper. The average bona fide circulation stated in such  
64 affidavit by each qualified newspaper shall control the  
65 rate circulation classification of such qualified newspaper  
66 for the ensuing fiscal year, beginning on the first day of  
67 July, one thousand nine hundred sixty-eight. The pub-  
68 lisher or proprietor of each newspaper desiring to pub-  
69 lish any legal advertisement during the ensuing fiscal  
70 year shall file an affidavit as aforesaid on or before the first  
71 day of March of each succeeding year, and such affidavit  
72 shall control the rate circulation classification of such  
73 newspaper, if it is a qualified newspaper, for the ensuing  
74 fiscal year. Any qualified newspaper for which the re-  
75 quired affidavit is not filed on or before the first day of  
76 March of any calendar year after the year one thousand  
77 nine hundred sixty-seven shall be conclusively presumed  
78 to have for the ensuing fiscal year a bona fide circulation

79 of less than four thousand. At the time a publisher or  
80 proprietor of a qualified newspaper files an affidavit with  
81 the secretary of state as aforesaid, such publisher or pro-  
82 prietor shall notify the clerk of the county court and the  
83 board of education of the county in which such qualified  
84 newspaper is published of the circulation classification of  
85 such qualified newspaper and of the applicable rate for  
86 publishing legal advertisements in such qualified news-  
87 paper during the ensuing fiscal year. If the qualified  
88 newspaper is published in a municipality, the publisher  
89 or proprietor shall at the same time also furnish the same  
90 notification to the clerk or recorder of such municipality.

**§59-3-4. Proof of publication and posting.**

1 (a) Any qualified newspaper publishing a legal ad-  
2 vertisement incident to any type of judicial proceed-  
3 ing or any provision in a deed of trust or contract, or  
4 incident to any other case if required by the responsible  
5 party placing the legal advertisement for publication,  
6 shall make and furnish under oath, an affidavit of publi-  
7 cation of each legal advertisement so published, show-  
8 ing the number of times it was published in such quali-  
9 fied newspaper, the dates of the publications thereof,  
10 and the cost of such publications. When posting of  
11 any legal advertisement is required in addition to publi-  
12 cation thereof in a qualified newspaper, such posting  
13 shall be done by the publisher or proprietor of the quali-  
14 fied newspaper in which the legal advertisement was  
15 published, and in such cases the affidavit of publication  
16 shall state when and where the legal advertisement  
17 was posted. In any case where any legal advertisement  
18 is not required to be published in a qualified newspaper  
19 but is required to be posted, an affidavit of the type  
20 provided for herein with respect to posting shall be  
21 made by the party who would have been responsible  
22 for causing the legal advertisement to be published in  
23 a qualified newspaper had the same been required.

24 (b) The affidavit of the publisher or proprietor of a  
25 qualified newspaper as aforesaid, together with a copy  
26 of the legal advertisement as published, shall constitute  
27 prima facie evidence that the legal advertisement was

28 published or published and posted as stated in the affi-  
29 davit.

**§59-3-5. Mandamus to compel publication.**

1 Any citizen, taxpayer, or the publisher or proprietor  
2 of any qualified newspaper entitled by law to have any  
3 legal advertisement published in his qualified news-  
4 paper, which any county court or tribunal created in  
5 lieu thereof, board of education, governing body of  
6 any municipal corporation, or public officer, shall fail  
7 or refuse to make, may have a writ of mandamus to  
8 compel such publication, if a qualified newspaper is  
9 willing to accept the legal advertisement for publica-  
10 tion at the rates prescribed in section three of this article.

**§59-3-6. Political advertisements.**

1 In no case involving the publication of paid adver-  
2 tisements for candidates for political office shall the  
3 rate charged by any publisher or proprietor of any  
4 newspaper be more than the average rate received by  
5 him from private patrons for similar advertising com-  
6 posed of reading matter or photographs and requiring  
7 the same amount of space.

**§59-3-7. Criminal and civil penalties.**

1 (a) Any person who publishes a legal advertisement  
2 and who knowingly refused to file with the secretary  
3 of state the affidavit for the fiscal year in which the  
4 legal advertisement was published, as required by the  
5 provisions of section three of this article, or to make  
6 and furnish the affidavit required by the provisions of  
7 section four of this article shall be guilty of a mis-  
8 demeanor, and, upon conviction thereof, shall be pun-  
9 ished by a fine of not less than one hundred dollars nor  
10 more than one thousand dollars.

11 (b) Any person who shall knowingly file a false affi-  
12 davit required by the provisions of this article shall be  
13 guilty of false swearing and upon conviction thereof  
14 shall be punished as provided for that offense.

15 (c) Any qualified newspaper which shall knowingly  
16 charge any rates in excess of those specified in sec-

17 tion three of this article, and any newspaper which shall  
 18 knowingly charge any rates in excess of those specified  
 19 in section six of this article, as the case may be, shall  
 20 be liable to the person damaged thereby for treble dam-  
 21 ages.

**§59-3-8. Construction of article; repeal; subsequent legislation.**

1 This article is intended to standardize and make uni-  
 2 form certain areas of the law relating to newspapers,  
 3 qualified newspapers, legal advertisements and publi-  
 4 cation of a newspaper or qualified newspaper, and to  
 5 this end all other provisions in this code or elsewhere  
 6 in law pertaining to such subjects shall be construed  
 7 so as to conform to and be consistent with the perti-  
 8 nent provisions of this article. As to those provisions  
 9 in this code or elsewhere in law which are so incon-  
 10 sistent with the provisions of this article as to preclude  
 11 such construction, such other provisions, whether gen-  
 12 eral or specific in character, are hereby repealed to the  
 13 extent of such inconsistency. No subsequent legisla-  
 14 tion shall be held to supersede or modify the provisions  
 15 of this article except to the extent that such legisla-  
 16 tion shall do so specifically and expressly. The provisions  
 17 of this act shall not affect the publication and/or posting  
 18 of any legal advertisements commenced, in process or  
 19 completed prior to the effective date of this act.

**§59-3-9. Severability.**

1 If any provision of this act or the application thereof  
 2 to any person or circumstance is held unconstitutional or  
 3 invalid, such unconstitutionality or invalidity shall not  
 4 affect other provisions or applications of the act, and to  
 5 this end, the provisions of this act are declared to be  
 6 severable.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

**ARTICLE 4. LICENSES.**

**§60-4-10. Notice of application for license.**

1 A person who desires to apply for a license author-  
 2 ized by the provisions of this chapter shall, not more than

3 thirty nor less than ten days before the filing of formal  
 4 application, give notice of his intention. He shall give  
 5 notice by posting a statement of his intention in such  
 6 form as the commission may require at the front door  
 7 or principal entrance of the place where the business is  
 8 to be conducted. He shall also publish notice, in such  
 9 form as the commission may require, as a Class I legal  
 10 advertisement in compliance with the provisions of ar-  
 11 ticle three, chapter fifty-nine of this code, and the pub-  
 12 lication shall be the county in which he intends to do busi-  
 13 ness: *Provided, however,* That retail druggists desiring  
 14 to sell alcoholic liquors on prescriptions shall not be sub-  
 15 ject to the provisions of this section: *Provided further,*  
 16 That such retail druggists shall file formal application  
 17 in writing with the commission and shall pay the license  
 18 fee.

#### **ARTICLE 5. LOCAL OPTION ELECTIONS.**

##### **§60-5-4. Notice of election; when held; election officers.**

1 The county court or governing body of the municipal-  
 2 ity shall give notice of the special "local option election"  
 3 by publication thereof as a Class II-0 legal advertisement  
 4 in compliance with the provisions of article three, chap-  
 5 ter fifty-nine of this code, and the publication area for  
 6 such publication shall be the area in which the election  
 7 is to be held. Such notice shall be so published within  
 8 fourteen consecutive days next preceding the election.  
 9 The election shall be held not more than ninety nor less  
 10 than sixty days from the filing of the petition. The reg-  
 11 ular election officers of the county or municipal corpora-  
 12 tion shall open the polls and conduct the election in the  
 13 same manner provided for general elections.

#### **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

##### **§60-6-21. Court procedure as to contraband and forfeited articles.**

1 Proceedings for confiscation of articles, conveyances  
 2 or vehicles declared contraband and forfeited to the state  
 3 under section twenty shall be had in the circuit or in-  
 4 ferior court having criminal jurisdiction, either in vaca-  
 5 tion or term time, in the county where such articles,

6 conveyances or vehicles were seized, and the procedure  
7 shall be as follows:

8 (1) When such articles, conveyances or vehicles have  
9 been seized under or without a warrant provided for in  
10 section eighteen of this article, by an officer charged with  
11 the enforcement of this chapter, the officer shall take  
12 possession of such article, conveyance or vehicle and de-  
13 liver the same and the alcoholic liquors so seized to the  
14 sheriff of the county in which such seizure was made,  
15 taking his receipt therefor in duplicate.

16 (2) The officer making such seizure shall forthwith  
17 report in writing of such seizure to the prosecuting at-  
18 torney of the county in which such seizure was made and  
19 to the commission.

20 (3) Within not less than ten days nor more than sixty  
21 days after receiving notice of any such seizure, the pros-  
22 ecuting attorney for the county shall file, in the name of  
23 the state, a petition against the seized property, in the  
24 clerk's office of the circuit court of the county, return-  
25 able to the circuit court or inferior court having crim-  
26 inal jurisdiction, which petition shall be filed by the clerk  
27 without fee and may be heard by said court or judge  
28 thereof in vacation.

29 (4) Such petition shall allege the seizure, and set  
30 forth in general terms, the grounds of forfeiture of the  
31 seized property, and shall pray that the same be forfeited  
32 to the state and the proceeds disposed of according to  
33 law, and that all persons concerned or interested may  
34 appear and show cause why said property should not be  
35 forfeited to the state.

36 (5) The owner of and all persons in any manner then  
37 indebted or liable for the purchase price of said property,  
38 and any person having a lien thereon, if they be known  
39 to the prosecuting attorney, shall be made parties de-  
40 fendant thereto, and shall be served with the notice is-  
41 sued by the clerk of such court, hereinafter provided for  
42 in the manner provided by law for serving a notice, at  
43 least ten days before the day therein specified for the  
44 hearing on said petition, if they be residents of this state,  
45 and, if they be unknown or nonresidents, or cannot with

46 reasonable diligence be found in this state, they shall be  
47 deemed sufficiently served by publication of said notice  
48 as a Class II legal advertisement in compliance with the  
49 provisions of article three, chapter fifty-nine of this code,  
50 and the publication area for such publication shall be  
51 said county.

52 (6) Any person claiming to be the owner of such  
53 seized property, or to hold a lien thereon or have an in-  
54 terest therein, may appear at any time before final judg-  
55 ment of the trial court, and be made a party defendant  
56 to the petition so filed, which appearance shall be by an-  
57 swer, under oath, in which shall be clearly set forth the  
58 nature of such defendant's claim or interest.

59 (7) If the court or judge thereof in vacation shall  
60 that illegally acquired alcoholic liquors or alcoholic li-  
61 quors being illegally transported in amounts in excess  
62 of one gallon, were not found in such conveyance or ve-  
63 hicle at the time of the seizure thereof, the judgment of  
64 the court shall be to entirely relieve said property from  
65 forfeiture, and no costs shall be taxed against such claim-  
66 ant.

67 (8) If the court or judge thereof in vacation trying  
68 the issue shall find or if it be admitted that said convey-  
69 ance or vehicle at the time of the seizure contained ille-  
70 gally acquired liquor or that alcoholic liquors were being  
71 transported therein, nevertheless:

72 (a) If it shall appear to the satisfaction of the court  
73 that such claimant is the bona fide owner and was such  
74 owner at the time of such seizure and that he was ignor-  
75 ant of such illegal use thereof and the illegal use was  
76 without his connivance or consent, expressed or implied,  
77 the court shall relieve said conveyance or vehicle from  
78 forfeiture and restore it to such claimant and no cost  
79 shall be taxed against such claimant.

80 (b) If it shall appear to the satisfaction of the court  
81 that such claimant is the holder of a bona fide lien against  
82 the property and was the holder of such lien at the time  
83 of such seizure and that he was ignorant of such illegal  
84 use thereof, or the use so made of such conveyance or  
85 vehicle was without his connivance or consent, expressed



86 or implied, and that the claimant has perfected his lien,  
87 the court shall,

88 (1) If the lien so established is equal to or more than  
89 the value of the conveyance or vehicle, such conveyance  
90 or vehicle shall be delivered to the lienor upon the pay-  
91 ment of storage and cost,

92 (2) If the lien is less than the value of the convey-  
93 ance or vehicle, the lienor may have said conveyance or  
94 vehicle delivered to him upon payment of the difference  
95 in amount as determined in such proceedings; but should  
96 the lienor not demand delivery as aforesaid, an order  
97 shall be made for the sale of said property by the sheriff  
98 of the county, in the manner prescribed by law for sale  
99 of personal property under execution, out of the proceeds  
100 of which sale shall be paid, first, the storage, if any, sec-  
101 ond, the cost, third, the lien, and the residue, if any, shall  
102 be paid to the commission.

103 (9) If, however, no valid lien or claim is established  
104 against the seized property upon the trial of the petition,  
105 or, if it shall be determined that the owner thereof was  
106 himself using the same at the time of the seizure or that  
107 such illegal use was with his knowledge or consent, ex-  
108 press or implied, the said property shall be completely  
109 forfeited to the state and turned over to the commission  
110 in accordance with the provisions of this chapter.

111 (10) In every case, the alcoholic liquors so seized  
112 shall be deemed contraband and forfeited to the state  
113 as heretofore provided.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 7. DANGEROUS WEAPONS.

#### §61-7-2. License to carry weapons; how obtained.

1 Any person desiring to obtain a state license to carry  
2 any such weapon as is mentioned in the first section  
3 of this article, within one or more counties in this  
4 state, shall first publish a notice setting forth his name,  
5 residence and occupation, and that on a certain day he  
6 will apply to the circuit court of his county for such  
7 state license. Such notice shall be published as a Class I

8 legal advertisement in compliance with the provisions  
9 of article three, chapter fifty-nine of this code, and the  
10 publication area for such publication shall be the county  
11 in which such person resides. Such notice shall be pub-  
12 lished at least ten days before such application is made.  
13 After the publication of such notice and at the time stated  
14 in such notice, upon application to such court, it may  
15 grant such license to such person, in the following man-  
16 ner, to-wit:

17 The applicant shall file with such court his application  
18 in writing, duly verified, which application shall show:

19 (a) That such applicant is a citizen of the United  
20 States of America;

21 (b) That the applicant has been a bona fide resident  
22 of this state for at least one year next prior to the date of  
23 such application, and of the county sixty days next prior  
24 thereto.

25 (c) That the applicant is over twenty-one years of  
26 age; that he is a person of good moral character, of tem-  
27 perate habits, not addicted to intoxication, and has not  
28 been convicted of a felony or of any offense involving the  
29 use on his part of such weapon in an unlawful manner,  
30 and shall prove to the satisfaction of the court that he is  
31 gainfully employed in a lawful occupation and has been  
32 so engaged for a period of five years next preceding the  
33 date of his application;

34 (d) The purpose or purposes for which the applicant  
35 desires to carry such weapon, the necessity therefor, and  
36 the county or counties in which such license is desired to  
37 be effective.

38 Upon the hearing of such application the court shall  
39 hear evidence upon all matters stated in such application  
40 and upon any other matter deemed pertinent by the court,  
41 and if such court be satisfied from the proof that there is  
42 good reason and cause for such person to carry such  
43 weapon, and all of the other conditions of this article be  
44 complied with, the court, or the judge thereof in vacation,  
45 may grant such license for such purposes, and no other,  
46 as such court, or the judge in vacation, may set out in the

47 license (and the word "court" as used in this article shall  
48 include the circuit judge thereof, acting either in term  
49 or vacation); but, before such license shall be effective  
50 such person shall pay to the sheriff, and the court shall so  
51 certify in its order granting the license, the sum of twenty  
52 dollars, and shall also file a bond with the clerk of such  
53 court, in the penalty of three thousand five hundred  
54 dollars, with good security, signed by a responsible  
55 person or persons, or by some surety company, author-  
56 ized to do business in this state, conditioned that such  
57 applicant will not carry such weapon except in accord-  
58 ance with his application and as authorized by the court,  
59 and that he will pay all costs and damages accruing to  
60 any person by the accidental discharge or improper, negli-  
61 gent or illegal use of such weapon or weapons. Any such  
62 license granted shall be good for one year, unless sooner  
63 revoked, as hereinafter provided, and be coextensive with  
64 the county in which granted, and such other county or  
65 counties as the court shall designate in the order granting  
66 such license; except that upon a proper showing the court  
67 granting such license to any person regularly employed  
68 as a security guard may, in its discretion, in the order  
69 granting such license extend the period of the validity  
70 of such license for a period not to exceed four years,  
71 under such terms and conditions as the court deems  
72 proper; except that regularly appointed deputy sheriffs  
73 having license shall be permitted to carry such revolver or  
74 other weapons at any place, within the state, while in  
75 the performance of their duties as such deputy sheriffs;  
76 and except that any such license granted to regularly  
77 appointed railway police shall be coextensive with the  
78 state. All license fees collected hereunder shall be paid  
79 by the sheriff and accounted for to the auditor as other  
80 license taxes are collected and paid, and the state tax  
81 commissioner shall prepare all suitable forms for licenses,  
82 bonds and certificates showing that such license has been  
83 granted and shall do anything else in the premises to  
84 protect the state and see to the enforcement of this sec-  
85 tion.

86 The clerk of the circuit court shall, immediately after  
 87 license is granted as aforesaid, furnish the superintendent  
 88 of the department of public safety a certified copy of the  
 89 order of the court granting such license, for which service  
 90 the clerk shall be paid a fee of two dollars which shall  
 91 be taxed as cost in the proceeding. It shall be the duty  
 92 of the clerk of each circuit court to furnish to the super-  
 93 intendent of the department of public safety, at any time  
 94 so required, a certified list of all such licenses issued in  
 95 his county.

**ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§61-10-28. Same—Local option election; petition; election procedure; form of ballot; effect of such election.**

1 The county court of any county is hereby authorized  
 2 to call a local option election for the purpose of deter-  
 3 mining the will of the voters as to whether the provi-  
 4 sions of section twenty-five of this article shall continue  
 5 in effect in said county.

6 A petition for such local option election shall be in the  
 7 form hereinafter specified and shall be signed by quali-  
 8 fied voters residing within said county equal to at least  
 9 ten per cent of the persons qualified to vote within said  
 10 county at the last general election. Said petition may  
 11 be in any number of counterparts and shall be sufficient  
 12 if substantially in the following form:

13 PETITION ON LOCAL OPTION ELECTION  
 14 RESPECTING WORK, LABOR OR BUSI-  
 15 NESS ON SUNDAY IN \_\_\_\_\_  
 16 COUNTY, WEST VIRGINIA

17 Each of the undersigned certifies that he or she is a  
 18 person residing in \_\_\_\_\_ County, West Virginia,  
 19 and is duly qualified to vote in said county under the  
 20 laws of the state, and that his or her name, address and  
 21 the date of signing this petition are correctly set forth  
 22 below.

23 The undersigned petition said county court to call and  
 24 hold a local option election upon the following question:  
 25 Shall the provisions of section 25, article 10, chapter 61  
 26 of the code of West Virginia, one thousand nine hundred

27 thirty-one, as amended, continue in effect in .....  
 28 County, West Virginia?

29	Name	Address	Date
30	.....	.....	.....
31	.....	.....	.....

32 (Each person signing must specify either his postoffice  
 33 address or his street number.)

34 Upon the filing of a petition for a local option election  
 35 in accordance with the provisions of this section, the  
 36 county court shall enter an order calling a local option  
 37 election and providing that the same shall be held at the  
 38 same time and as a part of the next primary or general  
 39 election to be held in said county. Said county court  
 40 shall give notice of such local option election by publi-  
 41 cation thereof as a Class II-0 legal advertisement in com-  
 42 pliance with the provisions of article three, chapter fifty-  
 43 nine of this code, and the publication area for such pub-  
 44 lication shall be the county. Such notice shall be so pub-  
 45 lished within fourteen consecutive days next preceding  
 46 said election.

47 Each person qualified to vote in said county at said  
 48 primary or general election shall likewise be qualified  
 49 to vote at the local option election. The election officers  
 50 appointed and qualified to serve as such at said primary  
 51 or general election shall conduct said local option elec-  
 52 tion in connection with and as a part of said primary or  
 53 general election. The ballots in said local option election  
 54 shall be counted and returns made by the election officers  
 55 and the results certified by the commissioners of election  
 56 to said county court which shall canvass the ballots, all in  
 57 accordance with the laws of the state of West Virginia re-  
 58 lating to primary and general elections insofar as the  
 59 same are applicable. The county court shall, without  
 60 delay, canvass the ballots cast at said local option election  
 61 and certify the result thereof.

62 The ballot to be used in said local option election shall  
 63 have printed thereon substantially the following:

64 "Shall the Sunday Closing Law continue in effect in  
 65 ..... County of West Virginia?

66 ☐ Yes ☐ No

67 (Place a cross mark in the square opposite your choice.)"

68 If a majority of the voters voting at any such local  
69 option election vote no on the foregoing question, the  
70 provisions of section twenty-five, article ten, chapter  
71 sixty-one of the code of West Virginia, one thousand nine  
72 hundred thirty-one, as amended, shall no longer continue  
73 in effect in said county.

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

William Tompkins  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the ~~House~~<sup>Senate</sup>.

Takes effect May 1, 1967.

William Steyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Howard Carson  
President of the Senate

H. Laban White  
Speaker House of Delegates

The within approved this the 17  
day of March, 1967.

Walter C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/17/67

Time 1:15 P. M.