WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 2

(By Mr. Blankenship and Mr. Causey)

PASSED

March 6, 1969

In Effect
July 1, 1969

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-12-69
ENROLLED

Senate Bill No. 2
(By Mr. Brotherton and Mr. Carrigan)

[Passed March 6, 1939; in effect July 1, 1939.]

AN ACT to repeal chapters eight and eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, chapter twenty-six, acts of the Legislature, first extraordinary session; one thousand nine hundred thirty-three, chapter forty-nine, acts of the Legislature, second extraordinary session; one thousand nine hundred thirty-three, chapter sixty-eight, acts of the Legislature, regular session; one thousand nine hundred thirty-five, chapters fifty-two, fifty-five and fifty-seven, acts of the Legislature, regular session; one thousand nine hundred thirty-seven, chapters ninety-one, ninety-five and ninety-seven, acts of the Legislature, regular session; one thousand nine hundred thirty-nine, chapter ten, acts of the Legislature, regular session; one thousand nine hundred forty-three, chapters nine and ninety, acts of the Legislature, regular session; one thousand nine hundred forty-five, chapters eighty-five, eighty-six, eighty-seven, and ninety, acts of the Legislature, regular session; one thousand nine hundred fifty-one, chapter one hundred thirty-six, one hundred thirty-seven and one hundred forty, acts of the Legislature, regular session; one thousand nine hundred fifty-three, chapters one hundred twenty-one, one hundred twenty-two and one hundred thirty-three, acts of the Legislature, regular session; one thousand nine hundred fifty-five, chapters one hundred sixteen, one hundred seventeen and one hundred nineteen, acts of the
Enr. S. B. No. 2

Legislature, regular session, one thousand nine hundred fifty-nine, chapters one hundred, one hundred three, one hundred four and one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-one, chapters one hundred twenty-three, one hundred twenty-five and one hundred twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, chapters one hundred twenty-three and one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, and any amendments to any of the foregoing chapters and acts by chapter one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, and to enact in lieu of all of the foregoing a new chapter eight of said code; and to amend and reenact section seventeen, article ten, chapter seventeen of said code, in order to effect a recodification of the basic municipal law (including municipal home rule law) of the state of West Virginia and various statutory provisions relating to certain intergovernmental relations involving municipalities, counties and other units of government and in this connection providing a purpose, short title and various definitions; classifying municipal corporations on the basis of population; providing for the relationship between said new chapter eight and the various special legislative charters; providing various rules and principles of construction; providing the method, manner and procedures for the creation of municipalities; providing for the framing and adopting of an original charter following the incorporation of a city; providing the methods, manner and procedures for revising or amending a charter; relating to the expenses of incorporation; providing for the framing and adopting of a charter other than immediately following incorporation; relating to various types of elections pertaining to incorporation and the framing and adopting, revising or amending of a charter and the expenses pertaining thereto; relating to the election, appointment, qualification and compensation of officers; relating to officers and employees generally; relating to various types of elections and petitions; relating to conflict of
interest; relating to the annexation of additional territory by a municipality; relating to decreasing the corporate limits of a municipality; providing the method, manner and procedures for the consolidation of municipalities; relating to the proceedings of governing bodies; relating to the powers and duties of certain officers; relating to powers and duties with respect to ordinances and ordinance procedures; relating to general and specific powers, duties and allied relations of municipalities, governing bodies, officers and employees; requiring notice of injury to person or property or of wrongful death before an action therefor may be brought against a municipality; relating generally to actions against municipalities; granting various powers of taxation; relating generally to taxation and finance; granting licensing and regulatory power and authority; relating to law and order; relating to police forces and departments; providing powers, authority and duties of law enforcement officials and policemen; relating to mayors and police or municipal court judges and their powers and jurisdiction; relating to police matrons; relating to special school zone police officers; relating to a policemen's civil service system; relating to fire fighting; relating to fire companies and departments; relating to a firemen's civil service system; relating to municipal public works; relating to low cost improvements; relating to assessments to improve streets, sidewalks and sewers; relating to the use of unappropriated funds and the issuance of assessment certificates and bonds in connection with assessments to improve streets, sidewalks and sewers; relating to municipal waterworks systems; relating to combined waterworks and sewerage systems; relating to boards of park and recreation commissioners; relating to retirement benefits generally; relating to policemen's pension and relief funds; relating to firemen's pension and relief funds; relating to pension plans for employees of waterworks systems, sewerage systems or combined waterworks and sewerage systems; relating to intergovernmental relations involving municipalities and counties, and in certain instances, other units of government and pertaining to contracting and joint enterprises, urban and rural planning and zoning, regional planning, interstate regional
planning, urban mass transportation systems, airports and
aviation, regional airports, flood control projects, fran-
chise obligations, contributions to or involvement with
nonstock, nonprofit corporations for public purposes, and
building commissions; providing for judicial review gen-
erally; relating to the dissolution of municipalities; pro-
viding for revenue bond financing in connection with vari-
ous types of governmental projects; providing criminal
penalties; providing for injunctive relief; providing for
liens and other liabilities under various circumstances and
the enforcement thereof; relating to constitutionality and
severability; and providing that municipalities and coun-
ties shall be liable for injuries to person or property
sustained by reason of any road, bridge, street, alley
or sidewalk being out of repair only in the event of negli-
gence.

Be it enacted by the Legislature of West Virginia:

That chapters eight and eight-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be re-
pealed; that chapter twenty-six, acts of the Legislature, first
extraordinary session, one thousand nine hundred thirty-three,
chapter forty-nine, acts of the Legislature, second extraor-
dinary session, one thousand nine hundred thirty-three, chap-
ter sixty-eight, acts of the Legislature, regular session, one
thousand nine hundred thirty-five, chapters fifty-two, fifty-five
and fifty-seven, acts of the Legislature, regular session, one
thousand nine hundred thirty-seven, chapters ninety-one,
ninety-five and ninety-seven, acts of the Legislature, regular
session, one thousand nine hundred thirty-nine, chapters ten,
acts of the Legislature, regular session, one thousand nine
hundred forty-three, chapters nine and ninety, acts of the
Legislature, regular session, one thousand nine hundred forty-five,
chapters eighty-five, eighty-six, eighty-seven and ninety,
acts of the Legislature, regular session, one thousand nine
hundred forty-nine, chapters one hundred thirty-six, one hun-
dred thirty-seven and one hundred forty, acts of the Legisla-
ture, regular session, one thousand nine hundred fifty-one,
chapter one hundred thirty-four, acts of the Legislature, regu-
lar session, one thousand nine hundred fifty-three, chapters one
hundred twenty-one, one hundred twenty-two and one hun-
dred thirty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-five, chapters one hundred sixteen, one hundred seventeen and one hundred nineteen, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, chapters one hundred, one hundred three, one hundred four and one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-one, chapters one hundred twenty-three, one hundred twenty-five and one hundred twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, chapters one hundred twenty-three and one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, and any amendments to any of the foregoing chapters and acts by chapter one hundred fifteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be repealed; that a new chapter eight of said code be enacted in lieu of all of the foregoing; and that section seventeen, article ten, chapter seventeen of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

PART I. PURPOSE AND SHORT TITLE.

§8-1-1. Purpose and short title.

1 The purpose of this chapter is to effect a recodification of the basic municipal law of this state and of various statutory provisions relating to certain intergovernmental relations involving municipalities, counties and other units of government, to provide as much uniformity as possible between the powers, authority, duties and responsibilities of special legislative charter municipalities and all other municipalities, and to give effect to the "Municipal Home Rule Amendment" to the constitution of this state, being section thirty-nine-(a), article six of said constitution.

12 For convenience of reference, this chapter may be known and cited as the "Municipal Code of West Virginia."
PART II. DEFINITIONS.


(a) For the purpose of this chapter:

1. "Municipality" is a word of art and shall mean and include any Class I, Class II and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state;

2. "City" is a word of art and shall mean, include and be limited to any Class I, Class II and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter, (iii) general law, or (iv) any combination of the foregoing; and

3. "Town or village" is a term of art and shall, notwithstanding the provisions of section ten, article two, chapter two of this code, mean, include and be limited to any Class IV town or village, as classified in section three of this article, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) general law, or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

1. "Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county court of any county or governing
(2) "Councilmen" shall mean the members of a governing body, by whatever name such members may be called;

(3) "Mayor" shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term "mayor" shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty or function shall be exercised, discharged or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty or function shall in fact be exercised, discharged or fulfilled in and for such municipality by the individual called mayor: Provided, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace and mayor's court functions specified in this chapter, the term "mayor" shall always mean the individual called mayor;

(4) "Recorder" shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) "Treasurer" shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) "Administrative authority" shall mean the officer, commission or person responsible for the conduct and management of the affairs of the municipality in accord-
ance with the charter, general law and the ordinances, resolutions and orders of the governing body thereof;

(7) "Charter" shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former chapter eight-a of this code or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter;

(8) "Ordinances" shall mean the ordinances and laws enacted by the governing body of a municipality in the exercise of its legislative power, and in one or more articles of this chapter, ordinances enacted by a county court;

(9) "Inconsistent or in conflict with" shall mean that a charter or ordinance provision is repugnant to the constitution of this state or to general law because such provision (i) permits or authorizes that which the constitution or general law forbids or prohibits, or (ii) forbids or prohibits that which the constitution or general law permits or authorizes;

(10) "Qualified elector," "elector," "qualified voter" or "legal voter" shall mean any individual who, at the time he offers to vote or at the time he participates in any event or activity (such as signing a petition) under the provisions of this chapter for which he must be a qualified elector, elector, qualified voter or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who (i) has been a resident of the state for one year and of the municipality or territory in question for at least sixty days next preceding such election or date pertinent to any such event or activity, and (ii) in the case of a regular municipal election, special municipal election, municipal public question election or
any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of voters with the "permanent registration system" of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he resides to vote in state-county elections, or (iii) in the case of a territory election, general election or any such territory event or activity, is duly registered in the county in which he resides to vote in state-county elections; and any chapter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election or special municipal election and whether or not they voted at such election) held in such municipality or territory, as the case may be; (11) "Public question" shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be; (12) "Inhabitant" shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be; (13) "Resident" shall mean any individual who maintains a usual and bona fide place of abode within the cor-
porate limits of a municipality or within the boundaries of
a territory referred to in this chapter, as the case may be;
(14) "Freeholder" shall mean any person (and in the
case of an individual one who is sui juris and is not under
a legal disability) owning a "freehold interest in real
property";
(15) "Freehold interest in real property" shall mean
any fee, life, mineral, coal or oil or gas interest in real
property, whether legal or equitable, and whether as a
joint tenant or a tenant in common, but shall not include
a leasehold interest (other than a mineral, coal or oil or
gas leasehold interest), a dower interest, or an interest in
a right of way or easement, and the freehold interest of a
church or other unincorporated association shall be con-
sidered as one interest and not as an individual interest
of each member thereof;
(16) "County court" shall mean the governmental
body created by section twenty-two, article eight of the
constitution of this state, or any existing tribunal created
in lieu of a county court;
(17) "Code" shall mean the code of West Virginia, one
thousand nine hundred thirty-one, as heretofore and
hereafter amended; and
(18) "Person" shall mean any individual, firm, part-
nership, corporation, company, association, joint stock as-
association, or any other entity or organization of whatever
character or description.
(c) The term "intergovernmental relations" is used in
this chapter to mean undertakings and activities which
may be undertaken or engaged in by two or more units of
government acting jointly, and in certain headings in this
chapter to call attention to the fact that the provisions
under such headings apply to units of government in
addition to municipalities.
(d) For the purpose of this chapter, unless the context
clearly indicates to the contrary, words importing the
masculine gender shall include both the masculine and
feminine gender, and the phrase "charter framed and
adopted or revised as a whole or amended (or words of
like import) under the provisions of former chapter
eight-a of this code" shall include a charter framed and
adopted or revised as a whole or amended under the pro-
visions of former article two of former chapter eight of
this code.

PART III. GENERAL PROVISIONS.

§8-1-3. Classification of municipal corporations.

Pursuant to the mandate of the "Municipal Home Rule
Amendment" to the constitution of this state, all munici-
pal corporations are hereby classified by population into
four classes, as follows:

(1) Every municipal corporation with a population in
excess of fifty thousand shall be a Class I city;

(2) Every municipal corporation with a population in
excess of ten thousand but not in excess of fifty thousand
shall be a Class II city;

(3) Every municipal corporation with a population in
excess of two thousand but not in excess of ten thousand
shall be a Class III city; and

(4) Every municipal corporation with a population of
two thousand or less shall be a Class IV town or village.

Transition from one to another class shall occur auto-
matically when the requisite population qualification has
been met, effective as of the effective date of the census,
as specified in section four of this article.

The Legislature hereby declares its interpretation of
the said "Municipal Home Rule Amendment" to be that
a single classification by population of municipal cor-
porations in this state is required which shall exclude
any other classification of municipal corporations by
population for any purpose. It is, therefore, the inten-
tion of the Legislature that the classification established
in this section shall give effect to the constitutional man-
date and shall be the only classification by population
applying to municipal corporations in this state. It is
the further intention of the Legislature that subsequent
legislation affecting municipal corporations in this state
shall treat municipal corporations differently upon the
basis of population, only in accordance with the general
classification established in this section.
§8-1-4. How population determined.

1 For any purpose pertinent to the provisions of this chapter, population shall be determined by reference to the last preceding census taken under the authority of the United States or of the Legislature of West Virginia or by the municipality pursuant to an ordinance adopted thereby, the adoption of any such ordinance being hereby expressly authorized.

§8-1-5. Existing status of municipalities confirmed; powers, authority, duties and responsibilities conferred by law.

1 The corporate being of every municipality now existing is hereby confirmed and validated. Except as otherwise provided in section six of this article, any municipality shall have all of the powers, authority, duties and responsibilities conferred by law upon a municipality of the class to which it belongs.

§8-1-6. Application of provisions of this chapter; inconsistent or conflicting special legislative charter provisions; amendment of special legislative charters; inconsistent or conflicting ordinance provisions; status and tenure of officers and members not affected; transactions already entered into not affected.

1 In furtherance of the purpose of this chapter as set forth in section one of this article, each municipality is subject to the provisions contained in this chapter and may exercise the power and authority conferred by this chapter. In this regard, it is recognized that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter, there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter
of practical construction, that either the charter pro-
visions or the provisions of this chapter, but not both,
should be applicable; (3) although varying in certain
respects, certain charter provisions may be similar to
and in essential harmony with corresponding provisions
of this chapter; (4) as to any particular charter pro-
visions, there may be no counterpart of such provisions
in this chapter; and (5) as to any provisions of this
chapter, there may be no counterpart charter provisions.
In view of these possibilities, it becomes necessary for
the Legislature to set forth certain rules of construction
to be applied in addition to the usual and ordinary rules
of statutory construction, and to set forth a substantive
provision as to application in connection with possi-
bility (2).

As to possibility (1), the pertinent provisions of this
chapter shall supersede such conflicting or inconsistent
charter provisions and shall be deemed amendments to
such charters. As to possibility (2), one year from and
after the effective date of this section or the effective
date of any pertinent amendment to this chapter here-
after adopted, such provisions of this chapter shall su-
persede such charter provisions and shall be deemed
amendments to such charter, unless within such one-
year period an ordinance is adopted providing that such
charter provisions shall be applicable, in which event
such charter provisions shall be applicable so long as
said ordinance remains in full force and effect. As to
possibility (3), all such charter provisions shall be con-
structed so as to conform to and be consistent with the
pertinent provisions of this chapter. As to possibility
(4), the charter provisions shall remain in operation and
effect until amended or repealed by general law here-
after enacted or until hereafter supplanted by a new
charter or revised as a whole or amended in accordance
with the provisions of this chapter. As to possibility (5),
the applicable provisions of this chapter shall be deemed
amendments to such charter. In determining the rela-
tionship between such charter provisions and the pro-
vocations of this chapter in any situation not included in
the possibilities outlined above, the relationship shall
be determined in keeping with the general concepts and principles embodied in the rules of construction set forth in this paragraph. The provisions set forth above in this paragraph shall also be applicable to the relationship between the pertinent provisions of various local or special acts of the Legislature (other than special legislative charters) pertaining to municipal matters and the provisions of this chapter.

Notwithstanding any of the foregoing provisions of this section, (1) particular provisions of this chapter shall supersede pertinent charter provisions whenever it is expressly provided in this chapter that such provisions of this chapter shall govern notwithstanding any charter provisions, that such charter provisions shall be of no force and effect, that the provisions of this chapter are the only applicable provisions, or that something may be accomplished only as provided in this chapter; and (2) charter provisions shall govern chapter provisions in those instances where this chapter expressly authorizes other or contrary charter provisions.

Any ordinance provision which is inconsistent or in conflict with any provision of this chapter shall be of no force and effect.

All individuals holding any office on the effective date of this chapter, and all officers and members of any commission, board, authority or other entity, by whatever name called, serving on the effective date of this chapter, and who were elected or appointed and qualified under or pursuant to the provisions of former chapter eight or chapter eight-a of this code, any act repealed by this new chapter eight or any charter provision or ordinance provision made or adopted under or pursuant to such former chapters or acts shall continue to serve, unless a vacancy sooner occurs, until their terms expire and until their successors have been elected or appointed, as the case may be, and have qualified.

Notwithstanding any of the foregoing provisions or any other provision of this act (even though such other provision is stated to be paramount), transactions validly entered into, causes of action which arose, and civil ac-
tions instituted, before the effective date of this act and
the rights, duties, obligations and interest flowing there-
from remain valid, enforceable and maintainable there-
after and may be terminated, completed, consummated,
prosecuted, maintained or enforced (1) as required or
permitted by any statute or other law (including the
provisions of former chapters eight and eight-a of this
code and the acts repealed by this act) repealed or
amended by this act as though such repeal or amend-
ment had not occurred, or (2) with like effect as though
this act had not been enacted.

§8-1-7. Construction of powers and authority granted.

The enumeration of powers and authority granted in
this chapter shall not operate to exclude the exercise of
other powers and authority fairly incidental thereto or
reasonably implied and within the purposes of this chap-
ter; and the provisions of this chapter shall be given full
effect without regard to the common law rule of strict
construction, and particularly when the powers and au-
thority are exercised by charter provisions framed and
adopted or adopted by revision of a charter as a whole or
adopted by charter amendment under the provisions of
this chapter.

Any charter provision framed and adopted or adopted
by revision of a charter as a whole or adopted by charter
amendment under the provisions of former chapter
eight-a of this code or under the provisions of this chapter
which is beyond the power and authority of a city and
any ordinance provision which is beyond the power and
authority of a municipality shall be of no force and effect.

§8-1-8. References to code provisions.

Any reference in this chapter to another provision of
this code and any reference elsewhere in this code or
other law to a provision in this chapter shall be construed
to mean the present provision or such provision as the
same may be hereafter amended from time to time,
Where additional provisions are added to the subject
matter of any other provision so referred to, the reference
shall include such additional provisions.
Wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order of a municipality, or in any order, ordinance or resolution of a county court or other unit of government, reference is made to any section, any article, any particular provision or any term of chapter eight of this code as it existed immediately prior to the effective date of this new chapter eight or to any section, any article, any particular provision or any term of former chapter eight of this code, such reference shall henceforth be read, construed and understood to mean the comparable section, article, particular provision or term in this new chapter eight.

**ARTICLE 2. CREATION OF MUNICIPALITIES.**

**PART I. GENERAL.**

§8-2-1. Requirements for incorporation; size and character of territory; population.

Any part of any county or counties, not within any municipality, urban in character, and containing at least one hundred inhabitants (if such part contains less than one square mile), and an average of not less than five hundred inhabitants per square mile (if such part contains one square mile or more), provided such part does not include an amount of territory disproportionate to the number of inhabitants thereof, may be incorporated, depending upon population, as a city, either a Class I, Class II or Class III city, or as a Class IV town or village, as classified in section three, article one of this chapter, upon the conditions and in the manner hereinafter prescribed: Provided, That the exact extent of the territory or portions thereof to be included or excluded shall be within the reasonable discretion of the county court, taking into consideration the topography thereof, the benefits thereto from incorporation, the amount of uninhabited land required for parks and recreational use and normal growth and development and the present and probable future uses thereof, so as to prevent hardships and inequities.
§8-2-2. Petition; survey and map.

1. A proceeding to incorporate any such city, town or village shall be initiated upon petition addressed to and filed with the county court of the county in which the territory is located, or if in more than one county in which the major portion of the territory is located, indicating whether the territory sought to be incorporated will be upon incorporation, depending upon population, a Class I, Class II or Class III city or a Class IV town or village. Such petition shall be signed by at least thirty percent of the freeholders of the territory to be incorporated.

Such petition shall be verified by at least one of the petitioners and shall be accompanied by a map made by a professional engineer registered under the laws of this state, which map shall be based upon an actual and accurate survey of the territory to be incorporated showing the courses, distances and the area of the territory to be incorporated.

Such map shall be verified and shall be left at the residence or place of business within the territory to be incorporated of some individual residing or some person doing business therein, and shall be subject to examination at all reasonable hours by every person interested in such application for a period of at least ten days prior to the hearing on such petition as provided for in section three of this article.

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

1. Upon the filing of such petition, the county court shall set the same for hearing not sooner than ten days and not later than thirty days thereafter, and the petitioners shall cause notice of the filing of said petition and of the date, time and place of hearing thereon to be published 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 the territory sought to be incorporated.

2. Upon the date set for hearing, the county court shall hear evidence for and against the proposed incorporation, and if it shall determine that the requirements of sections
§8-2-4. Census; bond; duties of enumerators.

If the court shall determine after hearing that the requirements of sections one and two of this article have been met, the petitioners shall provide bond in penalty prescribed by the court, with good and sufficient surety thereon, conditioned to pay all costs of taking a census, determining the qualification of electors, holding an election and ascertaining the results thereof, in the event a majority of the qualified electors vote against incorporation; and thereupon the court shall fix a day or days for taking a census of the inhabitants and for determining those who are qualified electors of said territory. For the purpose of taking said census, and determining the qualifications of the electors, said court shall appoint four enumerators for each five hundred inhabitants of said territory based upon the most reliable estimate obtainable: Provided, That if the territory contains less than one square mile and the county court believes the territory contains fewer than five hundred inhabitants, two enumerators shall be appointed. It shall be the duty of the enumerators so appointed to enumerate all of the inhabitants of said territory and to visit each house or dwelling therein, and to obtain the name of each known resident thereof. It shall also be the duty of the enumerators to examine the permanent registration records of the county or counties in which the territory is situate to determine which of such inhabitants are qualified electors therein and to compile and file with the county court a list of such qualified electors. Each enumerator shall receive for his services a sum per day, to be fixed by the county court, but not to exceed ten dollars per day, together with all reasonable and necessary expenses actually incurred in the discharge of such duties, which sum and expenses shall be paid by the county court and reimbursed to it by the city, town or village if and when the city, town or village shall become incorporated, as hereinafter provided; otherwise by the petitioners. The county court shall provide an opportunity for all qualified
19

individuals residing in such territory, who have not been
previously registered to vote, to become registered prior
to the election hereinafter provided for. Upon the com-
pletion of said census and the listing of qualified electors,
said enumerators shall make a report under oath to the
county court that said enumeration and listing are correct,
true and accurate, and do not contain the name of any
individual who is not a resident of the territory, and that
the list of qualified electors is true and correct, which
report shall be filed with the county court within the
following number of days after the appointment of said
enumerators: Forty days if it is to be a Class I city, twenty
days if it is to be a Class II city, ten days if it is to be a
Class III city and ten days if it is to be a Class IV town
or village.

PART II. ELECTION.

§8-2-5. Special election; voting precincts; time for; supplies;
commissioners and clerks; notice.

Upon receiving such a report from said enumerators,
the county court shall forthwith fix a date for a special
election, not later than thirty days thereafter, on which
all qualified electors of the territory shall vote upon the
question of incorporation between such hours as may
be fixed by order of said court. For the purpose of
holding and conducting said election, the county court
shall divide the territory into one or more precincts,
consisting of not more than five hundred qualified voters
in each precinct; shall arrange for and provide at its
expense polling places, registration books, challenges and
other election supplies as provided for by law in
general elections; shall appoint three commissioners of
election and two clerks from the qualified electors of said
territory for each precinct so established, dividing the
election officials as nearly as possible equally between
those favoring incorporation and those opposed to incor-
poration; and shall give notice of the date and place or
places of election and hours for voting by publication of
such notice as a Class II-0 legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such public-
lication shall be the territory sought to be incorporated.

§8-2-6. Same—Qualified electors; form of ballot or ballot
label; election officials; certification; canvass; declaration of results; recount.

On the date named in such notice for the taking of
the vote, each qualified elector of the territory sought
to be incorporated shall have the right to cast his vote
for or against such incorporation at the precinct in which
he resides, by depositing a ballot in a ballot box, or by use
of a voting machine, to be provided by the county court
for that purpose. Each ballot, or ballot label where voting
machines are used, shall be without party designation
and shall have written or printed thereon the following
words:

☐ For Incorporation
☐ Against Incorporation

The ballot or ballot label shall be a separate, special bal-
lot or ballot label.

Such election shall be held and conducted under the
supervision of the commissioners and clerks of election
appointed by the county court as aforesaid and shall be
conducted as nearly as may be in accordance with the
laws of this state governing general elections. The re-
results of such election shall be certified as in general elec-
tions, and the returns shall be canvassed and the results
declared by the county court. In the event any commis-
sioner or clerk designated to serve in said election shall
fail or refuse to serve, such vacancy may be filled in like
manner as vacancies in such positions are filled in general
elections under the laws of this state governing general
elections. A recount may be had, as in general elections,
upon the party or parties desiring such recount providing
adequate assurance to the county court that he or they
will pay all costs of such recount.

§8-2-7. Court order declaring boundaries of city; certificate of
incorporation of town or village; dismissal of proceeding.

If the proceeding be for the incorporation of a city,
and it appears to the county court, upon the returns being
canvassed, that a majority of the legal votes cast on the
question of incorporation were in favor of such incorpora-
tion and the court is satisfied that all of the applicable
provisions of this article have been complied with, the
court shall by order duly made and entered of record
declare that the territory in question (reciting the bound-
aries) shall thereby become a body corporate, and shall
thenceforth be known as the city of_______________________,
but that until a charter shall be framed and adopted as
provided in article three of this chapter, such city shall
have and exercise no powers of a municipality except the
power to frame and adopt a charter as therein provided.

If the proceeding be for the incorporation of a town or
village, and it appears to the county court, upon the re-
turns being canvassed, that a majority of the legal votes
cast on the question of incorporation were in favor of
such incorporation and the court is satisfied that all of the
applicable provisions of this article have been complied
with, the court shall by order duly made and entered of
record, direct the clerk of said court to issue a certificate
of incorporation in form or in substance as follows:

"It appearing to the court that under the provisions of
article two, chapter eight of the code of West Virginia,
as amended, at an election duly held on the________day
of_______________, 19____, a majority of the legal votes
cast on the question of incorporation by the qualified
voters of the following territory, to wit: Beginning,
etc. (here recite the boundaries), were cast in favor of the
incorporation of the town or village of_____________________,
in the County of__________________, bounded as herein set
forth; and it appearing to the satisfaction of the court
that all of the provisions of article two, chapter eight of
the code of West Virginia, as amended, have been com-
plied with by the petitioners for said incorporation, said
town or village is hereby declared to be a body corporate,
duly authorized to exercise all of the corporate powers
conferred upon towns or villages by chapter eight of the
code of West Virginia, as amended, from and after the
date of this certificate. (Signed) _______________________,
Clerk County Court."

Thereupon, the first election of officers shall be held as
provided in sections two, three and four, article five of this chapter.

If on the returns being canvassed on the question of incorporation, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed, and no subsequent proceeding for incorporation of the same territory or any portion thereof shall be considered or election thereon had within a period of three years thereafter.

PART III. JUDICIAL REVIEW.


1 A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court determining that the requirements of sections one and two of this article have been met and ordering a census or enumeration to be taken. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISION OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

§8-3-1. Charter board for cities; number of members; qualifications of members; nominations; ballots and ballot labels; dismissal of proceeding.

1 At every election on the question of incorporation of a city, under article two of this chapter, each qualified voter entitled to vote shall also be entitled to vote for a charter board consisting of eleven members if it is to be a Class I or Class II city, and of seven members if it is to be a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident of the territory sought to be incorporated for at least two years prior to the date of said election and who shall have been qualified to vote in state-county elections for at least two years prior to the date of said
election shall be eligible for membership on said charter board. Nominations for said charter board shall be made by petition to the county court bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the territory. All nominating petitions shall be filed with the county court at least twenty days prior to the date of the election on the question of incorporation. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the county court. The ballots, or ballot labels where voting machines are used, shall be prepared by or at the direction of the clerk of the county court. The ballots or ballot labels for members of the charter board shall be separate from the ballots or ballot labels on the question of incorporation. Such ballots or ballot labels for members of the charter board shall be special ballots or ballot labels without party designation. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. The ballots or voting machine directions shall bear instructions specifying the number of candidates to be voted for, and each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all of his votes for one candidate, or distribute them among several candidates as he sees fit. The ballots or voting machine directions shall bear advice to this effect. Any voter who shall vote against incorporation may, nevertheless, vote for members of the charter board, and the ballots or voting machine directions shall bear advice to this effect.

If on the returns being canvassed on the question of incorporation, such canvassing to be done by the county court, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed as specified in section seven, article two of this chapter, and no subsequent proceeding for incorporation of the same territory or any portion thereof shall be considered or election thereon had within a period of three years thereafter.
§8-3-2. Same—Organization; journal; quorum; duties; time for draft of charter; form of city government.

1 If on the returns being canvassed on the question of incorporation of a city, such canvassing to be done by the county court, a majority of the legal votes cast be in favor of such incorporation, then the legal votes cast for members of the charter board shall be counted and canvassed by the county court, and the candidates in the number to be chosen who received the highest number of votes shall be declared elected. The charter board shall be convened at a suitable place within the territory, by the member receiving the highest number of votes, not less than five days nor more than ten days after the canvass of the returns. He shall notify the other members of the board in writing of the time and place of the first meeting of the charter board. At such first meeting, the board shall perfect its organization by electing a chairman and secretary from its membership and by determining the rules to govern its proceedings. Any vacancy in the membership of the board occurring before a charter is approved by the qualified voters of the incorporated territory shall be filled by appointment by majority action of the remaining members, and any vacancy occurring after approval of a charter as aforesaid shall be filled as specified in section nine of this article. A journal shall be kept by the secretary, in which journal shall be entered, upon demand by any member, the vote by ayes and nays on any question. A majority of the members of said board shall constitute a quorum. The board shall specify the manner for nominating and electing candidates for the first elective offices provided for in the proposed charter at the election to be held on the question of approval of the charter. It shall fix the date of said election and it shall do and provide all other things necessary for making nominations and holding and conducting such election. Any qualified voter and any freeholder of the incorporated territory may file with said charter board any written material bearing upon the purposes of the board, and the board shall give such material so filed such consideration as it may deem proper. The charter drafting process may be carried on through committees, but their work shall be advisory.
only. The charter board shall complete its draft of a charter within ninety days after its first meeting. It shall be the duty of the charter board to provide in the charter so drafted for a form of city government in accordance with one of the following plans:

Plan I—"Mayor-Council Plan." Under this plan:

(1) There shall be a city council, elected at large or by wards, or both at large and by wards, by the qualified voters of the city; a mayor elected by the qualified voters of the city; and such other elective officers as the charter may prescribe; and

(2) The mayor and council shall be the governing body and administrative authority.

Plan II—"Strong-Mayor Plan." Under this plan:

(1) There shall be a mayor elected by the qualified voters of the city; and a city council elected at large or by wards, or both at large and by wards, by the qualified voters of the city;

(2) The council shall be the governing body;

(3) The mayor shall be the administrative authority;

and

(4) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter, but such appointments by the mayor or by his order may be made subject to the approval of the council.

Plan III—"Commission Government." Under this plan:

(1) There shall be, except as hereinafter in this plan provided, a commission of five members elected at large by the qualified voters of the city;

(2) The members of the commission shall be a commissioner of public affairs, a commissioner of finance, a commissioner of public safety, a commissioner of public works and a commissioner of streets: Provided, That a charter for a Class I or Class II city may, and a charter for a Class III city shall, provide for a commission of three members, viz., a commissioner of finance, a commissioner of public works and a commissioner of public safety;

(3) The members of the commission shall elect a mayor from among their membership;
(4) The commission shall be the governing body and administrative authority; and

(5) Officers and employees, other than members of the commission, shall be appointed in accordance with this chapter by the commissioners or by each commissioner with respect to his department, as the charter may prescribe.

Plan IV—"Manager Plan." Under this plan:

(1) There shall be a council of not less than five nor more than eleven members, elected either at large or from such geographical districts as may be established by the charter, or partly at large and partly from such geographical districts, and the charter may empower the council to change, from time to time, such districts without amending the charter: Provided, however, That the change of such districts shall not take effect during the terms of office of the members of such council making such change;

(2) There shall be a mayor elected by the council from among its membership, who shall serve as the presiding officer of the council; and a city manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority. He shall manage the affairs of the city under the supervision of the council and be shall be responsible to such council. He shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work he is responsible to the council.

The purpose of the provisions of this section pertaining to Plan I, Plan II, Plan III and Plan IV is to establish basic requirements of alternative plans of structure and organization of city government. The structure and organization of a city government may be specified by the charter in respects other than those enumerated, and in elaboration of the basic requirements, insofar as such charter provisions do not conflict with the purpose and the provisions of the alternative plans prescribed.

§8-3-3. Charters; approval by attorney general.

The draft of said charter shall, upon completion, be
certified by the secretary of said charter board to the
attorney general of the state. It shall be his duty to
examine the draft and advise whether it is consistent in
all respects with the constitution and general law of this
state. The attorney general, if satisfied that the pro-
posed charter is consistent in all respects with the con-
stitution and general law of this state, shall so certify
to the charter board within thirty days after receipt of
such draft. If the attorney general is not satisfied that
the proposed charter is consistent in all respects with
the constitution and general law of this state, he shall
certify, within thirty days after receipt of such draft, to
the charter board in what respects the same does not
conform to the constitution or general law of this state.

§8-3-4. Same—Hearing and notice.

When it shall have completed its draft of a charter,
the charter board shall conduct a public hearing thereon.
The county court shall cause notice of the date, time,
place and purpose of the hearing to be given by publi-
cation thereof at least ten days prior to the date set for
the hearing as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be the incorporated territory. The notice shall
state where copies of the draft of the charter may be
obtained. The hearing may be continued by the charter
board by adjournments over a period not exceeding
fourteen days.

§8-3-5. Same—Changes; time for; signatures; filing.

A charter board shall have thirty days after the con-
clusion of the hearing required by section four of this
article or receipt of the certificate of the attorney general
required by section three of this article, whichever shall
occur later, to make any changes it may consider neces-
sary or desirable in its charter draft.

At least three copies of the completed charter draft shall
be signed by at least a majority of the members of the
board, and two copies shall be filed with the clerk of
the county court.
§8-3-6. Same—Special election; time for; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

1 The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county court to be held not less than thirty days nor more than ninety days following the date on which the two copies of the completed charter were filed with the clerk of the county court, at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county court shall cause notice of the date, hours, place and purpose of such election to be given by publication thereof as a Class II-0 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 the incorporated territory. The first of said publications shall be made not less than thirty days prior to the date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

2 For the purpose of holding and conducting said election, the county court shall divide the incorporated territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each precinct so established, subject, however, to the provisions of section eleven, article four of this chapter. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county court as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections.

3 The results of such election, both as to approval or re-
section of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county court. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county court that he or they will pay all costs of such recount.

§8-3-7. Same—Approval; effective date; certification; judicial notice; recordation.
1 If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election, if the interim exceeds sixty days; otherwise on July first of the second fiscal year after its approval. If approved as aforesaid, one of the signed copies of the charter on file with the clerk of the county court, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by the clerk of the county court to the clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions. The clerk of the county court shall certify to the county court the other signed copy of the charter previously filed with him, which copy so certified shall be spread upon the records of said court for public examination.

§8-3-8. Same—Rejection; rewriting or altering draft; new charter board.
1 If the proposed charter shall be rejected by a majority of the legal votes cast at the election thereon, the election of officers shall be void, except that the candidate
who shall receive the highest number of legal votes cast for the office of mayor, if a mayor is to be elected, otherwise the candidate for any city office who shall receive the highest number of legal votes cast at the election, shall, within ten days thereafter, require such charter board to reconvene for the purpose of rewriting or altering the draft of the rejected charter in such manner as to it shall seem proper. Any three hundred qualified voters of said incorporated territory may, however, within ten days after the determination of the results of the election at which such charter is rejected, petition the clerk of the county court for the election of a new charter board, in which case the court shall thereupon call a new election for members of the charter board in the same manner as the original election and with nominations to be made and any vacancies to be filled in the same manner as in the first instance, as provided in section one of this article. The duties of the new charter board shall be the same as those of the former board, and as many successive charter boards may be elected as may be necessary until a charter for such territory is framed and approved by the qualified voters of the incorporated territory. The rewritten or altered proposed charter or the charter draft of a new or any succeeding charter board, as the case may be, shall be submitted to the attorney general and the qualified voters of said incorporated territory in the same manner and with like notice and proceedings as required in the first instance, and such proceedings shall continue until the qualified voters of said incorporated territory have by a majority vote approved a charter.

PART II. CONTINUING DUTIES—REVISING OR AMENDING A CHARTER.

§8-3-9. Charter boards; continuing duties—revising or amending a charter.

1 The members of the charter board of a city elected under the provisions of this article whose draft of a charter is approved by the qualified voters of the city shall hold office for a term of six years following the
approval of such charter. Any vacancy occurring during that period shall be filled temporarily by appointment by majority action of the remaining members, and a successor shall be elected at the next regular municipal election in the same manner as elective city officers, such successor to hold office for the remainder of the term.

During such six-year period as aforesaid, the board shall make a continuing study of the functioning of the city government and may, by a two-thirds vote of its members, not less than four years after such charter shall have taken effect, require the submission to the qualified voters of the city of the question of whether the charter shall be revised as a whole, such submission to be in accordance with the pertinent provisions of article four of this chapter. In the event revision as a whole is voted pursuant to such submission, the board as then constituted shall proceed to prepare a revision of the charter as a whole and the process of revision as a whole as so initiated shall be the same as that for the framing and adoption of a charter under the pertinent provisions of said article four of this chapter. During such six-year period as aforesaid, by a two-thirds vote of its members, at any time not less than one year after such charter shall have taken effect, the board may require the submission of one or more proposed charter amendments to the qualified voters of the city, in accordance with the pertinent provisions of article four of this chapter.

PART III. EXPENSES OF INCORPORATION.

§8-3-10. Expenses of incorporation.

1 The first governing body of any municipality incorporated under the provisions of article two of this chapter shall provide for reimbursement to the county court of all costs of incorporation, including, but not limited to, the cost of publishing notices, of taking the enumeration of inhabitants, of ascertaining the qualification of electors, and of holding, conducting and superintending the elections called for thereunder and the returning, certifying and canvassing of the results thereof. The
first governing body of any city incorporated under
said article two shall also provide for reimbursement
of the charter board or boards and the members thereof
for all reasonable and necessary expenses actually in-
curred in the performance of its and their duties.

ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN
IMMEDIATELY FOLLOWING INCORPORATION; REVISING OR AMENDING A CHARTER; ELECTIONS
AND EXPENSES.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

§8-4-1. Initiation of proceedings for framing a charter.

(a) The governing body of a city may provide by
ordinance for the submission to the qualified voters of
the city at a general election or at a regular municipal
election, or at a special municipal election if the gov-
erning body by the affirmative vote of two-thirds of its
members shall determine and specify that a special
municipal election is necessary, of the question, "Shall
a charter be framed by representatives of the people?".

(b) The governing body of a city shall, upon petition
therefor bearing the signatures, written in their own
handwriting, of fifteen percent of the qualified voters
of the city, if a Class I or Class II city, or ten percent
of the qualified voters of the city, if a Class III city,
provide by ordinance for the submission to the qualified
voters of the city at a general election or at a regular
municipal election of the question, "Shall a charter be
framed by representatives of the people?".

(c) The governing body of a city shall provide by
ordinance for a special municipal election on said question
if a petition bearing the signatures, written in their own
handwriting, of fifteen percent of the qualified voters
of the city, if a Class I or Class II city, or ten percent
of the qualified voters of the city, if a Class III city,
expressly requesting that a special municipal election
be called for the purpose be presented to the governing
body more than one hundred twenty days prior to the
date of the next general election or next regular munici-
al election.
(d) If the question is to be submitted at a general election or a regular municipal election and not a special municipal election, then in determining the general election or regular municipal election at which the question shall be submitted, the following provisions of this subsection (d) shall govern and control:

(1) If the question is to be submitted under the provisions of subsection (a) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the ordinance is adopted under the provisions of said subsection (a); or

(2) If the question is to be submitted under the provisions of subsection (b) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the petition is filed under the provisions of said subsection (b), if there is at least one hundred twenty days between the filing of the petition and the date of the election, and otherwise, at the next general election or next regular municipal election occurring after said interval of at least one hundred twenty days after the filing of said petition.

(e) Any special municipal election held in accordance with the provisions of subsection (a) of this section shall be held not less than thirty nor more than sixty days after the ordinance providing for same shall have been adopted, and any special municipal election held in accordance with the provisions of subsection (b) of this section shall be held not less than thirty nor more than sixty days after the petition shall have been presented to the governing body.

§8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board; effect of vote on question as to charter board.

The ordinance providing for submission to the qualified voters of the city of the question of whether a charter shall be framed shall make provision for voting for a charter board concurrently with the voting on the question of whether a charter shall be framed. A charter
board shall consist of eleven members in a Class I or Class II city and seven members in a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident and qualified voter of the city for at least two years prior to the date of election of members shall be eligible for membership on said charter board.

In the initiatory ordinance, the governing body of a Class I or Class II city may nominate five candidates, and that of a Class III city three candidates, for membership on the charter board. Other nominations, or all of the nominations if the governing body does not make any, shall be made by petition to the governing body bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the city. Nominating petitions may be filed at any time after the adoption of the initiatory ordinance and not less than twenty days prior to the date of the election. In the event of a vacancy which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the governing body.

Notice of any election at which the question of whether a charter shall be framed shall be voted upon shall consist of the initiatory ordinance and a brief prefatory statement setting out the date and hours of the election, naming the candidates, if any, nominated by the governing body for membership on the charter board as above provided and stating how and within what time limit other nominations may be made. The governing body shall cause such notice to be published as a Class II-0 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 the city. The first publication shall be made not less than thirty days prior to the date of the election.

Each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be
elected. He may cumulate all his votes for one candidate or distribute them among the several candidates as he sees fit.

The ballots, or ballot labels where voting machines are used, pertaining to the question of framing a charter shall be separate from the ballots or ballot labels for members of the charter board. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. A voter who shall vote "No" on the question may, nevertheless, vote for such candidates.

The ballots or voting machine directions shall bear instructions to this effect, and also instructions which shall indicate the number of candidates for which the voter may vote (which shall be the same as the number of members to be elected), and that cumulative voting is permitted. Special ballots or ballot labels without party designation shall be used at every election held under this article even though the election is held at the same time as some other election. The ballots or ballot labels shall be prepared by or at the direction of the recorder of the city.

After such an election, the legal votes on the question shall be counted and canvassed. If a majority of the legal votes cast on the question be in the negative, the proceeding shall be at an end, and the question shall not be submitted again, without a petition of the qualified voters as provided for in subsection (b), section one of this article, for at least two years. If a majority of the legal votes cast on the question be in the affirmative, the legal votes cast for members of the charter board shall be counted and canvassed and the candidates, in the number to be chosen, who receive the highest number of votes shall be declared elected.

§8-4-3. provisions of article three made applicable; duties and responsibilities of county court under article three placed upon governing body under this article; duties and responsibilities of charter board; exceptions.

All of the pertinent provisions of article three of this chapter pertaining to the charter drafting and adoption
Enr. S. B. No. 2)

3 process for a newly incorporated city shall be as fully
4 applicable to proceedings under this article four as if such
5 provisions were set forth in extenso herein, except that
6 (1) the publication area for all notices required to be
7 published shall be the city, and (2) the duties and re-
8 sponsibilities placed upon the county court in said article
9 three shall be performed and discharged under this article
10 four by the governing body of the city. A charter board
11 elected in accordance with the provisions of this article
12 four for the purpose of framing a charter, and the mem-
13 bers thereof, shall be governed by the provisions of said
14 article three relating to a charter board for a newly in-
15 corporated city, and the members thereof, and it and the
16 members thereof shall carry out all of the duties and
17 responsibilities imposed upon a charter board, and the
18 members thereof, elected in accordance with the pro-
19 visions of said article three, except that (1) the board,
20 under the provisions of this article four, shall file one
21 signed copy of the proposed charter with the clerk of the
22 county court of the county in which the city or the major
23 portion of the territory thereof is located and two signed
24 copies of the proposed charter with the recorder of the
25 city, and (2) if the proposed charter under the provisions
26 of this article four is rejected by a majority of the legal
27 votes cast at the election thereon, the duties and responsi-
28 bilities of such board shall be at an end, nor shall a new
29 charter board be then elected.

§8-4-4. Submission of proposed charter to qualified voters.

1 The proposed charter shall be submitted to the quali-
2 fied voters of the city in like fashion and with like notice
3 as provided for a proposed charter of a newly incor-
4 porated city as set forth in article three of this chapter,
5 except that the proposed charter shall be submitted at
6 the next regular municipal election instead of a special
7 election, unless (1) the governing body by the affirma-
8 tive vote of two-thirds of its members shall determine
9 and specify that a special municipal election is necessary,
10 or (2) a petition bearing the signatures, written in their
11 own handwriting, of fifteen percent of the qualified
12 voters of the city, if a Class I or Class II city, or ten
percent of the qualified voters of the city, if a Class III
city, expressly requesting that a special municipal elec-
tion be called for the purpose be presented to the gov-
erning body more than one hundred twenty days prior
to the date of the next regular municipal election.

§8-4-5. Approval; effective date; certification; judicial notice;
recordation; effect of rejection.

If the proposed charter shall be approved by a majority
of the legal votes cast at the election thereon, the charter
shall take effect on July first next after the date of the
election, if the interim exceeds sixty days; otherwise
on July first of the second fiscal year after its approval.
If approved as aforesaid, one of the signed copies of the
charter on file with the recorder of the city, together
with a certified copy of the declaration of the results of
the election showing the total legal votes cast for and
against approval, shall be certified forthwith by such
recorder to the clerk of the House of Delegates, in his
capacity as keeper of the rolls. The same shall be pre-
served by said clerk of the House of Delegates as an
authentic public record. After the effective date of a
charter so filed, all courts shall take judicial notice of
its provisions.

If the charter is approved as aforesaid, a certified copy
of the declaration of the results of the election showing
the total legal votes cast for and against approval shall
be forwarded by the recorder of the city to the clerk of
the county court for filing with the signed copy of the
charter previously filed with him.

Rejection of the proposed charter by a majority of
the legal votes cast shall have the same effect as a
majority vote against the question of framing a charter
as specified in section two of this article, and no further
effort shall be made to have a charter approved until
the question of framing a charter is again submitted to
the qualified voters of the city and is approved by a
majority vote, subject to the two-year limitation set
forth in said section two of this article.
§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

A new charter shall entirely supersede the prior charter of a city. All ordinances and administrative acts or rules theretofore adopted by the governing body or administrative agencies of a city which are in conflict with or are inconsistent with a new charter shall continue in force for sixty days after the effective date of the new charter, unless sooner modified or repealed by competent authority; but at the end of this period shall, to the extent of such conflict or inconsistency, be of no further force or effect.

PART II. REVISING OR AMENDING A CHARTER.

§8-4-7. Revising or amending a charter.

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, may be, may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of this article four, except that the question submitted shall be “Shall the charter be revised as a whole by representatives of the people?”, but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in section nine, article three of this chapter or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of sections two and three of this article relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special
legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in section nine, article three of this chapter, or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if (1) such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than one hundred twenty days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than thirty nor more than sixty days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a
designated person at a stated place, upon request. Such
notice shall be published as in the case of a notice of
an election on the question of whether a charter shall
be framed, as specified in section two of this article. A
charter amendment or amendments approved, or such
of them as may be approved, by a majority of the
legal votes cast at the election thereon shall take effect
on the date that the declaration of the results showing
approval by the voters has been made by the govern-
ing body and entered in the minutes of the governing
body. One copy of the amendment or amendments, to-
gether with a certified copy of the declaration of results
attached thereto, shall be certified forthwith by the
recorder of the city to the clerk of the House of Dele-
gates, as keeper of the rolls, and another to the clerk
of the county court for recording in the office of such
clerk of the county court. The same shall be preserved
by said clerk of the House of Delegates as an authentic
public record. After the effective date of an amend-
ment or amendments so filed, all courts shall take judi-
cial notice of such amendment or amendments.

If a majority of the legal votes cast at the election
thereon be against any amendment, such proposed amend-
ment shall not be submitted again, without a petition
of the qualified voters as provided for in subsection (b),
section one of this article considered in pari materia with
the provisions of this section seven, for at least one year.

§8-4-8. Amending a charter—an alternate plan.

Whenever the governing body of any city shall deem
it expedient to amend the charter of any such city
(whether such charter be a special legislative charter
or a charter framed and adopted or revised as a whole
under the provisions of former chapter eight-a of this
code, under article three of this chapter or under this
article four, as the case may be), it shall, by ordinance,
set out in its proper record book the proposed amend-
ment or amendments in full. The governing body shall
set a date, time and place for a public hearing thereon,
which date shall not be less than thirty days after the
date of the first publication hereinafter required. The
governing body shall cause the proposed amendment or
amendments, together with a notice of the date, time and
place fixed for the hearing thereon, to be published as a
Class II-0 legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the city. The notice shall state that the proposed amend-
ment or amendments will be considered on the date
and at the time and place fixed by the governing body
and that any qualified voter or any freeholder of the
city may appear and file objections, in writing, and also
that if no objections are filed the said amendment or
amendments shall become operative on and after a date
fixed in the notice, which date shall be not less than ten
days after the date of the hearing. If no objections are
filed, or if objections are filed and are withdrawn at the
time of the hearing, or within ten days thereafter, the
governing body shall, by ordinance, adopt the amendment
or amendments as an amendment or amendments to the
charter, and cause a copy of the amendment or amend-
ments, ordinance and transcript of the proceedings to
be certified to the clerk of the House of Delegates, as
keeper of the rolls, and to be recorded in the office of
the clerk of the county court. The same shall be pre-
served by such clerk of the House of Delegates as an
authentic public record. The amendment or amend-
ments shall take effect on the effective date specified in
the notice as aforesaid. After the effective date, all courts
shall take judicial notice of such amendment or amend-
ments.

If, on the date and at the time and place set for the
hearing, objections to the amendment or amendments
are filed and are not withdrawn then or within ten days
thereafter, the governing body may abandon the pro-
posed amendment or amendments to which objections
have been filed, or it may submit the proposed amendment
or amendments, either as a unit or separately, at the
next regular municipal election, or at a special mu-
icipal election if such governing body by the affirmative
vote of two-thirds of its members shall determine and
specify that a special municipal election is necessary
and if the date of such regular municipal election shall
be more than six months from such date, for ratification
or rejection. Notice of any election at which the proposed
amendment or amendments shall be voted upon shall
state the date and hours thereof and shall set out the
proposed amendment or amendments at length or state
that copies may be obtained by any qualified voter or
any freeholder of the city from a designated person at
a stated place, upon request. The governing body shall
cause such notice to be published as a Class II-0 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 the city. The amend-
ment or amendments approved, or such of them as may
be approved, by a majority of the legal votes cast at the
election thereon shall take effect on the date that the
declaration of the results showing approval by the voters
has been made by the governing body and entered in
the minutes of the governing body. One copy of the
amendment or amendments, together with a certified
copy of the declaration of results attached thereto, shall
be certified forthwith by the recorder of the city to the
clerk of the House of Delegates, as keeper of the rolls,
and another to the clerk of the county court for recording
in the office of such clerk of the county court. The same
shall be preserved by said clerk of the House of Dele-
gates as an authentic public record. After the effective
date of an amendment or amendments so filed, all courts
shall take judicial notice of such amendment or amend-
ments. If a majority of the legal votes cast at the elec-
tion thereon be against any proposed amendment, the
same shall not be proposed again under the provisions
of this section for at least one year.

The method of charter amendment provided for in
this section is not in lieu of but is in addition to the
other methods prescribed in this chapter.

§8-4-9. Submission of alternative provisions.

1 A charter revision as a whole or a charter amendment
or amendments may be proposed with alternative pro-
visions for submission to the qualified voters and the
The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county courts are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of section eleven of this article. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the gov-
erning body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county court. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that he or they will pay all costs of such recount.

§8-4-11. Special election and special municipal election officials.

1 In any special election upon the question of the approval or rejection of a proposed charter to be held under the provisions of article three of this chapter and in any special municipal election to be held under the provisions of this article four, the proponents and opponents of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, shall be entitled to representation among the election officials appointed to serve at each polling place.

Election officials representing the proponents and opponents shall be designated as follows:

(1) The proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, if organized, may, not less than fifteen days prior to the date fixed for the special election or special municipal election, as the case may be, file with the county court as to a special charter election to be held under the provisions of article three of this chapter or the governing body in all other cases a list of individuals to serve as election officials to represent their organization or organizations and if a list is so filed the county court or governing body, as the case may be, shall appoint as election officials to represent such organization or organizations the individuals so nominated: Provided, That any such organization has as members at least five percent of the qualified voters of the incorporated territory or city, and any such organization, within ten days after the official
notice of such special election or special municipal election, as the case may be, was published for the first time, submitted to the county court or governing body, as the case may be, a statement showing the name, officers and members thereof: Provided, however, That no individual shall be a member of more than one such organization; or

(2) If the proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole, or the proposed charter amendment or amendments, as the case may be, are not organized as aforesaid, or if no such list is filed as aforesaid, the county court or governing body, as the case may be, shall, not less than ten days prior to the date fixed for the special election or special municipal election, as the case may be, appoint as representatives of proponents and opponents, or either, as the case may be, an equal number of persons known to be in favor of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, and of persons known to be opposed to the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, to act as election officials at each polling place.

§4-12. Expenses.

The governing body of a city shall make full provision for all expenses incurred in advertising, holding and conducting any election or voting under the provisions of this article and all other proper expenses incurred in complying with the provisions of this article, including the expenses of a charter board and the members thereof, as specified in section two of this article.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS: GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART I. FIRST ELECTION OF OFFICERS.

§8-5-1. First election of officers of a city; terms of first officers.

The first election of officers of a city shall be held, con-
Enr. S. B. No. 2) 46

2 ducted, superintended, returned, certified and canvassed
3 in such manner as is provided in article three of this
4 chapter for the first charter election of such city. All
5 officers elected at such first charter election, which first
6 charter election is held after the effective date of this
7 article, shall be elected for a term which shall expire on
8 the thirtieth of June of the second or fourth year follow-
9 ing such election, as the charter may provide.

§8-5-2. First election of officers of a town or village; commis-
1 sioners of election.
2 At the time of ordering the issuance of the certificate of
3 incorporation of a town or village as specified in section
4 seven, article two of this chapter, the county court shall
5 appoint three qualified voters of such incorporated terri-
6 tory who shall act as commissioners of election at the
7 first election of officers to be held in such town or village,
8 as hereinafter provided, and, in case they shall fail or
9 refuse to act, such election may be held, conducted, super-
10 intended, returned and certified by any three qualified
11 voters of such incorporated territory appointed for that
12 purpose by the qualified voters present.

§8-5-3. When first election of officers of a town or village held;
1 notice.
2 The first election of officers of a town or village shall be
3 held within sixty days from the date of the certificate of
4 incorporation issued in accordance with the provisions
5 of section seven, article two of this chapter, and the com-
6 missioners of election appointed at the time the order is
7 entered directing issuance of such certificate shall cause
8 notice to be given of the date, time and place of holding
9 such election, which notice shall specify the officers to be
10 voted for, and shall be published within fourteen con-
11 secutive days next preceding the date appointed for such
12 election, as a Class II-0 legal advertisement in compliance
13 with the provisions of article three, chapter fifty-nine of
14 this code, and the publication area for such publication
15 shall be such town or village.

§8-5-4. Conducting first election of officers of a town or village;
1 certificate of election; terms of first officers.
2 Such commissioners, or the individuals acting as such,
shall preside and act as commissioners of such election, and all of the laws applicable to the election of district officers shall apply to such election, if not inconsistent with the provisions of this article. Such commissioners shall, within five days after such election, issue a certificate to the individuals elected, which certificate shall be recorded among the records of such town or village. All officers elected at the first election of officers held by a town or village, which first election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second year following such election.

PART II. REGULAR ELECTION OF OFFICERS.

§8-5-5. Regular election of officers; establishment of longer terms.

1 After the first election of officers of a city, the regular election of officers thereof shall be held on the first Tuesday in June of the appropriate year, unless otherwise provided in the charter thereof, at which election officers shall be elected for a two-year or four-year term, as the charter may provide, unless some other term is provided in the charter. Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision as a whole or charter amendment, as the case may be, providing for four-year terms is voted upon and approved by a majority of the legal votes cast, but the ballots, or ballot labels where voting machines are used, for the election of officers must bear information to the effect that the officers are being elected for four-year terms in the event the proposed charter, the proposed charter revision as a whole or charter amendment, as the case may be, is approved as aforesaid.

2 After the first election of officers of a town or village, the regular election of officers thereof shall be held on the first Tuesday in June of the appropriate year, unless otherwise provided in the special legislative charter thereof, at which election officers shall be elected for a two-year term, unless some other term is provided in
25 such special legislative charter: Provided, That officers
26 of a town or village may be elected for a four-year term
27 upon submission to the qualified voters of the town or
28 village at a regular municipal election of a proposition
calling for four-year terms and approval of such propo-
29 sition by a majority of the legal votes cast with respect
30 thereto. Officers of a town or village may be elected for
31 a four-year term at the same election at which the propo-
32 sition calling for four-year terms is voted upon and
33 approved by a majority of the legal votes cast, but the
34 ballots, or ballot labels where voting machines are used,
35 for the election of officers must bear information to
36 the effect that the officers are being elected for four-
37 year terms in the event the proposition is approved as
38 aforesaid.

PART III. CHARTER PROVISIONS PERTAINING TO ELECTION
OF OFFICERS.

§8-5-6. Charter provisions concerning officers and elections,
etc.; provisions of general law concerning same.

1 The charter of every city framed and adopted or revised
2 as a whole under the provisions of article three or article
3 four of this chapter, as the case may be, shall provide a
4 method and time for the filing of certificates of candidacy,
5 nominating candidates, conducting primary and regular
6 municipal elections, and determining and certifying the
7 results of such elections. Except as otherwise provided
8 in the charter of any municipality, the provisions of gen-
9 eral law with respect to the method and time for the filing
10 of certificates of candidacy, nominating candidates, con-
11 ducting primary and regular municipal elections, and
12 determining and certifying the results of such elections,
13 so far as applicable, shall apply to municipal elections;
14 Provided, That the provisions of section thirteen of this
15 article shall be construed as mandatory.

PART IV. OFFICERS TO BE ELECTED; WARD OR ELECTION
DISTRICT REPRESENTATION.

§8-5-7. Certain officers; wards or election districts; residency
and other requirements.

1 (a) Unless otherwise provided in the charter of a
municipality, there shall be elected a mayor and council-
men, who together shall form the governing body of the
municipality, and a recorder.

(b) When a municipality has not been divided into
wards or election districts, there shall be at least five
councilmen, but when the municipality has been divided
into wards or election districts, the governing body may,
by ordinance, determine the number of councilmen to be
elected from each ward or election district. When it is
deemed necessary, the governing body may, by ordinance,
increase the number of wards or election districts and
change the boundaries thereof, such wards or election
districts to be made as nearly equal as may be, in
population, and when the municipality shall be divided
into wards or election districts, or there shall be an
increase in the number of wards or election districts
as aforesaid, the governing body may increase the number
of councilmen and direct an election to be held at the next
regular municipal election in such ward or wards or elec-
tion district or districts so that each ward or election
district may have its full number of councilmen residing
therein and may have equal representation on the gov-
erning body. When a municipality has been divided into
wards or election districts, the governing body may, by
ordinance, also provide for the election of councilmen at
large in addition to the councilmen to be elected from
each ward or election district. The provisions of this sub-
section (b) shall be applicable to any municipality except
to the extent otherwise provided in the charter of such
municipality.

(c) Unless otherwise provided by charter provision or
ordinance, the mayor, recorder and councilmen must be
residents of the municipality, must be qualified voters
entitled to vote for members of its governing body, and
for the year preceding their election must have been
assessed with and paid real or personal property taxes to
the municipality upon at least one hundred dollars' worth
of property therein, except that the city manager in a
manager form of government need only be a resident of
the city at the time of his appointment: Provided, That
for two years after the date of his discharge, the eligibility
of any honorably discharged veteran of the armed forces of the United States for any of such offices in any municipality shall not be affected or impaired by reason of his not having been assessed with or paid such taxes.

**PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.**

§8-5-8. Oath of office.
1. Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officers, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located.

§8-5-9. Terms of office.
1. Except as otherwise provided in the charter of any municipality, the terms of all officers elected after the first election in municipalities holding biennial elections shall commence on the first day of July following their election and shall be for two years, and in municipalities holding quadrennial elections the terms of all elected officers shall commence on the first day of July following their election and shall be for four years.
2. All municipal officers, whether elected at the first election of officers or at regular municipal elections, or appointed, shall hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law.
3. Officers in office when this article becomes effective shall hold their offices subject to the provisions of the immediately preceding sentence hereof.
§8-5-10. Vacancies in elective offices; how filled.

1. Unless otherwise provided by charter provision or ordinance, when a vacancy shall occur from any cause in any municipal elective office, the vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by the governing body from among the residents of the municipality eligible under this article.

PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-11. Municipal officers and employees generally.

1. Subject to the provisions of the constitution of this state, the provisions of this article, and other applicable provisions of this chapter, any city may by charter provision, and the governing body of any municipality, consistent with the provisions of its charter, if any, may by ordinance, determine and prescribe the officers or positions which are to be filled by election, appointment or employment, the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees, and the method of filling any vacancies which may occur.

§8-5-12. Compensation of officers and employees.

1. Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term.

2. The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness, as additional consideration for their services and employment.

PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.

1. Notwithstanding any charter provision to the contrary, it shall be the duty of each city by charter provision or
each municipality by ordinance to make provision for
integrating the conduct of all municipal elections with the
system of "permanent registration of voters." Such
charter provision or ordinance shall, to the extent reason-
ably applicable, parallel the provisions of chapter three
of this code which integrate county-state elections with
the "permanent registration system."

§8-5-14. Municipal executive committees; expenses of munici-
pal primary and regular municipal elections; applic-
ability of state primary and general election law to munici-
pal primary and regular municipal elections; when municipal primary elections to be
held.

Except as otherwise provided by charter provision or
ordinance or this code, municipal executive committees
shall exercise similar functions and be governed by the
same laws in regard to municipal primary elections and
regular municipal elections as county executive commit-
tees in regard to county-state primary and general elec-
tions, so far as the same may be applicable. All expenses
of conducting municipal primary elections and regular
municipal elections shall be paid by the municipality. The
provisions of chapter three of this code, referring more
particularly to primary elections and general elections,
shall, so far as the same can be applied and so far as not
otherwise provided by charter provision or ordinance,
govern the conduct of municipal primary elections and
regular municipal elections, as the case may be. No mu-
nicipal primary election shall be held on the day of the
county-state primary election nor less than twenty-five
days immediately preceding the regular municipal elec-
tion, unless a shorter period of time is established by
charter or ordinance.

§8-5-15. Tie vote.

Whenever two or more individuals shall receive an
equal number of legal votes for the same office, if such
number be the highest cast for such office, the individuals
under whose supervision the election is held shall decide
by lot which of them shall be returned as elected, and
shall make their return accordingly.

A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court ordering an election to be held under the provisions of this chapter. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

The order of any municipality ordering an election to be held under the provisions of this chapter shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof is located upon certiorari to the governing body thereof, in accordance with the provisions of article three, chapter fifty-three of this code. Upon the filing of a petition for a writ of certiorari, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

§8-5-17. Canvassing of elections; contested elections.

All elections ordered and held by a county court under the provisions of this chapter shall be canvassed by such county court. All elections ordered and held by a municipality under the provisions of this chapter shall be canvassed by the governing body of such municipality.

Any contest of a public question election ordered and held by a county court, or by a municipality, under the provisions of this chapter, shall be heard and decided by the county court or governing body of the municipality, as the case may be, and any such contest shall be conducted in the manner to be provided in article seven, chapter three of this code for contests of an election on a public question. Any such election may be contested by a qualified elector or voter or by a freeholder interested therein.

Any contest by any candidate or candidates of an election of charter board members or of the first officers of a city, which election is held under the provisions of article three of this chapter, shall be heard and decided by the county court, and any such contest shall be conducted in the manner provided in said article seven, chapter three.
§8-5-18. Determination as to sufficiency of a petition filed under this chapter.

1 It shall be the right and duty of the county court, the governing body of a municipality, or other body or officer, to which or to whom any petition is presented under the provisions of this chapter, as the case may be, to determine the sufficiency of any such petition, and where no time limit is prescribed for the making of such determination, the same shall be accomplished within a reasonable period of time. Any such determination, where there is no other express right of judicial review provided, shall be reviewable by the circuit court of the county upon certiorari to the county court, governing body, or other body or officer, as the case may be, in accordance with the provisions of article three, chapter fifty-three of this code; and in the case of a governing body, the appropriate circuit court shall be the circuit court of the county in which the municipality or the major portion of the territory thereof is located.

PART VIII. CONFLICT OF INTEREST.

§8-5-19. Charter or ordinance provisions pertaining to conflict of interest; penalties for violation thereof.

1 Every city shall have plenary power and authority to provide by charter provision, and every municipality shall have plenary power and authority to provide by ordinance, that it shall be unlawful for the governing body, or any member thereof, or other officer or officers thereof, to be interested personally, either directly or
indirectly, or as a member, manager, officer or stock-
holder of any partnership, business, firm or corporation,
in any contract furnishing material, services or supplies
to the municipality, or to any contractor, or workmen
for the municipality, or in any manner whatsoever,
whereby the taxpayers of such municipality shall become
the paymaster, either directly or indirectly, or to adopt
any other provisions, deemed appropriate, pertaining
to conflict of interest or possible conflict of interest. Any
violation of any such charter or ordinance provision by
any member of the governing body or other officer or
officials thereof, shall be a misdemeanor and, upon con-
viction thereof, such member or officer shall be fined not
less than fifty nor more than five hundred dollars, and
shall automatically be removed from office.

ARTICLE 6. ANNEXATION.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.

Unincorporated territory may be annexed to and be-
come part of a municipality contiguous thereto only in
accordance with the provisions of this article.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

Five percent or more of the freeholders of a munici-
pality desiring to have territory annexed thereto may
file their petition in writing with the governing body
thereof, setting forth the change proposed in the metes
and bounds of the municipality, and asking that a vote
be taken upon the proposed change. Such petition shall
be verified and shall be accompanied by an accurate sur-
vey map showing the territory which would be annexed
to the corporate limits by the proposed change. The gov-
erning body, upon bond in penalty prescribed by the gov-
erning body with good and sufficient surety being given
by petitioners, and conditioned to pay the costs of such
election if a majority of the legal votes cast are against
the proposed change in boundary, shall thereupon order
a vote of the qualified voters of such municipality to be
taken upon the proposed change on a date and at a time
and place therein to be named in the order, not less than
twenty nor more than thirty days from the date thereof.
The governing body shall, at the same time, order a vote
of all of the qualified voters of the additional territory,
and of all of the freeholders of such additional territory,
whether they reside or have a place of business therein or
not, to be taken upon the question on the same day, at
some convenient place in or near such additional terri-


tory: Provided, That the additional territory to be in-
cluded shall conform to the requirements of section one,
article two of this chapter, and the determination that the
additional territory does so conform shall be reviewable
by the circuit court of the county in which the municipal-
ity or the major portion of the territory thereof, including
the area proposed to be annexed, is located upon cer-


tiorari to the governing body, in accordance with the
provisions of article three, chapter fifty-three of this
code. The governing body shall cause the order to be
published, at the cost of the municipality, as a Class II-0
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 the mu-


nicipality and the additional territory. The first publi-
cation must be at least fourteen days prior to the date
upon which the vote is to be taken. The order so pub-

lished shall contain an accurate description by metes and
bounds of the additional territory proposed to be an-

nexed to the corporate limits by the proposed change,
and, if practicable, shall also contain a popular descrip-
tion of such additional territory.

The election shall be held, superintended and con-
ducted, and the results thereof ascertained, certified,
returned and canvassed in the same manner and by the
same individuals as elections for municipal officers. The
ballots, or ballot labels where voting machines are used,
shall have written or printed on them the words:

☐ For Annexation
☐ Against Annexation

Any freeholder which is a firm or corporation may vote
by its manager, president, or executive officer duly desig-
nated in writing by such firm or corporation. Even though an individual who is a qualified voter of the municipality or the territory is also a freeholder of the territory, such person shall be entitled to vote only once.

When an election is held in any municipality in accordance with the provisions of this section, another such election relating to the same proposed change or any part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast both in the municipality and in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.

§8-6-3. Governing body of municipality to certify annexation; order.

The governing body of such municipality shall enter the results of such election in its minutes, and, when the annexation proposed is adopted, as provided in the immediately preceding section of this article, shall forward a certificate to such effect to the county court of the county wherein the municipality or the major portion of the territory thereof, including the annexed territory, is located; and such court shall thereupon enter an order in substance as follows:

"A certificate of the governing body of the municipality of ....... was this day filed showing that an annexation has been made, in the manner required by law, to the corporate limits thereof, and that by such annexation the said corporate limits are as follows:

"Beginning at (here recite the boundaries as changed). It is, therefore, ordered that such annexation to said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said governing body a certified copy of this order as soon as practicable after the rising of this court."

After the date of such order, the corporate limits of the municipality shall be as set forth therein.
PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

1 The governing body of a municipality may by ordinance provide for the annexation of additional territory without ordering a vote on the question if (1) sixty percent of the qualified voters of such additional territory file with the governing body their petition to be annexed, and (2) sixty percent of all freeholders of such additional territory, whether they reside or have a place of business therein or not, file with the governing body their petition to be annexed: Provided, That the additional territory shall conform to the requirements of section one, article two of this chapter, and the determination that the additional territory does so conform or that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed, is located upon certiorari to the governing body, in accordance with the provisions of article three, chapter fifty-three of this code. A qualified voter of the additional territory who is also a freeholder of the additional territory may join only in the voters' petition of such additional territory. It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory. In determining the total number of eligible petitioners, in each category, a qualified voter of the additional territory who is also a freeholder of the additional territory shall be counted only as a qualified voter and if all of the eligible petitioners are qualified voters, then only a voters' petition shall be required. If satisfied that the additional territory conforms to the requirements of section one, article two of this chapter and that the petition is sufficient in every respect, the governing body shall enter such fact upon its journal and forward a certificate to that effect to the county court of the county wherein the municipality or the major portion of the territory thereof, including the additional territory, is located. The county court shall thereupon enter an order along the lines of
the order described in the immediately preceding section
of this article. After the date of such order, the corporate
limits of the municipality shall be as set forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 In the event a municipality desires to increase its cor-
porate limits by making a minor boundary adjustment,
the governing body of such municipality may apply to
the county court of the county wherein the municipality
or the major portion of the territory thereof, including
the territory to be annexed, is located for permission to
effect such annexation by minor boundary adjustment.

2 Such application shall disclose the number of persons
residing in the territory to be annexed to the corporate
limits by the proposed change, and shall have attached
thereto an accurate map showing the metes and bounds
of such additional territory.

3 If satisfied that the proposed annexation is only a minor
boundary adjustment, the county court shall order publi-
cation of a notice of the proposed annexation to the cor-
porate limits and of the date and time set by the court for
a hearing on such proposal. Publication shall be as in the
case of an order calling for an election, as set forth in
section two of this article. A like notice shall be promi-
nently posted at not less than five public places within
the area proposed to be annexed.

4 If the freeholders of the area proposed to be annexed
who are present or are represented at the hearing are not
substantially opposed to the proposed boundary change,
the court may enter an order changing the corporate
limits of the municipality as requested, which order may
be reviewed by the circuit court as an order of a county
court ordering an election may be reviewed under section
sixteen, article five of this chapter. After the date of
such order, the corporate limits of the municipality shall
be as set forth therein, unless judicial review is sought
under the provisions of said section sixteen. If the pro-
posed change is substantially opposed at the hearing by
any such freeholder, the court shall dismiss the applica-
tion. Dismissal of any such application shall not preclude proceedings in accordance with the provisions of sections two and three or section four of this article. The municipality shall pay the costs of all proceedings under this section.

PART V. DUTIES AS TO AD VALOREM TAXES FOR MUNICIPAL PURPOSES ON PROPERTIES IN NEWLY ANNEXED AREAS.

§8-6-6. Duties as to ad valorem taxes for municipal purposes on properties in newly annexed areas.

1 Upon the effective date of any annexation under the provisions of this article, it shall be the duty of the governing body of the municipality to notify the county assessor of such annexation, and upon being so notified, it shall be the duty of such assessor to see to it that the properties situate within the newly annexed area are assessed with the municipal ad valorem taxes for the current fiscal year and subsequent fiscal years or the ensuing and subsequent fiscal years, depending upon the date of notification to such assessor.

ARTICLE 7. DECREASE OF CORPORATE LIMITS.

PART I. GENERAL.

§8-7-1. Decrease of corporate limits.

1 The corporate limits of a municipality may be decreased only in accordance with the provisions of this article.

PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.

§8-7-2. Procedure to decrease corporate limits.

1 Five percent or more of the freeholders of a municipality desiring to decrease the corporate limits thereof may file their petition in writing with the governing body thereof, setting forth the change proposed in the metes and bounds of the municipality, and asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied by an accurate survey map showing the territory which would be eliminated from the corporate limits by the proposed change.

10 The governing body, upon bond in penalty prescribed
by the governing body with good and sufficient surety
being given by petitioners, and conditioned to pay the
costs of such election if a majority of the legal votes
cast are against the proposed change in boundary, shall
thereupon order a vote of the qualified voters of such
municipality to be taken upon the proposed change on
a date and at a time and place therein to be named in
the order, not less than twenty nor more than thirty
days from the date thereof. The governing body shall
cause the order to be published, at the cost of the
municipality, as a Class II-0 legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such pub-
lication shall be the municipality. The first publication
must be at least fourteen days prior to the date upon
which the vote is to be taken. The order so published
shall contain an accurate description by metes and bounds
of the territory which would be eliminated from the
corporate limits by the proposed change, and, if prac-
ticable, shall also contain a popular description of such
territory.

The election shall be held, superintended and con-
ducted, and the results thereof ascertained, certified, re-
turned and canvassed in the same manner and by the
same individuals as elections for municipal officers. The
ballots, or ballot labels where voting machines are used,
shall have written or printed on them the words:

☐ For Decrease of Corporate Limits
☐ Against Decrease of Corporate Limits

When an election is held in any municipality in ac-
cordance with the provisions of this section, another such
election relating to the same proposed change or any
part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast within such
municipality are in favor of the proposed change, then
the governing body shall proceed as specified in the
immediately succeeding section of this article.

§8-7-3. Governing body of municipality to certify decrease in
corporate limits; order.

The governing body of such municipality shall enter
the results of such election in its minutes, and, when the
decrease proposed is adopted, as provided in the imme-
diately preceding section of this article, shall forward
a certificate to such effect to the county court of the
county wherein the municipality or the major portion
of the territory thereof is located; and such court shall
thereupon enter an order in substance as follows:

“A certificate of the governing body of the munici-
pality of ______ was this day filed showing that
a decrease has been made, in the manner required by
law, in the corporate limits thereof, and that by such
decrease the said corporate limits are as follows:

“Beginning at (here recite the boundaries as changed).
It is, therefore, ordered that such decrease in said cor-
porate limits be, and the same is hereby approved and
confirmed, and the clerk of this court is directed to deliver
to the said governing body a certified copy of this order
as soon as practicable after the rising of this court.”

After the date of such order, the corporate limits of
the municipality shall be as set forth therein.

PART III. DECREASE OF CORPORATE LIMITS BY MINOR
BOUNDARY ADJUSTMENT.

§8-7-4. Decreasing corporate limits by minor boundary adjust-
m 1 1 1 m.
1 In the event a municipality desires to decrease its
corporate limits by making a minor boundary adjust-
ment, the governing body of such municipality may apply
to the county court of the county wherein the munici-
pality or the major portion of the territory thereof is
located for permission to effect such decrease in the cor-
porate limits by minor boundary adjustment.

Such application shall disclose the number of indi-
 9
viduals residing in the territory which would be elimi-
nated from the corporate limits by the proposed change,
and shall have attached thereto an accurate map show-
ing the metes and bounds of such territory.

If satisfied that the change sought is only a minor
boundary adjustment, the county court shall order pub-
lication of a notice of the proposed decrease in the cor-
porate limits and of the date and time set by the court
for a hearing on such proposal. Publication shall be as
in the case of an order calling for an election, as set
forth in section two of this article. A like notice shall
be prominently posted at not less than five public places
within the territory which would be eliminated from
the corporate limits by the proposed change.
If the freeholders of such territory who are present
or are represented at the hearing are not substantially
opposed to the proposed boundary change, the court may
enter an order decreasing the corporate limits of the
municipality as requested, which order may be reviewed
by the circuit court as an order of a county court ordering
an election may be reviewed under section sixteen,
article five of this chapter. After the date of such order,
the corporate limits of the municipality shall be as set
forth therein, unless judicial review is sought under the
provisions of said section sixteen. If the proposed change
is substantially opposed at the hearing by any such free-
holder, the court shall dismiss the application. Dismissal
of any such application shall not preclude proceedings
in accordance with the provisions of sections two and
three of this article. The municipality shall pay the costs
of all proceedings under this section.

ARTICLE 8. CONSOLIDATION OF MUNICIPALITIES.

PART I. GENERAL

§8-8-1. Authority to consolidate.
1 Any two or more adjoining municipalities in this
2 state may consolidate and become one municipality only
3 in the manner provided in this article.

§8-8-2. Petition and resolution.
1 Upon the presentation to the governing body of a
2 municipality of a petition, signed in their own hand-
3 writing by twenty percent of the qualified voters thereof,
4 requesting consolidation with one or more municipalities
5 and setting forth the name by which it is proposed the
6 consolidated municipality be known, the governing body
7 shall forthwith adopt a resolution proposing such con-
8 solidation.
§8-8-3. Order for elections.

1 The governing body shall forthwith present a copy of the resolution to the county court of the county wherein the municipality or the portion thereof greatest in population is located. If the court receives a copy or copies of a like resolution or resolutions from the governing body or bodies of one or more municipalities also proposing such consolidation, it shall be the duty of the court to call, by written order, a special election to be held within such municipalities for a determination, by the qualified voters of the respective municipalities, upon the question of consolidation. When two or more adjoining municipalities in different counties in this state desire to consolidate and become one municipality, the county court or clerk thereof referred to in this article shall be the court or clerk of the county wherein the consolidating municipality having the greatest population is located or if such consolidating municipality is itself located in more than one county, the county wherein the portion thereof greatest in population is located. The order shall set the date for the special elections, which date shall be not less than thirty nor more than sixty days from the date of the order, and shall be the same date in each of the municipalities concerned.

24 The order shall state the names of the municipalities, the object of the special elections, and the name by which it is proposed the consolidated municipality be known.

27 The order shall forthwith be filed in the office of the clerk of the county court, and true copies shall at once be served upon the recorder of each of the municipalities concerned.

§8-8-4. Special elections; limitation on submission of question again.

1 Except as otherwise provided in this article, the special elections shall be held as are regular municipal elections, and the provisions of law governing regular municipal elections shall apply to those held under this article.

5 The question of the consolidation of the same munici-
§8-8-5. Ballots or ballot labels; expenses of special elections.

The ballots, or ballot labels where voting machines are used, shall be in substantially the following form:

Shall ... (name the municipalities) be consolidated and become one municipality, to be known as ...? (name of the proposed new municipality).

□ For Consolidation
□ Against Consolidation

The expenses of the elections shall be borne by the separate municipalities.

§8-8-6. Counting and canvassing by county court; certificate of results.

The county court shall furnish sealed ballot boxes or voting machines to the proper officers of the municipalities wherein the special elections are to be held. The municipal officers responsible for the custody of the ballots or voting machines shall, immediately upon the closing of the polls, transmit the ballot boxes, sealed and unopened, or the voting machines to the county court. The county court shall proceed to count and canvass the votes cast, and shall forthwith certify over their signatures the results of the canvass, showing distinctly in their certificate the number of votes for and the number of votes against the consolidation in each of the municipalities, and also the number of qualified voters in each municipality who voted on the question.

§8-8-7. Endorsement of certificate; filing; publication.

If a majority of the legal votes cast by the qualified voters of each of the municipalities are shown by such certificate to have been cast in favor of the consolidation, the county court shall endorse said certificate to that effect, and shall cause the same to be filed forthwith in the office of the clerk of the county court, and to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter...
§8-8-8. Effective date of consolidation.

The consolidation shall be effective on the first day of
the fiscal year next succeeding the date of the special
elections unless the first day of such fiscal year is less than
ninety days from and after the date of such special elec-
tions, in which event the consolidation shall be effective
on the first day of the second fiscal year succeeding the
date of such special elections.

PART II. APPLICABLE CHARTER AND ORDINANCES.

§8-8-9. New municipality; charter and ordinances of new mu-
nicipality.

When the consolidation becomes effective, the consoli-
dated municipalities shall constitute and be one munici-
pality under the name set forth in the initiatory petitions
and the special election order.

The charter, if any, of the consolidating municipality
having the greatest population shall, when the consolida-
tion becomes effective, be and remain the charter for the
whole of the consolidated territory, until supplanted.

The ordinances, resolutions, orders, rules and regula-
tions in force in the consolidating municipality having the
greatest population when the consolidation becomes effec-
tive, shall extend to and be in force throughout the new
municipality, until they are supplanted, and the ordi-
nances, resolutions, orders, rules and regulations of the
other municipalities shall cease to be operative.

§8-8-10. Ward representation.

If the charter, if any, applying to the new municipality
provides for ward or other territorial representation, in
whole or in part, in the membership of the governing
body, every ward or similar division in the new munici-
pality shall be entitled to representation upon the gov-
erning body of the new municipality.

The commission provided for in section eleven of this
article shall give careful attention to the provisions of
this section before proceeding with its prescribed duties.
§8-8-11. Commission on wards and election districts.

1. Within one week after the filing and publication provided for in section seven of this article, a joint commission shall be formed consisting of the mayor and the recorder of each municipality, and three inhabitants of each municipality appointed by the governing body thereof.

2. The commission shall be called together by the mayor of the consolidating municipality greatest in population, on a date and at a time and place fixed by him, but not later than ten days from the formation of the commission.

3. The commission shall organize by selecting a chairman and clerk. The clerk shall keep a record of all proceedings and expenses and shall file the same, not more than fourteen days after the commission has filed its report and certificate hereinafter prescribed, in the office of the clerk of the county court, together with an affidavit as to the truth and correctness thereof.

4. The commission shall fix and determine the ward lines (if the municipality with the greatest population is so divided) and election districts of the new municipality. The commission shall, within forty-five days from the date of its organization, make a report and certificate over the signatures of a majority of its members, and shall file the same in the office of the clerk of the county court.

5. The certificate shall set forth and accurately describe the ward lines, if any, and election district lines fixed by the commission, and shall contain a proper map of the new municipality with such lines set out thereon. The clerk of the commission shall cause a copy of the certificate to be filed in the office of the secretary of state.

6. The lines fixed and determined by the commission shall be those of the new municipality until changed in accordance with law. Wards, if any, shall be formed of contiguous territory. No election district shall be in more than one ward. In dividing the new municipality into wards and election districts, the commission shall have regard for, and shall take into consideration, the election laws of this state, as well as the population in all
wards and election districts, and shall divide and arrange the same so that each will contain, as nearly as possible, an equal number of inhabitants.

A notice setting forth the ward lines, if any, and election district lines as fixed by the commission shall be published by the clerk thereof as a Class I 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 of the municipalities concerned. The notice shall be published within seven consecutive days next succeeding the filing of the certificate with the clerk of the county court. The expenses of the publication shall be paid by the new municipality.

Upon the completion of the publication, the wards, if any, and election districts of the consolidating municipalities shall be superseded. The commission shall appoint, in accordance with the charter of the new municipality, if any, election officials to serve at the election provided for by section twelve of this article.

The commission may employ an engineer and an attorney to assist in performing its duties. The commission may provide for compensation to be allowed to its clerk, engineer and attorney, which shall be paid by the new municipality. The commission members shall not receive compensation for their services, but all reasonable and necessary expenses actually incurred by them in the performance of their duties, when itemized and sworn to by the chairman and clerk, shall be paid by the new municipality.

PART IV. ELECTION OF NEW OFFICERS.

§8-8-12. Election of new officers.

1 Notwithstanding any provision to the contrary in the charter, if any, which shall apply to the new municipality, an election shall be held on the first Tuesday in June next preceding the date when the consolidation becomes effective for the election of officers for the new municipality. The officers shall be elected and the election shall be conducted otherwise in accordance with the charter, if any, which shall apply to the new municipality and
as though the consolidation had become effective and
if there be no charter, then in accordance with the pro-
visions of article five of this chapter governing regular
municipal elections.

Individuals elected to office at the election held under
the provisions of this section shall take office upon the
day the consolidation becomes effective, for the term
specified by the charter, if any, applying to the new mu-
nicipality, and if there be no charter, then for such term
as may be permitted under said article five of this chapter.

PART V. OFFICERS AND EMPLOYEES.

§8-8-13. Officers and employees of old municipalities.

When the consolidation becomes effective, the terms
of office of all officers and officials of the consolidating
municipalities, elected or appointed, shall, except as
herein otherwise provided, cease and be at an end.
Policemen and firemen of the consolidating munici-
palities shall, when the consolidation becomes effective,
continue as policemen and firemen of the new munici-
pality. They shall be subject to the orders and control
of the mayor of the new municipality, until the heads
of the police and fire departments are chosen and placed
in charge thereof.

Tenure of office and pension laws applicable to the
employees of the consolidating municipalities shall not
be affected by the provisions of this article.

PART VI. RIGHTS, PROPERTIES, FUNDS, TAXES,
OBLEIGATIONS, PERMITS, LICENSES, ETC.

§8-8-14. Succession to rights and properties of superseded mu-
nicipalities.

The new municipality shall, when the consolidation
becomes effective, be vested with all the rights and prop-
erties of the municipalities of which it was formed, and
shall be responsible and liable for all contracts, debts
and obligations of such municipalities. However, the
lands and property in a municipality superseded under
this article shall not be taxed or assessed for the debts
or obligations of another municipality thus superseded.
The lands and properties in each of the constituent and superseded municipalities shall be taxed and assessed for the debts and obligations of its superseded government until the same shall be paid and satisfied.

§8-8-15. Taxes and obligations of superseded municipalities.

1 The taxes and assessments levied or imposed by one of the superseded municipalities and remaining outstanding and unpaid, and all other moneys due and owing such municipality, when the consolidation becomes effective shall be collected by the new municipality and shall be applied to the purposes for which raised or owing, and if not raised or owing for a specific purpose, shall be applied to the reduction or payment of the bonded or other indebtedness, if any, of the superseded municipality.

Proceedings pending to enforce the payment or collection of taxes and assessments in any of the superseded municipalities shall be carried to completion by the proper officers of the new municipality; and all taxes and assessments theretofore levied and assessed by any of the superseded municipalities shall be valid and effective as if originally levied and assessed by the new municipality. The governing body of the new municipality is authorized to perform all necessary acts to confirm and effectuate such levies and assessments.

§8-8-16. Transfer of funds and property.

Immediately upon the installation of the new municipal government, the officers having custody of the funds of the superseded municipalities shall deliver all funds in their possession into the custody of the proper fiscal officer of the new municipality, who shall acknowledge delivery by giving his receipt therefor.

The mayor of the new municipality shall supervise and direct the transfer of all personal property, books, papers, vouchers or other documents belonging to the superseded municipalities, to the proper officers of the new government. He shall also cause a complete inventory to be made of all assets, real and personal, received by the new government.
The tax commissioner shall cause an audit and settlement of the accounts of the officers of the superseded municipalities to be made forthwith.

§8-8-17. Permits and licenses issued by superseded municipalities.

1 Permits and licenses granted to any place or person by any of the superseded municipalities shall, subject to their conditions, remain in full force and effect and be recognized by the new municipality until the expiration of the term for which they were granted. However, this section shall not be construed to prevent the revocation of any such permit or license before its expiration in any manner provided by law.

§8-8-18. Legal proceedings pending at time of consolidation.

1 No suit, action or proceeding pending in any court or before any board or department, wherein one of the superseded municipalities is a party, or in which it is interested, or by the determination of which it might be affected, shall abate by reason of the consolidation, but the new municipality shall be substituted in the place and stead of such superseded municipality, and the suit, action or proceeding shall continue as if the consolidation had not taken place.

ARTICLE 9. PROCEEDINGS OF GOVERNING BODIES.

§8-9-1. Who to preside at meetings of governing body; quorum; interested member of governing body not to vote.

1 Unless otherwise provided by charter provision, the governing body of every municipality shall be presided over at its meetings by the mayor, or, in his absence, by the recorder, or, in the absence of both the mayor and the recorder, by one of its members selected by a majority of the members of the governing body present. A majority of the members of the governing body shall be necessary to constitute a quorum for the transaction of business.

No member of the governing body of any municipality shall vote upon any ordinance, order, measure, resolution or proposition, in which he may be interested other than as a citizen of such municipality.
§8-9-2. Mayor and recorder may vote; tie vote.

The mayor and recorder shall, unless otherwise provided by charter provision, have votes as members of the governing body, and, in case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted.

§8-9-3. Governing body to keep records; minutes of proceedings; voting.

The governing body of every municipality shall cause to be kept, in a well-bound book, an accurate record of all of its proceedings, ordinances, orders, bylaws, acts, resolutions, rules and regulations which shall be fully indexed and open to inspection by anyone who is required to pay taxes to such municipality.

At each meeting of the governing body, a journal of the proceedings of the last meeting shall be read, and corrected, if erroneous, and signed by the presiding officer for the time being: Provided, That the reading of the journal of the proceedings of the last meeting may be dispensed with by majority vote of the governing body if the members thereof have received and examined a copy of the journal or a synopsis thereof prior to the meeting at which the journal is signed. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the journal.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART I. MAYOR.

§8-10-1. Powers and duties of mayor.

When not otherwise provided by charter provision or general law, the mayor of every municipality shall be the chief executive officer of such municipality, shall have the powers and authority granted in this section, and shall see that the ordinances, orders, bylaws, acts, resolutions, rules and regulations of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor. He shall also be ex officio a justice and conservator of the
peace within the municipality, and shall, within the
same, have and exercise all of the powers, both civil
and criminal, and perform all duties vested by law in
a justice of the peace, except that he shall have no juris-
diction in civil cases or causes of action arising without
the corporate limits of the municipality. He shall have
the same power to issue attachments in civil suits as a
justice of his county has, though the cause of action
arose without the corporate limits of his municipality,
but he shall have no power to try the same and such
attachments shall be returnable and be heard before
some justice of his county. Upon complaint he shall
have authority to issue a search warrant in connection
with the violation of a municipal ordinance. Any search
warrant, warrant of arrest or other process issued by
him may be directed to the chief of police or any mem-
ber of the police department or force of the municipality,
and the same may be executed at any place within the
county or counties in which the municipality is lo-
cated. He shall have control of the police of the munici-
pality and may appoint special police officers whenever
he deems it necessary, except when otherwise provided
by law, and subject to the police civil service provisions
of article fourteen of this chapter if such civil service
provisions are applicable to his municipality, and it shall
be his duty especially to see that the peace and good
order of the municipality are preserved, and that persons
and property therein are protected; and to this end he
may cause the arrest and detention of all riotous and
disorderly individuals in the municipality before issuing
his warrant therefor. He shall have power to issue
executions for all fines, penalties and costs imposed by
him, or he may require the immediate payment thereof,
and, in default of such payment, he may commit the
party in default to the jail of the county or counties in
which such municipality is located, or other place of
imprisonment within the corporate limits of such mu-
nicipality, if there be one, until the fine or penalty and
costs shall be paid, but the term of imprisonment in
such case shall not exceed thirty days. He shall, from
time to time, recommend to the governing body such
measures as he may deem needful for the welfare of
the municipality. The expense of maintaining any indi-
vidual committed to a county jail by him, except it be
to answer an indictment, or be under the provisions of
sections eight and nine, article eighteen, chapter fifty
of this code, shall be paid by the municipality and taxed
as part of the costs of the proceeding. The mayor shall
not receive any money belonging to the state or to indi-
viduals, unless he shall give the bond and security re-
quired of a justice of the peace and all of the provisions
of article one, chapter fifty of this code relating to moneys
received by justices shall apply to like moneys received
by such mayor.

PART II. POLICE COURT OR MUNICIPAL JUDGE.

§8-10-2. Police court or municipal judge for cities.

Any city may provide by charter provision or ordi-
nance for the creation and maintenance of a police or
municipal court, for the appointment or election of an
officer to be known as police court judge or municipal
court judge, and for his compensation, and authorize the
exercise by such court or judge of such of the jurisdiction,
powers, authority and duties set forth in section one of
this article and similar or related powers, authority and
duties enumerated in any applicable charter provisions,
as set forth in the charter or ordinance. Such court or
judge shall in all events have the criminal jurisdiction
of a justice of the peace.

PART III. RECORDER.

§8-10-3. Powers and duties of recorder.

It shall be the duty of the recorder of every munici-
pality to keep the journal of the proceedings of the gov-
erning body thereof, and he shall have charge of and
preserve the records of the municipality. Unless other-
wise provided by charter provision or general law, when-
ever the mayor is unable because of illness or absence
from the municipality to perform the duties of his office,
and during any vacancy in the office of mayor, the re-
corder shall perform the duties of the mayor and be invested with all of his power and authority.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief.

To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter or any past or future act of the Legislature of this state, the governing body shall have plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations, not contrary to the constitution and laws of this state; and, for a violation thereof, to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment in the county jail or the place of imprisonment in such municipality, if there be one, for a term not exceeding thirty days. Such fines, forfeitures and imprisonment shall be recovered, imposed or enforced under the judgment of the mayor of such municipality or the individual lawfully exercising his functions, or the police court judge or municipal court judge of a city, if there be one, and may be suspended upon such reasonable conditions as may be imposed by such mayor, other authorized individual or judge. Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory thereof is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of such municipality, and such circuit court shall have jurisdiction to grant the relief sought.

§8-11-2. Validity of ordinances delegating discretion.

The fact that an ordinance vests in the governing body or some other body or officer a discretion to do, or refuse to do, a given thing, shall not invalidate such ordinance when it would be impractical to lay down by ordinance for all cases a uniform guide for exercising such discretion. This section shall not be construed to mean that a
delegation of discretion in any other case shall necessarily invalidate an ordinance. However, if, in any case, a delegated discretion is exercised in an arbitrary or discriminatory manner, such ordinance, as so applied, shall be unlawful and void.

§8-11-3. Cases requiring enactment of ordinance.

In the following enumerated cases, the action of a governing body shall, except where otherwise provided in this code, be by ordinance:

1. Levying taxes or providing for the collection of fees of any kind;
2. Requiring a license to do business;
3. Relating to offenses and penalties;
4. Authorizing the issuance of bonds or other forms of indebtedness;
5. Providing for a public improvement;
6. Providing for the purchase of private property by the municipality or for the sale of property belonging to the municipality;
7. Laying out or vacating a public street, avenue, road, alley or way;
8. Relating to planning and zoning;
9. Granting franchises to public utilities;
10. Providing for a contractual or other agreement with another jurisdiction; and
11. Relating to such other matters as the charter may require.

The action of a governing body shall also be by ordinance in any other case in which an ordinance is required by the provisions of this code.

§8-11-4. Ordinance procedures.

(a) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, it shall not be necessary, except where otherwise provided in this code, for the governing body of any municipality to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, and any and all ordinances of every municipality shall be
adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of this code, in which event such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class I-0 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 the municipality. The notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted.

(b) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordi-
nances, in the manner prescribed in this subsection (b).

Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising of revenue for the municipality, which notice shall also state where, within the municipality, the code or codes will be available for public inspection.

(c) By a charter framed and adopted, revision of a charter as a whole, or a charter amendment or amendments, as the case may be, subsequent to the effective date of this section, a city may require any or all ordinances to be published in a newspaper prior to the adoption thereof, may expressly adopt the provisions of this section, may specify other additional requirements for the enactment of ordinances, or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed in this section, but a city shall not, except in an emergency as specified in subsection (d) of this section or except as otherwise provided in this code, have the power and authority to lessen or reduce the requirements of this section.

(d) The governing body of a municipality may enact
an ordinance without complying with the rules prescribed in this section only (1) in the case of a pressing public emergency making procedure in accordance with the provisions of this section dangerous to the public health, safety or morals, and by affirmative vote of two-thirds of the members elected to the governing body, or (2) when otherwise provided in this code. The nature of any such emergency shall be set out in full in the ordinance.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART I. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

§8-12-1. General corporate powers of all municipalities.

1 Except as otherwise provided in this chapter, every municipality shall have plenary power and authority:
2 (1) To have and use a common seal;
3 (2) To contract and be contracted with;
4 (3) To institute, maintain and defend any civil action or other proceeding in any court;
5 (4) To take, purchase, hold and lease as lessee (on an annual fiscal year basis where tax revenues are to be used to make the rental payments required under any such lease, with or without an option to renew such lease each year for another such period), for any municipal purpose, real or personal property within or without the corporate limits of the municipality, and to acquire by condemnation real or personal property within or without the corporate limits of the municipality for the purposes set forth in and in accordance with the provisions of chapter fifty-four of this code, subject, however, to any limitations or qualifications set forth in this chapter eight; and
6 (5) To take by gift, donation, grant, bequest or devise and to hold and administer, real or personal property within or without the corporate limits of the municipality, absolutely, in trust or otherwise, for any public, charitable or municipal purpose, and to do all things necessary, useful, convenient or incidental to carry out the purpose of such gift, donation, grant, bequest, devise
or trust, and to manage, sell, lease or otherwise dispose
of the same in accordance with such terms and condi-
tions as may be prescribed by the donor, grantor or
testator and accepted by the municipality.

PART II. HOME RULE POWERS FOR CITIES.

§8-12-2. Home rule powers for all cities.

(a) In accordance with the provisions of the "Mu-
unicipal Home Rule Amendment" to the constitution of
this state, and in addition to the powers and authority
granted by (i) such constitution, (ii) other provisions
of this chapter, (iii) other general law, and (iv) any
existing charter, any city shall have plenary power
and authority by charter provision not inconsistent or
in conflict with such constitution, other provisions of this
chapter or other general law, or by ordinance not in-
consistent or in conflict with such constitution, other
provisions of this chapter, other general law or any
existing charter, to provide for the government, regu-
lation and control of the city's municipal affairs, includ-
ing, but not limited to, the following:

(1) The creation or discontinuance of departments of
the city's government and the prescription, modification
or repeal of their powers and duties;

(2) The transaction of the city's business;

(3) The incurring of the city's obligations;

(4) The presentation, ascertainment, disposition and
discharge of claims against the city;

(5) The acquisition, care, management and use of the
city's streets, avenues, roads, alleys, ways and prop-
erty;

(6) The levy, assessment, collection and administra-
tion of such taxes and such special assessments for bene-
fits conferred, as have been or may be specifically au-
thorized by the Legislature;

(7) The operation and maintenance of passenger
transportation services and facilities, if authorized
by the public service commission, and if so author-
ized, such transportation system may be operated
without the corporate limits of such city, but may
not be operated within the corporate limits of another municipality without the consent of the governing body thereof;

(8) The furnishing of all local public services;
(9) The government, protection, order, conduct, safety and health of persons or property therein;
(10) The adoption and enforcement of local police, sanitary and other similar regulations; and
(11) The imposition and enforcement of penalties for the violation of any of the provisions of its charter or of any of its ordinances.

(b) By charter provision, a civil service system may be provided for all or any class of city employees in addition to those classes for which a civil service system is made mandatory by general law.

(c) Any city is hereby authorized and empowered to require, for the purpose of inquiring into and investigating matters of concern to the city or its inhabitants, the attendance and testimony of witnesses and the production of evidence. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the governing body may invoke the aid of the circuit court of the county in which the city or the major portion of the territory thereof is located. Upon proper showing, the circuit court shall issue an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question. A person who fails or refuses to obey the order of the circuit court may be punished by the court as for contempt. A claim that any such testimony or evidence may tend to incriminate the person giving the testimony or evidence shall not excuse the witness, but such testimony or evidence shall not be used against the witness in any criminal prosecution.

(d) Any city is hereby authorized and empowered to provide for a sealer of weights and measures who shall exercise his powers in accordance with the provisions of article one, chapter forty-seven of this code.

§8-12-3. Creation by charter provision of certain independent city boards.

In selecting or changing to a form of government based
2 on any of the four plans set forth in section two, article
3 three of this chapter, a city may by charter provision
4 withdraw from the governing body and administrative
5 authority of the city the municipal powers and authority
6 and duties pertaining to a city gas system, city electric
7 system, any municipal public works in accordance with
8 the provisions of article sixteen of this chapter, a city
9 waterworks system in accordance with the provisions of
10 article nineteen of this chapter, a city sewage treatment
11 system in accordance with the provisions of
12 article twenty of this chapter, or any combination of the
13 foregoing, and confer such powers and authority and
14 duties upon one or more independent boards created by
15 charter provision, whose members shall be elected by the
16 qualified voters of the city, or appointed, in the manner
17 provided by charter provision. Unless and until abolished
18 by other charter provision, such board or boards so
19 created shall have complete and exclusive jurisdiction of
20 the exercise and discharge of the municipal powers and
21 authority and duties so conferred upon it or them, inde-
22 pendent of control by the governing body and adminis-
23 trative authority of the city. Such boards shall have the
24 powers and authority and perform the duties conferred
25 and required by general law.
26 The provisions of this section shall be construed as
27 conferring additional powers and authority upon cities,
28 and shall not be construed as affecting any powers and
29 authority heretofore conferred upon any city by general,
30 special or local law or by special legislative charter, or
31 parts thereof; however, whenever a board is established
32 by charter provision in accordance with the provisions of
33 this section in connection with a municipal public works,
34 a city waterworks system, or combined city waterworks
35 and sewerage system, as aforesaid, such board shall act
36 in lieu of the governing body of the city with respect
37 thereto, and the provisions of said articles sixteen, nine-
38 teen and twenty of this chapter authorizing the establish-
39 ment of a board with respect to any such public works,
40 waterworks system or combined waterworks and sewer-
41 age system shall not be applicable.
§8-12-4. Power to provide by charter for initiative, referendum and recall.

1 Any city may by charter provision provide for any or all of the following:
2 (1) The initiation of ordinances by petition bearing
3 the signatures, written in their own handwriting, of not
4 less than ten percent of the qualified voters of such city;
5 (2) The submission to the qualified voters of such city
6 of a proposed ordinance at a regular municipal election
7 or special municipal election upon petition bearing the
8 signatures, written in their own handwriting, of not less
9 than ten percent of the qualified voters of such city or
10 upon resolution of the governing body of such city; and
11 (3) The holding of a special municipal election to sub-
12 mit to the qualified voters of such city the question of the
13 recall of an elected officer upon petition bearing the
14 signatures, written in their own handwriting, of not less
15 than twenty percent of the qualified voters of such city.
16 Not more than one recall election shall be held with
17 respect to an officer during his term of office.

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by
2 (i) the constitution of this state, (ii) other provisions of
3 this chapter, (iii) other general law, and (iv) any charter,
4 and to the extent not inconsistent or in conflict with any
5 of the foregoing except a special legislative charter, every
6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate
9 action based thereon:
10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or vacate,
12 discontinue and close, streets, avenues, roads, alleys,
13 ways, sidewalks, crosswalks, drains and gutters, for the
14 use of the public, and to improve and light the same, and
15 have them kept free from obstructions on or over them;
(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality;

(5) To regulate the width of sidewalks on the streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marsh lands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the water front and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the water front and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, wastes, ashes, trash and other similar matters;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all
other facilities for the efficient removal and destruction of
garbage, refuse, wastes, ashes, trash and other similar
matters;
(12) To regulate or prohibit the purchase or sale of
articles intended for human use or consumption which
are unfit for such use or consumption, or which may be
contaminated or otherwise unsanitary;
(13) To prevent injury or annoyance to the public or
individuals from anything dangerous, offensive or un-
wholesome;
(14) To regulate the keeping of gunpowder and other
combustibles;
(15) To make regulations guarding against danger or
damage by fire;
(16) To arrest, convict and punish any individual for
carrying about his person any revolver or other pistol,
dirk, bowie knife, razor, slung shot, billy, metallic or
other false knuckles, or any other dangerous or other
deadly weapon of like kind or character;
(17) To arrest, convict and punish any person for im-
porting, printing, publishing, selling or distributing any
pornographic publications;
(18) To arrest, convict and punish any person for
keeping a house of ill fame, or for letting to another per-
son any house or other building for the purpose of being
used or kept as a house of ill fame, or for knowingly per-
mitting any house owned by him or under his control to
be kept or used as a house of ill fame, or for loafing, board-
ing or loitering in a house of ill fame, or frequenting
same;
(19) To prevent and suppress conduct and practices
which are immoral, disorderly, lewd, obscene and
indecent;
(20) To prevent the illegal sale of intoxicating liquors,
drinks, mixtures and preparations;
(21) To arrest, convict and punish any individual for
driving or operating a motor vehicle while intoxicated or
under the influence of liquor, drugs or narcotics;
(22) To arrest, convict and punish any person for
gambling or keeping any gaming table, commonly called
“A, B, C,” or “E, O,” table or faro bank or keno table, or
table of like kind, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license, unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have plenary power and authority, and it shall be the duty of its governing body, to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;

(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or wilfully depriving of necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the
owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, an electric system, a waterworks system, or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in said articles nineteen and twenty), within or without the corporate limits of the municipality, or partly within and partly without the corporate limits of the municipality, except that the municipality shall not erect any such system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed, and where such system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality shall have the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality, and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights of way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, sub-
178) To establish, construct, acquire, maintain and
179 operate and regulate markets, and prescribe the time of
180 holding the same;
181  (35) To regulate and provide for the weighing of ar-
182 ticles sold or for sale;
183  (36) To establish, construct, acquire, maintain and
184 operate public buildings, municipal buildings or city halls,
185 auditoriums, arenas, jails, juvenile detention centers or
186 homes, motor vehicle parking lots, or any other public
187 works;
188  (37) To establish, construct, acquire, provide, equip,
189 maintain and operate recreational parks, playgrounds and
190 other recreational facilities for public use, and in this
191 connection also to proceed in accordance with the pro-
192 visions of article two, chapter ten of this code;
193  (38) To establish, construct, acquire, maintain and
194 operate a public library or museum or both for public use;
195  (39) To provide for the appointment and financial sup-
196 port of a library board in accordance with the provisions
197 of article one, chapter ten of this code;
198  (40) To establish and maintain a public health unit in
199 accordance with the provisions of section two, article two,
200 chapter sixteen of this code, which unit shall exercise its
201 powers and perform its duties subject to the supervision
202 and control of the West Virginia board of health and state
203 department of health;
204  (41) To establish, construct, acquire, maintain and
205 operate hospitals, sanitariums and dispensaries;
206  (42) To acquire, by purchase, condemnation or other-
207 wise, land within or near the corporate limits of the
208 municipality for providing and maintaining proper places
209 for the burial of the dead and to maintain and operate the
210 same and regulate interments therein upon such terms
211 and conditions as to price and otherwise as may be de-
212 termined by the governing body, and, in order to carry
213 into effect such authority the governing body may acquire
214 any cemetery or cemeteries already established;
215  (43) To exercise general police jurisdiction over any
216 territory without the corporate limits owned by the mu-
(44) To protect and promote the public morals, safety, health, welfare and good order;
(45) To adopt rules for the transaction of business and the government and regulation of its governing body;
(46) Except as otherwise provided, to require and take such bonds from such officers, when deemed necessary, payable to the municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;
(47) To require and take from such employees and contractors such bonds in such penalty, with such sureties and with such conditions, as the governing body may see fit;
(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;
(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may deem necessary or appropriate for the public interest;
(50) To create, maintain and operate a system or systems for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or such classes thereof as may be deemed advisable;
(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;
(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;
(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;
(54) To provide revenue for the municipality and appropriate the same to its expenses; and
To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations.

PART IV. CERTAIN SPECIFIC POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-6. Membership in association or league.

Every municipality is hereby empowered and authorized to become a member of an association or league having for its general purpose the exchange and dissemination of information and ideas designed for the more efficient administration and conduct of municipal government and affairs. In order to finance the maintenance of such an organization, each municipality is hereby empowered and authorized to pay into such an organization annual dues or membership fees in an amount to be fixed by the members thereof at the annual meeting of such organization. Such dues or membership fees may be appropriated by the governing body as a current expense item and included in the annual budget.

§8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.

(a) Every municipality shall have plenary power and authority to contract and expend public funds for the purchase of one or more policies of public liability insurance, with or without a sharing in the cost thereof by the officers, agents and employees of such municipality, providing the municipality and its officers, agents and employees insurance coverage for legal liability of said municipality and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said municipality and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any
acts or omissions of said municipality, or its officers, agents or employees in the performance of their official duties. So long as the coverage aforesaid is obtained and remains in full force and effect as to the police officers of a municipality, the bond specified in section five, article seven, chapter sixty-one of this code shall not be required as to such police officers.

(b) Every municipality shall also have plenary power and authority to provide for the indemnification of its officers, agents and employees against any and all liability, losses, damages, expenses and costs, including court costs and reasonable and necessary attorney fees, arising from, growing out of, by reason of or in any way connected with any acts or omissions of said officers, agents or employees in the performance of their official duties. Such indemnification may be provided by a self-funding program, by expenditures from the general fund, or by the purchase of insurance as provided in subsection (a) of this section, with or without financial contribution or participation by such officers, agents and employees. Prior to the expenditure of any public funds pursuant to the power and authority conferred by the provisions of this subsection (b), the governing body shall determine by ordinance applicable to an entire class or classes of officers, agents or employees the manner in which such power and authority shall be exercised.

§8-12-8. Group insurance programs authorized.

Every municipality shall have plenary power and authority to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency and intermittent employees) who are in employee status with such municipality on and after the effective date of this section, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which
in the discretion of the governing body bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the insurance commissioner of this state as to form, rate and benefits.

The municipality is hereby authorized and empowered to pay the entire premium cost, or any portion thereof, of said group policy or policies. Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the municipality, the municipality is hereby authorized and empowered to make periodic premium deductions of the amount of the contribution each such subscribing employee is required to make for such participation from the salary or wage payments due each such subscribing employee as specified in a written assignment furnished to the municipality by each such subscribing employee.

When a participating employee shall retire from his employment, he may, if he so elects and the insurance carrier or carriers agree, remain a member of the group plan by paying the entire premium for the coverage involved.

§8-12-9. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.

Notwithstanding any statutory or charter provision to the contrary, the governing body of every municipality shall have plenary power and authority, by ordinance, to prohibit discrimination on the basis of race, creed, color or national origin in the sale, purchase, lease or rental of housing accommodations within the corporate limits of such municipality, and to impose fines for the violation of the provisions of any such ordinance.

§8-12-10. Purchasing; competitive bidding.

(a) Every municipality may provide for the centralized purchasing of materials, supplies and equipment; and the term "equipment," for the purposes of this sec-
Every municipality shall include, but not be limited to, motor vehicles. Every municipality may, by agreement with the state director of the division of purchases of the department of finance and administration, purchase the same through such department, or may enter into agreements with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement.

(b) Every municipality is hereby empowered and authorized to provide by ordinance whether competitive bidding is to be required in the purchase of materials, supplies and equipment and if so the type or types of purchases with respect to which the same shall be required and the method and manner in which bids shall be obtained. Any ordinance adopted by any municipality in accordance with the provisions of this subsection (b) shall supersede any provision pertaining to competitive bidding contained in the special legislative charter of such municipality.

§8-12-11. Lease agreements for equipment or materials with option to cancel or renew for one year authorized.

Notwithstanding any other provision of this code or any charter provision to the contrary, the governing body of every municipality shall have plenary power and authority to enter into and execute a lease agreement for the obtaining of equipment or material. Any such lease agreement shall not be void or voidable because it also provides (a) that title to the equipment or material shall vest in the municipality at or before the expiration of the leasehold term upon fulfillment of the terms and conditions stipulated in such lease agreement; (b) for application of the annual rental payments made thereunder toward the purchase price of such equipment or material, although such total rental payments under any such agreement are in excess of the cash price of the equipment or material described therein, whether such excess be by way of interest or a time-price differential; and (c) that the risk of loss of the equipment or material shall be borne by the municipality. Any
such lease agreement shall be void, however, unless such agreement provides that the municipality shall have the following options thereunder during each fiscal year of the agreement: (1) the option to terminate the agreement and return the equipment or material without any further obligation on the part of the municipality; (2) the option to continue the agreement for an additional rental period not to exceed one year in length; and, when the agreement contains the provisions described in (a), (b) and (c) above, (3) the option to pay in advance at any time during any fiscal year the balance due under such agreement, with an appropriate rebate of the unearned interest or time-price differential.

The funds for the initial rental payment under any such agreement must be legally at the disposal of the municipality for expenditure in the fiscal year in which such agreement is executed, and in the event the municipality elects during any subsequent fiscal year to continue the agreement for any additional rental period or to pay in advance the balance due, the funds for the additional rental period or the funds to be used to pay the balance in advance must be legally at the disposal of the municipality for expenditure in the fiscal year in which the municipality elects to continue the agreement or to pay in advance the balance due, as the case may be.

§8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.

Every municipality shall have plenary power and authority to enter into a lease with the owner or owners of any real property situate within the corporate limits of such municipality by which such real property is demised, leased and let to such municipality for an off-street parking facility (including parking lots, buildings, ramps, parking meters and other appurtenances deemed necessary, appropriate or incidental to the regulation, control and parking of motor vehicles), which off-street parking facility is hereby declared to be a municipal public work, and every such municipality shall have plenary power and authority to establish, maintain and
operate such parking facility. Every such lease shall be authorized by an ordinance adopted by the municipality. Every municipality shall have this power and authority whether such real property is at the time of the execution of such lease already equipped, maintained and operated, in whole or in part, as a parking facility or whether such real property is at such time unimproved and is to be, under the terms of the lease, improved by the installation of parking meters, lighting equipment, pavement or other equipment necessary, appropriate, useful, convenient or incidental to the use of such property for such purpose.

Any such ordinance may provide that the police force or department of such municipality shall police the parking facility; and that overtime parking at the facility or other violations of the ordinance shall be a misdemeanor punishable as provided in said ordinance. Any such ordinance shall also provide for the collection of reasonable charges for the use of such parking facility by the public generally, and any such ordinance may be amended from time to time. Any lease entered into by and between any such municipality and the owner or owners of any such real property may contain such terms and conditions as may be agreed upon between the parties, not inconsistent with any of the provisions of this section or other provisions of law. The ordinance authorizing any such lease may also specify terms and conditions which must be contained in such lease.

Under no circumstances whatever shall any obligation incurred under the provisions of this section or any such lease be deemed to be or create an indebtedness of the municipality, the governing body or any member thereof, any officer thereof, or other municipal official, and all of the expenses of whatever kind, nature or character incident to the establishment, maintenance and operation of such parking facility, including, but not limited to, such rental payments as are provided for in the lease and the cost of policing the facility, shall be paid solely from revenues derived from such parking facility, and from revenues derived from other parking facilities or meters not pledged to pay for such other
parking facilities or meters. No member of the governing body of any such municipality, or any officer thereof, or other municipal official, shall under any circumstances be personally liable under any such lease or upon any obligation of any kind, nature or character arising under the provisions of this section.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provision now or hereafter in effect. This section shall, without reference to any other provisions of this code or any other statute or any charter, be deemed full authority for the acquisition of any such real property by lease for a parking facility, for the establishment, maintenance and operation of any such parking facility and for the enactment of an ordinance as hereinbefore specified. This section shall be construed as an additional alternative method for providing off-street parking facilities, and shall not in any way limit the provisions of article sixteen of this chapter authorizing the establishment, maintenance, operation and financing of such facilities by the issuance of revenue bonds.

This section, being necessary for the public safety and welfare, shall be liberally construed to effectuate its purposes.

§8-12-13. Building regulation; general and special codes.

The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:

1. Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

2. Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair thereof; and

3. Regulate plumbing by prescribing the minimum
specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.

§8-12-14. Permits for construction and alteration.

1 The governing body of every municipality shall have plenary power and authority to require a permit as a condition precedent to the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance.

§8-12-15. Municipal inspection.

1 The governing body of every municipality shall have plenary power and authority to provide for the entering and inspection of private premises to aid in the enforcement of any state law or municipal ordinance: Provided, That this section shall not be construed as purporting to authorize an unreasonable search and seizure prohibited by section six, article three of the constitution of this state.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

1 Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public welfare.

1 The governing body in formally adopting such ordinances shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected
by and to serve at the will and pleasure of the mayor.

The ranking health officer and fire chief shall serve as ex officio members of such enforcement agency.

Any ordinance adopted pursuant to the provisions of this section shall provide for the assessment of the costs of such repairs, alterations or improvements, or such vacating and closing or removal or demolition, or any combination thereof, by order of the enforcement agency, and said costs, after the sale of any and all salvaged material is credited to the account, shall be a lien against the real property upon which such costs were incurred.

All complaints or orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order:

Provided, however, That no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause. In the event such application is made, a hearing thereon shall be had within twenty days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require. Costs shall be imposed in such manner as in the discretion of the court shall seem meet and proper.

PART V. SALE OR LEASE OF MUNICIPAL PUBLIC UTILITY.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality shall own a gas system, an electric system, a waterworks or other public
utility, and the governing body thereof shall deem it for
the best interest of such municipality that such utility be
sold or leased, it shall be lawful for the governing body,
by ordinance legally adopted, to submit to the qualified
voters of such municipality, at any regular municipal
election or at any special municipal election called for
that purpose, the question of making or effecting such
sale or lease. In such case the governing body shall, in
the ordinance submitting such question to a vote, set
forth in full the terms of such proposed sale or lease, the
name of the proposed purchaser or lessee and the date
of such election, and a notice containing this information
shall be published as a Class II-0 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 such municipality. Such election
shall be held in all respects in compliance with the pro-
visions of chapter three of this code, so far as the same are
applicable and not inconsistent herewith, and the pro-
visions of article five of this chapter. If a majority of the
legal votes cast at such election upon such question be in
favor of the proposed sale or lease of such utility, the gov-
erning body, upon the ascertainment of the result of such
election, shall have full power and authority to proceed
to execute or effect such sale or lease in accordance with
the terms and conditions prescribed in the ordinance as
aforesaid, and shall have power to do any and all things
necessary or incident thereto: Provided, That if at any
time after such election and before the execution of the
authority under the ordinance, any person should present
to the governing body an offer to buy such public utility
at a greater price than the sale price which shall have
been so voted upon and authorized or to lease the same
upon terms which the governing body, in its discretion,
shall consider more advantageous to the municipality
than the terms of the lease which shall have been author-
ized by vote as aforesaid, the governing body shall have
the power to accept such subsequent offer, and to make
such sale or such lease to the person making the offer,
without resubmitting the question to a vote; but, if a sale
shall have been authorized by vote as aforesaid, and such
subsequent proposition be for a lease, or, if a lease shall have been so authorized, and the subsequent proposition shall be for a sale, the governing body shall have no power to accept the same without submitting the question thereof to a vote of the people as first above provided.

Before any such second or subsequent proposition shall be submitted to a vote, after a sale or lease shall have been authorized at an election held hereunder, the person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved at the election to be called thereon. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any bonded indebtedness created in respect to such public utility, and in case there be no bonded indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of fire-fighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such bonded indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

PART VI. SALE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale or disposition of other municipal property.

1 Every municipality may sell or dispose of any of its
real or personal property (other than a public utility
which shall be sold or leased in accordance with the pro-
visions of section seventeen of this article) as authorized
in article five, chapter one of this code, or to the United
States of America or any agency or instrumentality there-
of for a public purpose for an adequate consideration,
without considering alone the present commercial or
market value of such property. In all other cases, any
municipality is hereby empowered and authorized to sell
any of its real or personal property for a fair and adequate
consideration, such property to be sold at public auction
at a place designated by the governing body, but before
making any such sale, notice of the time, terms and place
of sale, together with a brief description of the property to
be sold, shall be published as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the municipality: Provided,
That the requirements of notice and public auction shall
not apply to the sale of any one item or piece of property
of less value than one thousand dollars, and under no cir-
cumstances shall the provisions of this section be con-
strued as being applicable to any transaction involving the
trading in of municipally owned property on the pur-
case of new or other property for the municipality, and
every municipality shall have plenary power and author-
ity to enter into and consummate any such trade-in
transaction.

PART VII. EXTRATERRITORIAL EXERCISE OF POWERS
AND AUTHORITY.

§8-12-19. Extraterritorial exercise of powers and authority.
1 Wherever the powers and authority granted in this
2 chapter cannot be reasonably and efficiently exercised by
3 confining the exercise thereof within the corporate limits
4 of the municipality, the powers and authority of the muni-
5 cipality shall extend beyond the corporate limits to the
6 extent necessary to the reasonably efficient exercise of
7 such powers and authority within the corporate limits.
8 Such powers and authority, unless otherwise provided in
9 this code or elsewhere in law, shall not, however, extend
more than one mile beyond the corporate limits, and such
powers and authority shall not extend into the corporate
limits of another municipality without the consent of the
governing body thereof.

PART VIII. SUITS AGAINST MUNICIPALITIES.
§8-12-20. Notice to be given of claims for damages due to alleged negligence; waiting period.
1 Notwithstanding any other provision of this code or any
2 charter provision to the contrary, no action shall be main-
3 tained against any municipality for injury to any person
4 or property or for wrongful death alleged to have been
5 sustained by reason of the negligence of the municipality,
6 or of any officer, agent or employee thereof, unless a writ-
7 ten verified statement by the claimant, his agent, attorney
8 or representative of the nature of the claim and of the
9 time and place at which the injury is alleged to have oc-
10 curred or been received shall have been filed with the
11 mayor, recorder or municipal attorney within thirty days
12 after such cause of action shall have accrued. The cause of
13 action shall be deemed to have accrued on the date of the
14 sustaining of the injury, except that where death results
15 therefrom the time for the personal representative to give
16 notice shall run from the date of death. An action at law
17 for damages for injury to any person or property or for
18 wrongful death shall not be commenced until the expira-
19 tion of thirty days after the filing of the notice provided
20 for in this section.

ARTICLE 13. TAXATION AND FINANCE.

Part I. Powers of Taxation.
§8-13-1. General property and benefit taxes.
1 Every municipality shall have plenary power and
2 authority:
3 (1) To levy and collect taxes on real and personal
4 property for any municipal purpose within the limitations
5 and subject to the classifications prescribed by the consti-
6 tution and the general law of this state; and the assess-
7 ment, levy and collection of such taxes shall be governed
8 by the provisions of chapters eleven and eleven-a of this
9 code; and
(2) To finance public improvements by the levy and collection of special assessments or other benefit taxes in the manner and to the extent permitted by article eighteen of this chapter and by any other general law.

The entire cost of sidewalk construction, including curbing, may be imposed upon the owners of abutting property and made a lien thereon which shall have priority over all other liens except tax liens.

§8-13-2. Correcting erroneous tax levy.

Upon the petition of interested persons, as provided in chapter eleven of this code for superseding levies, the circuit court of the county in which the municipality or the major portion of the territory thereof is located may supersede a levy made by such municipality, in the same manner, and to the same effect, as provided in said chapter. The court, if it deem proper to do so, may require security for costs.


Every municipality shall have plenary power and authority to levy and collect an annual capitation tax upon all inhabitants of the municipality who have attained the age of twenty-one years. The governing body may exempt from such tax all individuals who are dependent in whole or in part upon public assistance for their support. The rate of such tax shall not exceed two dollars per individual and the revenue so produced shall be applied primarily to the maintenance and repair of streets, avenues, roads, alleys, ways and other public places.

§8-13-4. Municipal license and tax thereon when state license required.

Whenever anything, for which a state license is required, is to be done within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to require a municipal license therefor and for the use of the municipality to impose a reasonable tax thereon which may not exceed the amount of the state
license tax. Upon proper application for such municipal
license and payment of the prescribed reasonable tax
by any person who has a valid and subsisting state license,
such municipal license shall be issued.

§8-13-5. Business and occupation or privilege tax.
1 Whenever any business or occupation, upon which the
state imposes an annual business and occupation or privi-
lege tax under article thirteen, chapter eleven of this
code, is engaged in or carried on within the corporate
limits of any municipality, the governing body thereof
shall have plenary power and authority, unless pro-
hibited by general law, to impose a similar business and
occupation or privilege tax thereon for the use of the
municipality: Provided, That in no case shall the rate of
such municipal business and occupation or privilege tax
on a particular activity exceed the rate imposed by the
state, exclusive of surtaxes, and the ordinance imposing
such tax shall conform with the provisions of said article
thirteen as to the waiver of penalties: Provided, however,
That no municipality shall impose a business and occupa-
tion or privilege tax upon any businesses, occupations or
privileges taxed under sections two-a, two-b, two-c, two-d,
two-e, two-g, two-h, two-i and two-j of said article thir-
teen, chapter eleven in excess of the rates in effect under
said article thirteen on January one, one thousand nine
hundred fifty-nine.

Any taxes levied pursuant to the authority of this sec-
tion may be made operative as of the first day of the
current fiscal year and each year thereafter.

§8-13-6. Amusement tax.
1 Every municipality shall have plenary power and
authority to levy and collect an admission or amusement
tax upon any public amusement or entertainment con-
ducted within the corporate limits thereof for private
profit or gain. The tax shall be levied upon the pur-
chaser and added to and collected by the seller with the
price of admission, or other charge for the amusement
or entertainment. The tax shall not exceed two percent
of the admission price or charge, but a tax of one cent
may be levied and collected in any case.
Any ordinance imposing such tax shall contain reasonable rules and regulations governing the collection thereof by the seller and the method of his payment and accounting therefor to the municipality.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

Every municipality shall have plenary power and authority to levy and collect a tax upon all purchases of intoxicating liquors from the alcohol beverage control commissioner within such municipality: Provided, That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven, chapter sixty of this code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase. The tax shall not exceed three percent of the purchase price.

A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to the West Virginia alcohol beverage control commissioner. The commissioner by appropriate rules and regulations shall provide for the collection of such tax and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

Every municipality shall have plenary power and authority to levy and collect a fee from any private club licensee whose premises are situate therein, as authorized in section seven, article seven, chapter sixty of this code.

§8-13-8. License tax on horse racing.

Every municipality within the corporate limits of which a horse race track is located in whole or in part shall have plenary power and authority to impose upon the operator of the track a daily license tax for the privilege of conducting horse racing within the corporate limits of the municipality. Such daily license tax shall
not exceed the amount of the daily license tax due from
such operator to the state under the provisions of article
twenty-three, chapter nineteen of this code. The daily
license tax hereby authorized shall not be applicable
to any local, county or state fair, horse show or agri-
cultural or livestock exposition at which horse racing
is conducted for not more than six days. A municipal
license tax on horse racing may be imposed under the
provisions of this section but not under the provisions of
section four of this article.


Every municipality shall have plenary power and
authority to levy and collect an annual motor vehicle
operator’s license tax not to exceed two dollars. The
tax shall apply only to inhabitants of the municipality.

§8-13-10. Domestic animal tax.

Every municipality shall have plenary power and
authority to levy and collect an annual license tax
upon the privilege of keeping a domestic animal within
the corporate limits of the municipality.


Any city may include by charter provision, and may
continue to exercise, all powers of taxation, other than
property taxation, which were set forth in the special
legislative charter of such city in effect on the date of
the ratification of the municipal home rule amendment
to the constitution of this state, being section thirty-
nine-a, article six of said constitution, and which are
not in conflict with general law.

PART II. BORROWING POWER.

§8-13-12. Borrowing power.

Every municipality shall have plenary power and
authority to borrow money on the general faith and
credit of the municipality for any municipal purpose,
in the manner and subject to the limitations provided
by law for the issuance of general obligation bonds.
PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

Notwithstanding any charter provision to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, shall have plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such service, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such service, subject to the provisions of chapter twenty-four of this code, reasonable rates, fees and charges to be collected in the manner specified in the ordinance. The municipality shall not, however, have a lien on any property as security for payments due under such ordinance. Notwithstanding the provisions of section four, article eleven of this chapter, any ordinance enacted or substantially amended under the provisions of this section shall be published 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 such municipality. In the event thirty percent of the qualified voters of the municipality by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within fifteen days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance shall not become effective until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of such municipality at a regular municipal election or special municipal election, as the governing body shall direct. Voting thereon shall not take place until after notice of such submission shall have been given by publication as above provided for the publication of the ordinance after it is adopted or substantially
amended. The powers and authority hereby granted to
municipalities and to the governing bodies thereof are
in addition and supplemental to the powers and authority
named in any charters thereof. Notwithstanding any
other provisions of this section, in the event rates, fees
and charges herein provided for shall be imposed by
the governing body of any municipality for the purpose
of replacing and in amounts approximately sufficient to
replace in its general fund such amounts as shall be
appropriated to be paid out of ad valorem taxes upon
property within the municipality pursuant to an election
duly called and held under the constitution and laws
of the state to authorize the issuance and sale of general
obligation bonds of the municipality for public im-
provement purposes, in the call for which election it
shall be stated that the governing body of the munici-
pality proposes to impose rates, fees and charges in
specified amounts under this section for the use of one
or more of the services above specified, which shall be
related to the public improvement proposed to be made
with the proceeds of the bonds, no notice, publication of
notice, or referendum or election or other condition or
prerequisite to the imposition of such rates, fees and
charges shall be required or necessary other than the
legal requirements for issuance and sale of such general
obligation bonds.

PART IV. PENALTIES.


1 Every municipality shall have plenary power and au-
thority to provide, by ordinance, penalties for the viola-
tion of any ordinance enacted pursuant to the provisions
of this article.

PART V. COLLECTION OF MUNICIPAL TAXES, FINES AND
ASSESSMENTS.


1 Unless otherwise provided, it shall be the duty of the
treasurer of the municipality, or other individual who
may be designated by general law, by charter provision
or by the governing body, to collect and promptly pay
into the municipal treasury all taxes, fines, special assessments and other moneys due the municipality. All such taxes, fines, special assessments (except assessments for permanent or semi-permanent public improvements) and other moneys due the municipality are hereby declared to be debts owing to the municipality, for which the debtor shall be personally liable, and the treasurer, or other individual so designated, may enforce this liability by appropriate civil action in any court of competent jurisdiction, and is hereby vested with the same rights to distraint for the same as is vested in the sheriff for the collection of taxes. Such treasurer or other individual shall give bond, conditioned according to law, in such penalty and with such security as the governing body may require.

§8-13-16. Remedies for failure to collect, account for or pay over moneys.

If the treasurer, or other individual designated, shall fail to collect, account for or pay over all or any of the moneys with which he may be chargeable, belonging to the municipality, according to the conditions of his bond and the orders of the governing body, it shall be lawful for the governing body to recover the same, in the name of the municipality, by civil action in the circuit court of the county in which the municipality or the major portion of the territory thereof is located, or, where the sum does not exceed three hundred dollars, by suit before a justice of the district in which the municipality or the major portion of the territory thereof is located, against the treasurer, or other designated individual, or his sureties, or any or either of them, or his or their executors or administrators.

PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.

§8-13-17. Reports, etc., to conform to fiscal year.

All reports, settlements, accounts and statements of municipalities which are now, or which may hereafter be, required by law shall be kept and made to conform to the fiscal year.

The provisions of article nine, chapter six of this code shall apply to every municipality. By charter provision or ordinance, provision may be made for a system of budgeting, accounting and record-keeping, and for the conduct of the transactions of the municipality, but any such provision shall not conflict with said article nine, chapter six or with the regulations or orders promulgated thereunder by the state tax commissioner.


The governing body of every municipality shall have plenary power and authority to establish a special fund to be known as the "capital reserve fund." The fund shall consist of unexpended balances of other funds which may be transferred to the fund, with the approval of the state tax commissioner, at the end of the fiscal year, and any other moneys authorized by law to be used for the purposes of the fund. The fund shall be used, from time to time, for the construction, reconstruction, purchase or replacement of, or addition to, municipal buildings, public works, equipment, machinery, motor vehicles or other capital assets. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget. If a municipality accumulates its capital reserve fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of September of each year. The proceeds of the fund may be withdrawn by the municipality upon reasonable notice in writing to the state sinking fund commission.

§8-13-20. Balances in sinking fund may be transferred to general fund where bonded indebtedness has been paid; application of remitted funds.

Every municipality shall have plenary power and authority to transfer to the general fund of such municipality any unexpended balances of funds raised to pay the interest on and create sinking funds for any bonded
Indebtedness where said bonded indebtedness has been fully paid off and discharged, or where there remains no other bonded debt within such taxing district to which such unexpended balances might be applied, as well as any balance remaining in any fund levied and collected under authority of any special levy election.

The state sinking fund commission is authorized in any such case to remit any balances under its supervision or control to such municipality to be credited to its general fund.

In any case where such funds are transferred from sinking funds, or are remitted from the state sinking fund commission, as hereinabove provided, no part of the moneys so refunded or remitted shall be applied to the payment of current expenses of the municipality, but such funds shall be applied, first, to the liquidation of existing nonbonded indebtedness of such municipality; second, for capital improvements; and third, for the liquidation of bonded indebtedness of such municipality.


Every municipality which has raised, or which shall hereafter raise, by taxation or otherwise, any funds for any municipal public works, and is unable to obtain the necessary materials and equipment on account of priority restrictions imposed by the federal government on the sale of such materials and equipment, or for any other reason, shall have plenary power and authority, by proper resolution of its governing body, to place said funds in a special fund until such time as such materials and equipment shall become available to said municipality. When such materials and equipment shall become available to said municipality, it shall, by proper resolution of its governing body, direct the use of said funds for the purpose or purposes for which the same were raised.

§8-13-22. Payment of money out of municipal treasury must be by order; signing of orders by mechanical or electrical devices; officers jointly and severally liable for neglect; forgery; penalty.

No money shall be paid out of any municipal treasury
Enr. S. B. No. 2] 112

except upon an order duly signed by the municipal officers authorized to sign such order: Provided, That such signatures may be made by means of such mechanical or electrical device as the governing body may select. Such mechanical or electrical device for the making of such signatures shall be safely kept in the office of the treasurer or recorder so that no one shall have access thereto except the municipal officers authorized to sign such orders, the treasurer or recorder and such of their respective employees as may be authorized to have access thereto.

If the municipal officer or officers charged with the responsibility of keeping the aforementioned mechanical or electrical device wilfully or by neglect permit or make it possible for an unauthorized individual to sign the name of any municipal officer authorized to sign such order by the use of any such mechanical or electrical device upon any warrant, order or check, such municipal officer or officers shall be personally liable, jointly and severally, for the amount of any loss resulting to the municipality.

If any individual other than the individuals authorized so to do shall sign the name of any municipal officer authorized to sign such order by the use of any such mechanical or electrical device, or otherwise, upon any warrant, order or check, he shall be guilty of forgery; and if any individual shall utter or attempt to employ as true such forged warrant, order or check, knowing the same to be forged, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§8-13-23. Preparation, publication and disposition of financial statements.

Every city, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and cause to be published a sworn statement revealing (a) the receipts and expenditures of the city during the previous fiscal year arranged under descriptive headings, (b) the name of each person
who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the city, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I 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 the city.

Every city shall transmit to any resident of such city requesting the same a copy of any published statement for the fiscal year designated, supplemented by a document listing the names of each person who received less than fifty dollars from any fund during such fiscal year and showing the amount paid to each and the purpose for which paid.

Every town or village, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing (a) the receipts and expenditures of the town or village during the previous fiscal year arranged under descriptive headings, (b) the name of each person who received money from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the town or village, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

Every town or village shall transmit to any resident of such town or village requesting the same a copy of any such statement for the fiscal year designated. Any such town or village may, if the governing body thereof so elects, also publish such statement as a Class I legal advertisement in compliance with the provisions of said article three, chapter fifty-nine, and in such event, the publication area for such publication shall be the town or village.

The statement required by the first paragraph of this section and the statement required by the third paragraph of this section shall be sworn to by the recorder of the municipality and the mayor thereof and two members
of the governing body of such municipality. As soon as practicable following the close of the fiscal year, a copy of any statement herein required shall be filed by the municipality with the state tax commissioner, and the clerk of the county court of the county, and the clerk of the circuit court of the circuit, in which the municipality or the major portion of the territory thereof is located. If the governing body fail or refuse to perform any of the duties set forth in this section, every member of such governing body and the recorder thereof concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars. If any of the provisions of this section are violated, it shall be the duty of the prosecuting attorney of the county in which the municipality or the major portion of the territory thereof is located to immediately present the evidence thereof to the grand jury if in session, and if not in session, he shall cause such violations to be investigated by the next succeeding grand jury.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

PART I. LAW AND ORDER AND POLICE FORCE OR DEPARTMENTS.

§8-14-1. Power and authority with respect to the preservation of law and order; police force or departments.

1 Every municipality shall have plenary power and authority to protect persons and property within the municipality and preserve law and order therein, and, for this purpose, to provide for, establish, equip and maintain a police force or department. The police force or department in each municipality shall be subject to the authority, control and discipline of the administrative authority.

For the purposes of this article, the term "paid police department" shall be taken to mean only a municipal police department maintained and paid for out of public funds and whose employees are paid on a full-time basis
out of public funds. The term shall not be taken to
mean a department whose employees are paid nominal
salaries or wages or are only paid for services actually
rendered on an hourly basis.

§8-14-2. Hours of duty for policemen in a paid police department under civil service; overtime compensation or time off; municipal emergencies.

In any paid police department of any municipality now or hereafter operated under police civil service as provided in subsequent sections of this article, the members of any such department subject to and under civil service shall not be required to be on duty more than five days in any calendar week, nor more than eight hours in any one day, unless they shall be compensated as hereinafter in this section provided. For any time spent on duty by any member of a paid police department under civil service in excess of eight hours in any one day or in excess of forty hours in any one week, such member shall, notwithstanding any other provisions of this code to the contrary, be paid, at a rate not less than his regular rate of pay, for each full hour or allowed equal time off: Provided, That in time of municipal emergency as hereinafter in this section defined, the foregoing provisions with respect to additional pay or time off shall not apply. A municipal emergency for purposes of this section shall mean an unusual or abnormal condition beyond the municipality's control and a condition beyond its reasonable power to remove or overcome.

PART II. POWERS, AUTHORITY AND DUTIES OF LAW ENFORCEMENT OFFICIALS AND POLICEMEN.

§8-14-3. Powers, authority and duties of law enforcement officials and policemen.

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search war-
rant, warrant of arrest or other process, which can legally be exercised or discharged by a constable of a district within the same. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of any chief, policeman or sergeant shall extend anywhere within the county or counties in which the municipality is located, and any such chief, policeman or sergeant shall have the same authority of pursuit and arrest beyond his normal jurisdiction as has a sheriff. For an offense committed in his presence, any such officer may arrest the offender without a warrant and take him before the mayor or police court or municipal court to be dealt with according to law. He and his sureties shall be liable to all the fines, penalties and forfeitures which a constable of a district is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties and forfeitures are recovered against a constable. In addition to the mayor, or police court judge or municipal court judge, if any, of a city, the chief of police of any municipality and in the absence from the stationhouse of the chief of police the captains of police and lieutenants of police shall each have authority to administer oaths to complainants and to issue arrest warrants thereon for all violations of the ordinances of such municipality.

It shall be the duty of the mayor and police officers of every municipality and any municipal sergeant to aid in the enforcement of the criminal laws of the state within the municipality, independently of any charter provision or any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of or arrest any offender and take him before a regular or ex officio justice of the peace of the county to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a justice of the peace, and the same
authority to arrest without a warrant for offenses committed in his presence, as a constable.

PART III. POLICE MATRONS.

§8-14-4. Police matrons.

The mayor of every city may appoint one or more reputable women as police matrons. Upon the death, resignation or removal of a police matron, any successor shall be appointed by the mayor as aforesaid.

Each police matron shall have, subject to the general control of the head of the police department, the entire care and control of all women under arrest in the police station for which she serves, and she may, at any time, call upon any police officer connected with such police station for assistance.

Whenever a woman is arrested and taken to a police station to which a matron is attached and when a matron is not present, it shall be the duty of the officer in charge of such police station to cause a matron to be immediately summoned, and it shall be the duty of the police matron to hold herself in readiness at all hours of the day and night to answer any and all calls from such police station whenever and so long as any woman is or remains confined therein.

The police matron herein provided for shall attend all sessions of the mayor's court, police court or municipal court, at any and all times, when any woman is to be arraigned, and the police matron shall have charge of all women there in attendance awaiting trial or awaiting transfer to any other place of detention.

In every station to which a police matron is attached, sufficient and proper accommodations shall be provided by those having charge of the police and fiscal affairs of the city, for all women confined therein, under arrest, and in case such accommodations shall be insufficient and improper, the matron shall notify the mayor, and it shall be the duty of the mayor promptly to lay the matter before the governing body and it shall be the duty of such governing body to provide, at the expense of the city, all such sufficient and proper accommodations.
PART IV. SPECIAL SCHOOL ZONE POLICE OFFICERS.

§8-14-5. Special school zone police officers.
1 Every municipality shall have plenary power and authority to provide by ordinance for the appointment of special school zone police officers, who shall have the duty of controlling and directing traffic upon designated parts of the streets, avenues, roads, alleys or ways at or near schools, and who, in the performance of such duty, shall be vested with all the powers of local police officers. Such special school zone police officers shall be in uniform, shall display a badge or other sign of authority, shall serve at the will and pleasure of the appointing authority, and shall not come within the civil service provisions of this article or the policemen's pension and relief fund provisions of article twenty-two of this chapter. The governing body of the municipality may require such special school zone police officers to give bond, payable to the municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned for the faithful performance of their duties.

PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-6. Qualifications for appointment or promotion to positions in certain paid police departments to be ascertained by examination; provisions exclusive as to appointments, etc.; definitions.
1 All appointments and promotions to all positions in all paid police departments of Class I and Class II cities shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. No individual except the chief of police shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a paid member of any paid police department, regardless of rank or position, of any Class I or Class II city in any manner or by any means other than those prescribed in the following sections of this article.
13 The term "member of a paid police department," when-
ever used in the following sections of this article, shall mean and include any individual employed in a paid police department who is clothed with the police power of the state in being authorized to carry deadly weapons, make arrests, enforce traffic and other municipal ordinances, issue summons for violations of traffic and other municipal ordinances, and perform other duties which are within the scope of active, general law enforcement. The term "appointing officer," as used in the following sections of this article, shall be construed to mean the Class I or Class II city officer in whom the power of appointment of members of a paid police department is vested by charter provision or ordinance of the city.

§8-14-7. Policemen's civil service commission created.

In every Class I and Class II city having a paid police department, there shall be a "Policemen's Civil Service Commission." The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the city; one of whom shall be appointed by the local fraternal order of police; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen's association. The individuals appointed commissioners shall be qualified voters of the city for which they are appointed; and at least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each city, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local fraternal order of police and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen's association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen's association at the time any appointment is to be made by it, such appointment shall be made by the other two com-
missioners by mutual agreement. After the original ap-
pointments, all appointments shall be made for periods of
four years each by the appointing authority hereinbefore
designated. In the event that any commissioner of said
civil service commission shall cease to be a member there-
of by virtue of death, final removal or other cause, a new
commissioner shall be appointed to fill the unexpired term
of said commissioner within ten days after said ex-
commissioner shall have ceased to be a member of said
commission. Such appointment shall be made by the off-
icer or body who in the first instance appointed the com-
missioner who is no longer a member of the commission,
except that in the case of a vacancy in an appointment
made by the governor, which vacancy occurs after the
effective date of this article, the appointment for the un-
expired term shall be made by the mayor. Each year the
three members of the commission shall, together, elect
one of their number to act as president of the commission,
who shall serve as president for one year. The mayor
may, at any time, remove any commissioner or commis-
sioners for good cause, which shall be stated in writing
and made a part of the records of the commission: Pro-
vided, That once the mayor has removed any commis-
sioner, the mayor shall within ten days thereafter file in
the office of the clerk of the circuit court of the county
in which the city or the major portion of the territory
thereof is located a petition setting forth in full the reason
for said removal and praying for the confirmation by
said circuit court of the action of the mayor in so remov-
ing the said commissioner. A copy of said petition shall
be served upon the commissioner so removed simultane-
ously with its filing in the office of the clerk of the circuit
court and shall have precedence on the docket of said
court and shall be heard by said court as soon as practi-
cable upon the request of the removed commissioner or
commissioners. All rights herein vested in said circuit
court may be exercised by the judge thereof in vacation.
In the event that no term of the circuit court is being
held at the time of the filing of said petition, and the judge
thereof cannot be reached in the county wherein the peti-
tion was filed, said petition shall be heard at the next
succeeding term of said circuit court, whether regular or
special, and the commissioner or commissioners so re-
moved shall remain removed until a hearing is had upon
the said petition of the mayor. The court or the judge
thereof in vacation shall hear and decide the issues pre-
sent,ed by said petition. The mayor or commissioner or
commissioners, as the case may be, against whom the
decision of the court or the judge thereof in vacation shall
be rendered, shall have the right to petition the supreme
court of appeals for a review of the decision of the circuit
court or the judge thereof in vacation as in other civil
cases. In the event that the mayor shall fail to file his
petition in the office of the clerk of the circuit court, as
hereinbefore provided, within ten days after the removal
of said commissioner or commissioners, such commis-
sioner or commissioners shall immediately resume his or
their position or positions as a member or members of the
policemen's civil service commission.

Any resident of the city shall have the right at any time
to file charges against and seek the removal of any mem-
ber of the policemen’s civil service commission of such
city. Such charges shall be filed in the form of a petition
in the office of the clerk of the circuit court of the county
in which the city or the major portion of the territory
thereof is located, and a copy of said petition shall be
served upon the commissioner or commissioners sought
to be removed. Said petition shall be matured for hearing
and heard by said circuit court or the judge thereof in
vacation in the same manner as civil proceedings in the
circuit courts of this state are heard, and the party against
whom the circuit court’s decision is rendered shall have
the right to petition the supreme court of appeals for a
review of the action of the circuit court, as in other civil
cases.

No commissioner shall hold any other office (other than
the office of notary public) under the United States, this
state, or any municipality, county or other political sub-
division thereof; nor shall any commissioner serve on
any political committee or take any active part in the
management of any political campaign.
§8-14-8. Recorder ex officio clerk of commission; clerical and stenographic services.
1 The recorder of the city shall be ex officio clerk of the policemen's civil service commission and shall supply to the commission without extra compensation all necessary clerical and stenographic services for the work of the commission.

§8-14-9. Rooms, stationery, etc., to be furnished by city; appropriations required.
1 It shall be the duty of the mayor and the heads of the departments of government of every Class I and Class II city having a paid police department to cause suitable and convenient rooms and accommodations to be assigned and provided, furnished, heated and lighted for carrying on the work and examinations of the commission. The commission may order from the proper authorities the necessary stationery, postage stamps, official seal and other articles to be supplied, and the necessary printing to be done, for its official use. It shall be the duty of the officers of every such city to aid the commission in all proper ways in carrying out the civil service provisions of this article, and to allow the reasonable use of public buildings, and to heat and light the same, for holding examinations and investigations, and in all proper ways to facilitate the same.
1
17 All Class I and Class II cities subject to the civil service provisions of this article are hereby required to appropriate sufficient funds for the purpose of carrying out such provisions.

§8-14-10. Powers, authority and duties of policemen's civil service commission.
1 The policemen's civil service commission in each Class I and Class II city shall;
1 (1) Prescribe and enforce rules and regulations for carrying into effect the civil service provisions of this article. All rules and regulations so prescribed may, from time to time, be added to, amended or rescinded: Provided, That all rules and regulations shall be approved by the mayor and the governing body before they go
into effect, but when so approved shall not be changed
or rescinded except by the commission with the approval
of the mayor and the governing body. Provided, how-
ever, That if the mayor and governing body take no action
on a proposed rule and regulation or a proposed change
or rescission submitted to them within a period of twenty
days from the date of submission, then the same shall
become effective as though approved by the mayor and
governing body.

(2) Keep minutes of its own proceedings, and records
of its examinations and other official actions. All recom-
mendations of applicants for office, received by the said
commission or by any officer having authority to make
appointments to office, shall be kept and preserved for
a period of ten years, and all such records, recommenda-
tions of former employees excepted, and all written
causes of removal, filed with it, shall, subject to reason-
able regulation, be open to public inspection.

(3) Make investigations, either sitting as a body or
through a single commissioner, concerning all matters
touching the enforcement and effect of the civil service
provisions of this article and the rules and regulations
prescribed hereunder or concerning the action of any
examiner or subordinate of the commission or any indi-
vidual in the public service with respect to the execu-
tion of the civil service provisions of this article; and,
in the course of such investigations, each commissioner
shall have the power to administer oaths and affirma-
tions, and to take testimony.

(4) Have the power to subpoena and require the
attendance of witnesses, and the production thereby of
books and papers pertinent to the investigations and
inquiries herein authorized, and examine them and such
public records as it shall require, in relation to any matter
which it has the authority to investigate. The fees of
such witnesses for attendance and travel shall be the
same as for witnesses before the circuit courts of this
state, and shall be paid from the appropriation for the
incidental expenses of the commission. All officers in
the public service, and their deputies, clerks, subordinates
and employees shall attend and testify when required.
to do so by said commission. Any disobedience to, or neglect of, any subpoena issued by the said commissioners, or any one of them, to any person, shall be held a contempt of court, and shall be punished by the circuit court of the county in which the city or the major portion of the territory thereof is located, or the judge thereof in vacation, as if such subpoena had been issued therefrom. The judge of such court shall, upon the application of any one of said commissioners, in any such case, cause the process of said court to issue to compel such person or persons disobeying or neglecting any such subpoena to appear and to give testimony and produce evidence before the said commissioners, or any one of them, and shall have the power to punish any such contempt.

(5) Make an annual report to the mayor showing its own actions, and its rules and regulations, and all of the exceptions thereto in force, and the practical effects thereof, and any suggestions it may have for the more effectual accomplishment of the purposes of the civil service provisions of this article. Such report shall be made available for public inspection within five days after the same shall have been delivered to the mayor of the city.

§8-14-11. Rules and regulations for all examinations; probationary appointments.

1. The policemen's civil service commission in each Class I and Class II city shall make rules and regulations providing for both competitive and medical examinations for appointments and promotions to all positions in the paid police department in such city, and for such other matters as are necessary to carry out the purposes of the civil service provisions of this article. Any such commission shall have the power and authority to require by rules and regulations a physical fitness examination as a part of its competitive examination or as a part of its medical examination. Due notice of the contents of all such rules and regulations and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and said rules and regulations and any modifications
thereof shall also be printed for public distribution. All original appointments to any positions in a paid police department subject to the civil service provisions of this article shall be for a probationary period of one year: Provided, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty of this article. If, at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the service shall be equivalent to his final appointment.

§8-14-12. Form of application; age and residency requirements; exceptions.

The policemen's civil service commission in each Class I and Class II city shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules and regulations of said commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) His full name, residence and post-office address;
(2) His United States citizenship, age and the place and date of his birth;
(3) His state of health and his physical capacity for the public service;
(4) His business and employments and residences for at least three previous years; and
(5) Such other information as may reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

Blank forms for such applications shall be furnished by the commission, without charge, to all individuals requesting the same. The commission may require, in connection with such application, such certificates of citizenship, physicians and others, having pertinent knowledge con-
cerning the applicant, as the good of the service may re-
quire.

No application for original appointment shall be receiv-
ed if the individual applying is less than twenty-one years
of age or more than thirty-five years of age at the date of
his application: Provided, That in the event any applicant
formerly served upon the paid police department of
the city to which he makes application, for a period of
more than his probationary period, and resigned from
the department at a time when there were no charges
of misconduct or other misfeasance pending against
such applicant, within a period of two years next pre-
ceding the date of his application, and at the time of
his application resides within the corporate limits of the
city in which the paid police department to which he
seeks appointment by reinstatement is located, then such
individual shall be eligible for appointment by rein-
statement in the discretion of the policemen's civil serv-
ice commission, even though such applicant shall be
over the age of thirty-five years, and such applicant, pro-
viding his former term of service so justifies, may be ap-
pointed by reinstatement to the paid police department
without a competitive examination, but such applicant
shall undergo a medical examination; and if such in-
dividual shall be so appointed by reinstatement to the
paid police department, he shall be the lowest in rank in
the department next above the probationers of the de-
partment.

Any applicant for original appointment must have been
a resident for one year, during some period of time prior
to the date of his application, of the city in which he
seeks to become a member of the paid police department;
Provided, That if the commission deems it necessary it
may consider for original appointment applicants who
are not residents of the city but who have been residents
of the county in which the city or any portion of the
territory thereof is located for a period of at least one
year.
§8-14-13. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.

All competitive examinations for appointments or promotions to all positions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the individual or individuals examined to discharge the duties of the employment sought by him or them. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in the other civil service provisions of this article.

Adequate public notice of the date, time and place of every competitive examination together with information as to the kind of position to be filled, shall be given at least one week prior to such competitive examination. The said commission shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examination. The commission shall post in a public place at its office, the eligible list, containing the names and grades of those who have passed such competitive examinations for positions in the paid police department, and shall indicate thereon such appointments as may be made from said list.

All applicants for appointment or promotion to any position in a paid police department of a Class I or Class II city who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the appointing officer of the city. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if
the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

§8-14-14. Refusal to examine or certify; review thereof.

The commission may refuse to examine an applicant, or after examination to certify as eligible one, who is found to lack any of the established preliminary requirements for the examination or position for which he applies; or who is physically so disabled as to be rendered unfit for the performance of the duties of the position desired; or who is addicted to the habitual use of intoxicating liquors or drugs; or who has been guilty of any crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to practice any deception or fraud, in his application, in any such examination, or in securing his eligibility; or who refuses to comply with the rules and regulations of the commission.

If any applicant feels aggrieved by the action of the commission in refusing to examine him, or after examination in refusing to certify him as eligible, the commission shall, at the request of such applicant, appoint a date, time and place for a public hearing; at which time such applicant may appear, by himself or counsel, or both, and the commission shall then review its refusal to make such examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by him. After such review, the commission shall file in its records the testimony taken and shall again make a decision, which decision shall be final and not subject to judicial review, but under no circumstances shall the provisions of this article be construed, in the case of a refusal to examine an applicant for promotion or to certify an applicant as eligible for promotion, as depriving such applicant of his right to seek a writ of mandamus, if the application for such writ is made within twenty days from the date of the decision refusing to examine or to certify him as eligible for promotion.
§8-14-15. Appointments from list of eligibles.

Every position, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the policemen's civil service commission of any vacancy in a position which he desires to fill, and shall request the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three individuals thereon who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three names so certified: Provided, That should he make objection, to the commission, to one or more of these individuals, for any of the reasons stated in section fourteen of this article, and should such objection be sustained by the commission, after a public hearing along the lines of the hearing provided for in said section fourteen of this article, if any such hearing is requested, the commission shall thereupon strike the name of any such individual from the eligible list, and certify the next highest name for each individual so stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: Provided, however, That after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the said name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the foregoing provisions. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of one year, as provided in section eleven of this article.

§8-14-16. Noncompetitive examination for filling vacancy; provisional appointment.

Whenever there are urgent reasons for filling a vacancy
enr. s. b. no. 2] 130

1 in any position in a paid police department of a class i or
2 class ii city and there is no list of individuals eligible for
3 appointment after a competitive examination, the ap-
4 pointing officer may nominate an individual to the police-
5 men's civil service commission for noncompetitive ex-
6 amination; and if such nominee shall be certified by the
7 said commission as qualified, after such noncompetitive
8 examination and a medical examination, he may be ap-
9 pointed provisionally, to fill such vacancy until a selection
10 and appointment can be made after competitive examina-
11 tion, in the manner prescribed in section fifteen of this
12 article; but such provisional appointment shall not con-
13 tinue for a longer period than three months, nor shall
14 successive provisional appointments be made to the same
15 position, under the provisions of this section.

§8-14-17. Vacancies filled by promotions; eligibility for promo-
1 Vacancies in positions in a paid police department of a
2 class i or class ii city shall be filled, so far as practicable,
3 by promotions from among individuals holding posi-
4 tions in the next lower grade in the department. Promotions
5 shall be based upon merit and fitness to be ascertained by
6 competitive examinations to be provided by the police-
7 men's civil service commission and upon the superior
8 qualifications of the individuals promoted, as shown by
9 their previous service and experience: Provided, That
10 except for the chief of police, no individual shall be eligi-
11 ble for promotion from the lower grade to the next higher
12 grade until such individual shall have completed at least
13 two years' service in the next lower grade in the depart-
14 ment; Provided, however, That notwithstanding the
15 provisions of section six of this article, any member of a
16 paid police department of a class i or class ii city now
17 occupying the office of chief of such paid police depart-
18 ment, or hereafter appointed to such office, shall, except
19 as hereinafter provided in this section, be and shall con-
20 tinue to be entitled to all of the rights and benefits of the
21 civil service provisions of this article, except that he
22 may be removed from such office of chief of police with-
23 out cause, and the time spent by such member in the
office of such chief of police shall be added to the time
served by such member during the entire time he was a
member of said paid police department prior to his ap-
pointment as chief, and shall in all cases of removal,
except for removal for good cause, retain the regular
rank within said paid police department which he held
at the time of his appointment to the office of chief of
police or which he has attained during his term of service
as chief of police. The provisions of this section shall be
construed to apply and to inure to the benefit of all indi-
viduals who have ever been subject to the provisions of
this article. The commission shall have the power to
determine in each instance whether an increase in salary
constitutes a promotion.

§8-14-18. No inquiry shall be made concerning political or
religious opinions or affiliations of applicants, etc.

No question in any form of application or in or during
any examination shall be so framed as to elicit informa-
tion concerning the political or religious opinions or affili-
ations of any applicant; nor shall inquiry be made con-
cerning such opinions or affiliations; and all disclosures
thereof shall be discomtenanced. No discrimination
shall be exercised, threatened or promised by any indi-
vidual in a paid police department of a Class I or Class
II city against, or in favor of, an applicant, eligible, or
member of such a paid police department because of his
political or religious opinions or affiliations.

§8-14-19. Political activity of members of certain paid police
departments prohibited; petition for vacating ap-
pointment; action on petition; appeal.

(a) No member of any paid police department of a
Class I or Class II city shall engage in any political
activity of any kind, character or nature whatsoever,
except to cast his vote at any election, or shall act as
an election official in any election, municipal, county
or state. Any member of any such paid police depart-
ment violating the provisions of this section shall have
his appointment vacated and he shall be removed, in
accordance with the pertinent provisions of this section.
(b) Any three residents of any such city may file their written petition with the policemen's civil service commission thereof setting out therein the grounds upon which a member of the paid police department of such city should be removed for a violation of subsection (a) of this section. Notice of the filing of such petition shall be given by said commission to the accused member, which notice shall require the said member to file a written answer to the charges set out in the petition within thirty days of the date of said notice. The said petition and answer thereto, if any, shall be entered upon the records of the commission. If such answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, an order shall be entered by the commission declaring the appointment of said member vacated; if such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, the accused member may demand within such period a public hearing on the charges, or the commission may, in its discretion and without demand therefor, set a time for a public hearing on said charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the commission be granted. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining in whole or in part the charges made, or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of said member to be vacated and thereupon the proper municipal authorities shall immediately remove said member from the police force and from the payroll of said city. Notice of the action of the commission shall be given by registered letter to the mayor and chief of police of the city; and for failure to immediately
comply with the order of the commission such officer or
officers shall be punished for contempt, upon applic-
ation of the commission to the circuit court of the county
in which the city or the major portion of the territory
thereof is located.

(c) An appeal from the ruling of the commission
may be had in the same manner and within the same
time as specified in section twenty of this article for
an appeal from a ruling of a commission after hearing
held in accordance with the provisions of said section
twenty.

§8-14-20. Removal, discharge, suspension or reduction in rank
or pay; appeal; reduction in number of members.

(a) No member of any paid police department subject
to the civil service provisions of this article shall be re-
moved, discharged, suspended or reduced in rank or pay
except for just cause, which shall not be religious or
political, except as hereinbefore provided in section nine-
teen of this article; and no such member shall be removed,
discharged, suspended or reduced except as provided by
the civil service provisions of this article, and in no event
until he shall have been furnished with a written state-
ment of the reasons for such action. For the purpose of
the remainder of this subsection and subsections (b) and
(c) of this section, the term “suspension” shall mean only
(1) a suspension in excess of ten days, or (2) a suspension
in any calendar year which when added to any previous
suspension or suspensions within the same calendar year
results in a total period of suspension in excess of ten
days within such same calendar year, and for the purpose
of the remainder of this subsection and said subsections
(b) and (c), a member shall not be considered to be
suspended or sought to be suspended unless his suspen-
sion meets the foregoing definition of said term. In every
case of such removal, discharge, suspension or reduction,
a copy of the statement of reasons therefor and of the
written answer thereto, if the member sought to be re-
moved, discharged, suspended or reduced desires to file
such written answer, shall be furnished to the policemen’s
civil service commission and entered upon its records. If
the member sought to be removed, discharged, suspended
or reduced shall demand it, the commission shall grant
him a public hearing, which hearing shall be held within
a period of ten days from the filing of the charges in
writing or the written answer thereto, whichever shall
last occur. At such hearing the burden shall be upon the
removing, discharging, suspending or reducing officer,
hereinafter in this section referred to as "removing of-
icer," to justify his action, and in the event the removing
officer fails to justify his action before the commission,
then the member removed, discharged, suspended or re-
duced shall be reinstated with full pay, forthwith and
without any additional order, for the entire period during
which he may have been prevented from performing his
usual employment, and no charges shall be officially re-
corded against his record. A written record of all testi-
mony taken at such hearing shall be kept and preserved
by the commission, which record shall be sealed and not
be open to public inspection, if no appeal be taken from
the action of the commission.

(b) In the event that the commission shall sustain the
action of the removing officer, the member removed, dis-
charged, suspended or reduced shall have an immediate
right of appeal to the circuit court of the county wherein
the city or the major portion of the territory thereof is
located. In the event that the commission shall reinstate
the member removed, discharged, suspended or reduced,
the removing officer shall have an immediate right of
appeal to said circuit court. Any appeal must be taken
within ninety days from the date of entry by the commis-
sion of its final order; upon an appeal being taken and
docketed with the clerk of the circuit court of said county,
the circuit court shall proceed to hear the appeal upon
the original record made before the commission and no
additional proof shall be permitted to be introduced. The
circuit court's decision shall be final, but the member or
removing officer, as the case may be, against whom the
decision of the circuit court is rendered shall have the
right to petition the supreme court of appeals for a review
of the circuit court's decision, as in other civil cases. Such
member or removing officer shall also have the right,
where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any Class I or Class II city to reduce the number of paid members of its paid police department, said city shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid police department of said city shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid police department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid police department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid police department shall be made.

§8-14-21. Election to determine if civil service provisions of article shall apply to Class III city or Class IV town or village; existing police civil service not affected; certain regular members automatically covered.

Any Class III city or Class IV town or village having a paid police department and which has not prior to the effective date of this article established a police civil service system, may, by ordinance, provide for an election to determine whether the civil service provisions of this article shall apply to such city, town or village. Such election shall be held at the first regular municipal or general election held therein after the adoption of said ordinance and shall be conducted and the results thereof ascertained as provided by law for other elections. The ballots, or ballot labels where voting machines are used, shall have printed thereon:
If a majority of all of the legal votes cast on this question be against police civil service, then none of the civil service provisions of this article shall apply within such city, town or village. If a majority of all of the legal votes cast on this question be for police civil service, then all of the civil service provisions of this article shall apply within such city, town or village with like effect as if such Class III city or Class IV town or village were a Class I or Class II city: Provided, That all members of the paid police department of such city, town or village who were so employed by such city, town or village on the date of the election and who, as of such date, have had four or more years' service as members of any paid police department (including the years any member occupied the office of chief of any such paid police department) shall be considered to have been appointed as members under the civil service provisions of this article and shall hold their positions as members in accordance therewith. All members of the paid police department of such city, town or village who do not have, as of the date of such election, four or more years' service as members of a paid police department (including the years any member occupied the office of chief of any such paid police department) shall be subject to all examinations provided for in the civil service provisions of this article for members, except that if any such individual has sustained an injury or injuries in the line of duty while in police service, such injury or injuries shall not disqualify such individual under the medical examination required under the civil service provisions of this article.

The provisions of this section shall not apply to any such city, town or village operating under police civil service on the effective date of this article.

§8-14-22. Offenses and penalties.

Any individual who makes an appointment or promotion to any position, or selects an individual for employment, contrary to the civil service provisions of this
article, or wilfully refuses or neglects otherwise to comply with, or to conform to, any of the civil service provisions of this article, or violates any of such provisions, shall be deemed guilty of a misdemeanor.

Any commissioner or examiner, or any other individual, who shall wilfully, by himself or in cooperation with one or more persons, defeat, deceive or obstruct any individual with respect to his right of examination or registration according to the civil service provisions of this article, or to any rules and regulations prescribed pursuant thereto, or who shall wilfully or corruptly, falsely mark, grade, estimate, or report upon any such examination or proper standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aid in so doing, or who shall wilfully or corruptly furnish to any individual any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment or promotion to any position of any individual so examined, registered or certified, or to be so examined, registered or certified, or who shall impersonate any other individual, or permit or aid in any manner any other individual to impersonate him, in connection with any such examination or registration, or application or request to be examined or registered, shall, for each offense, be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense shall be punished by a fine of not less than fifty dollars, nor more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

§8-14-23. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected; certain members automatically covered; continuance of police civil service systems.

All acts, whether general, special, local or special legislative charters, or parts thereof, in relation to any civil service measure affecting any paid police department inconsistent with the civil service provisions of this article shall be, and the same are, hereby repealed insofar as
such inconsistencies shall exist. It is intended by the
civil service provisions of this article to furnish a com-
plete and exclusive system for the appointment, pro-
motion, reinstatement, removal, discharge, suspension and
reduction of all members of all paid police departments
subject to the civil service provisions of this article.
The status or tenure of all members of any paid police
department subject to the civil service provisions of
this article, which members were employed on the ef-
fec tive date of this article, shall not be affected by the
enactment of this article, but all such members shall be
subject to all of the civil service provisions of this article
with like effect as if they had been appointed members
hereunder.
When a Class III city which does not have a police
civil service system becomes a Class II city for which
police civil service is made mandatory by the provisions
of this article, all members of the paid police depart-
ment of such city who were employed by such city on
the effective date of the transition of such city to a Class
II city and who, as of such date, have had four or more
years' service as members of any paid police department
(including the years any member occupied the office
of chief of any such paid police department) shall be
considered to have been appointed as members under
the civil service provisions of this article and shall hold
their positions as members in accordance therewith. All
members of the paid police department of such city who
do not have, as of such date, four or more years' service
as members of a paid police department (including the
years any member occupied the office of chief of any
such paid police department) shall be subject to all
examinations provided for in the civil service provisions
of this article for members, except that if any such
individual has sustained an injury or injuries in the line
of duty while in police service, such injury or injuries
shall not disqualify such individual under the medical
examination required under the civil service provisions
of this article.
Any police civil service system established in accord-
ance with the provisions of former article five-a of this
Article 15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

Part I. Fire Fighting Generally.

§8-15-1. Power and authority of governing body with respect to fires.

1 The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

§8-15-2. Liability for property pulled down or destroyed to prevent spread of fire.

1 The owner of any property pulled down or destroyed to prevent the spreading of a fire, as specified in section one of this article, shall be entitled to recover from the municipality the actual property damage which he may
5 have sustained by reason of the same having been pulled
down or destroyed: Provided, That no one shall recover
compensation for property which would have been de-
stroyed by fire, if the same had not been pulled down
or destroyed under direction as specified in section one
of this article, but recovery may be had only for what
could have been saved with ordinary care and diligence
had no such direction been given.

§8-15-3. Municipalities empowered and authorized to contract
for prevention and extinguishment of fires within
three miles of corporate limits.

1 Any municipality shall have plenary power and au-
thority to contract to render services in the prevention
and extinguishment of fires upon property located within
three miles of its corporate limits: Provided, That no con-
tract entered into under the authority of this section shall
operate to impose any greater or different obligation or
liability upon the municipality than that with respect to
property within its corporate limits: Provided, however,
That nothing contained in this section shall be construed
as requiring any municipality to contract to render such
services, but if a municipality shall elect to make such
contract with any property owner, the same shall not be
cancelled or annulled without the consent of such prop-
erty owner, or such owner's successor, so long as the latter
shall not be in default: Provided further, That if a mu-
nicipality shall elect to contract with respect to any prop-
erty, it shall, if requested, contract on the basis and terms
contracted with respect to other property located at ap-
proximately the same distance from fireplugs, or other
fixed fire apparatus of said municipality. Any contract
entered into under the authority of this section shall re-
quire the property owner to pay as consideration for said
services an annual payment equivalent to eighty percent
of the annual tax levied for current municipal purposes
upon property within said municipality of like assessed
valuation to the property under contract. No contract
entered into under the authority of this section, and
nothing herein contained, shall be construed as requiring
or permitting any municipality to install or maintain any
special or additional apparatus or equipment beyond that
necessary for the protection of property within its cor-
porate limits.
The annual payments due under any such contract shall
be payable on or before the first day of October of each
calendar year in which such contract shall remain in
effect, or upon such day as may be hereafter provided as
the due date of the first installment of ad valorem taxes.
If any annual payment shall be in default for a period of
more than thirty days it shall bear interest at the same
rate as that provided for delinquent property taxes, and
shall be a lien upon the property subject to contract, pro-
vided a notice of such lien is recorded in the proper deed
of trust book in the office of the clerk of the county court
of the county in which such property or the major portion
thereof is located. Such lien shall be void at the expira-
tion of one year after such defaulted annual payment
shall have become due, unless within such year a civil
action seeking equitable relief to enforce the same shall
have been instituted by said municipality. The munici-
ality may by civil action collect any annual payment
and the interest thereon at any time within five years
after such payment shall have become due; and upon
default in any annual payment, the municipality may
cancel the contract involved.
Any contract made under the authority of this section
shall inure to the benefit of and be binding upon the suc-
cessors in title of the person making the same; and such
person, upon conveying the property subject to such con-
tract, shall no longer be liable under such contract, except
as to annual payments due prior to said conveyance and
remaining unpaid.
Any property owner may cancel any such contract with
respect to the property of such owner upon giving a
thirty-day written notice to the municipality, if such
owner is not in default with respect to any annual pay-
ment due thereunder, except that if such notice be given
subsequent to July first of any calendar year, the next
succeeding annual payment shall be made by said prop-
erty owner as soon as the amount thereof is ascertainable.
Upon cancellation as aforesaid, the municipality shall de-
Liver to the property owner a recordable release discharging such owner and such property from any further lien or obligation with respect to said annual payments. The annual payments due under any such contract shall be made to such officials as the municipality, in such contract, shall designate to receive them, who shall likewise have authority to receive notice of cancellation, and execute upon behalf of such municipality the release for which provision is hereinbefore made.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recordation of statement; organization.

Any number of persons, not less than twenty nor more than sixty-four, residing within the corporate limits of a municipality without a paid fire department may form themselves into a company for extinguishing fires therein. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county court of the county wherein such municipality or the major portion of the territory thereof is located, after which the members of the company shall elect its officers, including a commander, and make rules and regulations for effecting its object consistent with the laws of the state and the ordinances of such municipality. A volunteer fire company shall be subject to the authority of the governing body.

§8-15-5. Duties of company members; meetings to inspect equipment; report; penalty for noncompliance.

Every member of a volunteer fire company shall, upon any alarm of fire, attend, according to the ordinances of the municipality and the company's rules and regulations, and endeavor to extinguish the fire. In addition to the meetings required by the ordinances of the municipality and the rules and regulations of the company, semianual meetings of the company shall be held in April and October, on such days as the commander thereof may appoint, to examine the state of the engine, hose and other equipment, practice therewith and
11 see that the same are in good condition. Within one month
12 after any such semiannual meeting the commander of
13 such company shall make to the governing body a written
14 report of the names of those attending such meeting, to-
15 gether with a written report of the condition of the
16 engine, hose and other equipment. For any failure to
17 comply with the provisions of this section, the commander
18 shall be fined not less than ten nor more than twenty-five
19 dollars.

1 Whenever the governing body shall ascertain that such
2 company has failed, for three months successively, to con-
3 sist of twenty effective members, or shall ascertain that it
4 has failed for a like period of time to have and keep in
5 good, serviceable condition an engine, hose or other proper
6 equipment, such governing body shall declare such failure
7 and by order dissolve the company.
8 A fire company may also be dissolved at any time by
9 order of the governing body of the municipality or in such
10 manner as the ordinances thereof may prescribe. Whene-
11 ver a company is dissolved, the order of dissolution shall
12 be recorded in the office of the clerk of the county court
13 of the county wherein such municipality or the major por-
14 tion of the territory thereof is located.

§8-15-7. Incorporation of volunteer fire companies; duties and
1 obligations; dissolution.
2 In lieu of forming a company as specified in section four
3 of this article, interested persons may cause the incorpor-
4 ation of a volunteer fire company as a nonstock, nonprofit
5 corporation under the general corporation laws of this
6 state. The corporation and the members thereof shall have
7 all of the duties and obligations imposed upon unincor-
8 porated volunteer fire companies and the members there-
9 of by the provisions of sections four and five of this article.
10 The provisions of section six of this article shall be appli-
11 cable to any such corporation, except that instead of enter-
12 ing an order of dissolution, the governing body shall enter
13 an order directing the members of the corporation to
14 take the necessary action under the general corporation
laws of this state to bring about the dissolution of such
corporation. Upon the entry of any such order, it shall be
the duty of the members of such corporation to comply
therewith.

§8-15-8. Support of volunteer fire company; return of property
upon dissolution.

Any municipality may contribute to the support of its
volunteer fire company by providing a firehouse, fire fight-
ing equipment, necessary paid personnel and incidental
requirements to maintain such company upon an efficient
basis. Upon the dissolution of any such company, all of the
property contributed by the municipality shall become
the property of and be returned to such municipality.

PART III. PAID FIRE DEPARTMENTS.

§8-15-9. Establishment and maintenance of paid fire depart-
ment.

Any municipality may provide for, establish, equip and
maintain a full-time paid fire department. A paid fire de-
partment shall be subject to the authority, control and
discipline of the administrative authority. For the pur-
poses of this article, the term "paid fire department"
shall be taken to mean only a municipal fire department
maintained and paid for out of public funds and whose
employees are paid on a full-time basis out of public funds.
The term shall not be taken to mean a department whose
employees are paid nominal salaries or wages or are only
paid for services actually rendered on an hourly basis.


The members of a paid fire department shall not be re-
quired to remain on duty in excess of one hundred twenty
hours during any fourteen consecutive days' period. The
members of any such paid fire department shall, by major-
ity vote, determine the schedule of hours to be worked in
any twenty-four hour period: Provided, That the mem-
ers of any paid fire department shall not remain on duty
for more than twenty-four consecutive hours except in
case of a conflagration requiring the service of more than
one-half of the department. The chief executive officer
PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; definition of appointing officer.

All appointments and promotions to all positions in all paid fire departments shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. No individual shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a paid member of any paid fire department, regardless of rank or position, in any manner or by any means other than those prescribed in the following sections of this article: Provided, That in all municipalities in which the office of fire chief of a paid fire department was not covered by the provisions of former article six-a of this chapter on the first day of January, one thousand nine hundred forty-nine, such office in such municipality shall be excepted from the civil service provisions of this article fifteen until such time as the governing body of said municipality shall, by appropriate ordinance or resolution adopted by a majority of its members, elect to place the office of fire chief under the civil service provisions of this article; but until the office of any such fire chief is placed under the civil service provisions of this article by said governing body as aforesaid, the member of any such paid fire department now occupying such office or hereafter appointed to such office shall in all cases of removal, except for removal for good cause, revert to the status he held in such paid fire department at the time of his appointment to the office of such fire chief. The term "appointing officer" as used in the following sections of this article shall be construed to mean the municipal officer in whom the power of appoint-
§8-15-12. Firemen's civil service commission created.

In every municipality having a paid fire department, there shall be a "Firemen's Civil Service Commission." The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the municipality; one of whom shall be appointed by the local trades board in the event that said board shall exist in the municipality, or in case no such board exists in the municipality, then by the paid international association of fire fighters; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen's association. The individuals appointed commissioners shall be qualified voters of the municipality for which they are appointed; and at least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each municipality, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local trades board, or in the absence of such board, by the international association of fire fighters, and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen's association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen's association at the time any appointment is to be made by it, such appointment shall be made by the other two commissioners by mutual agreement. After the original appointments, all appointments shall be made for periods of four years each by the appointing authority hereinbefore designated. In the event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner
shall be appointed to fill the unexpired term of said commis-
missioner within ten days after said ex-commissioner
shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body
who in the first instance appointed the commissioner who
is no longer a member of the commission. Each year the
three members of the commission shall, together, elect
one of their number to act as president of the commission,
who shall serve as president for one year. The mayor
may, at any time, remove any commissioner or commis-
sioners for good cause, which shall be stated in writing
and made a part of the records of the commission: Pro-
vided, That once the mayor has removed any commis-
sioner, the mayor shall within ten days thereafter file in
the office of the clerk of the circuit court of the county in
which the municipality or the major portion of the terri-
tory thereof is located a petition setting forth in full the
reason for said removal and praying for the confirmation
by said circuit court of the action of the mayor in so re-
moving the said commissioner. A copy of said petition
shall be served upon the commissioner so removed simul-
taneously with its filing in the office of the clerk of the
circuit court and shall have precedence on the docket of
said court and shall be heard by said court as soon as
practicable upon the request of the removed commis-
sioner or commissioners. All rights herein vested in said
circuit court may be exercised by the judge thereof in
vacation. In the event that no term of the circuit court
is being held at the time of the filing of said petition, and
the judge thereof cannot be reached in the county where-
in the petition was filed, said petition shall be heard at
the next succeeding term of said circuit court, whether
regular or special, and the commissioner or commissioners
so removed shall remain removed until a hearing is had
upon the petition of the mayor. The court or the judge
thereof in vacation shall hear and decide the issues pre-
sented by said petition. The mayor or commissioner or
commissioners, as the case may be, against whom the
decision of the court or the judge thereof in vacation shall
be rendered, shall have the right to petition the supreme
court of appeals for a review of the decision of the circuit
court or the judge thereof in vacation as in other civil cases. In the event that the mayor shall fail to file his petition in the office of the clerk of the circuit court, as hereinbefore provided, within ten days after the removal of said commissioner or commissioners, such commissioner or commissioners shall immediately resume his or their position or positions as a member or members of the firemen's civil service commission.

Any resident of the municipality shall have the right at any time to file charges against and seek the removal of any member of the firemen's civil service commission of such municipality. Such charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located, and a copy of said petition shall be served upon the commissioner or commissioners sought to be removed. Said petition shall be matured for hearing and heard by said circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard, and the party against whom the circuit court's decision is rendered shall have the right to petition the supreme court of appeals for a review of the action of the circuit court, as in other civil cases.

No commissioner shall hold any other office (other than the office of notary public) under the United States, this state or any municipality, county or other political subdivision thereof; nor shall any commissioner serve on any political committee or take any active part in the management of any political campaign.


1 The recorder of the municipality shall be ex officio clerk of the firemen's civil service commission and shall supply to the commission without extra compensation all necessary clerical and stenographic services for the work of the commission.

§8-15-14. Rooms, stationery, etc., to be furnished by municipality; appropriations required.

1 It shall be the duty of the mayor and the heads of the
1 departments of government of every municipality having 2 a paid fire department to cause suitable and convenient 3 rooms and accommodations to be assigned and provided, 4 furnished, heated and lighted for carrying on the work 5 and examinations of the commission. The commission may 6 order from the proper authorities the necessary station- 7 ery, postage stamps, official seal and other articles to be 8 supplied, and the necessary printing to be done, for its 9 official use. It shall be the duty of the officers of every 10 such municipality to aid the commission in all proper 11 ways in carrying out the civil service provisions of this 12 article, and to allow the reasonable use of public build- 13 ings, and to heat and light the same, for holding examina- 14 tions and investigations, and in all proper ways to facil- 15 itate the same.

16 All municipalities subject to the civil service provisions 17 of this article are hereby required to appropriate sufficient 18 funds for the purpose of carrying out such provisions.

§8-15-15. Powers, authority and duties of firemen’s civil serv- 1 The firemen’s civil service commission in each munici- 2 pality shall:
3 (1) Prescribe and enforce rules and regulations for 4 carrying into effect the civil service provisions of this 5 article. All rules and regulations so prescribed may, from 6 time to time, be added to, amended or rescinded: Provid- 7 ed, That all rules and regulations shall be approved by the 8 mayor and the governing body before they go into effect, 9 but when so approved shall not be changed or rescinded 10 except by the commission with the approval of the mayor 11 and governing body: Provided, however, That if the 12 mayor and governing body take no action on a proposed 13 rule and regulation or a proposed change or rescission 14 submitted to them within a period of twenty days from 15 the date of submission, then the same shall become effect- 16 ive as though approved by the mayor and governing 17 body.

18 (2) Keep minutes of its own proceedings, and records 19 of its examinations and other official actions. All recom- 20 mendations of applicants for office, received by the said
commission or by any officer having authority to make ap-
pointments to office, shall be kept and preserved for a
period of ten years, and all such records, recommenda-
tions of former employees excepted, and all written causes
of removal, ifed with it, shall, subject to reasonable regu-
lation, be open to public inspection.

(3) Make investigations, either sitting as a body or
through a single commissioner, concerning all matters
touching the enforcement and effect of the civil service
provisions of this article and the rules and regulations
prescribed hereunder or concerning the action of any
examiner or subordinate of the commission or any indi-
vidual in the public service with respect to the execution
of the civil service provisions of this article; and, in the
course of such investigations, each commissioner shall
have the power to administer oaths and affirmations, and
to take testimony.

(4) Have the power to subpoena and require the at-
tendance of witnesses, and the production thereby of
books and papers pertinent to the investigations and in-
quiries herein authorized, and examine them and such
public records as it shall require, in relation to any matter
which it has the authority to investigate. The fees of such
witnesses for attendance and travel shall be the same as
for witnesses before the circuit courts of this state, and
shall be paid from the appropriation for the incidental ex-
peses of the commission. All officers in the public ser-
vice, and their deputies, clerks, subordinates and em-
ployees shall attend and testify when required to do so
by said commission. Any disobedience to, or neglect of,
any subpoena issued by the said commissioners, or any
one of them, to any person, shall be held a contempt of
court, and shall be punished by the circuit court of the
county in which the municipality or the major portion of
the territory thereof is located, or the judge thereof in
vacation, as if such subpoena had been issued therefrom.
The judge of such court shall, upon the application of any
one of said commissioners, in any such case, cause the
process of said court to issue to compel such person or
persons disobeying or neglecting any such subpoena to
appear and to give testimony and produce evidence be-
fore the said commissioners, or any one of them, and shall have the power to punish any such contempt.

(5) Make an annual report to the mayor showing its own actions, and its rules and regulations, and all of the exceptions thereto in force, and the practical effects thereof, and any suggestions it may have for the more effective accomplishment of the purposes of the civil service provisions of this article. Such report shall be made available for public inspection within five days after the same shall have been delivered to the mayor of the municipality.


1 The firemen’s civil service commission in each municipality shall make rules and regulations providing for both competitive and medical examinations for appointments and promotions to all positions in the paid fire department in such municipality, and for such other matters as are necessary to carry out the purposes of the civil service provisions of this article. Any such commission shall have the power and authority to require by rules and regulations a physical fitness examination as a part of its competitive examination or as a part of its medical examination. Due notice of the contents of such rules and regulations and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and said rules and regulations and any modifications thereof shall also be printed for public distribution. All original appointments to any positions in a paid fire department subject to the civil service provisions of this article shall be for a probationary period of six months: Provided, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty-five of this article. If, at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the service shall be equivalent to his final appointment.
§8-15-17. Form of application; age and residency requirements; exceptions.

1. The firemen's civil service commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules and regulations of said commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) His full name, residence and post-office address;
(2) His United States citizenship, age and the place and date of his birth;
(3) His state of health, and his physical capacity for the public service;
(4) His business and employments and residences for at least three previous years; and
(5) Such other information as may reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

Blank forms for such applications shall be furnished by the commission, without charge, to all individuals requesting the same. The commission may require, in connection with such application, such certificates of citizens, physicians and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

No application for original appointment shall be received if the individual applying is less than twenty-one years of age or more than thirty-five years of age at the date of his application: Provided, That in the event any applicant formerly served upon the paid fire department of the municipality to which he makes application, for a period of more than six months, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against such applicant, within a period of two years next preceding the date of his application, and at the time of his application resides within the corporate limits of the municipality in which the paid fire department to which he seeks appointment by reinstatement is located, then
such individual shall be eligible for appointment by 
reinstatement in the discretion of the firemen's civil 
service commission, even though such applicant shall 
be over the age of thirty-five years, and such applicant, 
providing his former term of service so justifies, may 
be appointed by reinstatement to the paid fire depart-
ment without a competitive examination, but such ap-
plicant shall undergo a medical examination; and if such 
individual shall be so appointed by reinstatement to the 
paid fire department, he shall be the lowest in rank in 
the department next above the probationers of the de-
partment.

Any applicant for original appointment must have 
been a resident for one year, during some period of time 
prior to the date of his application, of the municipality in 
which he seeks to become a member of the paid fire de-
partment: Provided, That if the commission deems it 
necessary it may consider for original appointment appli-
cants who are not residents of the municipality but who 
have been residents of the county in which the munici-
pality or any portion of the territory thereof is located for 
a period of at least one year.

§8-15-18. Character and notice of competitive examinations; 
qualifications of applicants; press representatives; 
posting eligible list; medical examinations.

All competitive examinations for appointments or pro-
motions to all positions shall be practical in their char-
acter, and shall relate to such matters, and include such 
inquiries, as will fairly and fully test the comparative 
merit and fitness of the individual or individuals exam-
ined to discharge the duties of the employment sought by 
him or them. All competitive examinations shall be open 
to all applicants who have fulfilled the preliminary re-
quirements specified in the other civil service provisions 
of this article.

Adequate public notice of the date, time and place of 
every competitive examination, together with informa-
tion as to the kind of position to be filled, shall be given 
at least one week prior to such competitive examination.
The said commission shall adopt reasonable rules and
regulations for permitting the presence of representatives
of the press at any such competitive examination. The
commission shall post, in a public place at its office, the
eligible list, containing the names and grades of those who
have passed such competitive examinations for positions
in the paid fire department, and shall indicate thereon
such appointments as may be made from said list.

All applicants for appointment or promotion to any
position in a paid fire department who have passed the
competitive examination specified above shall, before
being appointed or promoted, undergo a medical exami-
nation which shall be conducted under the supervision of
a board composed of two doctors of medicine appointed
for such purpose by the mayor of the municipality. Such
board must certify that an applicant is free from any
bodily or mental defects, deformity or diseases which
might incapacitate him from the performance of the
duties of the position desired and is physically fit to per-
form such duties before said applicant shall be appointed
or promoted to any position. Notwithstanding the first
sentence of this paragraph, in the event the commission
deems it expedient, the medical examination may be
given prior to the competitive examination, and if the
medical examination is not passed as aforesaid, the ap-
plicant shall not be admitted to the competitive examina-
tion.

§8-15-19. Refusal to examine or certify; review thereof.

The commission may refuse to examine an applicant,
or after examination to certify as eligible one, who is
found to lack any of the established preliminary require-
ments for the examination or position for which he ap-
plies; or who is physically so disabled as to be rendered
unfit for the performance of the duties of the position
desired; or who is addicted to the habitual use of intoxici-
cating liquors or drugs; or who has been guilty of any
crime or of infamous or notoriously disgraceful conduct;
or who has been dismissed from public service for de-
linquency or misconduct; or who has made a false state-
ment of any material fact, or practiced or attempted to
practice any deception or fraud, in his application, in any
such examination, or in securing his eligibility; or who
refuses to comply with the rules and regulations of the
commission.

If any applicant feels aggrieved by the action of the
commission in refusing to examine him, or after an ex-
amination in refusing to certify him as an eligible, the
commission shall, at the request of such applicant, appoint
a date, time and place for a public hearing; at which time
such applicant may appear, by himself or counsel, or
both, and the commission shall then review its refusal
to make such examination or certification, and testimony
shall be taken. The commission shall subpoena, at the
expense of the applicant, any competent witnesses re-
quested by him. After such review, the commission shall
file in its records the testimony taken, and shall again
make a decision, which decision shall be final and not
subject to judicial review, but under no circumstances
shall the provisions of this article be construed, in the case
of a refusal to examine an applicant for promotion or to
certify an applicant as eligible for promotion, as de-
priving such applicant of his right to seek a writ of man-
damus, if the application for such writ is made within
twenty days from the date of the decision refusing to
examine or to certify him as eligible for promotion.

§8-15-20. Appointments from list of eligibles; special exami-
nations for electricians or mechanics.

Every position, unless filled by promotion, reinsta-
tement or reduction, shall be filled only in the manner speci-
fied in this section. The appointing officer shall notify
the firemen's civil service commission of any vacancy in
a position which he desires to fill, and shall request the
certification of eligibles. The commission shall forthwith
certify, from the eligible list, the names of the three indi-
viduals thereon who received the highest averages at
preceding competitive examinations held under the civil
service provisions of this article within a period of three
years next preceding the date of the prospective appoint-
ment. The appointing officer shall, thereupon, with sole
reference to the relative merit and fitness of the candi-
dates, make an appointment from the three names so
Enr. S. B. No. 2]

[227x649]Enr. S. B. No. 2] 156

[232x625]15 certified: Provided, That should he make objection, to the
16 commission, to one or more of these individuals, for any
17 of the reasons stated in section nineteen of this article, and
18 should such objection be sustained by the commission,
19 after a public hearing along the lines of the hearing pro-
20 vided for in section nineteen, if any such hearing is re-
21 quested, the commission shall thereupon strike the name
22 of any such individual from the eligible list, and certify
23 the next highest name for each individual so stricken. As
24 each subsequent vacancy occurs, in the same or another
25 position, precisely the same procedure shall be followed:
26 Provided, however, That after any name has been three
27 times rejected for the same or another position in favor
28 of a name or names below it on the same list, the said
29 name shall be stricken from the list. When there are a
30 number of positions of the same kind to be filled at the
31 same time, each appointment shall, nevertheless, be made
32 separately and in accordance with the foregoing pro-
33 visions. When an appointment is made under the pro-
34 visions of this section it shall be, in the first instance, for
35 the probationary period of six months, as provided in
36 section sixteen of this article: Provided further, That in
37 the event any position as an electrician or mechanic is to
38 be filled in any paid fire department, then the examina-
39 tions to be given to applicants for either position shall be
40 so drawn as to test only the qualifications of such appli-
41 cants in regard to their ability as electricians or mechan-
42 ies, such examinations to be special examinations.

§8-15-21. Noncompetitive examination for filling vacancy; pro-
visional appointment.

1 Whenever there are urgent reasons for filling a vacancy
2 in any position in a paid fire department and there is no
3 list of individuals eligible for appointment after a com-
4 petitive examination, the appointing officer may nominate
5 an individual to the firemen's civil service commission for
6 noncompetitive examination; and if such nominee shall
7 be certified by the said commission as qualified, after such
8 noncompetitive examination and a medical examination,
9 he may be appointed provisionally, to fill such vacancy
10 until a selection and appointment can be made after com-
petitive examination, in the manner prescribed in section
twenty of this article; but such provisional appointment
shall not continue for a longer period than three months,
or shall successive provisional appointments be made
to the same position, under the provisions of this section.

§§-15-22. Vacancies filled by promotions; eligibility for promo-
tion.
Vacancies in positions in a paid fire department shall be
dfilled, so far as practicable, by promotions from among
individuals holding positions in the next lower grade in
the department. Promotions shall be based upon merit
and fitness to be ascertained by competitive examinations
to be provided by the firemen’s civil service commission
and upon the superior qualifications of the individuals
promoted, as shown by their previous service and ex-
erience: Provided, That no individual shall be eligible
for promotion from the lower grade to the next higher
grade until such individual shall have completed at least
two years’ service in the next lower grade in the depart-
ment. The commission shall have the power to determine
in each instance whether an increase in salary constitutes
a promotion.

§§-15-23. No inquiry shall be made concerning political or re-
ligious opinions or affiliations of applicants, etc.
No question in any form of application or in or during
any examination shall be so framed as to elicit informa-
tion concerning the political or religious opinions or
affiliations of any applicant; nor shall inquiry be made
concerning such opinions or affiliations; and all disclo-
sures thereof shall be discountenanced. No discrimination
shall be exercised, threatened or promised by any indi-
vidual in a paid fire department against, or in favor of, an
applicant, eligible, or member of a paid fire department
because of his political or religious opinions or affiliations.

§§-15-24. Political activity of members of paid fire depart-
ments prohibited.
No member of any paid fire department shall engage
in any political activity of any kind, character or nature
whate... serve, except to cast his vote at any election, or shall act as an election official in any election, municipal, county or state. Any member of any paid fire department violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this article.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section twenty-four of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term "suspension" shall mean only (1) a suspension in excess of fifteen days, or (2) a suspension in any calendar year which when added to any previous suspension or suspensions within the same calendar year results in a total period of suspension in excess of fifteen days within such same calendar year, and for the purpose of the remainder of this subsection and said subsections (b) and (c), a member shall not be considered to be suspended or sought to be suspended unless his suspension meets the foregoing definition of said term. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the firemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in
writing or the written answer thereto, whichever shall
last occur. At such hearing the burden shall be upon
the removing, discharging, suspending or reducing offi-
cer, hereinafter in this section referred to as "removing
officer," to justify his action, and in the event the re-
moving officer fails to justify his action before the com-
mission, then the member removed, discharged, sus-
pended or reduced shall be reinstated with full pay,
forthwith and without any additional order, for the
entire period during which he may have been prevented
from performing his usual employment, and no charges
shall be officially recorded against his record. A written
record of all testimony taken at such hearing shall be
kept and preserved by the commission, which record
shall be sealed and not be open to public inspection, if
no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain
the action of the removing officer the member removed,
discharged, suspended or reduced shall have an imme-
diate right of appeal to the circuit court of the county
wherein the municipality or the major portion of the
territory thereof is located. In the event that the com-
misson shall reinstate the member removed, discharged,
suspended or reduced, the removing officer shall have
an immediate right of appeal to said circuit court. Any
appeal must be taken within ninety days from the date
of entry by the commission of its final order; upon an
appeal being taken and docketed with the clerk of the
circuit court of said county, the circuit court shall pro-
ceed to hear the appeal upon the original record made
before the commission and no additional proof shall be
permitted to be introduced. The circuit court's decision
shall be final, but the member or removing officer, as
the case may be, against whom the decision of the circuit
court is rendered shall have the right to petition the
supreme court of appeals for a review of the circuit
court's decision, as in other civil cases. Such member or
removing officer shall also have the right, where appro-
priate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to
be removed, discharged, suspended or reduced shall at
all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, said municipality shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid fire department of said municipality shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid fire department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid fire department shall be made.


1 Any individual who makes an appointment or promotion to any position, or selects an individual for employment, contrary to the civil service provisions of this article, or willfully refuses or neglects otherwise to comply with, or to conform to, any of the civil service provisions of this article, or violates any of such provisions, shall be deemed guilty of a misdemeanor.

Any commissioner or examiner, or any other individual, who shall willfully, by himself or in cooperation with one or more persons, defeat, deceive or obstruct any individual with respect to his right of examination or registration according to the civil service provisions of this article, or to any rules and regulations prescribed pursuant thereto, or who shall willfully or corruptly, falsely mark, grade, estimate, or report upon any such examination or proper standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aid in so doing, or who shall willfully or corruptly furnish to any individual any special or secret information, for the purpose of either improv-
ing or injuring the prospects or chances of appointment
or promotion to any position of any individual so exam-
ined, registered or certified, or to be so examined, regis-
tered or certified, or who shall impersonate any other
individual, or permit or aid in any manner any other
individual to impersonate him, in connection with any
such examination or registration, or application or re-
quest to be examined or registered, shall, for each offense,
be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense
shall be punished by a fine of not less than fifty dollars,
nor more than one thousand dollars, or by imprisonment
for a term not exceeding one year, or by both such fine
and imprisonment, in the discretion of the court.

§8-15-27. Repeal of conflicting acts and provisions; civil serv-
vice provisions of article exclusive; status or tenure
not affected.

All acts, whether general, special, local or special legis-
llative charters, or parts thereof, in relation to any civil
service measure affecting any paid fire department in-const-
tsistent with the civil service provisions of this article
shall be, and the same are, hereby repealed insofar as such
inconsistencies shall exist. It is intended by the civil
service provisions of this article to furnish a complete and
exclusive system for the appointment, promotion, rein-
statement, removal, discharge, suspension and reduction
of all members of all paid fire departments in all munici-
palities. The status or tenure of all members of any paid
fire department, which members were employed on the
effective date of this article, shall not be affected by the
enactment of this article, but all such members shall be
subject to all of the civil service provisions of this article
with like effect as if they had been appointed members
hereunder.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND
FINANCING.

PART I. DEFINITION; AUTHORIZATION OF
MUNICIPAL PUBLIC WORKS.

§8-16-1. Definition of municipal public works, etc.

As used in this article, the terms “municipal public
works" or "works" or "projects" shall be construed to mean and include the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where such works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall mean and include any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

§8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.

Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire,
improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, rights of way, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties; Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article.

§8-16-3. Special provisions as to certain municipal public works.

1. When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.

2. When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

3. When the cost of the municipal public works is to be
paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds.

PART II. CONTROL OF GOVERNING BODY OR BOARD.

§8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said committee, board or commission to exercise such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for
by ordinance or ordinances. Any such committee, board
or commission shall consist of the number of members
fixed in the ordinance or ordinances creating the same,
and the manner and mode of the selection and appoint-
ment of the members of any such board or commission
shall be stated in such ordinance or ordinances. The
members of any such board or commission appointed
by the governing body or bodies shall be chosen without
regard to their political affiliations, but with regard to
their business and professional experience or standing
as citizens in the community. All compensation and ex-
penses, including attorney's fees, of such committee, board
or commission shall be paid solely from funds provided
under the authority of this article. Any such committee,
board or commission shall have the power to establish
bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term "board"
shall be construed to mean the governing body or com-
mittee composed of all or a portion of the governing body
when only one municipality is involved, or a board or
commission appointed by the governing body when only
one municipality is involved or appointed by the gov-
erning bodies when two or more municipalities take joint
action under the provisions of this article, as the case
may be. When two or more municipalities take joint
action under the provisions of this article each govern-
ing body shall appoint to the board the number of mem-
ers which the governing bodies have agreed shall be
appointed by each such governing body.

The governing body or bodies also, in its or their dis-
cretion, may provide by ordinance or ordinances for the
leasing of a municipal public works and provide for the
custody, maintenance and operation thereof by a lessee
in accordance with the provisions of such ordinance or
ordnances and lease contract executed pursuant thereto:

*Provided,* That the lessee shall pay to the municipality
or municipalities for the use and occupancy of such
municipal public works so leased an amount sufficient
to provide a sinking fund for the payment of the bonds
and the interest thereon and all other charges mentioned
in section seventeen of this article.
ART. III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1. The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase or equipment of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

2. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of one thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

3. After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may deem expedient, if funds therefor be available, or are
made available, as provided in this article, and shall establish rules and regulations for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

§8-16-6. Preliminary expenses.

1 All necessary preliminary expenses actually incurred by the board of any municipality or municipalities in the making of surveys or estimates of cost and of revenues, employment of engineers or other employees, the giving of notices, the taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the municipality or municipalities, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works as hereinafter provided.

§8-16-7. Ordinance for construction, etc., of works.

1 Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or
repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary or proper in the premises.

When two or more municipalities take joint action under the provisions of this article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county court of the county or counties in which the municipalities are located and in the office of the state tax commissioner, and when any such municipality is located in more than one county, the filing for that municipality shall be in the office of the clerk of the county court in which the major portion of the territory of such municipality is located. Before any such ordinance shall become effective, it shall be published 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 such municipality or each such municipality, as the case may be. Said notice shall specify a date, time and place for a public hearing, the date being not less than ten days after the first publication of said notice at which time and place all parties and interests may appear before the governing body of the municipality or each such municipality and may be heard as to whether or not said ordinance shall be put into effect. At such hearing all objections and suggestions shall be heard and the governing body or each such governing body shall take such action as it or they shall deem proper in the premises: Provided, That if at any such hearing written protest is filed by thirty percent or more of the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four-fifths of the members of said governing body assent thereto: Provided, however, that in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested
and said committee shall report its findings to any such

governing body.

PART IV. RIGHT OF EMINENT DOMAIN.

§8-16-8. Right of eminent domain.

1 Every such municipality shall have plenary power and
2 authority to condemn any such municipal public works to
3 be acquired, and any land, rights, easements, rights of
4 way, franchises and other property, real or personal,
5 deemed necessary, appropriate, useful, convenient or in-
6 cidental for or to the construction, reconstruction or es-
7 tablishment of any such works, or for the improvement,
8 renovation, extension, enlargement, increase or equip-
9 ment thereof or thereto, and in connection therewith shall
10 have and may exercise all the rights, power, authority and
11 privileges of eminent domain granted to municipalities
12 under the laws relating thereto. Title to property shall be
13 taken in the name of the municipality or jointly in the
14 names of the participating municipalities. Proceedings for
15 such appropriation of property shall be under and pur-
16 suant to chapter fifty-four of this code: Provided, That
17 any such municipality shall be under no obligation to ac-
18 cept and pay for any property condemned, and shall in no
19 event pay for any property condemned or purchased, ex-
20 cept from funds provided under the authority of this ar-
21 ticle; and in any proceedings to condemn, such orders may
22 be made as may be just to any such municipality and to
23 the owners of the property to be condemned; and an un-
24 derstanding or other security may be required securing
25 such owners against any loss or damage which may be sus-
26 tained by reason of the failure of any such municipality
27 to accept and pay for the property, but such undertaking
28 or security shall impose no liability upon any such mu-
29 nicipality, except such as may be paid from the funds
30 provided under the authority of this article.
31 In the event of acquisition by purchase, the board may
32 obtain and exercise an option from the owners of said
33 property for the purchase thereof, and may enter into a
34 contract for the purchase thereof, and such purchase may
35 be made upon such terms and conditions, and in such
36 manner as the board may deem proper: Provided, how-
ever, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing privately owned works in operation at the date of the condemnation.

PART V. REVENUE BOND FINANCING.

§8-16-9. Bonds for improvements, etc., of works.

Whenever any municipality or municipalities now, or hereafter, shall own and maintain and operate any of the works herein referred to, whether constructed, reconstructed, established or acquired under the provisions of this article or not, and shall desire to improve, renovate, extend, enlarge, increase, equip or repair (including replacements) the same, it may issue revenue bonds, under the provisions of this article, to pay for the same, and the procedure therefor, including fixing all rates and the computation of the amount thereof, shall be the same as in this article provided for the issuance of bonds for the construction, reconstruction, establishment or acquisition of any such works in or by any such municipality which has not theretofore owned and maintained and operated any such works: Provided, That no existing obligations or rights shall be affected or impaired thereby.
§8-16-10. Items of expense included in cost of works.

The cost of the works shall be deemed to include the cost of construction, reconstruction, establishment or acquisition thereof, the cost of all land, rights, easements, rights of way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor or thereto and for the improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) determined upon; the interest upon bonds prior to and during the project and for six months after completion thereof; engineering and legal expense; expenses for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expenses; and such other expenses as may be necessary or incident to the financing herein authorized, the project, the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

§8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.

Nothing in this article contained shall be so construed as to authorize or permit any municipality or municipalities to make any contract or incur any obligation of any kind or nature, except such as shall be discharged or payable solely from the funds provided under the authority of this article. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the municipality or municipalities, the principal and interest of which bonds shall be payable solely from the special fund for such payment herein provided for, and said bonds shall not in any respect be a corporate indebtedness of such municipality or municipalities. All such bonds and the interest thereon, and all properties and revenues and income derived from such municipal public works, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. All of the details of such
bonds and the issuance thereof shall be determined by ordinance of the governing body or bodies.

§8-16-12. Interest rate and life of bonds; redemption; how payable, form, denominations, etc.; additional bonds authorized; interim certificates.

1 Such revenue bonds shall bear interest at not more than six percent per annum, payable annually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, including the interest coupons to be attached thereto, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the state. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the prorata part thereof, as provided for in section eleven hereof. All such bonds shall be, and shall have and are
hereby declared to have all the qualities and incidents of, negotiable instruments, under the uniform commercial code of this state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone; but bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than six percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error or calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definite bonds, interim certificates may, under like restrictions, be issued with or without coupons exchangeable for definite bonds upon the issuance of the latter.

§8-16-13. Obligations not to bind municipal official or officer or member of board personally.

No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires.
§8-16-14. Additional bonds for improvements, etc., of works.

1 The governing body or bodies may provide by the said ordinance or ordinances authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said ordinance or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed necessary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine of this article.


1 All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

§8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.

1 In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust indenture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the state. The ordinance or ordinances authorizing the issuance of the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality
or municipalities and the board in relation to the con-
struction, reconstruction, establishment, acquisition, im-
provement, renovation, extension, enlargement, increase
and equipment of the project and the repair (including
replacements), maintenance, operation and insurance
thereof, and the custody, safeguarding and application of
all moneys, and may provide that the project shall be
contracted for, carried out and paid for, under the
supervision and approval of the consulting engineers em-
ployed or designated by the board and satisfactory to the
original bond purchasers, their successors, assignees or
nominees, who may be given the right to require the
security given by contractors and by any depository of
the proceeds of bonds or revenues of the works or other
moneys pertaining thereto be satisfactory to such pur-
cishers, their successors, assignees or nominees. Such in-
denture may set forth the rights and remedies of the
bondholders or such trustee, or both. Except as in this
article otherwise provided, the governing body or bodies
may provide by ordinance or ordinances or in such trust
indenture for the payment of the proceeds of the sale of
the bonds and the revenues of the works to such officer,
board or depository, as such body or bodies may deter-
mine for the custody thereof, and for the method of dis-
tribution thereof, with such safeguards and restrictions as
such body or bodies may determine.

§8-16-17. Sinking fund; sinking fund commission; purchase of
outstanding bonds.

Before the issuance of any such bonds, the governing
body or bodies shall, by ordinance or ordinances, pro-
vide for a sinking fund for the payment of the bonds and
the interest thereon, and the payment of the charges of
banking institutions or trust companies for making
payment of such bonds and interest, out of the net
revenues of said works, and shall set aside and pledge a
sufficient amount of the net revenues of the works hereby
defined to mean the revenues of the works remaining
after the payment of the reasonable expenses of repair
(including replacements), maintenance and operation,
such amount to be paid by the board into the sinking fund
at intervals, to be determined by ordinance or ordinances
adopted prior to the issuance of the bonds, for (a) the
interest upon such bonds as such interest shall fall due;
(b) the necessary fiscal agency charges for paying bonds
and interest; (c) the payment of the bonds as they fall
due, or if all bonds mature at one time, the proper main-
tenance of a sinking fund sufficient for the payment there-
of at such time; and (d) a margin for safety and for the
payment of premium upon bonds retired by call or
purchase as herein provided, which margin, together with
unused surplus of such margin carried forward from the
preceding year, shall equal ten percent of all other
amounts so required to be paid into the sinking fund.
Such required payments shall constitute a first charge
upon all the net revenues of the works. Prior to the is-
suance of the bonds, the board may, by ordinance or
ordinances, be given the right to use or direct the trustee
or the state sinking fund commission to use such sinking
fund, or any part thereof, in the purchase of any of the
outstanding bonds payable therefrom, at the market
prices thereof, but not exceeding the price, if any, at
which the same shall in the same year be payable or re-
demable, and all bonds redeemed or purchased shall
forthwith be cancelled, and shall not again be issued.
After the payments into the sinking fund as herein re-
quired, the board may at any time in its discretion trans-
fer all or any part of the balance of the net revenues,
after reserving an amount deemed by the board sufficient
for repair (including replacements), maintenance and
operation for an ensuing period of not less than twelve
months and for depreciation, into the sinking fund, or into
a fund for improvement, renovation, extension, enlarge-
ment, increase or equipment for or to the works.
All amounts for the sinking fund and interest, as and
when set apart for the payment of same, shall be remitted
to the state sinking fund commission at such periods as
shall be designated in the ordinance or ordinances, but in
any event at least thirty days previous to the time interest:
or principal payments become due, to be retained and
paid out by said commission consistent with the provi-
sions of this article and the ordinance or ordinances pur-
suant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pur-
suant to the provisions of this article and shall invest all sinking funds as provided by general law.

PART VI. IMPOSITION OF RATES OR CHARGES.

§8-16-18. Rates or charges for services rendered by works.

1 The governing body shall have plenary power and au-
2 thority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use and services rendered, or the improvement or protec-
3 tion of property provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust such rates or charges from time to time. When two or more municipalities take joint action under the provisions of this article, such rates or charges shall be established by each participating munici-
4 pality, with the concurrence of the other participating municipality or municipalities as to the amount of such rates or charges, and such rates or charges may be the same with respect to each municipality, or they may be different.

17 Rates or charges heretofore or hereafter established and maintained for the improvement or protection of property, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collec-
22 tible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and such governing body is reasonably assured that such works will be completed and placed in operation without unreasonable delay.

29 All rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and opera-
tion of the works, and for the payment of the sums herein
required to be paid into the sinking fund.

Revenues collected pursuant to the provisions of this
section shall be deemed the revenues of the works. No
such rates or charges shall be established until after a
public hearing at which all the users of the works and
owners of the property served, or to be served thereby,
and others interested, shall have an opportunity to be
heard concerning the proposed rates or charges. After in-
troduction of the proposed ordinance fixing such rates or
charges and before the same is finally adopted, notice of
such hearing, setting forth the proposed schedule of such
rates or charges, shall be given by publishing the same as
a Class I-0 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
such municipality or each such municipality, as the case
may be. Said notice shall be published at least five days
before the date fixed in such notice for the hearing, which
hearing may be adjourned from time to time. No other
or further notice to parties in interest shall be required.

After such hearing the ordinance establishing rates or
charges, either as originally proposed or introduced, or
as modified and amended, shall be adopted and put into
effect. A copy of the schedule of such rates and charges so
established shall be kept on file in the office of the board
having charge of such works, and also in the office of
the governing body or bodies, and shall be open to inspec-
tion by all parties in interest. The rates or charges so
established for any class of users or property served shall
be extended to cover any additional class of users or
property thereafter served which fall within the same
class, without the necessity of any hearing or notice. Any
change or adjustment of rates or charges may be made
in the same manner as such rates or charges were origi-
nally established as hereinabove provided. The aggregate
of the rates or charges shall always be sufficient for the
expenses of repair (including replacements), maintenance
and operation, and for the sinking fund payments. If any
rate or charge so established shall not be paid within
thirty days after the same is due, the amount thereof may
be recovered by the board in a civil action in the name
of the municipality or municipalities, and in the case of
charges due for services rendered, such charges, if not
paid when due, may, if the governing body so provide in
the ordinance provided for under section seven of this
article, constitute a lien upon the premises served by such
works, which lien may be foreclosed against such lot,
parcel of land or building so served, in accordance with
the laws relating to the foreclosure of liens on real
property. Upon failure of any person receiving any such
service to pay for the same when due, the board may dis-
continue such service without notice.

§8-16-19. Appeal to public service commission from rates fixed.
1 If any party in interest is dissatisfied with the rates
fixed under the provisions of the immediately preceding
section of this article, such party shall have the right to
appeal to the public service commission at any time
within thirty days after the fixing of such rates by the
governing body, but the rates so fixed by the governing
body shall remain in full force and effect, until set aside,
alter or amended by the public service commission.

PART VII. ACCOUNTING SYSTEM AND RECORDS.

§8-16-20. Accounting system; yearly audit; custodian of funds.
1 Any municipality or municipalities issuing revenue
bonds under the provisions of this article shall install
and maintain a proper system of accounting, showing the
amount of revenues received and the application of the
same, and the governing body or bodies shall, at least
once a year, cause such accounts to be properly audited
by a competent auditor, and the report of such auditor
shall be open for inspection at all proper times to any
taxpayer or resident of said municipality or municipalities,
or person receiving service from said works, or any
holder of bonds issued under the provisions of this article,
or anyone acting for and in behalf of such taxpayer,
resident, person or bondholder. The treasurer of such
municipality or each such municipality, or other official
or institution specifically charged with the duty, shall
be the custodian or custodians of the funds derived from
income received from said works, and shall give proper
bond or bonds for the faithful discharge of his or its or
their duties as such custodian or custodians, which bond
or bonds shall be fixed and approved by the governing
body or bodies. All of the funds received as income from
said works under the provisions of this article and all
funds received from the sale of revenue bonds issued
therefor shall be kept separate and apart from other funds
of the municipality or municipalities, and separate ac-
counts shall be maintained for the several items required
to be set up by the provisions of section seventeen of
this article.

PART VIII. RATES OR CHARGES FOR MUNICIPALITIES.

§8-16-21. Municipality or municipalities to pay established
rates or charges for services rendered to it or
them.
1 The municipality or municipalities issuing such bonds
shall be subject to the same rates or charges established
as hereinbefore provided, or to rates or charges estab-
lished in harmony therewith, for service rendered to
the municipality or municipalities and shall pay such
rates or charges, when due, from corporate funds, and
the same shall be deemed to be a part of the revenues
of the works as herein defined, and may be applied as
herein provided for the application of such revenue.

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.

§8-16-22. Statutory mortgage lien upon works created.
1 There shall be and there is hereby created and granted
a statutory mortgage lien upon such municipal public
works constructed, reconstructed, established, acquired,
Improved, renovated, extended, enlarged, increased,
equipped or repaired (including replacements) under
the provisions of this article, which shall exist in favor
of the holder of said bonds, and each of them, and to
and in favor of the holder of the coupons attached to
said bonds, and such municipal public works shall remain
subject to such statutory mortgage lien until payment
in full of the principal of and interest upon said bonds.
§8-16-23. Acquisition of property on which lien exists.

1. No property shall be acquired under the provisions of this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

§8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

1. Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as so restricted, with power to charge and collect rates or charges sufficient to provide for the payment of the expenses of repair (including replacements), maintenance and operation, and also to pay any bonds and interest outstanding, and to apply the income or other revenue in conformity with this article, and the said ordinance or trust indenture, or both, and the power herein provided for the appointment of a receiver and the administration by the court of the works on behalf of the municipality or municipalities, and the bondholders or
trustee, or both, shall apply to cases where such works are operated by a lessee of the municipality or municipalities as well as to cases where works are operated by the municipality or municipalities. In case a receiver is appointed for works operated by a lessee of a municipality or municipalities, the lease agreement then existing between the municipality or municipalities and the lessee ipso facto thereby shall be terminated and all property, equipment, bills receivable and assets of every kind, used in connection with the operation of such works, shall pass to the receiver and upon the termination of such receivership, such works, equipment, property, bills receivable and assets of every kind then in the hands of the receiver thereupon shall pass to the municipality or municipalities.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.

§8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.

1 The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect. For all purposes of this article, municipalities shall have jurisdiction for ten miles outside of the corporate limits thereof, except where such zone would overlap with the zone of another municipality, in which event the meridian line of the overlapping zone shall be the dividing line of their respective jurisdictions, except that one municipality shall have jurisdiction within such ten-mile zone and may overlap into the zone of another municipality or municipalities with the consent thereof.


1 This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation of the works herein provided for,
and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the state to the contrary notwithstanding.

§8-16-27. Article liberally construed.

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof.

§8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

In elaboration of the provisions of section eight, article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court, reference is made to the term "municipal authorities" or "municipal authority" within the meaning of the provisions of former article four-a of this chapter, such reference shall henceforth be read, construed and understood to mean "governing body" as that term is used in this article sixteen only.

ARTICLE 17. LOW COST IMPROVEMENTS.

PART I. PURPOSE; DEFINITIONS.

§8-17-1. Purpose of article; liberal construction.

It is hereby declared to be the purpose and policy of the Legislature in enacting this article to provide for a simplified method of low cost municipal improvements which cannot be practicably accomplished out of municipal revenues or in accordance with the procedures established in article eighteen of this chapter. This article shall be liberally construed to accomplish the purpose hereof.
§8-17-2. Definitions.

1 For the purposes of this article:
2 (1) "Abutter" shall include the owner or owners, as of
3 the date of service of, or the date of the first publication
4 of, a notice under the provisions of section eight of this
5 article, of the property abutting on any street, alley,
6 public way or easement, or sewer right of way or ease-
7 ment, upon or in which an improvement shall be made or
8 proposed to be made under the provisions of this article;
9 (2) "Engineer" shall mean the municipal engineer, or,
10 if the municipality has no regularly employed municipal
11 engineer, any registered professional engineer, if there be
12 any practicing in the municipality or the county, or if no
13 such engineer be practicing in the county, any competent
14 civil engineer;
15 (3) "Petitioner" shall, unless the context clearly indi-
16 cates otherwise, include those abutters, whether one or
17 more, who file the petition and bond described in section
18 four of this article;
19 (4) "Improvement" shall include the grading, regrad-
20 ing, paving, repaving, surfacing, resurfacing, curbing,
21 recurbing and repairing of streets, alleys, public ways or
22 easements, or portions thereof, and the building, renew-
23 ing and repairing of sidewalks, and the constructing, re-
24 newing and repairing of storm or sanitary or combined
25 storm and sanitary sewer systems, or portions thereof, up-
26 on or in any streets, alleys, public ways or easements, or
27 sewer rights of way or easements, or portions thereof, in-
28 dependently or in conjunction with other of such im-
29 provements, within the municipality; and
30 (5) "Total cost" shall include the cost and expense of
31 surveys, engineering and attorney fees, the printing and
32 publishing in relation thereto, and the cost and expense of
33 of all labor, work, supervision, inspection, equipment
34 leased and materials furnished and used in completing
35 said improvements, excepting, however, any salaries and
36 wages paid to municipal employees that would have been
37 paid regardless of the work on the proposed improvement.
PART II. Power and Authority to Make Low Cost Improvements—Preliminary Proceedings.

§8-17-3. Municipality empowered and authorized to make improvements.

Every municipality is hereby empowered and authorized, in addition to any other rights, power or authority conferred upon it, to make improvements upon the terms and conditions and in the manner hereinafter in this article set forth.

§8-17-4. Petition and bond; action of governing body; memorandum of engineer.

Upon the filing of a written petition for the making of an improvement, together with the bond hereinafter described, by (1) a petitioner stating in said petition the willingness of said petitioner to pay all of the total cost of said improvement, or (2) a petitioner owning the greater amount of frontage of property abutting upon any portion of a street, alley, public way or easement, or sewer right of way or easement, upon or in which said improvement is to be made, the governing body shall, by ordinance or resolution, order the engineer to investigate the improvement and to prepare a memorandum describing the portions of the streets, alleys, public ways or easements, or sewer rights of way or easements, proposed to be improved, and certifying the reasonable necessity of the improvement, the plans and specifications for the improvement and a list of all items comprising the total cost of the improvement, with an estimate of the cost of each item.

There shall be stated, specified or described in the petition the name and mailing address of the petitioner, the part or parts of the therein named streets, alleys, public ways or easements, or sewer rights of way or easements, desired improved, the improvement desired and whether the petitioner will pay all of the total cost or whether he desires the total cost to be apportioned among all of the abutters. In any case where two or more petitioners file the petition and it is stated therein that they intend to pay all of the total cost of the improvement, it shall also be
stated therein either that they desire to have such total
cost apportioned among them on a prorata basis of their
abutting footages according to a list of such footages com-
piled by them and contained in the petition or that they
desire to pay such total cost according to a list of per-
centage shares formulated by them and contained in the
petition.

Any petition filed under the provisions of this article
shall be signed by the petitioner. A bond shall be given by
the petitioner with good security to be approved by the
governing body in the penal sum of one thousand dollars.
The bond shall bind the petitioner (jointly and severally,
in the case of more than one petitioner) to pay all charges
and assessments imposed upon such petitioner under the
provisions of this article.

§8-17-5. Hearing on adverse report in engineer's memoran-
dum; notice thereof; modification of memorandum;
expenses charged to petitioner upon failure of peti-
tion.

If the engineer certifies in his memorandum that the
improvement is not reasonably necessary, or that the
estimated total cost is more than one thousand dollars,
or both, the governing body shall notify the petitioner of
the adverse report in the engineer's memorandum, and of
a date (at least ten days from the date of the mailing of
the notice as provided below), time and place of a meet-
ing of the governing body, at which the engineer shall be
present and the petitioner may object to or be heard on
any part of the engineer's memorandum concerned with
the said adverse report. The notice shall be given by mail-
ing a copy thereof to the petitioner at the address listed
in the petition unless the petitioner shall have notified the
governing body in writing of a change in his mailing ad-
dress, in which case the notice shall be mailed according
to such change. The governing body may modify the
memorandum in accordance with the evidence introduced
at said meeting; but if no evidence is introduced, the
engineer's memorandum shall be accepted. In any case
where the petition fails because there is no reasonable
necessity for the improvement or because the estimated
total cost of the improvement is more than one thousand dollars, or because of both reasons, the petitioner shall be charged with all municipal expenses in connection there-with, except salaries and wages of regular municipal officials and employees, which charge shall be made by ordinance or resolution of the governing body; and a statement of such charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

For convenience of reference herein, the term "engineer's memorandum" shall mean, as the case may be, his original memorandum, or his memorandum as modified in accordance with the provisions of this section or section eight of this article.

§8-17-6. When petition for improvement is to be granted.

1 A petition for improvement shall be granted when it and the accompanying bond have been found to be regular, and when the engineer's memorandum indicates that the proposed improvement is reasonably necessary and that the total cost will not exceed one thousand dollars.

PART III. Power and Authority to Make Low Cost Improvements—Proceedings After Granting of Petition.

§8-17-7. Procedure when petitioner to pay all of total cost.

1 If the petitioner has stated in the petition that he will pay all of the total cost, the governing body shall, as soon as the petition is granted as provided in section six of this article, order, by ordinance or resolution, the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum.

§8-17-8. Procedure when total cost to be apportioned among all abutters.

1 If the petitioner has stated in the petition that he desires the total cost to be apportioned among all of the abutters, the governing body shall, as soon as the petition is granted, cause notice to be given to all abutters that the petition has been granted; that the engineer's memorandum, certifying reasonable necessity, the plans and specifi-
cations and the cost estimates, will be reconsidered, before
work is started, at a public meeting of the governing body
on the date and at the time and place named in the notice;
and that all abutters will be given an opportunity to pro-
test or be heard concerning any or all particulars of the
engineer's memorandum at that meeting or an adjourn-
ment thereof. Such notice to abutters may be by service on
such abutters in the manner in which process commencing
a civil action under the law of this state is permitted to be
served, at least ten days before said meeting. In lieu of
such service of such notice, the following described notice,
or one in substantially the same form, may be given, and
shall be deemed to have been served on all such abutters,
by publication of such notice as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area for
such publication shall be such municipality:

"NOTICE TO ALL PERSONS OR CORPORATIONS
OWNING PROPERTY ABUTTING ON ...................................
(here describe the portion of the street, alley, public way
or easement, sewer right of way or easement, to be im-
proved) IN THE ........................................... (city, town or
village) OF .................................................. (name of muni-
cipality);

A petition has been granted by the ....................................
(council, board of directors, commissioners
or other governing body) of the ..................................
(city, town or village) of ........................................... (name
of municipality) to improve the portion of the ...............
(street, alley, public way or easement,
or sewer right of way or easement) above described in
.................................................. (name of municipality) by ......
(grading, regrading, paving, repaving, sur-
facing, resurfacing, curbing, recurbing or repairing, or
the building, renewing or repairing of sidewalks, or the
constructing of sanitary or storm sewers, or both, or other
general description of the proposed improvement), as
specifically described in the engineer's memorandum
certifying the reasonable necessity of the proposed im-
provement, the plans and specifications thereof, and the
estimate of the items of cost thereof, and to apportion the
cost of such improvement among the owners, as of .......

(....) (the date of the first publication of this notice), of the abutting property.

The engineer's memorandum above described and the granting of the petition will be reconsidered by the ........ (council, board of directors, commissioners or other governing body) at a public meeting to be held on the ........ day of ......................, 19...., at ............ M. at ............ ............ ............ Any abutting owner or interested party will be given an opportunity to protest or be heard at said meeting or an adjournment thereof.

........................................ (name of recorder)

........................................ (official position)."

An affidavit of publication of the notice, made by the newspaper publisher, or some person authorized to do so on behalf of such publisher, and a copy of the notice shall be made a part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons owning any interest in any property abutting upon any portion of said street, alley, public way or easement, or sewer right of way or easement, to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed.

Any part or parts of the engineer's memorandum may be modified or remodeled at the protest meeting in accordance with the evidence introduced at such meeting, including the extent of the portions of the streets, alleys, public ways or easements, or sewer rights of way or easements, proposed to be improved as designated in the engineer's memorandum. If, after modification or remodification at such protest meeting, the memorandum indicates that the improvement is not reasonably necessary or that its estimated total cost is more than one thousand dollars, or both, then the petition shall be automatically revoked; and the petitioner shall be charged with all municipal expense in connection therewith except the salaries and wages of regular municipal employees, which charge shall be made by ordinance or resolution of the governing body and a statement of said charge shall be mailed to the
petitioner at the proper address, determined as aforesaid.
If the engineer's memorandum has not been so modified
or remodified at the protest meeting as to render the peti-
tion automatically revoked as provided above, the govern-
ing body shall order, by ordinance or resolution, the
proper municipal authorities to proceed with the accomp-
lishment of the improvement according to the plans and
specifications in the engineer's memorandum, as modified
or remodified at the protest meeting in the event that
they were modified or remodified.

§8-17-9. Accomplishment of the improvement; use of munici-
pal employees and equipment; contracts; account
of costs.
When the proper municipal authorities shall have
been ordered by the governing body to proceed under the pro-
visions of either section seven or section eight of this
article, they shall do so without delay. The improvement
shall be accomplished, as far as possible without inter-
ferring with normal municipal services, with the munici-
pality's regular employees and equipment; but contracts
may be made with reputable persons for the improve-
ment. Said authorities shall keep an account of all items
of cost connected therewith that affect the total cost of
the improvement. Upon completion of the improvement,
said proper municipal authorities shall deliver the ac-
count of costs to the engineer.

§8-17-10. Apportionment among petitioners only; limit on
total cost chargeable to petitioners; notice.
Where the willingness of the petitioner to pay all of the
total cost is stated in the petition, the engineer shall
compute the actual total cost as soon as the improvement
is completed and the account called for in section nine of
this article is furnished to him; and, where more than
one petitioner filed the petition, the engineer shall assess
the amount owed by each petitioner according to the
method indicated in the petition as prescribed in section
four of this article: Provided, That if the actual total cost
exceeds one thousand dollars, the municipality shall be
responsible for such excess over one thousand dollars, and
12 if the actual total cost is less than one thousand dollars but exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

17 The engineer shall certify his determination of charges to the governing body, and, after adopting the same by ordinance or resolution, the governing body shall notify the petitioner of the assessment list by mailing a written copy thereof to the petitioner at the proper address, determined as aforesaid.

§8-17-11. Apportionment among all abutters; limit on total cost chargeable to abutters; engineer's report; notice; hearings; correcting and laying assessments.

1 Where the petitioner indicated in the petition his desire to have the total cost apportioned among all of the abutters, the engineer shall, as soon as the governing body has ordered the proper municipal authorities to proceed with the improvement under the provisions of section eight of this article, determine or cause to be determined the several frontages abutting on the improvement, a brief description thereof and the owners of such frontages as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and he shall keep an account of all items of cost connected therewith that affect the total cost. As soon as the improvement is completed and the account called for in section nine of this article has been furnished to him, the engineer shall compute the actual total cost of the improvement.

17 The total cost shall be personally borne by such owners of abutting property, including the petitioner, as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and the amount of the assessment against each shall be apportioned by the engineer on the basis of the formula next hereinafter set forth. Each lot or parcel of land so abutting shall be assessed with that portion of the total cost of the entire project which is represented
by the proportion which the abutting frontage in feet
of such lot or parcel bears to the total abutting frontage
in feet of all the lots or parcels of land abutting on the
streets, alleys, public ways or easements, or sewer rights
of way or easements, so improved: Provided, That if
the character of the improvements shall be substantially
different upon different streets, alleys, public ways or
easements, or sewer rights of way or easements, or por-
tions thereof, the cost may be equitably apportioned to
the respective streets, alleys, public ways or easements,
or sewer rights of way or easements, or portions thereof,
in proportion to the character and cost of the improve-
ments respectively thereon; and the part of the cost so
apportioned to each respective street, alley, public way
or easement, or sewer right of way or easement, or por-
tion thereof, shall be apportioned to and assessed against
the respective lots or parcels of land abutting thereupon
in the proportion as hereinabove provided: Provided,
however, That if any part of the street, alley, public way
or easement improved is used by a railway then the cost
of the portion of any improvements between the rails
and for two feet outside said rails shall be assessed
against and wholly borne by the owner of the railway:
Provided further, That if there be any property abutting
on the portion of the street, alley, public way or eas-
ment, or sewer right of way or easement, so improved
which it has been determined by the governing body, and
shown in the ordinance or resolution authorizing the
improvement, not to be specially benefited by the im-
provement, or for other reasons would not be liable to
assessment for any of, or for some part of, the cost of
improvements, then the cost of the improvements abut-
ting such part of said street, alley, public way or eas-
ment, or sewer right of way or easement, as is so deter-
mined to be nonassessable, shall be apportioned among,
assessed against and borne by the remaining property
abutting upon the portion of the street, alley, public way
or easement, or sewer right of way or easement, im-
proved in proportion to the frontage of such remaining
abutting property as hereinabove provided: And pro-
vided further, That if such improvement includes the
building, renewing or repairing of sidewalks on only one side of a street, alley, public way or easement, then the cost of such improvement shall be assessed only on the property abutting on that side where the sidewalks are so built, constructed or repaired: Provided, That if there be property abutting the street, alley, public way or easement, or sewer right of way or easement, so improved which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property: Provided, however, That if the actual total cost exceeds one thousand dollars, the municipality shall be responsible for such excess over one thousand dollars, and if the actual total cost is less than one thousand dollars but exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

The engineer shall formulate a report showing the chargeable total cost to be apportioned among, assessed against and borne by the abutters, the names of the abutters (including the petitioner), the several frontages owned by said abutters, a brief description thereof and the proper amount of the chargeable total cost to be assessed personally against each abutter, and shall deliver such report to the governing body. The governing body shall thereupon give notice to the abutters to be assessed that, on or after a date named in said notice, an assessment may be laid personally against the abutters as embodied in said report. Said notice shall state that the abutters so named, or other interested party, may on said date appear before the governing body to move the correction or revision of such proposed assessment. Said notice shall show the same facts embodied in the engineer's report hereinafore described and shall be published 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 the municipality. On or after the date so ad-
Enr. S. B. No. 2] 194

vertised, the governing body may revise, amend, correct
and verify the report according to the evidence intro-
duced by the contesting abutters or by the engineer, and
shall thereafter proceed by ordinance or resolution to
lay the assessments, as corrected and verified, against
the abutters personally.

§8-17-12. Assessments where property owned or controlled by
public, charitable, eleemosynary, educational or
religious institutions; duty of those in charge to
cause assessments to be paid.
1 When any of the lots or parcels of land abutting the
2 portion of the street, alley, public way or easement, or
3 sewer right of way or easement, improved consist of
4 property owned or controlled by this state, any munici-
pality, county, board of education or other public body,
or consist of property owned by or used for, a church, or
7 a religious, charitable, educational or eleemosynary insti-
tution, for purposes not subject to taxation, the owners
of such property, as of the date of service of, or the date
of the first publication of, a notice under the provisions
of section eight of this article, shall nevertheless be
assessed with their proper proportion of the total cost of
said improvement, and it shall be the duty of the owners
or those persons having charge of the fiscal affairs of such
owners or the management of any such property or institu-
tion to make proper arrangements for the payment of
such assessments and to cause the same to be paid.

PART IV. COLLECTION OF ASSESSMENTS AND CHARGES.

§8-17-13. Due date of assessments; statement of amount in de-
fault to petitioner.
1 Assessments made under the provisions of section
eleven of this article shall be due the municipality within
sixty days after the adoption by the governing body of
the ordinance or resolution laying the assessment; and
upon payment of an assessment by an abutter, he shall
be given a receipt therefor, a copy of which shall be re-
tained by the municipality; and, upon payment in due
course of all such assessments pertaining to an improve-
ment, the petitioner shall be automatically discharged on
his bond. If any such assessment, in whole or in part, be not paid within said sixty days, the governing body shall determine the total amount in default and shall charge said amount to the petitioner by ordinance or resolution; and a statement of the charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

§8-17-14. Due date of charges against petitioner; collection on bond; petitioner's right of action.

Charges made against any petitioner under the provisions of sections five, eight, ten and thirteen of this article shall be due the municipality within thirty days from the date that a statement was mailed to him at the proper address, determined as aforesaid. If any such charges against any petitioner be not paid within such thirty days, the governing body shall by ordinance or resolution authorize the proper municipal authorities to proceed to collect on the petitioner's bond.

Any petitioner who is forced to pay, either by collection on the bond or by voluntary payment to avoid collection on the bond, any sum which should have been paid by another petitioner or any other abutter shall have a right of action against any such defaulter for the amount that the defaulter should have paid, with interest at six percent from the date that the defaulter was in default; and where a petitioner makes a voluntary payment for any such defaulter to avoid collection on the bond, a receipt shall be given to him, and a copy retained by the municipality, showing the petitioner who made such payment, the defaulter for whom the payment was made and the charge or assessment for which the defaulter was in default, which receipt shall be prima facie evidence of the petitioner's right to collect from the defaulter named in said receipt the amount specified therein, with interest as above stated.

PART V. CUMULATIVE AUTHORITY.

§8-17-15. Cumulative authority.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitu-
ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH.

PART I. POWER AND AUTHORITY TO MAKE IMPROVEMENTS.

§8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements.

1 Every municipality is hereby empowered and authorized, in addition to any other rights, power and authority conferred upon it, upon the terms, conditions and in the manner hereinafter set forth, to grade or regrade, pave or repave, surface or resurface, curb or recurve, streets (which term is used in this article to include avenues and roads), alleys, public ways or easements, or portions thereof, and to build or renew sidewalks, and to construct, provide or renew any of such improvements or other permanent public improvements in any streets, alleys, public ways or easements, or portions thereof, in such municipality, and, if deemed advisable, to construct storm and sanitary sewers, or all or a part of a storm or sanitary or combined storm and sanitary sewer system in any streets, alleys, public ways or easements, or sewer rights of way or easements, or portions thereof, independently or in conjunction with other of such improvements, and to assess the costs of any or all of such improvements on abutting property.

§8-18-2. Petition of abutting property owners for improvement; improvements without petition.

1 Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon any portion of a street, alley, public way or easement, or sewer right of way or easement, for any permanent improvement (which term is used in this section and the succeeding sections of this article to include any reimprovement) authorized in section one of this article, the governing body of any municipality may, after giving notice to abutting property owners as hereinafter in this article...
provided, by ordinance or resolution declare the necessity
or convenience of such improvement and order and cause
such portions of such streets, alleys, public ways or easements, or sewer rights of way or easements, to be graded,
regraded, paved, repaved, surfaced, resurfaced, curbed,
recurbed, sewered, resewered, permanently improved
(which term is used in this section and the succeeding
sections of this article to also mean re-improved) with
sidewalks or otherwise permanently improved with suitable material, or any one or more of such improvements
without the others, as may be determined by the governing body, to be made or constructed within such municipality or within such part or parts thereof as the governing body may determine, and such governing body may specially assess the entire cost of such improvements, or any part thereof, upon the property abutting on both
sides of the portions of the streets, alleys, public ways or easements, or sewer rights of way or easements, improved.

The governing body of any municipality may also adopt such ordinance or resolution of necessity or convenience
and provide for such improvements and the assessing of the cost thereof upon abutting property without such a
petition of property owners having first been received, when the ordinance or resolution providing for such improvements is adopted by the affirmative vote of at least three-fourths of the members of such governing body by recorded vote, after having given notice to abutting property owners as hereinafter in this article provided.

§8-15-3. Notice to abutting owners before authorizing improvements; form of notice; affidavit of publication.

Before the adoption of such ordinance or resolution of necessity or convenience, the governing body shall cause notice to be given to owners of abutting property that such ordinance or resolution will be considered before adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons shall at that meeting, or an adjournment thereof, be given an opportunity to protest or be heard concerning the adoption or rejection of said ordinance.
or resolution. Such notice to owners of property abutting on the portion of the street, alley, public way or easement, or sewer right of way or easement, to be improved may be by service on such owners in the manner in which process commencing a civil action under the laws of this state is permitted to be served at least ten days before said meeting. In lieu of such service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such owners of abutting property, by publication of such notice 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 such municipality:

"NOTICE TO ALL PERSONS OR CORPORATIONS OWNING PROPERTY ABUTTING ON (here describe the portion of the street, alley, public way or easement, or sewer right of way or easement, to be improved) IN THE (city, town or village) OF (name of municipality):

Proposals have been made to the (council, board of directors, commissioners or other governing body) of the (city, town or village) of (name of municipality) to permanently improve the portion of the (street, alley, public way or easement, or sewer right of way or easement) above described in (name of municipality) by (grading, regrading, paving, repaving, surfacing, resurfacing, curbing or recurbing, building or renewing of sidewalks, or the constructing of sanitary or storm sewers, or other general description of the proposed improvements) as the (council, board of directors, commissioners or other governing body) may deem proper, and to assess the cost of such improvements on the property abutting said portion of said (street, alley, public way or easement, or sewer right of way or easement).

The proposals to make such improvements, and the plans, specifications, profiles and estimates therefor, will be considered by the (council, board of
directors, commissioners or other governing body) at a public meeting to be held on the ____ day of _____.

Any abutting owner or interested party will be given an opportunity to protest or be heard at said meeting or an adjournment thereof.

An affidavit of publication of the notice, made by the newspaper publisher, or some person authorized to do so on behalf of such publisher, and a copy of the notice shall be made a part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons owning any interest in any property abutting upon any portion of said street, alley, public way or easement, or sewer right of way or easement, to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed.

PART II. PROCEDURES RELATED TO IMPROVEMENTS AND ASSESSMENTS.

§8-18-4. Ordinance or resolution authorizing improvements; approval of plans, specifications and estimates; provisions for advertisement of bids and payment of cost; default.

After hearing held pursuant to notice as provided in section three of this article, the governing body, by ordinance or resolution, may authorize such improvements and the assessing of the total cost or any part thereof on abutting property as herein provided. In the same or subsequent ordinances or resolutions, but before advertising for bids from contractors, the governing body shall cause to be prepared plans, specifications and estimates of the cost of the proposed improvements under the supervision of the engineer for the municipality. Such plans, specifications and estimates shall show the proposed grade and sufficient data for any owner of abutting property to calculate approximately what proportionate part of the estimated cost thereof might be assessed against his property, and shall be filed with the recorder and open to the in-
spection of interested persons before advertisement for
bids of contractors and before the meeting at which such
bids may be accepted or rejected. Before advertising for
bids of contractors, such governing body shall consider
said plans, specifications and estimates and may amend or
modify them, and before advertising for bids shall by ordi-
nance or resolution approve such plans, specifications and
estimates as so amended and modified. Such ordinance or
resolution shall also provide for advertisement for bids,
for the letting of a contract or contracts for the work to
the lowest responsible bidder, with right reserved to such
governing body to reject any and all bids, and shall pro-
vide for supervision of such work by the mayor, city
manager, if any, municipal engineer, if any, or other
person or committee designated by the governing body.
Such ordinance or resolution shall also provide for pay-
ment of the cost of the work when completed. The gov-
erning body shall provide in such ordinance or resolution
for the payment by abutting property owners of the cost
of the work in equal installments payable over a period
of not less than five years nor more than ten years from
the date of assessment, with interest at the rate of six
percent per annum from the date of assessment, and in
said ordinance or resolution the governing body shall fix
the number of installments in which the amounts assessed
shall be payable: Provided, That each of said assessments
or the installments thereof then remaining unpaid shall
be payable at any time after assessment without interest
after the date such payment is made: Provided, however,
that on failure of the owner of the property assessed to
pay any installment as and when due, and if such default
continues for sixty days, then at the option of the govern-
ing body (if neither assessment certificates nor bonds are
issued as hereinafter in this article provided), or the
holder of the assessment certificates (if the assessments
are evidenced by such certificates), or the holder of any
bonds secured by such assessments (if bonds are issued),
the entire balance due may be declared immediately due
and payable and the municipality, or the holder of the
certificates, or bonds, as the case may be, may forthwith
proceed to enforce the collection thereof: Provided fur-
ther, That if the amounts to be assessed against abutting
property be less than two dollars for each abutting front
foot of property, then said governing body is authorized
to make the same payable in one lump sum or in install-
ments, with interest, over a period of less than five years
from the date of assessment.

§8-18-5. Report on completion; notice to abutting owners of
assessments; hearings; correcting and laying as-
sements.

When the improvement of such street, alley, public
way or easement, or sewer right of way or easement, has
been completed, the governing body shall cause the engi-
neer, or other person charged by the governing body with
the supervision of the work of improvement, to make a
report showing the several frontages abutting thereon,
the total cost, the respective amounts chargeable upon
each lot or parcel of land assessed abutting thereon and
the proper amounts to be assessed against the respective
abutting lots or parcels of land as provided herein, with
a description of the abutting lots and parcels of land as to
ownership, frontage and location. The governing body
shall thereupon give notice to the owners of the property
to be assessed that on or after a date named in said notice
an assessment may be laid against the property so im-
proved as embodied in said report. Said notice shall state
that the owner or owners whose property is to be assessed,
or other interested party, may on said date appear before
the governing body to move the revision or correction of
such proposed assessment. Such notice shall be published
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 the
municipality. Said notice shall show the total cost of the
improvement, the several frontages abutting thereon and
the respective amounts to be assessed against the abutting
property, with a description of the respective abutting
lots and parcels of land as to ownership, frontage and
location. On or after the date so advertised, the governing
body may revise, amend, correct and verify the report and
31 proceed by ordinance or resolution to lay the assessments
32 as corrected and verified.

PART III. APPORTIONMENT IN MAKING ASSESSMENTS.

§8-18-6. Construction of sewers and sewer systems; assessments; corner lots, etc.

1 The governing body of any municipality is hereby em-
2 powered and authorized to order and cause to be con-
3 structed, within said municipality, or partly within and
4 partly without the corporate limits of said municipality,
5 public, common, lateral, branch and trunk storm and
6 sanitary sewers and sewer systems and combined storm
7 and sanitary sewers or sewer systems, or both, by contract
8 or directly by the municipality, for the benefit of said
9 municipality or any part thereof, and to purchase lands
10 or easements or to condemn lands or easements in the
11 manner provided by law for such sewers or sewer sys-
12 tems. When the governing body shall order and complete
13 the construction of any such sewer or sewer system or any
14 part thereof within said municipality, the property
15 abutting on such sewer or abutting upon any street, alley,
16 public way or easement, or any sewer right of way or
17 easement, in which such sewer shall be constructed, or
18 abutting on any street, alley, public way or easement, or
19 any sewer right of way or easement, in which any part
20 of such a sewer is constructed, may be charged with all or
21 any part of the cost thereof, including the cost of such
22 sewer or sewer system across intersections of streets,
23 alleys, public ways and easements.
24 A sewer system shall be deemed to include all of the
25 common sewers whether they be lateral, branch, trunk
26 or combined sewers, which serve to drain a definite drain-
27 age area as specified in the order of the governing body
28 directing the work to be done.
29 In case of a corner lot, or of acreage which has not been
30 divided into lots, frontage which may be assessed shall
31 be measured along the longest dimension thereof abutting
32 on each street, alley, public way or easement, or sewer
33 right of way or easement, in which such sewer is laid,
34 but if sewered on two or more sides then such corner lot,
35 or acreage which has not been divided into lots, is to be
charged only with the side first sewerized unless two hundred feet or more in depth measured from such first sewered side, in which event the corner lot, or acreage which has not been divided into lots, shall be charged only with the footage in excess of two hundred feet. Any lot, or any acreage which has not been divided into lots, having such a depth of two hundred feet or more and abutting on two or more streets, alleys, public ways or easements, or sewer rights of way or easements, one in the front and one in the rear of said lot, or said acreage which has not been divided into lots, shall be assessed on both of said streets, alleys, public ways or easements, or sewer rights of way or easements, if a sewer is constructed on both such streets, alleys, public ways or easements, or sewer rights of way or easements. Where a corner lot, or an acreage which has not been divided into lots, has been assessed on both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on either end.

In case of corner lots, or acreage which has not been divided into lots, where the cost of sewerizing along one dimension is not assessed against the owner thereof, and in the case of lots, or acreage, less than two hundred feet deep abutting at each end on a street, alley, public way or easement, or sewer right of way or easement, in which a sewer is laid, the cost of sewerizing along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the streets, alleys, public ways or easements, or sewer rights of way or easements, being improved, in the manner of apportionment of the cost of improvements in intersections.

§8-18-7. What total cost to include.

1. In ascertaining the total cost of the improvements in any project undertaken pursuant to the provisions of this article, there shall be included the cost and expense of surveys, engineering and attorneys' fees, the printing and publishing in relation thereto, and the cost and expense of all labor, work, supervision, inspec-
tion, equipment leased, and materials furnished and used in completing said improvements.


1 The cost of the entire project, including the cost of all improvements at and within intersections, shall be apportioned to, and assessed against and borne by the properties abutting upon the streets, alleys, public ways or easements, or sewer rights of way or easements, in or upon which the improvements involved in the project shall have been made. Each lot or parcel of land so abutting shall be assessed, subject to the provisions of section six of this article respecting assessment for sewer improvement of corner lots, acreage not divided into lots and lots or acreage sewered on more than one side or end, with that portion of the total cost of the entire project which is represented by the proportion which the abutting frontage in feet of such lot or parcel of land bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the streets, alleys, public ways or easements, or sewer rights of way or easements, so improved: Provided, That if the character of the improvements shall be substantially different upon different streets, alleys, public ways or easements, or sewer rights of way or easements, or portions thereof, the cost may be equitably apportioned to the respective streets, alleys, public ways or easements, or sewer rights of way or easements, or portions thereof, in proportion to the character and cost of the improvements respectively thereon and the part of the cost so apportioned to each respective street, alley, public way or easement, or sewer right of way or easement, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: Provided, however, That if any part of the street, alley, public way or easement improved is used by a railway, then the cost of the portion of any improvements between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway: Provided further, That property shall be assessed only to the extent it is benefited and if there be
any property abutting on the portion of the street, alley, public way or easement, or sewer right of way or easement, so improved which it has been determined by the governing body, and shown in the ordinance or resolution authorizing the improvements, not to be specially benefited by the improvements, or not to be specially benefited to the full extent of the cost of the improvements, or for other reasons would not be liable to assessment for any of, or for some part of, the cost of improvements, then the cost of the improvements abutting such part of said street, alley, public way or easement, or sewer right of way or easement, or so much thereof as is so determined to be nonassessable, shall be apportioned among, assessed against and borne by the remaining property abutting upon the streets, alleys, public ways or easements, or sewer rights of way or easements, improved in proportion, subject to the aforesaid provisions of section six of this article, to the frontage of such remaining abutting property as hereinabove provided: And provided further, That if such improvements include the building or renewal of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so built or renewed: Provided, That in apportioning and assessing the cost of sewers or sewer systems the provisions of section six of this article shall be observed: Provided, however, That if there be property abutting the street, alley, public way or easement, or sewer right of way or easement, so improved which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property.

In apportioning the cost to any lot or parcel of land in any situation not covered in this article, the cost shall be apportioned equitably, as determined by the governing body, in keeping with the concepts and principles expressed in this article and the special benefit to the property in question from the improvements made.
§8-18-9. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

When any of the lots or parcels of land abutting the portion of the street, alley, public way or easement, or sewer right of way or easement, improved consist of property owned or controlled by this state, any municipality, county, board of education or other public body, or consist of property owned by, or used for, a church, or a religious, charitable, educational or eleemosynary institution, for purposes not subject to taxation, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

PART IV. LIENS OF ASSESSMENTS AND ENFORCEMENT THEREOF.

§8-18-10. Liens; recording notice of liens; suit for enforcement; priority.

The property abutting the portion of the street, alley, public way or easement, or sewer right of way or easement, improved shall be subject to a lien, from the date of the ordinance or resolution laying the assessment, for the payment of the cost of the improvements assessed against said property. A notice of the liens of said assessments referring to the assessing ordinance or resolution, and setting forth a list of the property assessed, described respectively as to amounts of assessment and ownership, frontage and location of the property, shall be certified by the recorder of the municipality to the clerk of the county court of the county wherein the improvement or any part thereof is located. The county clerk shall record the same in a proper trust deed book and index the same in the name of each owner of abutting property assessed. From the date of the assessment, the municipality (if neither assessment certificates nor bonds are issued as hereinafter in this article provided), or
the holder of the assessment certificates (if the assessments are evidenced by such certificates), or the holders of the bonds secured by such assessments (if bonds are issued), shall have such liens and shall be entitled to enforce the same in its, his or their name or the name of the municipality to the extent of the amount, principal and interest, of such assessments and against the said property, as to any assessment not paid as and when due. Said assessments shall be and constitute liens in the hands of the municipality, or the holders of said certificates, or the holders of said bonds, as the case may be, upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality, and except any liens for pre-existing special assessments. Said assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. The municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may enforce the lien thereof in any proper suit, and when default in the payment, as and when due, of any assessment, principal or interest, or installment, shall occur and such default shall have continued for more than sixty days, the municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may declare the whole unpaid balance due and payable and by proper civil action seeking equitable relief enforce the lien thereof, upon process issued and served according to law upon the owner or owners of the lots or parcels of land subject to said lien at the time such suit may be brought as shown by the records of the clerk of the county court of the county in which said lots or parcels of land are located.

§8-18-11. How assessments may be evidenced.

The governing body shall also determine and provide in the ordinance or resolution laying the assessments, adopted in accordance with the provisions of section five of this article, if such provision was not made in the ordinance or resolution adopted in accordance with the provisions of section four of this article, the method
of paying for the work, for the cost of which assessments are levied as in this article provided, whether by an appropriation from funds in the treasury of the municipality unappropriated to be repaid from the collection of the assessments, or by the issuance of certificates as hereinafter provided, or from the proceeds of bonds issued in anticipation of the collection of special assessments to be made against the abutting property owners as provided for in section fourteen of this article.

PART V. FINANCING IMPROVEMENTS BY USE OF UNAPPROPRIATED FUNDS TO BE REPAYED BY ASSESSMENTS.

§8-18-12. How funds of municipality to be repaid if work paid for from unappropriated funds rather than by means of assessment certificates or from the proceeds of bonds.

1 If the governing body shall determine by ordinance or resolution as in this article provided to pay for the work completed, for the cost of which assessments are levied as in this article provided, from unappropriated funds in the treasury of the municipality, it shall be the duty of the governing body immediately to certify such assessments to the treasurer for collection in accordance with the terms provided in the ordinance or resolution authorizing the improvements.

10 To each of the installments of assessments remaining unpaid in the treasurer’s hands on the dates specified for the payment thereof, a penalty of ten percent shall be added, and any assessments so remaining unpaid in the treasurer’s hands on such dates shall be taken up by the governing body on settlements had with the treasurer on such dates, and such assessments, with the penalty added thereto, shall be collected in all respects as provided for the collection of taxes due the municipality, and they shall be a lien upon the property liable therefor the same as a lien for taxes, which lien may be enforced in the same manner as provided for a lien for taxes.

23 Whenever all installments of an assessment for such improvements shall be paid in full to the treasurer he, on behalf of the municipality, shall execute and deliver
to the party paying the same a release of the lien there-
for, which may be recorded in the office of the clerk
of the county court as other releases of liens; and when-
ever any such assessments shall not be in the hands
of the treasurer for collection, but the same shall be
shown to the satisfaction of the municipal auditor or
other official performing the duties of auditor for the
municipality to have been paid in full to any officer
entitled to receive the same, such auditor or such other
official or the mayor, in cases where the municipality
has no auditor or such other official, may in like manner
execute such release.

PART VI. FINANCING IMPROVEMENTS BY ISSUANCE OF
ASSESSMENT CERTIFICATES.


1 If the governing body shall determine by ordinance or
2 resolution to pay for the cost of the work by the issuance
3 of assessment certificates, then immediately upon the
4 laying of the assessment against the abutting property,
5 such assessment certificates shall be issued evidencing
6 said assessments and each installment of principal and
7 interest payable. Said certificates may be payable to
8 the municipality or to the bearer and be signed by the
9 mayor and recorder, or other equivalent officers of the
10 municipality, and shall refer to the ordinance or resolu-
11 tion laying the assessments; shall show the amount and
12 date of the assessment and describe the property against
13 which the assessment is laid, describing the same as to
14 ownership, amount, frontage and briefly as to location.
15 Said certificates shall also show the dates on which
16 principal and interest payments are due, and shall con-
17 tain a provision that in the event there is default in the
18 payment of any one of such installments and such de-
19 fault continues for a period of sixty days, then all unpaid
20 installments shall become due and payable at the elec-
21 tion of the certificate holder and the holder may proceed
22 to collect all of the unpaid balances of installments, with
23 interest until paid. Said certificates may be issued to
24 the contractor making the improvements in payment
25 therefor, upon the contractor's reimbursing the munici-
PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.


Every municipality is hereby empowered and authorized to issue its bonds for any improvements under the provisions of this article in anticipation of special assessments to be made upon the property abutting upon the streets, alleys, public ways or easements, or sewer rights of way or easements, so improved, and such bonds may be in such an amount as will be sufficient to pay the entire estimated cost and expense of such improvements for which such special assessments are levied. Such municipality is also authorized to sell such bonds, but the price for which they are sold shall not be below the par value of such bonds. Such bonds shall be payable in not to exceed ten years from the date of the issuance thereof, and shall bear interest at not to exceed six percent per annum, payable annually; and in the issuance and sale of such bonds, the municipality shall be governed by all the restrictions and limitations of the constitution of this state, and by the restrictions and limitations of the statutes of this state with respect to the issuance and sale of other bonds, so far as they are not in conflict with the provisions of this article; and the assessments shall be collected as provided in sections ten and twelve of this article, and as paid and collected shall be applied to the liquidation of such bonds and the interest thereon; and if by reason of penalties collected with delinquent assessments there be any balance after the payment of such bonds and all accrued interest and cost, such balance shall be turned into the municipal treasury to the credit of the interest and sinking fund of the municipality: Provided, That no such municipality shall by sale or issuance of such bonds cause the aggre-
gate of its indebtedness of every kind whatsoever to exceed five percent of the value of taxable property therein: Provided, however, That nothing herein contained shall be construed as authorizing any such municipality to become indebted in any other manner or for any other purpose, to an amount, including its existing indebtedness, in the aggregate exceeding two and one-half percent of the value of the taxable property therein, as provided in section three, article one, chapter thirteen of this code, except for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or re-improving the streets, alleys, public ways or easements, or sewer rights of way or easements, of such municipality, as provided for in this article; nor shall such municipality make such issuance and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years. All of the assessments, interest and penalties collected from the abutting property owners on account of the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or re-improving the streets, alleys, public ways or easements, or sewer rights of way or easements, of any such municipality, under the provisions of this article, shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding ten years; and in the event that the assessments, interest and penalties so collected do not amount to a sum sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years, then the governing body of such municipality shall collect so much of such levy as will pay annually the interest on such debt and the principal thereof within and not exceeding ten years.


Every municipality is also empowered and authorized
§8-18-16. Bond issue to be authorized by voters.

No bonds shall be issued under the provisions of this article unless and until the question of issuing such bonds shall have first been submitted to a vote of the qualified voters of the municipality, and shall have received three-fifths of all of the votes cast at such election for or against the same. The governing body of any municipality empowered and authorized to issue bonds under the provisions of this article may provide by ordinance for an annual election, at which the question shall be submitted to the people as to whether the municipality shall issue bonds for the purposes and under the provisions of this article, to an amount not to exceed in the ensuing year the amount recommended by such ordinance for such ensuing year. The ordinance providing for such election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of such aggregate issue authorized for such year, but, before issuing any such bonds, the governing body shall adopt an ordinance or resolution as in this article provided, authorizing the improvements to be made. It shall be a sufficient description of the purpose for which such election is held if the ordinance calling the same shall recite that the governing body proposes to issue bonds for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recuring, building or renewing sidewalks, or constructing sewers or otherwise improving or improving the streets, alleys, public ways or easements, or sewer rights of way or easements, of such municipality at such time as to the governing body shall seem fit during the ensuing year ending on the ______ day of ______, 19______, to an amount not exceeding in the aggregate dur-
When the governing body shall have once been authorized by a vote of the qualified voters to issue bonds for such purposes and to a sum not to exceed the amount set forth in the ordinance calling such election, no further election shall be necessary for the issuing of bonds during such ensuing year up to the amount stipulated in such ordinance calling such election, but the governing body shall, from time to time during such ensuing year, by ordinance authorize the issuance of such bonds in such sums, and authorize such improvements the cost of which shall be paid from the proceeds of such bonds, as said governing body shall determine. The aggregate amount of bonds authorized by such annual election shall not be exceeded during such ensuing year, unless the same be authorized by a special bond election held at a subsequent time in such year and duly called as provided for the calling of the annual bond election. The provisions of article one, chapter thirteen of this code, concerning bond elections shall, so far as they are not in conflict with the provisions of this article, apply to the annual bond elections and special bond elections herein provided for.

PART VIII. PAYMENT OF ASSESSMENTS.

§8-18-17. Payment of assessments or installments; release.

1 Payments of any assessments or installments thereof may be made to the treasurer of the municipality or the holder of the assessment certificates. If payment is made to the treasurer he shall require all interest to be paid which is owed up to the time of payment, and notify the holder of the certificate, if informed of the holder's address, that he has received such payment, and make payment to the holder on presentation for cancellation of the certificate representing such payment. If payment is made to the holder of the certificate, the holder shall deliver to the payor certificates marked "paid" representing the payments made of principal and interest. On presentation to the treasurer for cancellation of all certificates of principal and interest for the whole assessment made against a specific piece of property assessed, the treasurer shall on request execute and deliver a release of the lien of such assessment.
PART IX. REASSESSMENT FOR VOID ASSESSMENTS.

§8-18-18. Reassessment for void, irregular or omitted assessments.

1 In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvements were made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the governing body within ten years after the completion of such improvements, or after any court shall have declared such assessment invalid, to cause notice to be given to any person or persons against whom the cost of said improvements might properly be or have been assessed, of its intention to lay such assessment and fixing a date, time and place at which the owner or owners may appear and show cause against the same. Said notice shall be served in the manner provided in this article for the giving of notices in assessment proceedings, or in any other manner provided by law. At the time and place specified in the notice aforesaid or at any time thereafter, the governing body shall proceed to lay and levy an assessment or assessments for the cost of such improvements as would have been lawful under proper proceedings at the time said improvements were completed, unless the owner or owners so notified shall show good cause against the same. The reassessment or reassessments so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the completion of the improvements, with interest therefrom, and proper assessment certificates may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements if the assessments therefor had been then properly laid and levied.
PART X. LIMITATION ON ADDITIONAL ASSESSMENTS.

§8-18-19. Limitation on additional assessments.

When the cost of grading or regrading, paving or repaving, surfacing or resurfacing, curbing or recurfing or other work permanently improving streets, alleys, public ways or easements, or of building or renewing sidewalks, or constructing sewers, has been assessed against abutting property under the provisions of this article, no part of the cost of a similar permanent improvement of the same portion of the same street, alley, public way or easement, or sewer right of way or easement, shall be assessed against such abutting property within ten years after completion of the last preceding similar such improvement for which assessments have been so made and levied.

PART XI. CONSTRUCTION.

§8-18-20. Liberal construction of article; validity and enforcement of assessments when bond issue for same improvements; cumulative authority.

This article shall be liberally construed to accomplish the purpose of providing reasonable, economical and expeditious means for municipalities to provide permanent improvements and to assure to the contractors making such improvements, or persons directly or indirectly financing the same, security in the payment of the cost and expense of such improvements; and nothing in this article shall be construed as imposing a time limit on a certificate holder or bond holder for the enforcement of his rights.

Moreover, the validity and enforcement of the assessments in this article provided shall not be impaired by the issuance and sale of bonds, as provided in article one of chapter thirteen of this code, for the same improvements, nor by the application, in whole or in part, of the proceeds of any such bond issue to the cost of any such improvement prior to collection of said assessments.


The power and authority herein granted shall be in
addition to and not in derogation of any power and
authority vested in any municipality under any consti-
tutional, statutory or charter provisions which may now
or hereafter be in effect.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH.

§8-18-22. Connection to sewers; board of health.

1 The owner or owners of any lot or parcel of land
2 abutting on any street, alley, public way or easement
3 in any municipality on which a public sewer is now
4 located or may hereafter be constructed and laid
5 (whether constructed and laid under the provisions of
6 this article or any other provisions of law) upon which
7 lot or parcel of land any business or residence building
8 is now located or may hereafter be erected, not con-
9 nected with a public sewer, may be required and com-
10 pelled by the board of health to connect any such building
11 with such sewer. Notice so to connect may be given by
12 the board of health either to the owner, lessee or occupant
13 of such building. Each day’s failure to comply with
14 such notice and connect with such sewer by such owner
15 or owners, after ten days from the giving of such notice,
16 shall be a misdemeanor and a separate and new offense
17 under this section, and each such offense shall be punish-
18 able by a fine of not less than five nor more than twenty-
19 five dollars. Jurisdiction to hear, try, determine and
20 sentence for any violation of this section is hereby vested
21 in the police or municipal court thereof, or, where no
22 police court exists, in the mayor thereof.

ARTICLE 19. MUNICIPAL WATERWORKS SYSTEMS.

Part I. Municipal Waterworks Systems Authorized;
Definition.

§8-19-1. Acquisition and operation of municipal waterworks
systems; extension beyond corporate limits; defin-
tion.

1 Subject to and in accordance with the provisions of
2 this article, any municipality may acquire, construct,
3 establish, extend, equip, repair, maintain and operate,
4 or lease to others for operation, a waterworks system,
5 or construct, maintain and operate additions, betterments
and improvements to an existing waterworks system, within the corporate limits of said municipality and within the area extending twenty miles beyond the corporate limits of such municipality, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Class III city and Class IV town or village prohibited from selling or leasing water plant without first submitting question to voters.

The governing body of any Class III city or Class IV town or village is hereby prohibited from selling, leasing or otherwise disposing of its municipally owned waterworks system, unless upon submission of the question of the proposed sale, lease or other disposition to the qualified voters of said city, town or village for ratification or rejection at any regular municipal election or special municipal election, three-fifths of the legal votes cast shall be in favor of ratification. Should any such city, town or village desire to sell, lease or otherwise dispose of its waterworks system, it shall publish the following described notice immediately prior to the regular municipal election or special municipal election, as specified by the governing body, 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 such city, town or village. The notice shall set forth the terms and conditions of such sale, lease or other disposition of said waterworks system, the price or other consideration which has been agreed upon, the name of the purchaser or purchasers or lessee or lessees, and such other information as the governing body may deem necessary, and each ballot, or ballot label where voting machines are used, shall have written or printed thereon the following words:

☐ For Ratification
☐ Against Ratification

Such election shall be held under the superintendence of the commissioners of election appointed by the governing body of such city, town or village and the results of such election shall be certified under oath and returned by said election commissioners to the governing body as soon as may be after such election.

In the event that the sale, lease or other disposition of said waterworks system is ratified by three-fifths of the qualified voters voting at said regular or special municipal election, the governing body of said city, town or village having control of such waterworks system shall proceed to consummate the sale, lease or other disposition to the purchaser or purchasers or lessee upon such terms and provisions as have been agreed upon; otherwise, no further action with respect to said sale, lease or other disposition shall be taken.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any waterworks system, or for the purpose of constructing any additions, betterments or improvements to any waterworks system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately
owned waterworks system shall not be exercised without
prior approval of the public service commission, and in
no event shall any municipality construct, establish or
extend beyond the corporate limits of said municipality a
municipal waterworks system under the provisions of this
article to supply service in competition with an existing
privately or municipally owned waterworks system in
such municipality or within the proposed extension of
such system, unless a certificate of public convenience and
necessity therefor shall have been issued by the public
service commission.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue
bonds; interest on bonds; rates for services.

Whenever a municipality shall, under the provisions of
this article, determine to acquire (by purchase or other-
wise), construct, establish, extend or equip a waterworks
system, it shall cause an estimate to be made of the cost
thereof, and shall, by ordinance, provide for the issuance
of revenue bonds under the provisions of this article,
which ordinance shall set forth a brief description of the
contemplated undertaking, the estimated cost thereof, the
amount, rate or rates of interest, the time and place of
payment, and other details in connection with the issuance
of the bonds. Such bonds shall be in such form and shall
be negotiated in such manner and upon such terms as
the governing body of such municipality may by ordi-
nance specify. All such bonds and the interest thereon,
and all properties and revenues and income derived from
such waterworks system, shall be exempt from all tax-
ation by this state, or any county, municipality, political
subdivision or agency thereof. Such bonds shall bear
interest at not more than six percent per annum, pay-
able semiannually, and shall be payable at such times,
not exceeding forty years from their date, and at such
place or places, within or without the state, as shall be
prescribed in the ordinance providing for their issuance.
Such ordinance shall also declare that a statutory
mortgage lien shall exist upon the property so to be
acquired, constructed, established, extended or equipped,
fix minimum rates or charges for water to be collected
prior to the payment of all of said bonds and shall pledge
the revenues derived from the waterworks system for
the purpose of paying such bonds and interest thereon,
which pledge shall definitely fix and determine the
amount of revenues which shall be necessary to be set
apart and applied to the payment of the principal of and
interest upon the bonds and the proportion of the balance
of such revenues which are to be set aside as a proper
and adequate depreciation account, and the remainder
shall be set aside for the reasonable and proper mainte-
nance and operation thereof. The rates or charges to be
charged for the services from such waterworks system
shall be sufficient at all times to provide for the payment
of interest upon all bonds and to create a sinking fund
to pay the principal thereof as and when the same become
due, and reasonable reserves therefor, and to provide
for the repair, maintenance and operation of the water-
works system, and to provide an adequate depreciation
fund, and to make any other payments which shall be
required or provided for in the ordinance authorizing
the issuance of said bonds.

§8-19-5. Publication of ordinance and notice; hearing.

1 After the ordinance for any project under this article
has been adopted, the ordinance, together with the fol-
lowing described notice, shall be published 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 such munici-
pality. The notice to be published with said ordinance
shall state that said ordinance has been adopted, and that
the municipality contemplates the issuance of the bonds
described in the ordinance, and that any person interested
may appear before the governing body, upon a certain
date which shall not be less than ten days subsequent to
the date of the last publication of such ordinance and
notice, and present protests. At such hearing all protests
and suggestions shall be heard and the governing body
shall take such action as it shall deem proper in the
premises: Provided, That if at such hearing written pro-
test is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four-fifths of the qualified members of said governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than six percent per annum to the purchaser upon the amount paid therefor.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute
an indebtedness of such municipality within any constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.


There shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks system so acquired, constructed, established, equipped or extended from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six hereof. Any revenue bonds so issued in payment for such an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.


Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and
execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such waterworks system, including any part thereof here-tofore or hereafter acquired, constructed, established, extended or equipped or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks system, including the parts thereof here-tofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the waterworks system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such waterworks system;

(e) Subject to the provisions of subsection (b), section twelve of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks system, and the rank or priority, as to lien and source and
47 security for payment from the revenues of such water-
works system, between bonds payable from such rev-

cens;
(f) The manner and terms upon which all bonds
and other obligations issued hereunder may be declared
immediately due and payable upon the happening of
a default in the payment of the principal of or interest
thereon, or in the performance of any covenant or
agreement with bondholders, and the manner and
terms upon which such defaults may be declared cured
and the acceleration of the maturity of such bonds
rescinded and repealed;
(g) Budgets for the annual repair, maintenance and
operation of such waterworks system and restrictions
and limitations upon expenditures for such purposes,
and the manner of adoption, modification, repeal or
amendment thereof, including the approval of such
budgets by consulting engineers designated by holders
of bonds issued hereunder;
(h) The amounts of insurance to be maintained upon
such waterworks system, or any part thereof, and the
use and disposition of the proceeds of any insurance;
and
(i) The keeping of books of account, relating to such
undertakings and the audit and inspection thereof, and
the furnishing to the holders of bonds issued hereunder
or their representatives, reports prepared, certified or
approved by accountants designated or approved by the
holders of bonds issued hereunder.
Any such ordinance or trust indenture may also con-
tain such other additional covenants as shall be deemed
necessary or desirable for the security of the holders
of bonds issued hereunder, notwithstanding that such
other covenants are not expressly enumerated above,
it being the intention hereof to grant to municipalities
plenary power and authority to make any and all

covenants or agreements necessary in order to secure
greater marketability for bonds issued hereunder as
fully and to the same extent as such covenants or agree-
ments could be made by a private corporation rendering
similar services and facilities and to grant to munici-
palities full and complete power and authority to enter
into any contracts, covenants or agreement with holders
of bonds issued hereunder not inconsistent with the
constitution of this state.

§8-19-10. Operating contract.
Any such municipality may enter into contracts or
agreements with any persons for (1) the repair, mainte-
nance and operation and management of the facilities
and properties of said waterworks system, or any part
thereof, or (2) the collection and disbursement of the
income and revenues therefor, or for both (1) and (2),
for such period of time and under such terms and condi-
tions as shall be agreed upon between such municipality
and such persons. Any such municipality shall have
plenary power and authority to provide in the ordinance
authorizing the issuance of bonds hereunder, or in any
trust indenture securing such bonds, that such contracts
or agreements shall be valid and binding upon the
municipality as long as any of said bonds, or interest
thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water must be sufficient to pay
bonds, etc.; disposition of surplus.
Rates or charges for water fixed precedent to the
issuance of bonds shall not be reduced until all of said
bonds shall have been fully paid, and may, whenever
necessary, be increased in amounts sufficient to provide
for the payment of the principal of and interest upon
such bonds, and to provide proper funds for the depre-
ciation account and repair, maintenance and operation
charges. If any surplus shall be accumulated in the
repair, maintenance and operation fund which shall be
in excess of the cost of repairing, maintaining and oper-
ating the waterworks system during the remainder of
the fiscal year then current, and the cost of repairing,
maintaining and operating the said waterworks system
during the fiscal year then next ensuing, then any such
excess may be transferred to either the depreciation
account or to the bond and interest redemption account,
and if any surplus shall be accumulated in the depre-
ciation account over and above that which the munici-
pality shall find may be necessary for the probable
replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and if any surplus shall exist in the bond and interest redemption account the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the
same issue and shall be entitled to payment from the
same fund without preference or priority over the bonds
first authorized and issued.
(c) If the proceeds of the bonds shall exceed the
cost of the property or undertaking, the surplus shall
be converted into the fund for the retirement of the
bonds and payment of the interest thereon.
§8-19-13. Discontinuance of water service for nonpayment of
rates or charges.
1 Any such municipality shall also have plenary power
2 and authority, and may covenant with the holders of
3 any bonds issued hereunder, to shut off and discontinue
4 the supplying of the water service of said waterworks
5 system for the nonpayment of the rates or charges for
6 said water service.
1 Whenever any municipality shall now or hereafter
2 own and operate a waterworks system, whether acquired,
3 constructed, established, extended or equipped under
4 the provisions of this article or not, and shall desire to
5 construct additions, betterments or improvements thereto,
6 it may issue revenue bonds under the provisions of this
7 article to pay for the same, and the procedure therefor,
8 including the fixing of rates or charges and the com-
9 putation of the amount thereof, and the power and
10 authority in connection therewith, shall be the same
11 as in this article provided for the issuance of bonds
12 for the acquisition, construction, establishment, exten-
13 sion or equipment of a waterworks system in a munici-
14 pality which has not heretofore owned and operated
15 a waterworks system: Provided, That nothing in this
16 article shall be construed as authorizing any munici-
17 pality to impair or commit a breach of the obligation
18 of any valid lien or contract created or entered into by
19 it, the intention being to authorize the pledging, setting
20 aside and segregation of such revenues for the con-
21 struction of such additions, betterments or improvements
22 only where and to the extent consistent with outstanding
23 obligations of such municipality, and in accordance with
24 the provisions of this article.
Enr. S. B. No. 2] 228

1 Any municipality operating a waterworks system
2 under the provisions of this article shall set up and main-
3 tain a proper system of accounts in accordance
4 with the requirements of the public service commission,
5 showing the amount of revenues received from such
6 waterworks system and the application of the same.
7 At least once each year such municipality shall cause
8 such accounts to be properly audited, and a report of
9 such audit shall be open to the public for inspection
10 at all reasonable times.

§8-19-16. Protection and enforcement of rights of bondholders,
1 etc.; receivership.
2 Any holder of any bonds issued under the provisions
3 of this article or of any coupons representing interest
4 accrued thereon may by civil action, mandamus or other
5 proper proceeding enforce the statutory mortgage lien
6 created and granted in section eight of this article, pro-
7 tect and enforce any and all rights granted hereunder
8 or under any such ordinance or trust indenture, and
9 may enforce and compel performance of all duties re-
10 quired by the provisions of this article or by any such
11 ordinance or trust indenture to be performed by the
12 municipality, or by the governing body or any officer,
13 including the making and collecting of reasonable and
14 sufficient rates or charges for services rendered by the
15 waterworks system. If there be default in the payment
16 of the principal of or interest upon any of such bonds,
17 or of both principal and interest, any court having
18 jurisdiction shall appoint a receiver to administer said
19 waterworks system on behalf of the municipality, and
20 the bondholders or trustee, or both, with power to charge
21 and collect rates or charges sufficient to provide for the
22 retirement of the bonds and pay the interest thereon,
23 and for the payment of the repair, maintenance and
24 operation expenses, and such receiver shall apply the
25 revenues in conformity with the provisions of this article
26 and the ordinance pursuant to which such bonds have
27 been issued or any trust indenture, or both.
PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-19-17. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Any municipality is hereby empowered and authorized to accept grants, and procure loans or temporary advances, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the municipal waterworks system so recited in each such contract and agreement.

§8-19-18. Additional and alternative method for constructing, etc., and financing waterworks system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the waterworks system herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, refer-
endum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction, etc., of waterworks system.

As an alternative to the procedures hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter, except that as to a Class III city or Class IV town or village, the right to lease said waterworks system shall be strictly limited as provided in section two of this article nineteen.

§8-19-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.
ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS.

§8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

1 Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

2 Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.
Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination.

Part II. Right of Eminent Domain.

§8-20-2. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establishing or extending any waterworks system or any sewerage system, or a combined waterworks and sewerage system, or for the purpose of constructing any additions, betterments or improvements to any such waterworks or sewerage system, or a combined waterworks and sewer-
age system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or sewerage system, or combined waterworks and sewerage system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks system or a combined waterworks and sewerage system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined waterworks and sewerage system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission.

PART III. REVENUE BOND FINANCING.

§8-20-3. Ordinance describing project; contents.

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined waterworks and sewerage system any existing waterworks system or any existing sewerage system, or both, such ordinance shall provide that it or they be so included in such combined system and shall describe in a general way such existing waterworks or sewerage system or both to be included in the combined waterworks and sewerage system. Such ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both. Such ordinance shall determine the period of usefulness of the contemplated project. If it is intended to acquire, construct, establish and equip a combined waterworks and sewerage system or
any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed. Such ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with such bonds deemed advisable. Such ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

§8-20-4. Publication of ordinance and notice; hearing.

After the ordinance for any project under the provisions of this article has been adopted, the ordinance, together with the following described notice, shall be published 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 such municipality. The notice to be published with said ordinance shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body, upon a certain date which shall not be less than ten days subsequent to the date of the last publication of such ordinance and notice, and present protests. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises:

Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four-fifths of the qualified members of said governing body assent thereto.
§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

1 For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any such waterworks or sewerage system, or a combined waterworks and sewerage system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage system, or both, any such municipality may issue revenue bonds under the provisions of this article. All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time.

10 Such bonds shall bear interest at a rate not to exceed six percent per annum, payable semiannually, and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. Such bonds may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all such bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with said combined waterworks or sewerage system, and all the moneys, revenues
and other income of such municipality derived from such combined waterworks and sewerage system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Such bonds may be sold in such manner as the governing body shall determine and if issued to bear interest at the rate of six percent per annum shall be sold for not less than par and accrued interest. If any such bonds shall be issued to bear interest at a rate of less than six percent per annum, the minimum price at which they may be sold shall be such that the interest cost to such municipality of the proceeds of such bonds shall not exceed six percent per annum computed to maturity according to the standard table of bond values: Provided, that if the governing body of the municipality determines to sell any revenue bonds of such combined waterworks and sewerage system for refunding purposes, such bonds shall be sold at not less than par and accrued interest and the proceeds deposited at the place of payment of the bonds, obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the law of this state. Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. Whenever
any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system included in a combined waterworks and sewerage system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined waterworks and sewerage system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined waterworks and sewerage system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier. Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be cancelled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged; but each such bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.

§8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined waterworks and sewerage system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision
Enr. S. B. No. 2] 238

or limitation. The ordinance authorizing the issuance of
the bonds may contain such covenants and restrictions
upon the issuance of additional revenue bonds thereafter
as may be deemed necessary or advisable for the assurance
of payment of the bonds thereby authorized and as
may thereafter be issued.

§8-20-7. Lien of bondholders.
1 There shall be and there is hereby created and granted
2 a statutory mortgage lien upon such combined water-
works and sewerage system which shall exist in favor
3 of the holder of bonds hereby authorized to be issued,
4 and each of them, and to and in favor of the holder of
5 the coupons attached to said bonds, and such combined
6 waterworks and sewerage system shall remain subject
7 to such statutory mortgage lien until payment in full
8 of the principal of and interest upon said bonds.
9 Any municipality in acquiring an existing waterworks
10 system may provide that payment therefor shall be made
11 by issuing revenue bonds and delivering the same at
12 such prices as may be agreed upon within the limitations
13 prescribed in section five hereof. Any revenue bonds
14 so issued in payment for such an existing waterworks
15 system shall for all purposes be regarded as partaking
16 of the nature of and as being secured by a purchase
17 money mortgage upon the property so acquired; and
18 the holders thereof shall have, in addition to any other
19 remedies and rights prescribed by this article, such
20 remedies and rights as may now or hereafter exist in law
21 in the case of purchase money mortgages.

§8-20-8. Covenants with bondholders.
1 Any ordinance authorizing the issuance of bonds here-
2 under, or any trust indenture with any banking institu-
3 tion or trust company, within or without the state, for
4 the security of said bonds, which any such municipality
5 is hereby empowered and authorized to enter into and
6 execute, may contain covenants with the holders of such
7 bonds as to:
8 (a) The purpose or purposes to which the proceeds
9 of sale of such bonds or the revenues derived from said
combined waterworks and sewerage system may be ap-
plied and the securing, use and disposition thereof, in-
cluding, if deemed desirable, the appointment of a trustee
or depository for any of such funds;

(b) The pledging of all or any part of the revenues
derived from the ownership, control or operation of such
combined waterworks and sewerage system, including
any part thereof heretofore or hereafter acquired, con-
structed, established, extended, equipped, added to, bet-
tered or improved or derived from any other sources,
to the payment of the principal of or interest thereon of
bonds issued hereunder and for such reserve or other
funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such
rates or charges for the use of the services and facilities
of the combined waterworks and sewerage system, in-
cluding the parts thereof heretofore or hereafter acquired,
constructed, established, extended, equipped, added to,
bettered or improved and the revision of same from time
to time, as will always provide revenues at least suffi-
cient to provide for all expenses of repair, maintenance
and operation of such combined waterworks and sewer-
age system, the payment of the principal of and interest
upon all bonds or other obligations payable from the
revenues of such combined waterworks and sewerage
system, and all reserve and other funds required by the
terms of the ordinance authorizing the issuance of such
bonds;

(d) The transfer from the general funds of the mu-
nicipality to the account or accounts of the combined
waterworks and sewerage system of an amount equal
to the cost of furnishing the municipality or any of its
departments, boards or agencies with the services and
facilities of such combined waterworks and sewerage
system;

(e) Limitations or restrictions upon the issuance of
additional bonds or other obligations payable from the
revenues of such combined waterworks and sewerage
system, and the rank or priority, as to lien and source
and security for payment from the revenues of such
combined waterworks and sewerage system, between
bonds payable from such revenues;
(f) The manner and terms upon which all bonds and
other obligations issued hereunder may be declared
immediately due and payable upon the happening of a
default in the payment of the principal of or interest
thereon, or in the performance of any covenant or agree-
ment with bondholders, and the manner and terms upon
which such defaults may be declared cured and the accel-
eration of the maturity of such bonds rescinded and
repealed;
(g) Budgets for the annual repair, maintenance and
operation of such combined waterworks and sewerage
system and restrictions and limitations upon expenditures
for such purposes, and the manner of adoption, modifica-
tion, repeal or amendment thereof, including the ap-
proval of such budgets by consulting engineers design-
ated by holders of bonds issued hereunder;
(h) The amounts of insurance to be maintained upon
such combined waterworks and sewerage system, or any
part thereof, and the use and disposition of the proceeds
of any insurance; and
(i) The keeping of books of account, relating to such
undertaking and the audit and inspection thereof, and
the furnishing to the holders of bonds issued hereunder
or their representatives, reports prepared, certified or
approved by accountants designated or approved by the
holders of bonds issued hereunder.

Any such ordinance or trust indenture may also con-
tain such other additional covenants as shall be deemed
necessary or desirable for the security of the holders
of bonds issued hereunder, notwithstanding that such
other covenants are not expressly enumerated above, it
being the intention hereof to grant to municipalities
plenary power and authority to make any and all cove-
enants or agreements necessary in order to secure greater
marketability for bonds issued hereunder as fully and
to the same extent as such covenants or agreements
could be made by a private corporation rendering similar
services and facilities and to grant to municipalities full
and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state.

1 Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said combined waterworks and sewerage system, or any part thereof, or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, is outstanding and unpaid.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; delinquent rates or charges as liens; civil action for recovery thereof.
1 The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such municipality shall have
15 plenary power and authority to charge the users for the
16 use and service of such combined waterworks and sewer-
17 age system and to establish rates or charges for such pur-
18 pose. Separate rates or charges may be fixed for the
19 water and sewer services respectively or combined rates
20 or charges for the combined water and sewer services.
21 Such rates or charges, whether separate or combined,
22 shall be sufficient at all times to pay the cost of repair,
23 maintenance and operation of the combined waterworks
24 and sewerage system, provide an adequate reserve fund
25 and adequate depreciation fund and pay the principal of
26 and interest upon all revenue bonds issued under this
27 article. Rates or charges shall be established, revised and
28 maintained by ordinance and become payable as the gov-
29 erning body may determine by ordinance, and such rates
30 or charges shall be changed from time to time as needful,
31 consistent with the provisions of this article.
32 Such rates or charges whenever delinquent, as pro-
33 vided by ordinance of the municipality, shall be liens for
34 the amount thereof upon the real property served, and
35 the municipality shall have plenary power and authority
36 from time to time to enforce such lien in a civil action to
37 recover the money due for such services rendered plus
38 a reasonable attorney's fee.

§8-20-11. Discontinuance of water service for nonpayment
of rates or charges.
1 Any such municipality shall also have plenary power
2 and authority, and may covenant with the holders of any
3 bonds issued hereunder, to shut off and discontinue the
4 supplying of the water service of said combined water-
5 works and sewerage system for the nonpayment of the
6 rates or charges for said water service or sewer service,
7 or both.

§8-20-12. Use of revenues; sinking fund.
1 All revenues derived from the operation of any com-
2 bined waterworks and sewerage system under the pro-
3 visions of this article shall be set aside as collected and
4 used only for the purpose of paying the cost of repairing,
5 maintaining and operating such system, providing an
adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the combined waterworks and sewerage system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued.


Any municipality operating a combined waterworks and sewerage system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such combined waterworks and sewerage system and the application of the same. At least once each year such municipality shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times.

§8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system.
§8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the combined waterworks and sewerage system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined waterworks and sewerage system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which such bonds have been issued or trust indenture, or both.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-20-16. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Any municipality is hereby empowered and authorized to accept grants, and procure loans or temporary advances, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined waterworks and sewerage sys-
tems and the construction of additions, betterments and
improvements thereto, from the United States of America
or any federal or public agency or department of the
United States or any private agency, corporation or in-
dividual, which loans or temporary advances may be
repaid out of the proceeds of bonds authorized to be
issued under the provisions of this article and to enter
into the necessary contracts and agreements to carry
out the purposes hereof with the United States of
America or any federal or public agency or department
of the United States, or with any private agency, corpora-
tion or individual.

In no event shall any such loan or temporary advance
be a general obligation of the municipality and such
loans or temporary advances, including the interest
thereon, shall be paid solely from the proceeds of the
bonds authorized to be issued under the provisions of this
article or the revenues of the combined waterworks and
sewerage system so recited in each such contract and
agreement.

§8-20-17. Additional and alternative method for constructing,
extc., and financing combined waterworks and
sewerage system; cumulative authority.

This article shall, without reference to any other statute
or charter provision, be deemed full authority for
the acquisition, construction, establishment, extension,
equipment, additions, betterment, improvement, repair,
maintenance and operation of or to the combined water-
works and sewerage system herein provided for and for
the issuance and sale of the bonds by this article author-
ized, and shall be construed as an additional and alterna-
tive method therefor and for the financing thereof, and
no petition, referendum or election or other or further
proceeding with respect to any such undertaking or to
the issuance or sale of bonds under this article and no
publication of any resolution, ordinance, notice or pro-
ceeding relating to any such undertaking or to the is-
suance or sale of such bonds shall be required, except
as prescribed by this article, any provisions of other
statutes of the state to the contrary notwithstanding:
Provided, That all functions, powers and duties of the state department of health and the division of water resources of the department of natural resources shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART V. OPERATION BY BOARD; CONSTRUCTION.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

(a) As an alternative to the procedure hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined waterworks and sewerage system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

(b) In the event that the waterworks or sewerage system or both are in existence prior to the creation of the combined waterworks and sewerage system, and the waterworks or sewerage system or both are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this section is to be followed with respect to the supervision and control of the combined waterworks and sewerage system, the governing body may by ordinance, after the
creation of the combined waterworks and sewerage system, provide (1) the manner of and procedure for transferring such supervision and control from each such separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined waterworks and sewerage system, or (2) the manner of and procedure for combining each such separate committee, board or commission into one committee, board or commission and transferring thereto such supervision and control as aforesaid.

§8-20-19. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSIONERS.

PART I. ESTABLISHMENT; ORGANIZATION.

§8-21-1. Cities may establish board.

Every city is hereby empowered and authorized to provide for by charter provision, or to create by ordinance, a board of park and recreation commissioners, for the purpose of establishing, constructing, improving, extending, developing, maintaining and operating a city public park and recreation system.

§8-21-2. Board a public corporate body; perpetual existence; seal; name; powers.

The board of park and recreation commissioners provided for by charter provision, or created by ordinance, pursuant to the authority of this article, shall be a public corporate body, with perpetual existence and a common seal. It shall be known as the board of park and recreation commissioners of such city. It shall have the power to purchase, hold, sell and convey real or personal property; receive any gift, grant, donation, bequest or devise; sue and be sued; contract and be contracted with; and do any and all things and acts which may be necessary, appropriate, convenient or incidental to carry out and effectuate the purposes and
provisions of this article. For convenience of reference
herein, the board of park and recreation commissioners
will be hereinafter referred to as the "board."

§8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

1. The board shall consist of not less than three nor
more than five members as may be provided by charter
provision or ordinance, a majority of whom shall con-
stitute a quorum for the transaction of business, except
as hereinafter in this article provided. Each member
of said board must be a resident and freeholder of the
city. It may be provided either by charter provision
or by ordinance for the appointment of the members
thereof by the governing body, but unless and until
such provision is made, the members of the board shall
be elected by the qualified voters of the city at appro-
priate regular municipal elections. Membership on the
governing body shall not disqualify any member for
election to the board. If provision is made for the
appointment of members as aforesaid and the board
consists of three or four members, one member of the
governing body, if otherwise qualified, may be appointed
by the governing body, and if the board consists of five
members not more than two members of the governing
body so qualified may be so appointed. The term of the
board membership of any such member of the governing
body so appointed shall continue during his term as a
member of such governing body and until his successor
is appointed or elected and qualified. The terms of other
appointed or of elected members shall be for six years,
and until their successors have been duly appointed
or elected and qualified: Provided, That notwithstanding
the fact that there be no charter provision or ordinance
for appointment of the members of the board, the gov-
erning body of the city shall appoint the members of
the first board, such appointees to serve, one for a term
of six years, one for a term of four years, and one for
a term of two years. The date upon which the terms
of such board members shall begin shall be specified
by ordinance. When any member of the board, during
his term of office, shall cease to be a resident and free-
holder of the city, he shall thereby be disqualified as a
member of said board and his office shall thereupon
come vacant.

§8-21-4. Filling vacancies.
1 When a vacancy occurs on said board by reason of
death, resignation, change of residence from the city,
failure to remain a freeholder of the city, or due to
any other cause, the remaining member or members of
said board shall appoint a successor or successors, or
if there should be no members left on said board, the
governing body of the city shall appoint successors, and
in either event, the appointments shall be for the unex-
pired term or terms.

§8-21-5. Oath of members; organization of board; secretary;
treasurer.
1 After appointment or election, the members of the
board shall qualify by taking and filing with the recorder
of the city the oath prescribed by law for public officials,
and they shall not be permitted to serve upon said board
until they have so qualified. If any member of said
board shall fail to so qualify on or before the date upon
which he should assume the duties of his office, a vacancy
shall exist which shall be filled as provided in section
four of this article.
10 At the first meeting held after the first board has been
appointed, as hereinbefore provided, and thereafter on
date to be fixed by ordinance, the members of the
board shall organize by electing one of their number
president, and another vice president, and by electing
a secretary who need not be a member of the board.
The secretary shall keep an accurate record of all the
fiscal affairs of the board, and shall keep a minute book
in which he shall record the proceedings and transactions
of each meeting of the board. The secretary shall be
paid such compensation for his services as the board
shall fix from year to year. The city treasurer shall be
ex officio treasurer of said board, and he shall take the
oath prescribed by law and shall furnish such bond as
may be required by said board.
§8-21-6. Members to be paid expenses; members not to be personally interested in contracts or property controlled by board.

1 The members of said board shall receive no compensation for their services but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as members of said board. They shall not be personally interested, directly or indirectly, in any contract entered into by said board, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as members of said board.

PART II. POWERS.

§8-21-7. Office; powers.

1 The governing body shall furnish said board an office in the city building where it may hold its meetings and keep its records. Any board operating under the provisions of this article shall have complete and exclusive control and management of all of the properties which shall be operated in connection with the public park and recreation system for the city, and shall have power to employ such persons as, in its opinion, may be necessary for the establishment, construction, improvement, extension, development, maintenance or operation of the property under its control, at such wages or salaries as it shall deem proper, and shall have full control of all employees.

§8-21-8. Purchase, lease or condemnation of real property.

1 The board is hereby granted the power and authority to acquire in its name or in the name of the city by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such land or lands as it shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a system of public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas
§8-21-9. Authority to take title to real and personal property; conveyances of real property to board by public bodies; sales and conveyances of real property by board; execution of deeds.

The board is hereby empowered and authorized to take title in its name or in the name of the city to all real and personal property acquired by it for the use of the public or useful to the public in the establishment, construction, improvement, extension, development, maintenance or operation of all public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and all other public park and recreational facilities for the city, whether of a like or different nature, and shall manage and dispose of the same as, in its opinion, will best serve the interests of the public in carrying out the purposes of this article. The city and all other public bodies owning real property intended to be used for public parks and recreation are hereby authorized to convey the same to said board to be held by it for such purposes, and said board is hereby authorized to receive the same. Nothing contained in this chapter shall be construed as limiting said board from going beyond the corporate limits of the city, anywhere within the state, to lease, purchase or otherwise acquire any real property for the purposes herein set forth. The board shall have the right to sell and convey only such part of the real property that it may acquire by gift, devise, purchase or otherwise, as it may determine to be of no advantage in the establishment, construction, improvement, extension, development, maintenance or operation of said public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities, whether of a like or different nature; except that the board shall have the power and authority to make such sales and conveyances of its real property as may be necessary, appropriate or convenient to enable the city to obtain the benefits of article sixteen of this chapter or any other similar act or legislative
authorization. Under no circumstances shall any of such
real property of the board be sold or conveyed except
by unanimous vote of all of the members of said board.
All deeds conveying the real property of said board shall
be executed in its official name by its president or vice
president, shall have its seal affixed and shall be duly
attested by its secretary.

§8-21-10. General powers of board; enactment and enforce-
ment of rules and regulations; counsel.

1. The board shall have the necessary, appropriate, con-
venient and incidental powers and authority to manage
and control all public parks, parkways, playgrounds,
athletic fields, stadiums, swimming pools, skating rinks
or arenas and other public park and recreational facilities
of all kinds used as a part of said public park and recrea-
tion system or as a means of maintaining places of beauty,
education and recreation, and promoting the health,
property, lives, decency, morality and good order of the
general public, and particularly of the inhabitants of the
city and vicinity; to abate or cause to be abated all
nuisances affecting same; to regulate or prohibit the sell-
ing of any article, goods, wares or merchandise within
said park and recreation system so designated; to regulate
or prohibit the placing of signs, billboards, posters and
advertisements within said park and recreation system
as so designated, or the grounds immediately adjacent
thereto; to have the same kept in good order and free
from obstruction for the use and benefit of the public;
to restrict and prohibit vagrants, mendicants, beggars,
tramps, prostitutes or disorderly individuals therefrom;
to establish, construct, improve, extend, develop, main-
tain and operate such parks, parkways, playgrounds,
athletic fields, stadiums, swimming pools, skating rinks
or arenas and other public park and recreational facilities,
whether of a like or different nature, on any grounds
to be controlled by said board; to acquire for public use by
lease or otherwise lands either within or without the
corporate limits of the city; to cause any public street,
avenue, road, alley, way, bridle path or walkway, which
is a part of the public park and recreation system, to be
graded, drained and surfaced; to construct, maintain and
operate all necessary sewers and water lines in connec-
tion with said public park and recreation system; and
to do any and all other things or acts which may in any
way be necessary, appropriate, convenient or incidental
to the use and enjoyment of said public park and recrea-
tion system by the general public as a place or places of
beauty, education, entertainment and recreation.

In order to accomplish the foregoing purposes, said
board is hereby empowered and authorized to promulgate,
and amend from time to time, such rules and regulations
as may be necessary, appropriate, convenient or inci-
dental thereto; after codification of such rules and regula-
tions, or any amendments thereto, by ordinance of the
governing body which may provide penalties for a viola-
tion thereof, which codification is hereby authorized, to
enforce the same by appropriate proceedings in any
proper tribunal of this state, or any county, district or
municipality thereof; and to employ such police officers
as it shall deem proper and necessary. The city attorney
shall be the official counsel for said board and shall advise
it on all legal matters, but said board may, in its own
discretion, employ other or additional counsel.

PART III. FINANCING.

§8-21-11. Charges for use of recreational facilities; use of
funds.
1 The board may make reasonable charges to the public
for the privilege of using any of the recreational facili-
ties provided in said park and recreation system and
may use the funds so received for the purpose of estab-
lishing, constructing, improving, extending, developing,
maintaining or operating said park and recreation system.

§8-21-12. Use of city appropriations and other funds.
1 In carrying out the purposes of this article, the board
is hereby empowered and authorized to receive and
disburse for such purposes, any moneys appropriated
to it by the governing body of the city, together with
any other funds which may come into its hands by gift,
grant, donation, bequest, devise, or from its own opera-
tion, or otherwise.

Every city is hereby empowered and authorized to issue, in the manner prescribed by law, bonds for the purpose of raising funds to establish, construct, improve, extend, develop, maintain or operate, or any combination of the foregoing, a system of public parks and recreational facilities for such city, or to refund any bonds of the city, the proceeds of which were expended in the establishment, constructing, improving, extending, developing, maintaining or operating of such public park and recreation system, or any part thereof. Any bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the words "public park and recreation bonds," in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city. The governing body may provide for the issuance of bonds for other lawful purposes of the city in the same ordinance in which provision shall be made for the issuance of bonds under the provisions of this section. The board shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park and recreation bonds only. The costs and expenses of holding an election to authorize the issuance of public park and recreation bonds and bonds for other city purposes shall be paid by the board and the city respectively, in the proportion that the public park and recreation bonds bear to the total amount of bonds authorized.

Whenever the governing body of the city and the requisite majority of the legal votes cast at the election thereon shall authorize, in the manner prescribed by law, the issuance of bonds for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a system of public parks and recreational facilities for the city, or for refunding any outstanding bonds, the proceeds of which were applied to any of said purposes, said bonds shall be issued and delivered to the board to be by it sold in the manner prescribed by law, and the proceeds thereof shall be paid into the treasury.
of the board, and the same shall be applied and utilized
by the board for the purposes prescribed by the ordi-
nance authorizing the issuance of such bonds. In any
ordinance for the issuance of bonds for such purposes,
it shall be a sufficient statement of the purposes for
creating the debt to specify that the same is for the
purpose of establishing, constructing, improving, extend-
ing, developing, maintaining or operating, or any com-
bination of the foregoing, a public park and recreation
system for the city, without specifying the particular
establishment, construction, improvement, extension,
development, maintenance or operation contemplated;
but an ordinance for refunding bonds shall designate
the issue and the number of bonds which it is proposed
to refund.

PART IV. CONSTRUCTION.

§8-21-14. Construction of article.

The provisions of this article shall be construed as con-
ferring additional power and authority upon cities acting
hereunder, and shall not be construed as affecting any
power or authority heretofore conferred upon any city
by the Legislature by general, special or local law or
municipal charter, or parts thereof.

ARTICLE 21. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIREMEN'S
PENSION AND RELIEF FUND; PENSION PLANS
FOR EMPLOYEES OF WATERWORKS SYSTEM,
SEWERAGE SYSTEM OR COMBINED WATER-
WORKS AND SEWERAGE SYSTEM.

PART I. PARTICIPATION IN STATE PUBLIC EMPLOYEES
RETIREMENT SYSTEM.

§8-22-1. Membership in public employees retirement system.

Any municipality may elect to become a participating
public employer under the West Virginia public em-
ployee retirement system created and established by,
and administered pursuant to, the provisions of article
ten, chapter five of this code, for the coverage of all
employees eligible under the provisions of said article
ten, except policemen and firemen covered by a police-
§8-22-2. Class I and Class II cities empowered and authorized to establish and maintain "employees' retirement and benefit fund" or to maintain such fund heretofore established.

Every Class I and Class II city which is not a participating public employer in the said West Virginia public employees retirement system is hereby empowered and authorized to and may establish and maintain an "employees' retirement and benefit fund" in accordance with the provisions of this section two and sections three through fourteen of this article. Any Class I or Class II city which has heretofore established such a fund in accordance with the acts of the Legislature referred to in section fifteen of this article may continue to maintain said fund in accordance with the provisions of this section two and sections three through fourteen of this article, or said acts, as specified in said section fifteen.


For the purpose of sections two through fifteen of this article:

(a) "Prior service credit" shall mean the number of years that the member has been in the service of the city prior to the effective date of the employees' retirement and benefit fund;

(b) "Earned service credit" shall mean the number of years that the member has contributed to the employees' retirement and benefit fund;

(c) "Total service credit" shall mean the total of all prior service credit and all earned service credit;

(d) "Fund" shall mean the employees' retirement and benefit fund;

(e) "Board" shall mean the board of trustees of the fund;

(f) "Member" shall mean an eligible employee of the city, who is a member of the fund;
(g) "Total disability in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, which shall be caused by accidental injury sustained in the course of the operations usual to his employment and while in line of duty, and shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment;

(h) "Total disability not in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, from any cause other than that set forth in subdivision (g) of this section;

(i) The term "actuarial equivalent" shall mean an annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund;

(j) "Monthly salary" shall mean the amount earned each month by a member as an employee of the city: Provided, That to and including June thirty, one thousand nine hundred sixty-seven, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits shall be four hundred dollars per month; and

(k) "Average salary" shall mean the highest annual average salary earned by a member during a period of five consecutive years within the total service of the member, subject to a maximum amount of four hundred dollars per month to and including June thirty, one thousand nine hundred sixty-seven, and no such maximum amount after such date.

§ 22-4. Board of trustees.

The governing body of each such city desiring to establish and maintain a fund as authorized in sections two through fourteen of this article shall by ordinance provide for a board of trustees of the fund.
The said board of trustees shall consist of the mayor and four members of the fund, to be appointed by the mayor, with the advice and consent of a majority of the members of the fund. The initial appointments shall be for a term of one, two, three and four years, respectively, after which all appointments shall be for a term of four years.

The presiding officer of the board shall be the mayor, and the secretary thereof shall be appointed by said board. It shall be the duty of such secretary to keep a full and permanent record of all the proceedings of the board, and said board may fix his compensation for this work which shall be paid out of said fund.

The mayor or any three members of the board shall have the power to call a meeting at any time that it is necessary in order to carry out the business of the board. Three members of the board shall constitute a quorum to transact business, but it shall require three or more affirmative votes to pass any matter before the board.

The board shall have charge of and administer the fund and shall order payments therefrom, and no money shall be paid out of the fund except upon the order of the board.

The governing body shall have plenary power and authority to make any and all rules and regulations pertaining to the fund not inconsistent with the provisions of sections two through fifteen of this article, the constitution and the laws of this state.

Such board shall be a public corporation by the name and style of "The Board of Trustees of the Employees' Retirement and Benefit Fund of (name the city)," by which name the board may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property, for the use of said fund, and have and use a common seal. Said board may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of said board.
§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

(1) Appointive members of administrative boards and commissions, except employees of such boards and commissions;

(2) Individuals employed under contract for a definite period or for the performance of a particular or special service;

(3) Employees serving on a part-time basis of less than one-half time;

(4) Policemen and firemen covered by a policemen's pension and relief fund or firemen's pension and relief fund;

(5) Employees who are paid in part by the state, county or other governmental agency, and only in part by the city;

(6) Employees who are past sixty years of age on the effective date of the fund; and

(7) Employees who are hired after the effective date of the fund and who were past fifty years of age at the time they were so employed.

In case of doubt, the board of trustees of the fund may make determination as to any individual's eligibility to become a member of the fund.

All employees eligible for participation at the effective date of the fund shall become members of the fund, unless they file a written election not to become a member within thirty days after the effective date of the fund.

§8-22-6. Contributions; prior, earned and total service credits; service breaks.

Until June thirty, one thousand nine hundred sixty-seven, each member shall pay into the fund six percent of his monthly salary up to four hundred dollars a month. After June thirty, one thousand nine hundred sixty-seven, each member shall contribute six percent of his monthly salary without any such maximum limitation.
Each member shall continue to make such contributions until such time as such member retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of "earned service credit."

For prior service, each participating employee, in the employ of the city on the effective date of the fund, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund. Any employee who is in the employ of the city on the effective date of the fund and who becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous. Any individual who is not in the employ of the city on the effective date of the fund but who has been employed by the city in the past shall be entitled to prior service credit if he returns to the service of the city within two years from the date of termination of his service and becomes a member of the fund within such two-year period.

A member upon separation from the service shall be entitled to withdraw his contributions without interest in lieu of any benefits to which he may be entitled. If such employee returns to the service of the city within two years and becomes a member of the fund, he shall be considered as a new employee and shall have forfeited all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus four percent interest compounded annually on said amount during the time he was separated from the service. If, however, the break in service of such member is more than two years, he shall not be entitled to any prior service credit nor shall he be entitled to redepsoit withdrawals but he shall reenter the fund as a new member.


(a) After the effective date of the fund, any member of the fund who has at least ten years of total service credit shall receive a vested right to a retirement pension which he may exercise upon, or after attainment of age sixty. When he has attained the age of sixty years he
may, at his option, apply for a retirement pension, the
amount thereof to be determined in accordance with
the provisions of subsection (d) of this section.

(b) Retirement for all members of the fund shall
be compulsory at the age of sixty-five, subject to the
following conditions: The employee may be permitted
to continue in the service if he so desires and if his
services are still valuable to the city. Whether an
employee’s services are valuable at the age of sixty-five
shall be determined by the appointing officer of the
city. If he determines that such services are valuable,
his determination must be certified to the board for
approval. If the board approves, the employee may
continue in the service of the city. The appointing
officer shall annually certify to the board relative to the
ability and competency of all employees over age sixty-
five. The amount of any pension under the provisions
of this subsection shall be determined in accordance
with the provisions of subsection (d) of this section.

(c) Although he has not attained the age of sixty,
any member who has thirty-five years’ total service
and who becomes so physically or mentally disabled as
to render him unfit for the performance of the duties
of the position he occupies shall be entitled to an annual
retirement pension, the amount thereof to be determined
in accordance with the provisions of subsection (d) of
this section.

(d) A member of the fund, upon retirement, shall
be entitled to the following annual retirement pension,
payable in twelve monthly installments:

For thirty-five years of total service credit to and
including twenty-four years of total service credit, fifty
percent of average salary plus one and two-thirds per-
cent of average salary per year of service for each year
above twenty-three years;

For twenty-three years of total service credit, fifty
percent of average salary: Provided, That if a member
has twenty-three years of total service credit he shall
be entitled to a minimum retirement pension of one
hundred dollars per month;
For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;

For seventeen years of total service credit, forty-one percent of average salary;

For sixteen years of total service credit, thirty-nine percent of average salary;

For fifteen years of total service credit, thirty-six percent of average salary;

For fourteen years of total service credit, thirty-three percent of average salary;

For thirteen years of total service credit, thirty-one percent of average salary;

For twelve years of total service credit, twenty-nine percent of average salary;

For eleven years of total service credit, twenty-seven percent of average salary; and

For ten years of total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(e) With the condition that no optional benefit shall be effective if the member dies within thirty days after the effective date of his retirement, such member may elect at least one year prior to such effective date of his retirement to receive a lesser retirement pension, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement pension shall be continued throughout
the life of and paid to such individual having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one-half of his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life as he shall have named in a written designation duly acknowledged and filed with the board.

(f) A member who has attained the age of sixty years and who has less than ten years' total service credit shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation account at the time of his retirement.

§8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under any one of the following mutually exclusive provisions:

(1) If a member receives total disability in line of duty, he shall be entitled during the time of his disability to a monthly disability pension equal to fifty percent of the monthly salary of the member at date of disability: Provided, That the minimum payment shall be one hundred dollars per month.

(2) If a member receives total disability not in line of duty while an employee of the city after he has had at least ten years' total service credit and such member is not entitled to a retirement pension under the provisions of section seven of this article, he shall be entitled during the time of his disability to one-half of the retirement pension to which he would have been entitled under the provisions of said section seven had he been sixty years of age at date of disability and had elected to take retirement: Provided, That he shall be entitled to a minimum payment of fifty dollars per month and a maximum payment of one hundred dollars per month.

(3) If a member becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies, but his disability does not constitute either total disability in line of duty
or total disability not in line of duty, and such member has less than ten years' total service credit, he shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation at the date of his disability.

The board of trustees of the fund shall order a periodic reexamination of members of the fund receiving a disability pension, and if the disability no longer exists the payment thereunder shall be discontinued: Provided, That no such reexamination of any such member shall be ordered as aforesaid after such member attains the age of sixty years.


(a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

(1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed one hundred and twenty-five dollars per month. In the event there be no surviving spouse, or if remarriage occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member's final monthly salary, subject to a total payment to all such children of fifty percent of such final monthly salary, or one hundred twenty-five dollars per month, whichever is the lesser. If there be no surviving spouse or children under age eighteen, the deceased member's dependent father or mother or both, the question of dependency to be determined by the board, shall each be entitled until death to a monthly payment equal to one-sixth of the deceased member's final monthly salary, but the payment to either parent shall not exceed fifty dollars per month.
(2) If the member died from any cause other than that stated in subdivision (1) of this subsection, and such member at the date of his death had ten or more years' total service credit, his beneficiary or beneficiaries shall be entitled, for a period not to exceed ten years, to death benefits in accordance with the retirement pension table contained in section seven of this article. The death benefits shall be paid to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board. As to any spouse beneficiary, the marriage must have occurred at least one year prior to the death of the member in order that the spouse may be eligible for benefits under this subdivision (2).

(b) If a member receiving a retirement pension under the provisions of section seven of this article at the date of his death dies with a spouse surviving [concerning which retirement pension the optional benefit provisions set forth in subsection (e) of said section seven are not applicable], and such member had been receiving such retirement pension for less than ten years, such surviving spouse shall be entitled to receive death benefits equivalent to the deceased member's retirement pension for the remaining period of ten years dating from the date of the member's retirement; but a surviving spouse shall not be entitled to death benefits under the provisions of this subsection unless such surviving spouse was married to the member before the date of his retirement and such marriage took place at least one year prior to the date of the death of the member. If the surviving spouse remarries, such spouse's death benefits shall be terminated and shall not be resumed upon subsequent change in the marital status of such spouse.

(c) If a member dies with less than ten years' total service credit so that he was not entitled to a retirement pension during life, the member's total contributions to the fund, without interest, shall be returned to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board, and in the absence of any such designation, to the member's estate.
§8-22-10. Contributions by the city.
1 The governing body shall annually provide sufficient
2 funds in the budget of the city, on an actuarially funded
3 basis, to provide for the funded requirements of the fund
4 for current service of the employees over and above
5 the amount contributed by the members, plus an amount
6 to pay the cost of administration of the fund.
7 The city shall also contribute to the fund the amount
8 required, at three and one-half percent interest per
9 annum, to amortize, over a period not to exceed forty
10 years from July one, one thousand nine hundred sixty-
11 seven, any unfunded accrued liability at that date.

§8-22-11. Investment of funds.
1 The board shall keep as an available sum for the pur-
2 pose of making retirement, disability and death payments
3 and administration expense an amount estimated to meet
4 such payments for a period not to exceed ninety days.
5 It shall have full power and authority in its sole discre-
6 tion to invest and reinvest any moneys received by it
7 in the following types of securities: (a) Direct general
8 obligations of the United States government or of this
9 state; (b) direct general obligations of any municipality,
10 county or school district in this state; (c) bonds or
11 debentures of any utility corporation, industrial cor-
12 poration or railroad corporation organized under the
13 laws of any state of the United States, rated "A" or
14 better by any two security rating concerns, provided
15 interest shall have been paid by the corporation on its
16 indebtedness for at least the ten years last past; and
17 (d) federally insured mortgages under sections two hun-
18 dred three and two hundred seven of the national hous-
19 ing act.

§8-22-12. Individual accounts; actuarial data; tables.
1 The board of trustees shall maintain an Individual
2 account with each member, showing the amount of the
3 member's contributions and the interest accumulations
4 thereon. It shall collect and keep in convenient form
5 such data as may be necessary for the preparation of
6 the required mortality and service tables, and for the
7 compilation of such other information as may be needed
for the actuarial valuation of the fund. The board of
trustees shall adopt appropriate tables for the purpose
of evaluating and computing retirement, disability and
death allowances.

§8-22-13. Reports by board of trustees.
1 At such times as the board of trustees may deem it
necessary, but at least once within the first three years
of the operation of the fund and each five-year period
thereafter, the board of trustees shall employ a competent
actuary to prepare a report containing an evaluation of
the present and prospective assets and liabilities of the
fund.
2 The board of trustees shall submit to the governing
body an annual report showing the condition of the fund
under its control. It shall certify in such report the
amount of accumulated cash and securities in the fund
and shall present a full account of the operation of the
system.

§8-22-14. Custodian of fund; duties; bond.
1 The treasurer of the city shall be the custodian of all
of the assets of the fund, and shall deposit and pay out
the moneys of the fund upon, and in accordance with,
any proper order of the board of trustees. Such treasurer
shall be liable upon his official bond as treasurer for the
faithful performance of his duties in respect to such
fund, and the official bond of the treasurer covering such
fund shall be executed with a good and financially respon-
sible surety company, authorized to do business in this
state, as surety for such fund. Such fund shall not be
used for any other purpose than provided in sections two
through fourteen of this article.

§8-22-15. Action by city required before new provisions are
applicable.
1 Notwithstanding any provisions in sections two through
fourteen of this article to the contrary, the provisions
of said sections two through fourteen shall not be ap-
plicable to any fund established by any city prior to the
effective date of this section, unless and until such city
shall by ordinance provide for the application thereof.
In the absence of any such ordinance, any such established fund shall be governed and controlled by and administered in accordance with the provisions of chapter one hundred fourteen, acts of the Legislature, regular session, one thousand nine hundred forty-seven, and the amendments by (1) chapter ninety-two, acts of the Legislature, regular session, one thousand nine hundred forty-nine, (2) chapter one hundred twenty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-five, and (3) chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, if and only if an ordinance were adopted on and after May eight, one thousand nine hundred sixty-eight, and prior to the effective date of this section providing for the application of said chapter thirty-nine.

PART III. POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; boards of trustees; definition; continuance of funds.

In every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen’s pension and relief fund, and for a firemen’s pension and relief fund, for the purposes herein-after enumerated, and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and sections seventeen through twenty-eight of this article, the term “paid police department” or “paid fire department” shall be taken to mean only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-
time basis out of public funds. The term shall not be
taken to mean any such department whose employees
are paid nominal salaries or wages or are only paid for
services actually rendered on an hourly basis.

Unless and until other provision is made by subse-
quent legislative action, any policemen’s pension and
relief fund and any firemen’s pension and relief fund
established in accordance with the provisions of former
article six of this chapter or this article twenty-two
shall be or remain mandatory and shall be governed by
the provisions of sections sixteen through twenty-eight
of this article twenty-two (with like effect, in the case
of a Class III city or Class IV town or village, as if such:
Class III city or Class IV town or village were a Class
1 or Class II city), and shall not be affected by the transi-
tion from one class of municipal corporation to a lower
class as specified in section three, article one of this
chapter.

§8-22-17. Powers of boards of trustees.

1 Such board of trustees, or boards of trustees, shall be
public corporations by the name and style of “The Board
of Trustees of the Policemen’s Pension and Relief Fund
of (name of municipality),” or “The Board of Trustees
of the Firemen’s Pension and Relief Fund of (name of
municipality),” as the case may be, by which names they
may sue and be sued, plead and be impleaded, contract
and be contracted with, take and hold real and personal
property for the use of said policemen’s pension and
relief fund or said firemen’s pension and relief fund
and have and use a common seal. In the absence of such
a seal, the seal of the president of any such corporation
shall be equivalent to such common seal. Any such board
of trustees may also in its corporate name do and perform
any and all other acts and business pertaining to the
trust created hereby or by any conveyance, devise or
dedication made for the uses and purposes of said board.

§8-22-18. Members of board of trustees; how elected; presiding
officers; secretary.

1 The board of trustees of the policemen’s pension and
relief fund shall consist of the mayor of the municipality
and four members of the paid police department, to be
chosen as hereinafter in this section specified. The mayor
of such municipality shall give notice of an election
to be held on the second Monday of the month following
the adoption of the ordinance providing for the estab-
lishment and maintenance of such fund, which notice
shall be served upon each member of the paid police
department and which shall notify each member that
between the hours of nine in the forenoon and six in
the afternoon, on the day designated for such election,
an election will be held for such purpose and that each
member shall furnish in writing the names of four
members of the paid police department voted for; and
all votes so cast shall be counted and canvassed by the
mayor and the governing body for the first election,
and thereafter the votes shall be counted by the then
existing members of such board, who after such election
shall announce the results, and the four members of
the paid police department receiving the highest num-
ber of votes shall, with the mayor, constitute “The Board
of Trustees of the Policemen’s Pension and Relief Fund
of (name of municipality).” As to the first election
held following the adoption of the ordinance providing
for the establishment and maintenance of such fund,
the member receiving the highest number of votes
shall serve for a period of four years, the member
receiving the second highest number of votes shall serve
for a period of three years, the member receiving the
third highest number of votes shall serve for a period
of two years, and the member receiving the fourth
highest number of votes shall serve for a period of one
year. After such first election, the board shall hold a
similar election each year to elect one member to suc-
ceed, for a term of four years, the retiring member.
In the case of a tie vote being received by any two
individuals for the office of trustee, such tie vote shall
be decided by casting lots, or in any other way which
may be agreed upon by the individuals for whom such
tie vote was cast. The results of such election shall be
entered in the record of the proceedings of the board
and the members so elected shall, except as hereinabove
specified with respect to the first election, serve for
four years and until their successors are elected and
have qualified. The election for such members of the
board of trustees shall be held annually upon the
second Monday of the same month during which the
first election was held. In case of a vacancy by death,
resignation, or otherwise, among the members so
elected, the remaining members of the board shall
choose the successor, or successors, until the next annual
election at which latter time all vacancies shall be
filled.

The board of trustees of the firemen’s pension and
relief fund shall consist of the mayor of the municipality and four members of the paid fire department,
to be chosen in the same manner and for such terms
as is provided above in this section for the election
of policemen to the policemen’s pension and relief fund
board of trustees.

The presiding officer of any such board of trustees
shall be the mayor of the municipality, and the secre-
tary thereof shall be appointed by the board. It shall
be the duty of such secretary to keep a full and per-
manent record of all of the proceedings of the board,
and said trustees may fix the secretary’s compensation
for this work, which shall be paid out of the funds of
said policemen’s pension and relief fund or firemen’s
pension and relief fund, as the case may be.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on
members of departments; return of assessments.

1 In every municipality in which there shall be a
policemen’s pension and relief fund or a firemen’s pension
and relief fund, or both, the same shall be maintained
as follows: The governing body of the municipality
shall levy annually and in the manner provided by
law for other municipal levies, and include within the
maximum levy or levies permitted by law, and if neces-

sary in excess of any charter provision, a tax at such
rate as will, after crediting all interest, if any, to be
received in such year from the investments of the
respective boards, provide funds equal to the sum of
(1) the full amount of estimated expenditures of the
boards of trustees of the respective funds, and (2) an
additional amount equal to ten percent of such estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, That in no event shall such levy for each of the respective boards of trustees be less than one cent nor more than five cents on each one hundred dollars of all real and personal property as listed for taxation in such municipality.

The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditure thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any such fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of four percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the fireman's pension and relief fund, if collected from a fireman.

Any member of a paid police or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his connection with said department, provided he has served two full years or more, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest. In the event such refund is made and such member subsequently reenters the
department no credit shall be allowed him for any
former service, unless any such member of a paid police
or fire department repays to the pension and relief
fund all sums refunded to him within one year from
the date he reenters the department with interest at
the rate of six percent per annum: Provided, however,
That any member who, on or before June three, one
thousand nine hundred fifty-five, reentered the paid
colice or fire department shall be allowed credit for
any former service in the same department reentered
if he within one year from said June three, one thousand
nine hundred fifty-five, repaid all sums withdrawn or
refunded to him with interest at the rate of six percent
per annum, but in no case shall interest be charged
for more than three years. Any probationary member
of a paid police or fire department who is not given
an absolute appointment at the end of his probationary
period shall, upon request, be refunded all pension and
relief fund deductions made from his salary or com-
ensation, but without interest.

§8-22-20. When arrest fee to be collected for municipal policemen's pension and relief fund.

1 In case of conviction for violation of any municipal
2 ordinance or any state law of any person arrested by
3 any member of the paid police department of any
4 municipality having a policemen's pension and relief
5 fund, or of the forfeiture of bail not vacated after arrest
6 for violation of any municipal ordinance or any state
7 law by any person so arrested, whether the conviction
8 or forfeiture be in the court of a justice of the peace,
9 or in the mayor's court of a municipality, or in the
10 police court or municipal court of a city, or in any
11 other court of criminal jurisdiction, an arrest fee of one
dollar shall be taxed as part of the costs, in addition
to other fees authorized by law, and shall be collected
from the person convicted or furnishing bail, and such
arrest fee shall be paid into the policemen's pension
and relief fund of the municipality of the arresting
officer.

1 The treasurer of the municipality shall be the custodian of all of the assets of the policemen's pension and relief fund and shall deposit and pay out the moneys thereof upon, and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such fund or funds. Such fund or funds shall be trust funds and shall not be used for any other purpose than provided herein.

§8-22-22. How trustees of funds to invest moneys received; annual report.

1 The said board of trustees shall invest any moneys received by it either in interest-bearing general obligation bonds of the United States, or of this state, or of the municipality, or of the county or school district in which the municipality or any portion of the territory thereof may be located, or in improved real estate first lien security worth at least twice the amount loaned thereon, based on a sound appraisal by a competent appraiser and duly certified by him, or in savings accounts in state and national banking institutions to the extent that such accounts are insured by the federal deposit insurance corporation, or in state building and loan associations or federal savings and loan associations to the extent that such interests are insured by the federal savings and loan insurance corporation or by any other similar federal instrumentality that may be hereafter created, or in any combination of the foregoing investments. Said board of trustees shall make a report to the governing body of the municipality on the condition of its fund on the thirty-first day of December of each year.
§8-22-23. Rules and regulations as to distribution of funds; proof of age.
1 The board of trustees of the policemen's pension and relief fund and the board of trustees of the firemen's pension and relief fund shall make rules and regulations, not inconsistent with the provisions of sections sixteen through twenty-eight of this article, for the distribution of the moneys of such funds according to the qualifications of those to whom any portion of such moneys shall be paid and the amount thereof: Provided, That such rules and regulations shall not be enforced until the same have been approved by the governing body.

At the time of the original appointment of any member to the paid police or fire department, such member shall, at the request of the board of trustees, furnish to said board a certified copy of his birth certificate or other proof of his date of birth satisfactory to the board.


(a) If any member of any such paid police or fire department of any such municipality shall become and be found upon examination by a majority of a board of medical examiners, which board shall consist of not less than three physicians appointed by the board of trustees, to have become so physically or mentally permanently disabled by reason of service rendered in the performance of his duties in such department, as to render necessary his retirement from all service in such department, or if any member who has been such a member of either of such departments for a period of not less than five consecutive years preceding his disability become and be found upon such an examination to have become so physically or mentally permanently disabled, from any reason other than as specified above in this section, as to render necessary his retirement from all service in such department, such board of trustees shall retire such permanently disabled members from all service in such department; and said board of trustees of such pension and relief fund shall authorize the payment to each such permanently disabled member monthly from the
pension and relief fund a disability pension, the amount thereof to be determined as specified in subsection (f) of this section.

(b) If any member of any such department shall at any time be injured or become sick, regardless of the cause therefor, so as to render such member temporarily disabled, he shall be paid, during such disability for not exceeding twenty-six weeks, from said pension and relief fund temporary disability payments, the amount thereof to be determined as specified in said subsection (f) for the determination of payments under a disability pension.

(c) No member shall be eligible for any disability pension or any temporary disability payments unless such member shall have presented himself for an examination at the time of his appointment to the department and his condition was then approved by a majority of a board of medical examiners appointed as aforesaid by such pension board: Provided, That this provision shall not apply to any individual who became a member of either of said departments on or before March eight, one thousand nine hundred thirty-five. Any such pension board may, if it so elects, designate as a member or members of its board of medical examiners any physician or physicians appointed by the policemen's civil service commission or firemen's civil service commission of such municipality to conduct medical examinations on behalf of any such commission under the provisions of article fourteen or article fifteen of this chapter, as the case may be.

(d) Any member who has been heretofore, or shall hereafter be, allowed a disability pension or temporary disability payments under the provisions of sections sixteen through twenty-eight of this article may be required by such board to be reexamined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor of the municipality to return to duty in his former position in the paid police or fire department, as the case may be, and his disability pension or temporary disability payments shall be discontinued: Pro-
vided, however, That this provision shall not apply to any member until such member can and shall be restored to his former position in such department.

(e) All medical examinations conducted under the provisions of this section shall be ordered by the pension board.

(f) The monthly sum to be paid to each permanently disabled member of a paid police or fire department entitled thereto shall be equal to fifty percent of the monthly salary or compensation being received by such member, at the time he is so disabled, or the sum of one hundred fifty dollars per month, whichever shall be greater: Provided, That any member who is permanently disabled, after having served twenty years in such department, shall be entitled to such sum in twelve monthly installments as shall equal fifty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which he received his highest salary or compensation while a member of the department, and also one additional percent (to be added to the fifty percent) per each year served in excess of said twenty years (up to a maximum of five additional percent), or a total amount of one hundred fifty dollars per month, whichever shall be greater.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to fifty percent of such member's average annual salary or compensation received during the five fiscal years, not neces-
sarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of one hundred \$50 per month, whichever shall be greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the fifty percent authorized in said subsection (a), receive one additional percent, to be added to the fifty percent, per each year served in excess of said twenty years, up to a maximum of five additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department shall have reached the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixtieth birthday; and the mayor shall cause such sixty-five year old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection (d), such member, whether he has been employed in said department for twenty years or not, shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to fifty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of one
hundred fifty dollars per month, whichever shall be
greater, and if such member has been employed in said
department for more than twenty years, the provisions
of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid
police or fire department at the time a fund is hereafter
established to furnish the necessary proof of his date
of birth to the said board of trustees, as specified in
section twenty-three of this article, within a reasonable
length of time, said length of time to be determined by
the said board of trustees; and then the board of trustees
and the mayor shall proceed to act in the manner pro-
vided in subsection (d) of this section and shall cause
all members of the paid police or fire department who
are over the age of sixty-five years to be retired in not
less than sixty days from the date the fund is established.

Upon retirement under the provisions of this subsection
(e), such member, whether he has been employed in
said department for twenty years or not, shall re-
ceive retirement pension benefits payable in twelve
monthly installments for each year of the remainder of
his life, in an amount equal to fifty percent of such
member's average annual salary or compensation re-
ceived during the five fiscal years, not necessarily con-
secutive, in which such member received his highest
salary or compensation while a member of the depart-
ment, or an amount of one hundred fifty dollars per
month, whichever shall be greater, and if such member
has been employed in said department for more than
twenty years, the provisions of subsection (b) of this
section shall apply.


1 (a) In case:

2 (1) Any member of a paid police or fire department

3 who has been in continuous service for more than five

4 years shall die, from any cause other than as specified

5 in subsection (b) of this section twenty-six, before re-

6 tirement on a disability pension under the provisions of

7 section twenty-four of this article or a retirement pen-

8 sion under the provisions of subsection (a) or both sub-
sections (a) and (b) of section twenty-five of this article, leaving in either case surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(2) Any former member of any such department who is on a disability pension under the provisions of said section twenty-four, or has attained the age of fifty years and is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die, from any cause other than as specified in subsection (b) of this section twenty-six, leaving in either case surviving a dependent spouse to whom the marriage took place prior to the date of such member's retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member's retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(3) Any former member of any such department who has retired under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die before attaining the age of fifty years, from any cause other than as specified in subsection (b) of this section twenty-six, leaving surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1), (2) and (3), the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits, viz.: To such dependent spouse, until death or remarriage, a sum per month equal to twenty-five percent of such member's average monthly salary or
compensation received during the five fiscal years, not
necessarily consecutive, in which such member received
his highest salary or compensation while a member of
the department, hereinafter for convenience referred to
in this section as "monthly average," or an amount of
seventy-five dollars per month, whichever shall be greater;
to each such dependent child a sum per month equal to
ten percent of such monthly average, or the sum of thirty
dollars per month for each such child, whichever shall
be greater, until such child shall attain the age of
eighteen years or marry, whichever first occurs; to each
such dependent orphaned child a sum per month equal
to fifteen percent of such monthly average, or the sum
of forty-five dollars per month for each such child, which-
ever shall be greater, until such child shall attain the
age of eighteen years or marry, whichever first occurs;
to each such dependent father or mother a sum per
month for each equal to ten percent of such monthly
average, or the sum of thirty dollars per month for each
such father and mother, whichever shall be greater; to
each such dependent brother or sister the sum of five
dollars per month until such individual shall attain the
age of eighteen years or marry, whichever first occurs,
but in no event shall the aggregate amount paid to such
brothers and sisters exceed thirty dollars per month; but
if at any time, because of the number of dependents,
all such dependents cannot be paid in full as herein
provided, then each dependent shall receive his prorata
share of such payments: Provided, however, That in no
case shall the payments to the surviving spouse and
children be cut below sixty percent of the total amount
to be paid to all dependents.
(b) The dependent spouse, child or children, or de-
pendent father or mother, or dependent brothers or sis-
ters, of any such member who shall die by reason of
service rendered in the performance of such member's
duties shall, regardless of the length of such member's
service and irrespective of whether such member was
or was not entitled to receive or was or was not receiv-
ing a disability pension or temporary disability payments
at the time of his death, receive the death benefits pro-
vided for in subsection (a) of this section, and if such
member had less than five years’ service at the time of
his death, the monthly average shall be computed on the
basis of the actual number of years of service.

(c) The provisions of this section shall not be con-
strued as creating or establishing any contractual or
vested rights in favor of any individual who may be or
become qualified as a beneficiary of the death benefits
herein authorized to be made, all the provisions hereof
and benefits provided for hereunder being expressly sub-
ject to such subsequent legislative enactments as may
provide for any change, modification or elimination of
the beneficiaries or benefits specified herein.

§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.

(a) In determining the years of service of a member
in a paid police or fire department for the purpose of
ascertaining certain disability pension benefits, all re-
tirement pension benefits and certain death benefits, the
following provisions shall be applicable:

(1) Absence from the service because of sickness or
injury shall not be construed as time out of service; and

(2) Any member of any paid police or fire department
covered by the provisions of sections sixteen through
twenty-eight of this article who has been required to
or shall at any future time be required to enter the
armed forces of the United States by conscription, by
reason of being a member of some reserve unit of the
armed forces or a member of the West Virginia national
guard or air national guard, or who enlists in one of
the armed forces of the United States during hostilities,
and who upon receipt of an honorable discharge from
such armed forces presents himself for resumption of
duty to his appointing municipal official within six
months from his date of discharge, and is accepted by the
pension board’s board of medical examiners as being
mentally and physically capable of performing his re-
quired duties as a member of such paid police or fire de-
partment, shall be given credit for continuous service in
said paid police or fire department, and his rights shall be
governed as herein provided. No member of a paid police
or fire department shall be required to pay the monthly
assessment as now required by law, during his period of
service in the armed forces of the United States.

(b) As to any former member of a paid police or fire
department receiving disability pension benefits or re-
tirement pension benefits from a policemen's or firemen's
pension and relief fund, on the effective date of this
article, the following provisions shall govern and control
the amount of such pension benefits:

(1) A former member who on June thirty, one thou-
sand nine hundred sixty-two, was receiving disability
pension benefits or retirement pension benefits from a
policemen's or firemen's pension and relief fund, shall
continue to receive pension benefits in the amount of
one hundred fifty dollars per month; and

(2) A former member who became entitled to dis-
ability pension benefits or retirement pension benefits
on or after July one, one thousand nine hundred sixty-
two, shall receive the disability pension benefits or re-
tirement pension benefits provided for in section twenty-
four or section twenty-five of this article, as the case
may be.

(c) As to any dependent spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any former member of a paid police or fire
department, receiving any death benefits from a police-
men's pension and relief fund or firemen's pension and
relief fund, on the effective date of this article, the
following provisions shall govern and control the amount
of such death benefits:

(1) A dependent spouse, child or children, or de-
dependent father or mother, or dependent brothers or
sisters, of any former member, who on June thirty, one
thousand nine hundred sixty-two, was receiving any
death benefits from a policemen's pension and relief fund
or firemen's pension and relief fund, shall continue to
receive death benefits in the following amounts: To a
dependent spouse, until death or remarriage, the sum
of seventy-five dollars per month; to each dependent
child the sum of thirty dollars per month, until such
child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month for each; to each dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his prorata share of such payments: Provided further, That in no case shall the payments to the surviving spouse and children be cut below sixty percent of the total amount to be paid to all dependents.

(2) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who became eligible for death benefits on or after July one, one thousand nine hundred sixty-two, shall receive the death benefits provided for in section twenty-six of this article.

§8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

1 Until the expiration of three years from the time of the creation of any such fund, unless otherwise authorized by ordinance of the municipality, no payment shall be made to any member or beneficiary except from the income arising from said fund; and if at any time there shall not be sufficient money to the credit of said pension and relief fund to pay each member and beneficiary entitled to the benefits thereof the full amount per month, as herein provided, then an equal percentage of such monthly payments shall be made to each member and beneficiary thereof, until said fund is so replenished as to warrant payment in full to each of such members and beneficiaries.
PART IV. PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-29. Pension plans for employees of waterworks system, sewerage system or combined waterworks and sewerage system may be continued.

Any city which owns a waterworks system or sewerage system or combined waterworks and sewerage system, which does not hereafter become a participating public employer under the said West Virginia public employees retirement system, which does not establish and maintain an employee's retirement and benefit fund in accordance with the provisions of sections two through fourteen of this article and which has heretofore provided, under the provisions of former section twenty-one-a, article four of this chapter, a pension plan or plans on behalf of and pertaining to all or part of the employees of said waterworks system or sewerage system or combined waterworks and sewerage system, may continue to maintain such plan or plans, financed from the general operation funds of said waterworks system or sewerage system or combined waterworks and sewerage system, and administered by a pension board or pension commission. Any such pension board or pension commission shall continue to be composed of such members as shall be approved by the governing body, giving proper representation to the employees of such waterworks system or sewerage system or combined waterworks and sewerage system. The chief financial executive officer or treasurer of such pension board or pension commission shall continue to maintain bond with a surety company qualified to do business in this state in an amount equal to the value of any funds or securities in the control of or owned by the pension board or pension commission. After reserving such funds as may be deemed necessary by the pension board or pension commission to provide such amounts as may be required to meet temporary commitments, the remainder shall continue to be invested in general obligation bonds of the United States, this state or any political subdivision of this state.
ARTICLE 23. INTERGOVERNMENTAL RELATIONS—CONTRACTING AND JOINT ENTERPRISES.

PART I. PURPOSE; DEFINITIONS.

§8-23-1. Statement of purpose.

It is the purpose of this article to permit local governmental units to make the most efficient use of their power and authority by enabling them to cooperate with each other on a basis of mutual advantage and to consolidate functions and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization which will result in economies in the operation of local government and which will accord best with the geographic, economic, population and other factors influencing the needs and development of local governmental services and facilities, and thus promote the public health, safety and welfare.


For the purposes of this article:

(1) The term "public agency" shall mean any municipality, county or other political subdivision of this state, or any county board of education of this state; and
(2) The term "public works" shall mean any improvement or project involving an outlay of a capital nature which may be required by or convenient for the purposes of any public agency, including, without limiting the generality of the foregoing, the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, landfill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, sewers, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other
facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or other public improvements, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurb, widening or otherwise improving of any street, avenue, road, alley or way.

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

Any power or powers, privilege or privileges, authority or undertaking, exercised or capable of exercise, or which may be engaged in, and any public works which may be undertaken, by a public agency acting alone may be exercised, enjoyed, engaged in or undertaken jointly with any other public agency which could likewise act alone.

Any two or more public agencies may enter into a written agreement with one another for joint or cooperative action pursuant to the provisions of this section. Appropriate action by ordinance, resolution, or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement shall become effective.

Any such agreement shall specify the following:

(1) Its duration;
(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;
(3) Its purpose or purposes;
(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and
(6) Any other necessary and proper matters.

In the event that the agreement does not establish a separate legal or administrative entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to the items enumerated above, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, and in the event a joint board is provided for, there shall be a representative on the board from each of the public agencies which are party to the agreement; and

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

No agreement made pursuant to the provisions of this section shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

Every agreement made pursuant to the provisions of this section shall, prior to and as a condition precedent to its becoming effective, be submitted to the attorney general who shall determine whether the agreement is in proper form and is compatible with the laws of this state. The attorney general shall approve any such agreement submitted to him unless he shall find that it does not meet the conditions set forth herein, in which event he shall detail in writing to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove any such agreement so submitted within thirty days of its submission shall constitute approval thereof.

The financing of joint projects by agreement shall be as provided by law.
1 Before an agreement made pursuant to the provisions
2 of section three of this article may become effective, a
3 copy of the same must be filed with the recorder of any
4 municipality party thereto and with the clerk of the
5 county court of any county party thereto, and, as to any
6 other public agency party thereto, with the officer in
7 charge of the records thereof. When a municipality is
8 a party, a copy of the agreement must also be filed with
9 the state tax commissioner before such agreement be-
10 comes effective.

§8-23-5. Additional approval of governmental agreements
required in certain cases.
1 In the event that an agreement entered into pursuant
2 to the provisions of section three of this article shall
3 deal in whole or in part with the providing of services
4 or facilities with respect to which an officer or agency
5 of this state has constitutional or statutory powers of
6 control, the agreement shall, as a condition precedent
7 to its becoming effective, be submitted to the state officer
8 or agency having such power of control and shall be
9 approved or disapproved by him or it as to all matters
10 within his or its jurisdiction in the same manner and
11 subject to the same requirements and provisions govern-
12 ing the action of the attorney general under said section
13 three of this article. This requirement of the submission
14 and approval shall be in addition to and not in sub-
15 stitution for the requirement of submission to and ap-
16 proval by the attorney general.

§8-23-6. Appropriations; furnishing of property, personnel
and services.
1 Any public agency entering into an agreement pur-
2 suant to the provisions of section three of this article
3 is hereby empowered and authorized to appropriate
4 funds to, and to sell, lease, transfer or otherwise supply
5 real or personal property to, and to furnish personnel
6 and services to, the administrative joint board or other
7 legal or administrative entity created to operate the
8 joint or cooperative undertaking, and such board or entity
9 is hereby empowered and authorized to receive, expend
10 and utilize the same.
§8-23-7. Contract between public agencies for one public agency to perform a service, etc., for another public agency.

Any one or more public agencies are hereby empowered and authorized to contract with any one or more other public agencies for the performance of any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, power, authority, rights, objectives and responsibilities of the contracting parties. Any contracting party may make such payments for the performance of such service, activity or undertaking and as reimbursement for expenses incurred with respect thereto, as may be specified in the contract, and the public agency to which such payments are to be made is hereby empowered and authorized to receive the same.

§8-23-8. Duration of intergovernmental agreements and contracts.

Any intergovernmental agreement entered into in accordance with the provisions of section three of this article, and any contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article, shall be limited in duration to one fiscal year, but the same may be annually renewed each fiscal year: Provided, That any such agreement or contract may be for such period in excess of one fiscal year as is specified in the agreement or contract, if such agreement or contract is ratified by a majority of the legal votes cast by the qualified voters of the several jurisdictions represented by the contracting parties voting separately at a regular or special election.

PART III. CONSTRUCTION.


The provisions of this article are in addition to and not in derogation of any power and authority vested
in any public agency under any constitutional, statutory
or charter provisions which may now or hereafter be in
effect, and under no circumstances whatever shall the
provisions of this article be construed as in any way
limiting the power and authority to take joint or co-
operative action or enter into agreements or contracts
granted in other articles of this chapter.

ARTICLE 24. INTERGOVERNMENTAL RELATIONS—URBAN AND
RURAL PLANNING AND ZONING.

PART I. URBAN AND RURAL PLANNING—PLANNING
COMMISSIONS AUTHORIZED; OBJECTIVE;
DEFINITIONS.

§8-24-1. Planning commissions authorized; statement of ob-
jective.
1 The governing body of every municipality and the
county court of every county may by ordinance create
a planning commission in order to promote the orderly
development of its governmental units and its environs.
It is the object of this article to encourage local units
of government to improve the present health, safety,
convenience and welfare of their citizens and to plan
for the future development of their communities to the
end that highway systems be carefully planned; that new
community centers grow only with adequate highway,
utility, health, educational and recreational facilities;
that the needs of agriculture, industry and business be
recognized in future growth; that residential areas pro-
vide healthy surroundings for family life; and that the
growth of the community is commensurate with and
promotive of the efficient and economical use of public
funds.

In accomplishing this objective, it is intended that the
planning commission shall serve in an advisory capacity
to the governing body of a municipality or a county
court, that certain regulatory powers be created over
developments affecting the public welfare and not now
otherwise controlled, and that additional powers and
authority be granted to the governing bodies of municipi-
alties and to counties to carry out the objective and
overall purposes of this article.
§8-24-2. Continuation of planning commissions heretofore established.

Any planning commission heretofore established shall continue to operate as though established under the terms of this article. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this article.

The membership of existing commissions shall continue unchanged until the first regular meeting of the governing body of a municipality or the county court in January of the year following enactment of this article. At that time, any appointments or changes necessary shall be made to bring the membership of the commissions into conformity with the provisions of this article.

§8-24-3. Definitions.

As used in this article:

(1) "Commission or planning commission" shall mean a municipal planning commission or a county planning commission, as the case may be;

(2) "Comprehensive plan" shall mean a complete comprehensive plan or any of its parts such as a comprehensive plan of land use and zoning, of thoroughfares, of sanitation, of recreation and other related matters, and including such ordinance or ordinances as may be deemed necessary to implement such complete comprehensive plan or parts thereof by legislative approval and provision for such rules and regulations as are deemed necessary and their enforcement;

(3) "Public place" includes any tracts owned by the state or its subdivisions;

(4) "Streets" includes streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways;

(5) "Unit of government" means any federal, state, regional, county or municipal government or governmental corporation; and

(6) "Utility" means any facility used in rendering service which the public has a right to demand.
§8-24-4. How powers and authority exercised.

Where power and authority are conferred herein, singly or disjunctively, on the governing body or administrative authority of a municipality, that power and authority may be exercised only in relation to a municipal planning commission. Where power and authority are conferred herein, singly or disjunctively, on a county court, that power may be exercised only in relation to a county planning commission.

§8-24-5. Municipal planning commission.

A municipal planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the municipality, who shall be qualified by knowledge and experience in matters pertaining to the development of the municipality, who shall include representatives of business, industry and labor, and who shall be nominated by the administrative authority and confirmed by the governing body of the municipality or appointed by the governing body where the administrative authority and governing body are the same. At least three-fifths of all of the members must have been residents of the municipality for at least ten years prior to nomination and confirmation or appointment. One member of the commission shall also be a member of the governing body of the municipality and one member shall also be a member of the administrative department of the municipality, the term of these two members to be coextensive with the term of office to which they have been elected or appointed, unless the governing body and administrative authority of the municipality at the first regular meeting of the commission each year designate others to serve as the municipality's representatives. The remaining members of the commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members
shall be selected for terms of three years each. Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8-24-6. County planning commission.

A county planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the county, who shall be qualified by knowledge and experience in matters pertaining to the development of the county, who shall include representatives of business, industry, labor and farming, and who shall be appointed by the county court. At least three-fifths of all of the members must have been residents of the county for at least ten years prior to appointment. One member of the commission shall also be a member of the county court, the term of such member to be coextensive with the term of office to which he has been elected, unless the county court at the first regular meeting of the commission each year appoints another member to serve as its representative. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be appointed for terms of three years each. Vacancies shall be filled by appointment by the county court for the unexpired term only. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. An individual may at the same time serve as a member of a municipal planning commission and as a member of a county planning commission.

§8-24-7. Advisory members.

In the event a municipality which has or shall establish a planning commission is located within or partly within
A county which has or shall have a county planning commission, a designated representative of the county planning commission shall be an advisory member of the municipal planning commission. A designated representative of a municipal planning commission of a municipality located within or partly within a county which has or shall have a county planning commission shall be an advisory member of the county planning commission. All such advisory members shall have all the privileges of membership except the right to vote.

§8-24-8. Regular and special meetings.

The commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October.

Special meetings of the commission may be called by the president or by at least two members upon written request to the secretary. Whether called by the president or by two or more members, the secretary shall send to all of the members, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written notice of a special meeting is not required if the date, time and place of the special meeting have been fixed in a regular meeting, or if all of the members are present at the special meeting.

§8-24-9. Quorum.

A majority of the members of a commission shall constitute a quorum. No action of a commission shall be official, however, unless authorized by a majority of all of the members of the commission at a regular or properly called special meeting.

§8-24-10. Offices; appropriation for expenses.

The county court in the case of a county planning commission, and the governing body of the municipality in the case of a municipal planning commission, shall provide the commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the commission.
§8-24-11. Election of officers.

1 At its first regular meeting in each year the commission shall elect from its members a president and vice president. The vice president shall have the power and authority to act as president of the commission during the absence or disability of the president.

§8-24-12. Appointment, duties and compensation of secretary and employees; special and temporary services; legal assistance.

1 Any commission may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the commission. All such compensation, however, shall be in conformity to and in compliance with the salaries and compensation theretofore fixed by the governing body or county court of such municipalities or counties.

A commission may make contracts for special or temporary services and any professional counsel. The prosecuting attorney of a county, upon request, shall, without additional compensation, render legal assistance and service to the county planning commission.

§8-24-13. Municipal-county commission; powers and authority; expenses.

1 The governing body of any municipality located within a county having an established planning commission may, by ordinance, designate such county planning commission as the municipal planning commission. The county court of any county within which a municipality having an established planning commission is located may, by ordinance, designate such municipal planning commission as the county planning commission. In the event any such municipality is located partly within one county and partly within another county or counties, the foregoing provisions of this section shall apply only to the county within which the major portion of the territory of the municipality is located.

A county planning commission designated as a municipal planning commission shall have for that municipality
all the powers, authority and duties granted under this article to a municipal planning commission. A municipal planning commission designated as a county planning commission shall have for that county all the powers, authority and duties granted under this article to a county planning commission.

Any municipality designating a county planning commission as its municipal planning commission may contract annually to pay to the county a proportionate part of the expenses which is properly chargeable to the planning service rendered to such municipality, and any such payments received by the county shall be appropriated by the county to the county planning commission in addition to any funds budgeted for planning purposes, although the county court may, if it so elects, agree to pay the total cost. Any county designating a municipal planning commission as its county planning commission may contract annually to pay to the municipality a proportionate part of the expenses which is properly chargeable to the planning service rendered to such county, and any such payments received by the municipality shall be appropriated by the municipality to the municipal planning commission in addition to any funds budgeted for planning purposes.

PART III. SAME—POWERS, AUTHORITY AND DUTIES.


To effectuate the purposes of this article, a commission shall have the power, authority and duty to:

1. Exercise general supervision of and make rules and regulations for the administration of the affairs of the commission;
2. Prescribe uniform rules and regulations pertaining to its investigations and hearings;
3. Supervise the fiscal affairs and responsibilities of the commission;
4. Prescribe the qualifications of, appoint, remove and fix the compensation of, the employees of the commission, such compensation to be in conformity to and in compliance with the salaries and compensation there-
tofore fixed by the governing body or county court of such municipalities or counties;

(5) Delegate to employees authority to perform ministerial acts in all cases except where final action of the commission is necessary;

(6) Keep an accurate and complete record of all departmental proceedings, and record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission;

(7) Make recommendations and an annual report to the governing body of the municipality or to the county court concerning the operation of the commission and the status of planning within its jurisdiction;

(8) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;

(9) Adopt a seal, and certify all official acts;

(10) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;

(11) Prepare and submit an annual budget in the same manner as other departments of municipal and county government and the commission shall be limited in all expenditures to the provisions made therefor by the governing body of such municipality or by the county court of such county;

(12) If deemed advisable, establish an advisory committee or committees; and

(13) Delegate to a committee composed of one or more members of the commission the power to hold any public hearings or conferences required or permitted under this article to be held by the commission. If the hearing or conference is held by a committee, a written record of the substance of the hearing or conference shall be made and preserved with the records of the commission for not less than five years. The committee shall have
authority only to conduct the hearing and report to
the commission.

§8-24-15. Appropriations; expenditures; disposition of gifts;
participation in federal planning assistance pro-
grams.

After the governing body of a municipality or a county
court has adopted an ordinance creating a planning
commission, the governing body or county court shall
appropriate funds to carry out the duties of the com-
mmission.

The planning commission shall have the power and
authority to expend, under regular municipal or county
procedure as provided by law, all sums appropriated
to it for the purposes and activities authorized under
this article.

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

A municipal or county planning commission is em-
powered and authorized to spend funds made available
for the purposes of this article, and to accept and use
funds provided for the purposes of this article by the
government of the United States and any other agency
or group whose interests are in harmony with such
purposes, in accordance with federal requirements and
subject to such conditions or limitations as the constitu-
tion or law of the state may provide. In this connection
a municipal or county planning commission is hereby
expressly authorized to participate in the federal plan-
ing assistance programs as set forth in the "Federal
Housing Act of 1954," as amended, and any subsequent
acts.
PART IV. SAME—COMPREHENSIVE PLAN.


1. A planning commission shall make and recommend for adoption to the governing body of the municipality or to the county court, as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction. Any county plan may include the planning of towns or villages to the extent to which, in the commission’s judgment, they are related to the planning of the unincorporated territory of the county as a whole: Provided, That the plan shall not be considered as a comprehensive plan for any town or village without the consent of any planning commission and the governing body of such town or village. The county plan shall be coordinated with the plans of the state road commission, insofar as it relates to highways or thoroughfares under the jurisdiction of that commission. A county planning commission may prepare, and the county court is empowered and authorized to adopt, a comprehensive plan and zoning ordinance for either the entire county, or for any part or parts thereof which constitute an effective region or regions for planning and zoning purposes without the necessity of adopting a plan and ordinance for any other part. In determining what constitutes an effective region or regions for planning and zoning purposes, due consideration shall be given to such factors as population density, health, general welfare, water and sanitation requirements, and future potential for residential, commercial, industrial or public use. The procedure for the preparation and adoption of a comprehensive plan and zoning ordinance for a part of such county shall be the same as the procedure for the preparation and adoption of a plan and ordinance for the entire county, except that the election provided for in section forty-eight of this article shall be restricted to the qualified electors residing within the part or parts affected.

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

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

1. To create conditions favorable to health, safety, transportation, prosperity, civic activities and recreational, educational and cultural opportunities;

2. To reduce the wastes of physical, financial or
human resources which result from either excessive
congestion or excessive scattering of population; and
(3) Toward the efficient and economic utilization,
conservation and production of the supply of food and
water and of drainage, sanitary and other facilities and
resources.

§8-24-17. Same—Contents.

A comprehensive plan may include the following or
a study of the following:
(a) Careful and comprehensive surveys and studies
of existing conditions and the probable future growth
of the municipality and its environs or of the county;
(b) Maps, plats, charts and descriptive material pre-
senting basic information, locations, extent and character
of any of the following:
(1) History, population and physical site conditions;
(2) Land use, including the height, area, bulk, location
and use of private and public structures and premises;
(3) Population densities;
(4) Community centers and neighborhood units;
(5) Blighted and slum areas;
(6) Streets, including bridges, viaducts, subways,
parkways and other public ways and places;
(7) Sewers, sanitation and drainage, including han-
dling, treatment and disposal of excess drainage waters,
sewage, garbage, refuse, wastes, ashes, trash and other
similar matters;
(8) Stream pollution;
(9) Flood control and prevention;
(10) Public and private utilities, including water,
light, heat, communication and other services;
(11) Transportation, including rail, bus, truck, air
and water transport and their terminal facilities;
(12) Local mass transportation, including motor and
trolley busses; street, elevated or underground railways
and taxicabs;
(13) Parks and recreation, including parks, play-
grounds, reservations, forests, wildlife refuges and other
(32) Public grounds, spaces and facilities of a recreational nature;
(33) Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions and other civic and social service buildings;
(34) Education, including location and extent of schools, colleges and universities;
(35) Land utilization, including residence, industry, agriculture, forests and other uses;
(36) Conservation of water, soil, agricultural and mineral resources; and
(37) Any other factors which are a part of the physical, economic or social situation within the municipality or county;

(c) Reports, maps, charts and recommendations setting forth plans for the development, redevelopment, improvement, extension and revision of the subjects and physical situations of the municipality or county set out in subdivision (b) of this section so as to substantially accomplish the objective set forth in section one of this article;
(d) A long-range development program of public works projects, based on the recommended plans of the commission, for the purpose of eliminating unplanned, unsightly, untimely and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up to date by yearly revisions; and
(e) A long-range financial program of governmental expenditures in order that such development program may be carried out, and the keeping of such program up to date, for all separate taxing units within the municipality or county, respectively, for the purpose of assuring efficient and economic use of public funds.


1 Prior to the adoption of a comprehensive plan, a commission shall give notice, as hereinafter in this section specified, and hold a public hearing on the plan and the proposed ordinance for its enforcement.
At least thirty days prior to the date set for hearing, the commission shall publish a notice of the date, time and place of the hearing as a Class I 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 the municipality or county, as the case may be.

§8-24-19. Same—Adoption by commission.

After a public hearing has been held, the commission may by resolution adopt the comprehensive plan and recommend the ordinance to the governing body of the municipality or to the county court.

§8-24-20. Same—Certification and presentment to governing body or county court.

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

§8-24-21. Same—Consideration of plan and ordinance by governing body or county court; publication.

After certification of the plan and ordinance to the governing body of the municipality or to the county court, the governing body of the municipality or the county court shall proceed to a consideration of the plan and ordinance and shall either adopt, reject or amend the same. If the ordinance adopting the comprehensive plan is published, the plan may be incorporated by reference in the ordinance and the full text of said plan not published.

§8-24-22. Same—Rejection or amendment by governing body or county court; consideration and report by commission.

If the governing body of the municipality or the county court rejects the plan and ordinance or amends it, then
3 it shall be returned to the commission for its consider-
4 ation, with a written statement of the reasons for its
5 rejection or amendment.
6 The commission shall have forty-five days in which
7 to consider the rejection or amendment and report
8 thereon to the governing body of the municipality or
9 the county court. If the commission approves the
10 amendment, the ordinance shall stand as adopted by the
11 governing body of the municipality or the county court
12 as of the date of the filing of the commission's report
13 with the governing body of the municipality or with
14 the county court. If the commission disapproves the
15 rejection or amendment, it shall state its reasons in the
16 report, and the governing body of the municipality or
17 the county court shall again consider said plan and
18 ordinance, and its action in rejecting or amending said
19 plan and ordinance, after such consideration, shall be
20 final.
21 In case the commission does not file a report with the
22 governing body of the municipality or with the county
23 court within forty-five days, the action in rejecting or
24 amending the ordinance shall be final.

§8-24-23. Same—Amendment of plan and ordinance after
adoption.
1 After the adoption of a comprehensive plan and ordi-
2 nance, all amendments to it shall be adopted according
3 to the procedures set forth in sections eighteen through
4 twenty-two of this article, except that publication of
5 notice of the date, time and place of hearing upon amend-
6 ment of the zoning ordinance need be only fifteen or
7 more days prior to the date set for such hearing, and
8 except that, if the governing body of the municipality
9 or the county court desires an amendment, it may direct
10 the planning commission to prepare an amendment and
11 submit it to public hearing within sixty days after formal
12 written request by the governing body of the municipality
13 or by the county court.

§8-24-24. Same—Validation of prior action.
1 The adoption of a comprehensive plan or any general
2 development plans by a planning commission under the
3 authority of prior acts is hereby validated and shall con-
4 tinue in effect until amended under the authority of this
5 article.

§8-24-25. Same—Intergovernmental cooperation.
1 Whenever the commission undertakes the preparation
2 of a comprehensive plan, the departments and officials
3 of the state and of municipal, county and separate tax-
4 ing units operating within lands under the jurisdiction
5 of the commission shall make available, upon the request
6 of the commission, such information, documents and
7 plans as have been prepared, or upon the request of the
8 commission shall provide such information as relates to
9 the commission's activity.

§8-24-26. Same—Jurisdiction of municipal planning com-
1 mission.
2 A municipal planning commission shall adopt a com-
3 prehensive plan for the development of the municipality,
4 but the authority of such municipal planning commis-
5 sion shall not extend beyond the corporate limits of the
6 municipality.

§8-24-27. Cooperation between planning commissions; co-
operation between commissions and governing and
1 administrative bodies and officials.
2 In the exercise of the powers and authority granted
3 by this article, the planning commission of any munici-
4 pality or county may cooperate with the planning com-
5 missions or governing and administrative bodies and
6 officials of other municipalities within or without such
7 county and of other counties, with a view to coordinating
8 and integrating the planning and zoning of such municipi-
9 ality or county with the plans of such other munici-
10 palities and of such other counties, and may appoint such
11 committee or committees and may adopt such rules and
12 regulations as may be thought proper to effect such
13 cooperation. Such planning commissions and governing
14 and administrative bodies and officials of other munici-
15 palities and counties are hereby authorized to cooperate
16 with such municipal or county planning commissions for
17 the purposes of such coordination and integration. Sim-
ilarly, such municipal or county planning commissions may cooperate with the department of natural resources of this state and make use of advice and information furnished by such department and by other appropriate state and federal officials, departments and agencies, and all state departments and agencies having information, maps and data pertinent to the planning and zoning of such municipality or county may make such available for the use of such planning commissions.

PART V. SAME—COMPREHENSIVE PLAN; SUBDIVISION CONTROL.

§8-24-28. Subdivision plats—Approval required prior to recordation.

After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted by the governing body of the municipality or by the county court and a certified copy of the ordinance has been filed with the clerk of the county court (being in the case of a municipal plan and ordinance the county court of the county in which the municipality is located), a plat of a subdivision shall not be recorded by the clerk of such county court unless it has first been approved by the planning commission having jurisdiction over the area. If in the case of a municipal plan and ordinance, the municipality is located in more than one county, a certified copy of the ordinance shall be filed with the clerk of the county court of each such county.

§8-24-29. Same—Application for approval; notice and hearing.

A person desiring the approval of a plat shall submit a written application for approval, together with a copy of the proposed plat, to the planning commission having jurisdiction.

Upon receipt of the application, the commission, if it tentatively approves the application, shall set a date, time and place for a hearing, notify the applicant in writing, and notify by publication in the manner specified in section eighteen of this article or otherwise any person or governmental unit having a probable interest in the proposed plat.
§8-24-30. Same—Basis for commission's action upon application for approval.

1 In determining whether an application for approval shall be granted, the commission shall determine if the plat provides for:

2 (1) Coordination of subdivision streets with existing and planned streets;

3 (2) Coordination with and extension of facilities included in the comprehensive plan;

4 (3) Establishment of minimum width, depth and area of lots within the projected subdivision;

5 (4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county; and

6 (5) Fair allocations of areas for streets, parks, schools, public and semipublic buildings, homes, utilities, business and industry.

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

7 (1) The manner in which streets shall be laid out, graded and improved;

8 (2) Provisions for water, sewage and other utility services;

9 (3) Provision for schools;

10 (4) Provision for essential municipal services; and

11 (5) Provision for recreational facilities.

§8-24-31. Same—Effect of approval or disapproval.

1 After hearing and within a reasonable time after the filing of an application for approval of the plat, the commission shall approve or disapprove it. If the commission approves the application, it shall affix the commission's seal upon the plat. If it disapproves the application, it shall set forth its reasons in its own records and provide the applicant with a copy thereof.

§8-24-32. Same—Application fees.

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

§8-24-33. Same—Plats filed without approval.

After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the filing and recording of a plat involving the subdivision of lands covered by such comprehensive plan and ordinance shall be without legal effect unless approved by the commission; Provided, That failure to comply with this section shall not invalidate or affect the title to any land within the area of such plat: Provided, however, That if such plat shall bear the seal of the commission it shall be presumed to have been approved thereby.

§8-24-34. Same—Conditional approval; bonds.

The commission may approve a plat for a subdivision in which the improvements and installations have not been completed as required by the ordinance for the approval of plats if the applicant provides a bond which shall:

(1) Run to the municipality or county which established the commission;

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

(3) Be with surety satisfactory to the commission;

and

(4) Specify the time for the completion of the improvements and installations.

Any funds received from any such bonds shall be used by the legally constituted body charged with making public improvements for the municipality or county only for completion of the improvements and installations for which such bonds were provided, and without prior appropriation. The municipality or county is hereby authorized to make these improvements and installations.
§8-24-35. Same—Jurisdiction and control; inconsistent provisions for platting control repealed.

1 After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the municipal planning commission, in the case of a municipal plan and ordinance, shall have exclusive control over the approval of all plats involving land covered by such municipal plan and ordinance and located within the corporate limits of such municipality, and the county planning commission, in the case of a county plan and ordinance, shall have exclusive control over the approval of plats involving unincorporated lands covered by such county plan and ordinance and located within its jurisdiction.

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

PART VI. SAME—IMPROVEMENT LOCATION PERMITS.

§8-24-36. Improvement location permits—Conformity of structure to comprehensive plan and ordinance.

1 Within the corporate limits of the municipality, a structure shall not be located and an improvement location permit for a structure on platted or unplatted lands shall not be issued unless the structure and its location conform to the municipality's comprehensive plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on unincorporated lands within the jurisdiction of the county planning commission unless the structure and its location conform to the county's comprehensive plan and ordinance.
§8-24-37. Same—Authority to issue and control.
1 The ordinance may designate the official or employee
2 of the municipality or county who shall have authority
3 to issue and control improvement location permits within
4 the jurisdiction of the commission and in conformity
5 with the comprehensive plan and ordinance.

PART VII. JUDICIAL REVIEW OF COMMISSION DECISIONS.

§8-24-38. Review of decisions of commission by certiorari.
1 A decision of a commission may be reviewed by
2 certiorari procedure the same as that provided for the ap-
3 peal of zoning cases from the decision or order of a board
4 of zoning appeals, as hereinafter in this article provided.
5 A petition for certiorari shall specify the grounds upon
6 which it is alleged that the commission’s action is illegal.
7 Such petition must be filed in the circuit court of the
8 county in which the affected land or the major portion
9 thereof is located within thirty days after the date of
10 such decision.

PART VIII. URBAN AND RURAL ZONING—ZONING GENERALLY.

1 As an integral part of the planning of areas so that
2 adequate light, air, convenience of access, and safety from
3 fire, flood and other danger may be secured; that con-
4 gestion in the public streets may be lessened or avoided;
5 that the public health, safety, comfort, morals, con-
6 venience and general public welfare may be promoted;
7 and that the objective set forth in section one of this
8 article may be further accomplished, the governing body
9 of a municipality or a county court shall have the follow-
10 ing powers:
11 (1) To classify, regulate and limit the height, area,
12 bulk and use of buildings hereafter to be erected;
13 (2) To regulate and determine the area of front, rear
14 and side yards, courts and other open spaces about such
15 buildings;
16 (3) To regulate and determine the use and intensity of
17 use of land and lot areas;
18 (4) To classify, regulate and restrict the location of
trades, callings, industries, commercial enterprises and
the location of buildings designed for specified uses;

(5) To regulate and control, or prohibit in certain
areas, junk yards, salvage yards, used parts yards, dumps
or automobile or appliance graveyards, or the mainten-
ance and operation of secondhand stores or outlets in
residential areas;

(6) To classify and designate the rural lands among
agricultural, industrial, commercial, residential and other
uses and purposes; and

(7) To divide the municipality or county into dis-
tricts of such kind, character, number, shape and area
as may be deemed necessary to carry out the purposes
of this section.

PART IX. SAME—ZONING DISTRICTS.


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

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

(2) For each district designated for the location of
trades, callings, industries, commercial enterprises or
buildings designated for specified uses, rules and regula-
tions may be enforced specifying uses that shall be ex-
cluded or subjected to reasonable requirements of a
special nature and designating the use for which build-
ings may not be erected, altered or used;

(3) The rules and regulations in one or more districts
of the same kind or character may differ from those in
other like districts but shall be uniform for each district;
and
Several parts of the municipality or county may be classified within a single district although not contiguous.

§8-24-41. Same—Preliminary study.

1 In establishing such districts and rules and regulations the governing body of a municipality or the county court shall give reasonable regard to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted and the conservation of property values throughout the municipality or county.

PART X. SAME—ZONING DISTRICTS—PROCEDURES.

§8-24-42. Same—Tentative report; notice and hearings.

1 Recommendations as to the boundaries of districts and the rules and regulations and restrictions to be enforced therein shall be prepared by the planning commission. The commission may prepare the tentative report on its own initiative or the governing body of the municipality or the county court may require its preparation. The commission shall hold public preliminary hearings and conferences, on such dates and at such times and places and upon such notice as it may determine to be necessary to inform and aid itself in the preparation of the tentative report.

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

§8-24-43. Same—Action by governing body or county court on tentative report.

1 The governing body of the municipality or the county court shall consider the tentative report of the planning commission and shall return it, with any suggestions and recommendations, to the planning commission for its final report.

6 No zoning ordinance hereunder shall be adopted until after the final report of the planning commission has been received by the governing body of the municipality or by the county court.
§8-24-44. Same—Final report; notice and hearing; action.

1 After the final report has been submitted by the planning commission, the governing body of the municipality or the county court shall afford all interested persons an opportunity to be heard with reference to it at public hearings, convenient for all persons affected, to be held on dates and at times and places to be specified in notices to be published, within fourteen consecutive days next preceding the date set for the hearings, as Class II legal advertisements in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county, as the case may be. The notices shall state the dates, times and places of the hearings, that the report contains a comprehensive zoning ordinance for the municipality or county, that written objections to the final report filed with the recorder of the municipality or with the clerk of the county court at or before the hearings will be heard and that the hearings will be continued from time to time as may be found necessary. During the period between the date of the first publication of the notice and the date of the hearing, the final report shall be on file in the office of the planning commission for public examination. Upon completion of the public hearings, the governing body of the municipality or the county court shall proceed to the consideration of the ordinance.

PART XI. SAME—AMENDING, SUPPLEMENTING OR CHANGING ZONING ORDINANCE RULES AND REGULATIONS.

§8-24-45. Supplemental and amending ordinances.

1 The governing body of a municipality or the county court may, from time to time, amend, supplement or change the rules and regulations and districts fixed by ordinance hereunder.

§8-24-46. Changes of zoning rules and regulations—Petition for change.

1 Petitions, duly signed, may be presented to the recorder of the municipality or to the clerk of the county court requesting an amendment, supplement or change of the rules and regulations of the zoning ordinance by:
§8-24-47. Same—Considered as amendments to comprehensive plan; notice and hearing.

Amendments, supplements or changes of the rules and regulations of the zoning ordinance shall be considered as amendments to the comprehensive plan. Any proposed ordinance for the amendment, supplement, change or repeal of the zoning ordinance not originating upon petition of the planning commission shall be referred to the planning commission for consideration and report before any final action is taken by the governing body of the municipality or the county court.

Prior to submission to the governing body of a municipality or to the county court of a planning commission petition or a report on a proposed ordinance referred to it for an amendment, supplement, change or repeal of the zoning ordinance, the planning commission shall give notice and hold a public hearing in the manner prescribed for adoption of a comprehensive plan in section eighteen of this article, except that publication of notice of the date, time and place of hearing upon a proposed amendment, supplement, change or repeal of the zoning ordinance need be made only fifteen or more days prior to the date set for such hearing.

PART XII. SAME—ELECTION ON ZONING ORDINANCE.

§8-24-48. Election on zoning ordinance; form of ballots or ballot labels; procedure.

If, within sixty days following adoption of the zoning ordinance by the governing body of the municipality or by the county court, a petition is filed with the recorder or the clerk of the county court praying for submission of such zoning ordinance for approval or rejection to the qualified voters residing in the area within the jurisdiction of the municipal or county planning commission, such ordinance shall not take effect until the same shall have been approved by a majority of the legal votes cast thereon at any regular primary
or general election or special election called for that purpose. The petition may be in any number of counterparts but must be signed in their own handwriting by a number of qualified voters residing in the area affected by the proposed zoning equal, notwithstanding the provisions of subdivision ten, subsection (b), section two, article one of this chapter, to not less than fifteen percent of the total legal votes cast in the affected area for all candidates for governor at the last preceding general election at which a governor was elected. Only qualified voters residing in the area affected by the proposed ordinance shall be eligible to vote with respect thereto.

Upon the ballots, or ballot labels where voting machines are used, there shall be written or printed the following:

☐ For Zoning
☐ Against Zoning

If a majority of the legal votes cast upon the question be for zoning, the provisions of said zoning ordinance shall, upon the date the results of such an election are declared, be effective. If a majority of the legal votes cast upon the question be against zoning, said zoning ordinance shall not take effect, but the question may again be submitted to a vote at any regular primary or general election in the manner herein provided.

Subject to the provisions of the immediately preceding sentence, voting upon the question of zoning may be conducted at any regular primary or general election or special election, as the governing body of the municipality or the county court in its order submitting the same to a vote may designate.

Notice of all elections at which the question of zoning is to be voted upon shall be given by publication of the order calling for a vote on such question as a Class II-0 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 the area in which voting on the question of zoning is to be conducted.
Any election at which the question of zoning is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state concerning primary, general or special elections, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

PART XIII. SAME—EXISTING ORDINANCES AND USES.

§8-24-49. Validation of existing ordinances.
1 All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county court taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

§8-24-50. Existing uses safeguarded.
1 Such zoning ordinance or ordinances shall not prohibit the continuance of the use of any land, building or structure for the purpose for which such land, building or structure is used at the time such ordinance or ordinances take effect, but any alteration or addition to any land or any alteration, addition or replacement of or to any existing building or structure for the purpose of carrying on any use prohibited under the zoning rules and regulations applicable to the district may be prohibited: Provided, That no such prohibition shall apply to alterations or additions to or replacement of buildings or structures by any farm, industry or manufacturer, or to the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or to the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation or any present or future satellite agricultural,
industrial or manufacturing use. If a nonconforming use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structure may be located: Provided, however, That abandonment of any particular agricultural, industrial or manufacturing process shall not be construed as abandonment of agricultural, industrial or manufacturing use.

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

PART XIV. SAME—BOARD OF ZONING APPEALS—ORGANIZATION AND FUNCTION.

§8-24-51. Board of zoning appeals—Creation; membership; terms; vacancies.

As a part of the zoning ordinance, the governing body of the municipality or the county court shall create a board of zoning appeals consisting of five members to be appointed by the governing body of the municipality or by the county court, as the case may be.

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

Upon the creation of a board of zoning appeals, the
members shall be appointed for the following terms:
One for a term of one year; two for a term of two
years; and two for a term of three years. The terms
shall expire on the first day of January of the first,
second and third year, respectively, following their
appointment. Thereafter, as their terms expire, each
new appointment shall be for a term of three years.

If a vacancy occurs, by resignation or otherwise, among
the members of the board of zoning appeals, the govern­
ing body of the municipality or the county court, as the
case may be, shall appoint a member for the unexpired
term.

§8-24-52. Same—Officers; quorum; compensation of secretary
and employees.
At its first meeting of each year, the board of zoning
appeals shall elect a chairman and vice chairman from
its membership. The vice chairman shall have the power
and authority to act as chairman during the absence or
disability of the chairman.

A majority of the members of a board of zoning appeals
shall constitute a quorum. No action of a board shall
be official, however, unless authorized by a majority
of all of the members of the board.

The board of zoning appeals may appoint and fix the
compensation of a secretary and such employees as are
necessary for the discharge of its duties, all in con­
formity to and in compliance with the salaries and com­
ensation theretofore fixed by the municipality or county
court.

§8-24-53. Same—Offices; appropriation for expenses.
The governing body of the municipality in the case
of a municipal board of zoning appeals and the county
court in the case of a county board of zoning appeals
shall provide the board with suitable offices for the
holding of meetings and the preservation of plans, maps,
documents and accounts, and shall provide by appro­
priation a sum sufficient to defray the reasonable expenses
of the board.
§8-24-54. Same—Rules and regulations and procedures; minutes and records.

1 The board of zoning appeals shall adopt such rules and regulations concerning the filing of appeals, applications for variances and exceptions, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this article.

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

PART XV. SAME—BOARD OF ZONING APPEALS—Powers, Authority and Duties.

§8-24-55. Same—Powers, authority and duties.

1 The board of zoning appeals shall:

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

3 (2) Permit and authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the ordinance;

4 (3) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to act under the ordinance; and

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

6 In exercising its powers and authority, the board of zoning appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, as in its opinion ought to be done in the premises, and to this end shall have
§8-24-56. Appeal from decision of administrative official or board.

1. An appeal taken from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of any ordinance or rule and regulation adopted pursuant to sections thirty-nine through forty-nine of this article shall be filed with the board of zoning appeals.

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

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

§8-24-57. Hearing of appeal.

1. The board of zoning appeals shall fix a reasonable time for the hearing of an appeal. Public notice of the hearing shall be given in the manner specified in section eighteen of this article, and due notice shall be given additionally to the interested parties.

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

3. At the hearing, any party may appear in person, by agent or by an attorney at law admitted to practice in this state.

§8-24-58. Staying of work on premises when appeal taken; exception.

1. When an appeal has been taken and filed with the board of zoning appeals, all proceedings and work on the premises in question shall be stayed unless the official or board from whom or which the appeal was
taken shall certify to the board of zoning appeals that
by reason of facts stated in the certificate a stay would
cause imminent peril to life or property. If such certifi-
cate be filed, proceedings or work on the premises shall
not be stayed except by a restraining order which may
be granted by the circuit court of the county in which
the premises affected are located, upon application
therefor, on notice to the official or board from whom
or which the appeal is taken and the owner of the prem-
ises affected and on due cause shown.

PART XVII. SAME—BOARD OF ZONING APPEALS—
JUDICIAL REVIEW.

§8-24-59. Petition for writ of certiorari from decision or order.

1 Every decision or order of the board of zoning appeals
shall be subject to review by certiorari.

2 Any person or persons jointly or severally aggrieved
by any decision or order of the board of zoning appeals
may present to the circuit court of the county in which
the premises affected are located a petition duly verified,
setting forth that such decision or order is illegal in
whole or in part, and specifying the grounds of the
alleged illegality. The petition must be presented to
the court within thirty days after the date of the decision
or the order of the board of zoning appeals complained of.

§8-24-60. Notice to adverse parties.

1 Upon filing a petition for a writ of certiorari with
the clerk of the circuit court of the county in which
the premises affected are located, the petitioner shall
cause a notice to be issued and served by the sheriff
of the county upon the adverse party or parties, if any,
as shown by the record of the appeal in the office of
the board of zoning appeals, and upon the chairman
or secretary of the board of zoning appeals.

2 The adverse party or parties shall be any property
owner whom or which the record of the board of zoning
appeals shows to have appeared at the hearing before
the board in opposition to the petitioner. If the record
shows a written remonstrance or other document op-
posing the request of petitioner containing the names
of more than three property owners, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named in the remonstrance or document shall not be required.

The notice shall state that a petition for a writ of certiorari has been filed in the circuit court of the county asking for a review of the decision or order of the board of zoning appeals, shall designate the premises affected and shall specify the date of the decision or order complained of.

Section 8-24-61. Action of court or judge on petition.

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

Section 8-24-62. Stay of work on allowance of writ.

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

Such staying order may be issued by the court or judge without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.

§8-24-63. Return to writ by board of zoning appeals.

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

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

§8-24-64. Action by circuit court or judge thereof.

The court or judge may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the board of zoning appeals on the facts set out in the petition and return to the writ of certiorari.

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

In passing upon the legality of the decision or order of the board of zoning appeals, the court or judge may reverse or affirm, in whole or in part, or may modify such decision or order.
§8-24-65. Appeal from final judgment of circuit court or judge thereof.
1 An appeal may be taken to the supreme court of this state from the final judgment of the court or judge reversing, affirming or modifying the decision or order of the board of zoning appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.

PART XVIII. ENFORCEMENT PROVISIONS.

1 The governing body of a municipality or the county court may provide penalties, as set out in section sixty-eight of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this article and may declare that any buildings erected, raised or converted or land or premises used in violation of any ordinance or rule and regulation adopted under the authority of sections thirty-nine through sixty-five of this article shall be common nuisances and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

§8-24-67. Injunction.
1 The planning commission, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county to restrain a person or unit of government from violating the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. The planning commission, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court directing a person or unit of government to remove a structure erected in violation of the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. If the planning commission, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.
§8-24-68. Penalty.
1 Any person who violates any provision of this article
2 shall be guilty of a misdemeanor and, upon conviction,
3 shall be fined not less than ten dollars nor more than
4 three hundred dollars.

PART XIX. CONSTRUCTION; SPECIAL PROVISIONS; REPEALER.

§8-24-69. Provisions supplemental; special provisions concerning state-supported institutions of higher education.
1 The planning and zoning provisions of this article are
2 supplemental to and do not abrogate the powers and
3 authority extended to agencies, bureaus, departments,
4 commissions, divisions and officials of the state govern-
5 ment by other state statute and these powers and author-
6 3 shall remain in full force and effect. The powers
7 of supervision and regulation by such divisions of the
8 state government over municipal, county and other
9 local governmental units and persons are also not abro-
10 gated and shall continue in full force and effect. If the
11 county court of any county in which a state-supported
12 institution of higher education is situate shall not create
13 a county planning commission as contemplated herein,
14 the county court of such county is hereby authorized
15 to enact an ordinance for the zoning of any unincor-
16 porated territory in said county within one-half mile
17 of the campus of any such state-supported institution
18 of higher education, and with respect to the zoning of
19 such territory, any such county court shall have the
20 same power and authority as are conferred hereunder
21 upon municipalities.

§8-24-70. Conflict with other laws, etc.
1 Whenever any ordinance or rule and regulation adopted
2 under the authority of this article requires a greater
3 width or size of yards, courts or other open spaces, or
4 requires a lower height of building or less number of
5 stories, or requires a greater percentage of lot to be left
6 unoccupied, or imposes other higher standards than are
7 required in any other statute, including a special legis-
8 lative charter, or local ordinance or rule and regulation,
the provisions of the ordinance or rule and regulation
adopted under the authority of this article shall govern.
Whenever any other statute, including a special legis-
lative charter, or local ordinance or rule and regulation
requires a greater width of size of yards, courts or other
open spaces, or requires a lower height of building or
a less number of stories, or requires a greater percentage
of lot to be left unoccupied, or imposes other higher
standards than are required by any ordinance or rule
and regulation adopted under the authority of this article,
the provisions of such other statute, including a special
legislative charter, or such other local ordinance or rule
and regulation shall govern.
§8-24-71. General repealer; planning and zoning outside cor-
porate limits exercised under prior acts.
All acts or parts of acts, including special legislative
charters, inconsistent with the provisions of this article
are hereby repealed to the extent of their inconsistency,
except as provided in section seventy of this article.
In amplification of the provisions of sections two,
twenty-four and forty-nine of this article, and notwith-
standing any other provision of this article to the con-
trary, any comprehensive plan and any zoning ordinance
or rule and regulation adopted by any municipality af-
fecting land located beyond the corporate limits of such
municipality under any prior planning and zoning act
of the Legislature granting such extraterritorial juris-
diction to such municipality shall remain valid and en-
forceable, and any such municipality which adopted or
enacted any such plan or ordinance or rule and regu-
lation under such prior act may continue to exercise
planning and zoning control and authority, under the
provisions of this article, over any territory located be-
yond the corporate limits thereof which is covered under
the plan or ordinance or rule and regulation adopted or
enacted under any such prior act, and under no circum-
stances whatever shall a municipality which has not
heretofore exercised extraterritorial jurisdiction under
any such prior act hereafter have any power or authority,
notwithstanding any provision of this chapter to the con-
trary, to exercise any such extraterritorial jurisdiction.
§8-25-1. Statement of purpose

1 The Legislature hereby recognizes the social and economic interdependence of the people residing within a given region of the state and the common interest they share in its future development. The Legislature hereby further recognizes that plans and decisions made by local governments within a region with respect to land use, circulation patterns, capital improvements and the like, affect the welfare of neighboring jurisdictions and therefore should be developed jointly. It is, therefore, the aim of this article to provide a means for: (1) Formulation and execution of objectives and policies necessary for the orderly growth and development of a region as a whole; and (2) coordination of the objectives, plans and policies of the separate units of government comprising the area; all being hereby declared to be public purposes.

§8-25-2. Creation of a regional planning commission.

1 A regional planning commission may be established as a public agency pursuant to the following procedures and with the approval of the commissioner of commerce:
2 (a) Two or more municipalities, two or more counties, or one county or two or more counties and a municipality or municipalities within the county or counties may, by agreement among their respective governing bodies, create or reorganize a regional planning commission: Provided, That a municipality or county not having a planning commission shall not participate in the creation or reorganization of a regional planning commission: Provided, however, That (1) in the case of municipalities, the one within the region with the largest population shall be a party to the agreement; and (2) the total number of both counties and municipalities participating in the agreement shall equal fifty percent or more of the total number of counties and municipalities within the region. The agreement shall be effected through the adoption by the governing body of each
participating government, acting individually, of an appropriate resolution. A copy of such agreement shall be filed with the commissioner of commerce.

(b) Any additional county or municipality within the region may become a party to the original agreement or a new agreement reorganizing the commission.

§8-25-3. Definition of the term “region.”

As used in this article, the term “region” shall mean a specific geographic area in which a regional planning commission shall have jurisdiction, which area shall be fixed and determined by the commissioner of commerce and be stipulated with his approval in the agreement by which the commission is established or reorganized. Provided, That no territory within a municipality or county not having a planning commission shall be included in the area, except that territory within a municipality having a planning commission may be included even though the county in which it is located does not have a planning commission.

§8-25-4. Membership and organization of commission; meetings.

Except as provided below, the membership of a regional planning commission shall consist of representatives from each participating government or stipulated combinations thereof, in number to be specified in the agreement: Provided, That at least one member of the planning commission of each participating government and one member of the governing body of each participating government shall be members of the commission, and all members of the commission shall be qualified by knowledge and experience in matters pertaining to the planning and development of municipalities, counties or regions, with the exception of the member or members of the governing body of each participating governmental unit. A commission may appoint not to exceed two members from the general public, such members to have demonstrated outstanding leadership in community affairs. The terms of the members of a commission, the manner of their appointment or removal, and the method and manner of filling any
vacancies on a commission, as well as any additional
qualifications for membership on a commission, shall be
specified in the agreement. A representative of the state
government may be designated by the governor to attend
meetings of a commission.

The members of a commission shall serve without
compensation, but shall be reimbursed for all reasonable
and necessary expenses actually incurred in the per-
formance of their commission duties. A commission shall
elect a chairman from among its members, and shall
establish its own rules and regulations and such com-
mittees as it deems necessary to carry on its work.
Such committees may have as members persons other
than members of the commission. A commission shall
meet as often as necessary, but not less than four times
a year.

§8-25-5. Annual budget; appropriations; depositories; ex-
penditures; accounting.

A regional planning commission shall adopt an annual
budget, to be submitted to the participating governments
which shall each contribute to the financing of the
commission according to the formulas specified in the
agreement, and each such government is hereby em-
powered and authorized to appropriate and expend funds
for services rendered to it by the commission. Money
received by a commission shall be deposited in such
depository as may be specified in the agreement and be
paid out in such manner as the commission may deter-
mine. A commission shall upon demand at any time
make a full and complete accounting of all funds to
with respect thereto, either separately, jointly or coop-
without demand make to the participating governments
an annual accounting thereof.

§8-25-6. Financial aid; contracts; reports.

A regional planning commission is hereby empowered
and authorized to accept and expend funds and grants
provided for the purposes hereof by the government of
the United States or its departments or agencies, by
departments and agencies of this state or of any other
state, by one or more municipalities, counties or other
political subdivisions of this state or of any other state, or by any other agency whose interests are in harmony with the purposes hereof, including planning commissions, all in accordance with any federal requirements and subject to any conditions or limitations the constitution or law of the state may provide, and to contract with respect thereto, either separately, jointly, or cooperatively, if the contract is approved by the attorney general, and to provide such information and reports as may be necessary to secure such financial aid. In this connection, any such commission is hereby expressly empowered and authorized to participate in any federal planning assistance program.

§8-25-7. Cooperation by and with other planning commissions, governmental units and officials; authority of political subdivisions to expend funds.

To effectuate the purposes of this article, a regional planning commission and the planning commissions of the participating governments in the region may cooperate with regional planning commissions for other regions or the planning commissions of the participating governments therein, with the governing or administrative bodies and officials of any municipality, county or other political subdivision, including those in other states, with federal and state departments, agencies and officials, including those of other states, and with any other agency whose interests are in harmony with the purposes of this article, with a view to coordinating and integrating the planning for the cooperating governmental units, and may appoint such committees and may adopt such rules and regulations as may be thought proper to effect such cooperation; and, for the purpose of such coordination and integration, may contract with respect thereto with such bodies, departments, agencies and officials, all in accordance with any federal requirements and subject to any conditions or limitations the constitution or law of the state may provide, if the contract is approved by the attorney general. The governing or administrative bodies and officials of municipalities, counties and other political subdivisions within this state are hereby empowered and authorized to cooperate.
in this manner with such planning commissions and with
the governing or administrative bodies and officials of
political subdivisions in other states for the purposes of
such coordination and integration.

All municipalities, counties and other political sub-
divisions within this state are hereby empowered and
authorized to appropriate and expend funds for services
they obtain through cooperative arrangements made pur-
suant to the provisions of this section.

§8-25-8. Director and staff.

A regional planning commission may appoint a director,
who shall be qualified for the position by training and
experience and who shall serve at the will and pleasure
of the commission. The director shall be the chief ad-
ministrative and planning officer and regular technical
adviser of the commission, and shall appoint and remove
the staff of the commission. When authorized by the
regional planning commission, such director may enter
into agreements with the planning commissions of the
participating governments for the temporary transfer
or joint use of staff employees, and may contract for
professional or consultant services from other govern-
mental and private agencies.

In the event a director is not appointed, a commission
may exercise the power and authority granted to a di-
rector by the provisions of this section as well as the
other power and authority granted to it by the provisions
of this article.

PART II. POWERS AND DUTIES.

§8-25-9. Powers and duties of regional planning commission
generally.

A regional planning commission shall:

(a) Prepare, and from time to time revise, amend,
extend or add to, a plan or plans for the development
of the region. Any such plan or plans shall be based
on studies of physical, social, economic and governmental
conditions and trends, and shall aim at the coordinated
development of the region in order to promote the general
health, welfare, convenience and prosperity of its peo-
The plan or plans shall embody the policy recommendations of the regional planning commission, and may include, but shall not be limited to:

(1) A statement of the objectives, standards and principles sought to be expressed in the plan or plans.

(2) Recommendations for the most desirable pattern and intensity of general land use within the region in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the region, and the relation of land use within the region to land use in adjoining areas. The land use pattern shall include provision for open as well as urban, suburban and rural development.

(3) Recommendations for the general circulation pattern for the region, including land, water and air transportation and communication facilities, whether used for movement within the region or to and from adjacent areas.

(4) Recommendations concerning the need for and proposed general location of public and private works and facilities, which by reason of their function, size, extent or for any other cause are of a regional, as distinguished from purely local, concern.

(5) Recommendations for the long-range programming and financing of capital projects and facilities.

(6) Such other recommendations as it may deem appropriate concerning such current and impending problems as may affect the region.

(b) Prepare, and from time to time revise, recommended ordinances and rules and regulations which would implement the regional plan or plans.

(c) Prepare studies of the region's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public service, local governments and any other matters which are relevant to regional planning.

(d) Collect, process and analyze, at regular intervals, the social and economic statistics for the region which
are necessary to planning studies, and make the results of such collection, processing and analysis available to the general public.

(c) Participate with other governmental agencies, educational institutions and private organizations in the coordination of the regional research activities described in paragraphs (c) and (d) of this section.

(f) Cooperate with, and provide planning assistance to, municipalities, counties and municipal and county planning commissions within the region, and coordinate regional planning with the planning activities and plans of the state and of the municipalities and counties within the region, as well as neighboring areas, including those in adjoining states, and the programs of federal departments and agencies.

(g) Provide information to officials, departments, agencies and instrumentalities of the federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional plan and the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region.

(h) Receive and review for compatibility with regional plans all proposed comprehensive land use, circulation and public facilities plans and projects, ordinances and rules and regulations, official maps and building codes of local governments in the geographic area and all amendments or revisions of such plans, rules and regulations and maps, and make recommendations for their modification where deemed necessary to achieve such compatibility.

(i) Review applications of participating governments for capital project financial assistance from the federal government and state governments, and comment upon their consistency with the regional development plan; and review and comment upon state plans for highways and public works within the area to promote coordination of all intergovernmental activities in the region on a continuing basis.
(j) Exercise all other power and authority necessary and proper for the discharge of its duties.

In developing a comprehensive plan, the plan may be for all or part of the territory in the region, or for all or part of the territory in the region and any territory adjacent to the region, including that without the state, which, in the opinion of the commission, bears a substantial relation to the planning for territory within the region; Provided, That any plan for a part of the region shall be for territory which does not begin and terminate within the boundaries of any single participating government. In developing a plan, a commission shall give consideration to any comprehensive or general development plan existing in any participating government.

During the preparation of a plan, a commission shall periodically consult with the planning commissions of the various participating governments involved in the plan and make every effort to develop a plan which will meet with the approval of the planning commissions of such governments.

PART III. IMPLEMENTATION OF REGIONAL PLANS.

§8-25-10. Certification and implementation of regional plans.

1 All comprehensive regional plans, including zoning ordinances and subdivision regulations, prepared pursuant to the provisions of this article, shall, after adoption by the regional planning commission, be certified by the commission to all planning commissions of the participating governments within the region.

§8-25-11. Adoption of plan by local planning commissions and governing bodies; amendments to plan.

1 A plan shall not be considered the comprehensive plan or a part thereof for any participating government until it has been adopted by its governing body in accordance with the provisions of sections eighteen through twenty-two, article twenty-four of this chapter, and when so adopted it shall supersede any previous comprehensive plan or any part of such plan of the participating government inconsistent therewith. Before rejecting or amending a plan as certified by the regional planning commis-
§8-25-12. Cooperation by local governments.

Any municipality or county within the geographic area of the region may, and all participating governments and their planning commissions shall, file with the regional planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations, and project plans for capital facilities, and amendments to and revisions of any of the foregoing, as well as copies of their regular and special reports dealing with planning matters. Each municipality or county within the geographic area of the region shall afford the regional planning commission having jurisdiction therein a reasonable opportunity to comment upon any such proposed plans, zoning ordinances, subdivision regulations and project plans for capital facilities and shall consider such comments, if any, prior to adopting any such plan, ordinance, regulation or project plan.
1 A regional planning commission shall submit an annual
2 report to the commissioner of commerce and to the
3 governing bodies and planning commissions of all par-
4 ticipating governments in the region.

ARTICLE 26. INTERGOVERNMENTAL RELATIONS — INTER-
STATE REGIONAL PLANNING COMMISSIONS.

PART I. CREATION; ORGANIZATION AND FUNCTION.

§8-26-1. Creation of commission; state may be ex officio member.
1 Any municipality or county or any two or more muni-
2 cipalities or counties, or any combination thereof, may
3 cooperate with political subdivisions of other states
4 bordering on this state for the purpose of creating, by
5 an agreement, an interstate regional planning commis-
6 sion, whenever such political subdivisions comprise a
7 region which would benefit from cooperative planning.
8 The agreement entered into by the several political sub-
9 divisions shall specify the extent of the region included
10 within the jurisdiction of the interstate regional planning
11 commission; and shall fix the membership comprising
12 the commission, the terms of office and method of ap-
13 pointment of the members thereof, the duration of the
14 commission, the method for terminating the commission,
15 the method of disposal of all property belonging to the
16 commission, the distribution of the proceeds, and the
17 apportionment of the costs of maintaining the planning
18 commission to be borne respectively by the various po-
19 litical subdivisions included within the agreement, such
20 apportionment to be based on the population of the
21 various participating political subdivisions. Any such
22 agreement shall be executed on behalf of any municip-
23 2ality by the governing body thereof and on behalf of a
24 county by the county court.
25 The state of West Virginia may be an ex officio mem-
26 ber of any such interstate regional planning commission
27 formed under the provisions of this article. The com-
missioner of commerce or a representative designated by him shall represent the state in the deliberations of any interstate regional planning commission or its agencies or instrumentalities but this state shall not be a voting member of any interstate regional planning commission or any agency or instrumentality thereof.

§8-26-2. Definition of region.

The term "region," as used in this article, shall mean a specific metropolitan interstate area designated by the proper federal agency pursuant to the "Demonstration Cities and Metropolitan Development Act of 1966" and any amendments thereto, as well as all other Interstate areas which would benefit from cooperative planning. Before any area in this state is included within an interstate region for interstate planning, it shall be approved by the commissioner of the department of commerce: Provided, That no territory within any municipality or county not having a planning commission shall be included in an interstate area.

§8-26-3. Membership and organization of commission; reports and audits.

Any member of an interstate regional planning commission may hold any other public office, appointive or elective, if not prohibited by some other statute or constitutional provision, and a member thereof may also serve as a member of a municipal, county or regional planning commission. The members of the commission shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of their commission duties. The commission shall elect its own chairman or other officers from among its members and shall establish its own rules and regulations and bylaws, schedule of meetings and such committees with such powers as it may deem necessary to carry on its work. Any such commission shall make a quarterly report to the governing body of each municipality and to the county court of each county contributing to the financial support of such commission, containing an itemized ac-
count of its receipts and disbursements during the pre-
ceeding quarter. Such report shall be made within thirty
days after the end of each quarter. At the end of each
fiscal year, any such commission shall arrange for an
independent audit of its financial affairs and within
thirty days after the end of such fiscal year, such com-
mmission shall furnish a copy of the report of such audit
to any such governing body or county court and shall
cause a copy thereof to be published as a Class I 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 municipality and
county which contributed to the financial support of such
commission.

PART II. POWERS AND DUTIES.

§8-26-1. Powers and duties of an interstate regional planning
commission.

(a) An interstate regional planning commission may
make studies, maps, plans and reports relative to the
region and shall recommend procedures and policies to
the appropriate authorities, based on physical, social,
industrial and governmental conditions and trends, to
promote the coordinated development of the region and
the general health, welfare, convenience and prosperity
of the people of the region. Such planning and coordina-
tion may reflect the following planning criteria:

(1) Goals, objectives, standards and principles for the
development of the region;

(2) The distribution and intensity of general land
use and open space;

(3) The general circulation pattern for the region,
including land, water and air transportation and com-
munication facilities, and continuing comprehensive trans-
portation planning;

(4) The general location, character and extent of pub-
lic and private works and facilities which are of area-
wide or regional, as distinguished from purely local, con-
cern; and

(5) Long-range programming and financing of capital
projects and facilities.
(b) The commission shall:

(1) Review plans and proposals for projects and programs of interstate or regional significance which may be proposed by others;

(2) Review and make recommendations concerning administrative and regulatory measures to implement area-wide or regional plans;

(3) Review and make recommendations concerning effective utilization of such federal and state assistance as may be available on a regional basis or as may have a regional impact;

(4) Collect, analyze and report on statistics and other information concerning traffic, housing, population and social, economic and physical conditions of the region;

(5) Make recommendations to governmental bodies within such region for such actions as are necessary and proper to further the coordinated development of the region; and

(6) Conduct necessary investigations and research and cooperate with other public and private agencies or persons to conduct such investigations and research on planning problems affecting the region.

§8-26-5. Appropriations, receipts and expenses.

(a) Any political subdivision which becomes a member of any interstate regional planning commission may contract each fiscal year with said interstate regional planning commission to pay a proportionate part of the expenses properly chargeable to the planning services rendered to such political subdivision, and any funds budgeted for interstate planning may be paid over by the political subdivision to the interstate regional planning commission.

(b) An interstate regional planning commission may accept and use funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of any adjoining state, and from any municipality, county or other political subdivision of this or any adjoining state, including municipal, county, regional or other planning commissions of this or any adjoining state, or from private sources, or services from departments, agencies or instrumentalities of this state,
and may contract with respect thereto and provide such
information and reports as may be necessary to secure
such financial or other aid. Within the amounts thus
agreed upon and appropriated or otherwise received,
any commission may employ such engineers, planners,
consultants and other employees as are necessary and
may rent or own such space and make such purchases
as it deems necessary to its use.

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN
MASS TRANSPORTATION SYSTEMS.

PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF
AUTHORITIES.

1 This article may be cited as the “Urban Mass Trans-
2 portation Authority Act.”

§8-27-2. Legislative findings and declaration of policy.
1 The Legislature hereby finds and declares:
2 (a) That a significant part of the population of this
3 state is located in expanding urban areas;
4 (b) That in certain of these areas there are no urban
5 mass transportation systems and in others there are urban
6 mass transportation systems which are inadequate or in
7 imminent danger of becoming inadequate or in imminent
8 danger of discontinuing such service;
9 (c) That the establishment and maintenance of ade-
10 quate urban mass transportation systems in such areas
11 is essential for preserving viable urban areas and further
12 promoting the healthful, safe, orderly and economical
13 development and expansion of such urban areas;
14 (d) That the creation of urban mass transportation
15 authorities to establish and maintain urban mass trans-
16 portation systems in such areas is for the welfare of the
17 people of this state in general and of the participating
18 governments in particular, and is a public purpose for
19 which public money may be spent and private property
20 acquired; and
21 (e) This article is enacted in view of these findings
22 and shall be liberally construed in the light thereof.

As used in this article, unless a different meaning appears from the context:

(a) “Authority” means any urban mass transportation authority created pursuant to the provisions of this article;

(b) “Board” means the board of any urban mass transportation authority;

(c) “Contiguous counties” means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least one other county, but does not require that each county touch all of the other counties so combining;

(d) “Facilities and equipment” means all real and personal property of every kind and character owned or held by any urban mass transportation system for the purpose of providing transportation by bus or rail or other conveyance serving the public;

(e) “Participating government” means any municipality or county establishing or participating in an urban mass transportation authority;

(f) “Project” means any undertaking of an authority;

(g) “Revenues” means the gross receipts derived directly or indirectly from or in connection with the operation by an authority of any urban mass transportation system or systems and shall include, without limitation, all fees, rates, fares, rentals or other income actually received or receivable by or for the account of an authority from the operation of the system, and any other receipts from whatever source derived;

(h) “Service area of the authority” means and includes an area commensurate with the area served by an existing system or systems acquired or to be acquired by an authority, or if there be no existing system, the area shall extend to and include an area to be defined in the certificate of convenience and necessity issued by the public service commission under the applicable provisions of chapter twenty-four and chapter twenty-four-a of this code;

(i) “System” means any urban mass transportation system;
(j) "Trust indenture" means a security instrument entered into by an authority pursuant to which bonds or notes are issued;

(k) "Urban area" means any area that includes a municipality or other built-up place which is appropriate for a system to serve commuters or others in the locality taking into consideration the local patterns and trends of growth;

(l) "Urban mass transportation system" means any common carrier of passengers for hire which operates equipment over regular routes within the service area of the authority; and

(m) The singular shall include the plural and the plural shall include the singular.

§8-27-4. Urban mass transportation authorities authorized; authorities to be public corporations.

Any municipality or county, or both, or any two or more municipalities within any county or contiguous counties, or any two or more contiguous counties, or any combination thereof, may create an urban mass transportation authority. Such authority shall be created upon the adoption, by the governing body of each participating government, acting individually, of an appropriate ordinance or order. Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

PART II. ORGANIZATION AND FUNCTION OF AUTHORITIES AND BOARDS.

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

The management and control of any authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments. Prior to making the initial appointments to the board, the governing bodies of the participating governments shall agree to make such initial appointments so that approxi-
mately one-third of the total number of the members to
be so appointed shall be appointed for a term of one year,
approximately one-third of such total number of the
members shall be appointed for a term of two years and
approximately one-third of such total number of the
members shall be appointed for a term of three years.
As the term of each such initial appointee expires, the
successor to fill the vacancy created by such expired term
shall be appointed for a term of three years. The number
of members representing each participating government
shall be as agreed upon from time to time by the govern-
ing bodies of the said participating governments. Each
member of the board shall have one vote on all matters
coming before it. Any individual who is a resident of,
or member of the governing body of, any participating
government is eligible to serve as a member of the board.
The governing body of each participating government shall
inform the authority of its appointments or reappoint-
ments to the board by delivering to the authority a cer-
tified copy of the ordinance or order making the ap point-
ment or reappointment. If any member of the board
dies, resigns, or for any other reason ceases to be a mem-
ber of the board, the governing body of the participating
government which such member represented shall ap-
point another individual to fill the unexpired portion of
the term of such member.

§8-27-6. Compensation of members; expenses.
As compensation for his services on the board each
member shall receive from the authority the sum of fifty
dollars for each meeting actually attended. The total
compensation paid to any member by the authority for
any fiscal year shall not exceed in the aggregate the sum
of six hundred dollars. Each member shall also be reim-
bursed by the authority for all reasonable and necessary
expenses actually incurred in the discharge of his duties
as a member of the board.

§8-27-7. Meetings of authority; officers; employees; official
bonds; records of authority public records.
At its first meeting, to be held no later than sixty days
from the creation of the authority as provided in section
four of this article, the board shall elect from its membership a president to act during the next ensuing fiscal year, or until his successor is elected and qualified. At that time, the board shall also elect a vice president, a secretary and a treasurer and such other officers as may be required, who need not be members of the board, whose duties shall be defined and whose compensation shall be fixed by the board and paid out of the funds of the authority. The treasurer, and such other officers and employees as the board shall direct, shall furnish bond for the use and benefit of the authority in such penal sum as may be fixed by the board and conditioned upon the faithful discharge by such treasurer and such other officers and employees so directed by the board of the duties of their respective offices or employment, and upon accounting for and paying over all moneys which may come into their possession by virtue of such office or employment. At its first meeting the board shall also fix the time and place for holding regular meetings, but it shall meet at least once in the months of January, April, July and October. Special meetings of the board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all the members, at least two days in advance of a special meeting, a written notice setting forth the time and place of the special meeting and the matters to be considered at such special meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all the members are present at the special meeting. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before an authority. All proceedings of the authority shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved by the secretary of the authority. All records of the authority shall be public records.

§8-27-8. Quorum; majority vote required.

A majority of the members of the board, which majority must include members from a majority of the partic-
pating governments, shall constitute a quorum. The vote of a majority of all members present at any meeting of the board shall be necessary to take any action.


The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the authority and annually thereafter the treasurer shall prepare and submit to the board a tentative budget. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by said board, shall be adopted as the budget for the ensuing fiscal year. No expenditures in excess of the budget shall be made during such fiscal year unless expressly authorized and directed by the board. It shall not be necessary to include in such budget any statement of necessary expenditures for annual interest or principal payments on bonds or for capital outlays, but it shall be the duty of the board to make provisions for their payment as they become due.

PART III. POWERS AND DUTIES OF AUTHORITIES.


Each authority is hereby given the power:

(a) To sue and be sued, implead and be impleaded;
(b) To have and use a seal and alter the same at pleasure;
(c) To make and adopt all rules and regulations and bylaws as may be necessary or desirable to enable it to exercise the powers and perform the duties conferred or imposed upon it by the provisions of this article;
(d) To employ, in its discretion, planning, architectural and engineering consultants, attorneys, accountants, construction, financial, transportation and traffic experts and consultants, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation;
(e) To acquire by grant, purchase, gift, devise or lease and to hold, use, sell, lease or otherwise dispose of real
and personal property of every kind and nature whatsoever, licenses, franchises, rights and interests necessary for the full exercise of its powers pursuant to the provisions of this article, or which may be convenient or useful for the carrying out of such powers;

(f) To acquire, construct, reconstruct, complete, develop, improve, own, equip, maintain and operate any system or systems, or any part thereof, including, without limitation, the power to acquire by purchase, lessee or gift all or any part of any licenses, franchises, rights, interests, engineering and technical studies, data or reports owned or held by any person and determined by its board to be necessary, convenient or useful to the authority in connection with the acquisition, construction, reconstruction, completion, development, improvement, ownership, equipping, maintenance or operation of any system or systems and to reimburse public utilities for relocation of any utility line or facility made necessary by the construction, reconstruction, completion, development, improvement, equipping, maintenance or operation of any system or systems;

(g) To acquire any land, rights or easements deemed necessary or incidental for the purposes of the authority by eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by business corporations;

(h) To enter into contracts and agreements which are necessary, convenient or useful to carry out the purposes of this article with any person, public corporation, state or any agency or political subdivision thereof and the federal government and any department or agency thereof, including, without limitation, contracts and agreements for the joint use of any property and rights by the authority and any person or authority operating any system, whether within or without the service area of the authority, and contracts and agreements with any person or authority for the maintenance, servicing, storage, operation or use of any system or part thereof, facility or equipment on such basis as shall seem proper to its board;
(i) To enter into contracts and agreements for superintendence and management services with any person, who has executive personnel with experience and skill applicable to the superintendence and management of any system, for the furnishing of its services and the services of experienced and qualified personnel for the superintendence and management of any system or any part thereof, including, without limitation, superintendence over personnel, purchases, properties and operations and all matters relating thereto, and any revenue bond trust indenture may require such contract or agreement, but the personnel whose services are to be so furnished under any such contract or agreement shall not include any member of the board, any member of the immediate family of a member of the board or any agents or employees of the authority, and no such contract or agreement shall extend beyond a term of ten years or such longer time as there are outstanding any revenue bonds under a trust indenture which requires such contract or agreement;

(j) To assume any lien indebtedness of any system or part thereof acquired by it under the provisions of this article;

(k) To execute security agreements, contracts, leases, equipment trust certificates and any other forms of contracts or agreements, granting or creating a lien, security interest, encumbrance or other security in, on or to facilities and equipment, containing such terms and provisions as the board deems necessary;

(l) To apply for, receive and use grants, grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any agency or department thereof, and a state government whose constitution does not prohibit such grants, grants-in-aid, donations and contributions, and any agency or department thereof, and to accept and use bequests, devises, gifts and donations from any person;

(m) To lease any system or any part thereof to, or contract for the use of any system or any part thereof by, any person, but a trust indenture may prohibit, limit or restrict the exercise of such power;
(n) To acquire for cash or in exchange for its bonds all or any part of any publicly or privately owned system or systems;

(o) To make or cause to be made either by itself or in cooperation with other persons or organizations, whether public or private, traffic surveys, population surveys and such other surveys and studies as it shall consider useful in the performance of its duties or the exercise of its powers under the provisions of this article and in connection therewith the authority may contract with any person or organization for such planning services;

(p) To enter into contracts and agreements with any public or private system either within or contiguous to its boundaries for the transfer of passengers between it and the system operating in territory contiguous to its boundaries;

(q) To fix and establish from time to time, subject to the approval of the public service commission, such fees, rates or other charges and routes, time schedules and standards of service as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by the authority, and reasonable reserves therefor, as the same shall become due, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, together with all other payments required in each such year by the resolution which authorized the issuance of such bonds, or the trust indenture securing the same, including, without limitation, reasonable reserves or margins for any of such purposes, and every authority shall file and keep on file the information specified in section two, article six, chapter twenty-four-a of this code in the manner and form as therein provided;

(r) To issue revenue bonds of the authority for any of its purposes or projects and to refund its bonds, all as provided in this article;

(s) To encumber or mortgage all or any part of its facilities and equipment;

(t) To prepare plans for and assist in the relocation
of persons displaced by the authority and to make re-
location payments to or with respect to such persons for
moving expenses and losses of property for which reim-
bursement or compensation is not otherwise made, in-
cluding the making of such payments financed by the
federal government; and
(u) To do any and all things necessary or convenient
to carry out the powers given in this article unless other-
wise forbidden by law.
The exercise of any of the powers herein granted is
expressly made subject to the provisions of section
eighteen of this article, wherever the same are applicable.

PART III. FUNDS OF AUTHORITIES.

§8-27-11. Contributions to authorities; funds and accounts of
authorities; reports; audit by state tax department.

Contributions may be made to authorities from time
to time by the participating governments and by any
other municipalities, counties or persons that shall desire
to do so. All such funds and all of the other funds
received by any authority shall be deposited in a separate
account in such banking institution or institutions as
its board may direct and shall be withdrawn therefrom
only in such manner as its board may direct. Each
authority shall keep strict account of all its receipts
and expenditures and shall make a quarterly report
to the participating governments which have made con-
tributions to it and such report shall contain an itemized
account of its receipts and disbursements during the
preceding quarter. Such report shall be made within
sixty days after the termination of the quarter. Within
ninety days after the end of each fiscal year, each author-
ity shall make an annual report containing an itemized
statement of its receipts and disbursements for the pre-
ceding fiscal year, and any and all other information
which the board may deem pertinent, to all of the par-
ticipating governments. The books, records and accounts
of each authority shall be subject to audit and exam-
ination by the state tax department of West Virginia.
PART IV. DEVELOPMENT OF TRANSPORTATION PLAN.

§8-27-12. Study and plan of operation; notice and hearing; adoption of transportation plan.

1 The authority, as soon as practical after its organization, shall prepare a comprehensive plan with respect to a program for a unified or officially coordinated system as a part of a comprehensively planned development of the urban area within its service area. Said program, to the maximum extent feasible, shall provide for the participation of privately owned systems.

2 In the preparation of a comprehensive plan, an authority shall make careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions within its service area. The comprehensive plan shall be made for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of systems within the service area which, in accordance with present and future needs and resources, will best promote the health, safety and general welfare of the inhabitants of the service area, as well as the orderly and economical development and expansion of the service area.

3 Prior to the adoption of a comprehensive plan, the authority shall submit its tentative plan to the governing bodies of the participating governments and hold a public hearing in the service area on the plan. At least thirty days prior to the date set for hearing, the authority shall publish a notice of the time and place of the hearing 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 the service area of the authority. After a public hearing has been held, the authority may by resolution adopt the comprehensive plan and may from time to time amend, supplement or change the comprehensive plan in the same manner in which it was adopted.

PART V. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.

§8-27-13. Resolution authorizing acquisition or construction of urban mass transportation system.

1 Before the authority shall acquire or construct any
system, the authority shall adopt a proper resolution which shall include:

(a) The estimated cost of the acquisition or construction and all incidental expenses connected with;

(b) The probable sources of revenue and the estimated amount thereof;

(c) The estimated cost of administration, maintenance, repair and operation thereof;

(d) The proposed methods of financing; and

(e) Any other information which the authority shall deem appropriate.

Such resolution shall also:

(a) Order the acquisition or construction of such system;

(b) If appropriate, direct that revenue bonds in such amount as the authority may deem necessary to pay all or any part of the cost of acquisition or construction of such system be issued pursuant to the provisions of this article; and

(c) Set forth the amount of the principal of the indebtedness, the maximum term the bonds proposed to be issued shall run before maturity and the maximum rate of interest to be paid and such other details with respect to the bonds and the trust indenture, if any, securing the same as the authority may deem necessary or desirable.

Before such resolution shall become effective, the authority shall submit such resolution to the governing bodies of the participating governments and hold a public hearing in the service area on the resolution. At least thirty days prior to the date set for hearing, the authority shall publish a notice of the time and place of hearing 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 the service area of the authority. At such hearing all objections and suggestions shall be heard and after the hearing has been held the authority shall take such action as it shall deem proper.

1. The authority is hereby empowered and authorized to provide by resolution, from time to time, for the issuance of revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing or improving a system or systems, or any part thereof, or the facilities and equipment therefor, as the case may be, or for any other purpose or project authorized by the provisions of this article. The purposes for which revenue bonds may be issued may include the payment of all costs and estimated costs incidental to or connected with the accomplishment of such purpose or project including, without limitation, engineering, inspection and legal fees, the fees of fiscal agents and financial consultants and other fees, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period and for a period not to exceed two years thereafter, and expenses of all proceedings for the authorization, issuance and sale of the bonds.

2. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six percent per annum, payable semiannually, and shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be at any banking institution or trust company within or without the state. The bonds shall be signed by the president of the authority or shall bear his facsimile signature, and the official seal of the authority, or a facsimile thereof, shall be impressed or imprinted thereupon and attested by the secretary of the authority, and any coupons attached to the bonds shall bear the facsimile signature of the president of
the authority. All such signatures, countersignatures and seal may be printed, lithographed or mechanically reproduced, except that one of such signatures or countersignatures on the bonds shall be manually affixed, unless the resolution authorizing the issuance of such bonds shall otherwise provide. If any officer whose signature or countersignature appears on bonds or coupons ceases to be such officer before the delivery of the bonds, his signature shall be as effective as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form, or both, as each authority may determine and provision may be made for the registration of any coupon bonds as to principal alone, and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes except when registered in the name of a registered owner. The authority may exchange its bonds, in whole or in part, for any system or systems, or any parts thereof, or facilities and equipment therefor, or may sell its bonds, in whole or in part, in such manner either at public or private sale and for such price as it may determine will best effect the purposes of this article and be for the best interest of the authority. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The authority is hereby empowered and authorized to provide by resolution, from time to time, for the issuance, sale or exchange of revenue refunding bonds
of such authority for the purpose of refunding any
bonds then outstanding which shall have been issued
under the provisions of this article, including the pay-
ment of any redemption premium thereon and any
interest accrued or to accrue to the date of redemption
of such bonds, and the payment of all expenses incidental
thereto. The authority is further empowered and author-
ized to provide by resolution, from time to time, for
the issuance, sale or exchange of revenue bonds of such
authority for the combined purpose of refunding any
bonds then outstanding, as herein provided, and paying
all or any part of the cost of any additional project or
projects. All provisions of this article applicable to
the issuance of revenue bonds are applicable to the
issuance of refunding bonds and to the sale or exchange
thereof.


1 In the discretion of the authority, any bonds issued
under the provisions of this article may be secured by
a trust indenture by and between such authority and
a corporate trustee, which may be any trust company
or banking institution having the powers of a trust
company within or without the state, or any person
in the United States having power to enter into the same,
including any federal agency.

9 Any resolution authorizing the issuance of such bonds
or any trust indenture securing the same may contain
such provisions for protecting and enforcing the rights
and remedies of the bondholders and of the trustee
as the authority may deem necessary and proper and
not in violation of law, including provisions pledging
all or any part of the revenues of such authority or
cumbering all or any part of the facilities and equip-
ment of such authority to secure the payment of the
bonds subject to such agreements with bondholders
as may then exist; limiting the purpose to which the
proceeds of sale of any bonds then or thereafter to
be issued may be applied; defining the duties of such
authority in relation to the acquisition, construction,
 improvement, maintenance, repair, operation and in-
surance of any project or projects in connection with
which such bonds shall have been authorized; providing for the custody, safeguarding and application of all moneys, limiting the issuance of additional bonds; prescribing a procedure by which the provisions of any trust indenture or contract with bondholders may be amended or modified; requiring such authority to fix and establish such fees, rates or other charges and routes, time schedules and standards of service as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by such authority and reasonable reserves therefor as the same shall become due, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, including, without limitation, reasonable reserves or margins or sinking funds for any of such purposes, subject to the provisions of section eighteen of this article; defining the acts or omissions to act which shall constitute a default in the duties of such authority to the holders of its bonds and providing the rights and remedies of such holders and of the trustee in the event of default and the manner and terms upon which such default may be declared cured; vesting in a trustee such property rights, powers and duties, in trust, as such authority may determine; and such other additional provisions as such authority may deem necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that such other provisions are not expressly enumerated in this section, it being the intention to grant to the authority the power to make any and all covenants or agreements necessary to secure greater marketability of bonds issued under the provisions of this article, as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services, and to grant to such authorities full and complete power to enter into any contract, covenant or agreement with holders of bonds issued under the provisions of this article not inconsistent with this article or the constitution of this state.
§8-27-16. Sinking fund; sinking fund commission; purchase of outstanding bonds.

1 Before the issuance of any bonds under the provisions of this article, the authority shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said system, and, in this connection, shall set aside and pledge a sufficient amount of the net revenues of the system for such purpose, such net revenues being hereby defined to mean the revenues of the system remaining after the payment of the reasonable expense of administration, maintenance, repair and operation, such amount to be paid by such authority into the sinking fund at intervals, to be determined by resolution adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all the bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as provided in this article. Such required payments shall constitute a first charge upon all the net revenues of such authority.

2 Prior to the issuance of any bonds, the authority may, by resolution, be given the right to use or direct the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. In addition to the payments into the sinking fund provided for above, the authority may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by such authority sufficient for maintenance, repair and
40 operation for an ensuing period of not less than twelve
41 months and for depreciation, into the sinking fund.
42 The amounts of the balance of the net revenues as
43 and when so set apart shall be remitted to the state
44 sinking fund commission at such periods as shall be
45 designated in the resolution, but in any event at least
46 thirty days previous to the time interest or principal
47 payments become due, to be retained and paid out by
48 said commission consistent with the provisions of this
49 article and the resolution pursuant to which such bonds
50 have been issued. The state sinking fund commission
51 is hereby authorized to act as fiscal agent for the admin-
52 istration of such sinking fund under any resolution
53 adopted pursuant to the provisions of this article and
54 shall invest all sinking funds as provided by general law.

§8-27-17. Remedies of bondholders.
1 Any holder of bonds issued under the provisions of
2 this article or any of the coupons appertaining thereto,
3 and the trustee under any trust indenture securing
4 the same, except to the extent the rights herein given
5 may be restricted by such trust indenture, may, by civil
6 action, mandamus or other proceeding, protect and en-
7 force any and all rights under the laws of this state or
8 granted under the provisions of this article or under
9 the resolution authorizing the issuance of such bonds,
10 or the trust indenture securing same, and may enforce
11 and compel the performance of all duties required by
12 the provisions of this article or by such resolution or
13 trust indenture to be performed by any authority or by
14 any officer thereof.

PART VI. PUBLIC SERVICE COMMISSION.

§8-27-18. Authority and duty of public service commission.
1 Each authority which undertakes to engage in trans-
2 porting passengers for hire by motor vehicles or other
3 conveyances over regular routes shall be deemed a com-
4 mon carrier of passengers for hire and shall be subject to
5 the jurisdiction and authority of the public service com-
6 mission of West Virginia as provided in chapter twenty-
7 four and chapter twenty-four-a of this code, to the same
8 extent as any other common carrier of passengers for
Provided, That it shall be the mandatory duty of the public service commission to fix and establish, from time to time, such fees, rates or other charges and routes, time schedules and standards of service for each authority as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by that authority, and reasonable reserves therefor, as the same shall become due in each year, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, together with all other payments required in each year by the resolution which authorized the issuance of such bonds or the trust indenture securing the same, including reasonable reserves, margins or sinking funds for any of such purposes.

PART VII. INDEBTEDNESS; EXEMPTION FROM TAXATION.


Each authority may issue bonds, borrow money and incur any proper indebtedness and issue any other obligations as authorized by law or provided in this article. No such indebtedness or obligation incurred by any authority shall give any right against any member of the governing body of any participating government or any member of the board of any authority. Any obligation or indebtedness of any nature of any authority shall never constitute an obligation or indebtedness of any participating government or the governing body of any participating government, within the meaning of any constitutional provision or statutory limitation, and shall never constitute or give rise to a pecuniary liability of any participating government or the governing body of any participating government, or be a charge against the general credit or taxing power of any participating government or the governing body of any participating government, and such fact shall be plainly stated on the face of any bonds issued by any authority. The rights of creditors of any authority shall be solely against the authority as a corporate body and shall be satisfied only out of revenues, moneys or property received or held by it in its corporate capacity.

1. It is hereby found, determined and declared that the creation of any authority and the carrying out of its purposes is in all respects for the benefit of the people of this state in general, and of the participating governments in particular, and is a public purpose; and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, property, operations and activities shall be exempt from the payment of any taxes or fees to the state or any of its political subdivisions or to any officer or employee of the state or any of its political subdivisions, except the special assessment provided for in section six, article six, chapter twenty-four-a of this code. The revenue bonds and other evidences of indebtedness issued pursuant to the provisions of this article, and the interest thereon, shall be exempt from taxation, except inheritance and transfer taxes.

PART VIII. EMPLOYEES OF EXISTING SYSTEMS.


1. Whenever any authority acquires any existing system pursuant to the provisions of this article, the employees of such system shall be protected in the following manner:

(a) The employees of such system shall be retained to the fullest extent possible consistent with sound management, and if terminated or laid off shall be assured priority of reemployment;

(b) The individual employees who are retained shall be retained in positions the same as, or no worse than, their positions prior to the acquisition of such system;

(c) The rights, privileges and benefits of the employees under existing collective bargaining agreements shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such agreement;

(d) Collective bargaining rights shall be continued with respect to employees of any acquired system;
(e) The rights, privileges and benefits of the employees under any existing pension or retirement plan or plans shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such plan or plans;

(f) The owning authority shall provide paid training or retraining programs when necessary; and

(g) The authority owning a system, or any of the employees of any system owned by the authority, shall, in the case of any labor dispute relating to the terms and conditions of employment which is not settled through any established grievance procedure, have the right to submit the dispute to final and binding arbitration by a board of arbitration consisting of three arbitrators, one arbitrator to be chosen by the authority, one by the employee and the third to be chosen by the two arbitrators selected by the authority and the employee. A decision of a majority of the members of the board of arbitration shall be final and binding on the parties. The parties shall each pay the arbitrator of its or his own selection, and they shall jointly pay the third arbitrator and any other expenses connected with submitting such labor dispute to the board of arbitration.

In the event any authority acquires a system and (1) leases such acquired system, or (2) enters into a management contract for superintendence and management services for the operation of such acquired system pursuant to any provision of this article, the lease or contract shall include terms and provisions insuring the protection specified in this section.

PART IX. CONFLICT OF INTEREST; BIDS; LEGAL INVESTMENTS; CONSTRUCTION.

§8-27-22. Conflict of interest.

No member of any authority, nor any of its officers, employees, agents or consultants, shall have any interest in any firm, partnership, corporation, company, association or joint-stock association engaged in the business of providing public transportation in the area encompassed by the authority, or in the manufacture, sale or lease of passenger transportation equipment or facilities. No
member of any authority, nor any of its officers, employees, agents or consultants, shall contract with the authority or be interested in, either directly or indirectly, any contract with such authority or in the sale of property, either real or personal, to such authority. The term "agents" as used in this section shall not be deemed for the purposes of this section to include any persons or authorities which lease from or contract for superintendence and management services with any authority for the administration, maintenance, repair or operation of any system.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required on competitive sealed bids. Such bids shall be obtained by public notice published 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 the service area of such authority. The second publication shall be made at least fourteen days before the final date for submitting bids. In addition to such publication, the notice may also be published by any other advertising medium such authority may deem advisable, and such authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the office of such authority.


Banking institutions, building and loan associations, and insurance companies organized under the laws of this state, may lawfully invest their own funds in bonds issued under the provisions of this article.

§8-27-25. Article constitutes complete authority; liberal construction.

This article shall constitute full and complete authority for the creation of any authority and for carrying out
the powers and duties of any such authority and for the
issuance, sale or exchange of revenue bonds by such
authority as provided in this article. The provisions of
this article shall be liberally construed to accomplish
its purpose and no procedure or proceedings, notices,
consents or approvals shall be required in connection
therewith except as may be prescribed by this article:
Provided, That all applicable functions, powers, authori-
ties and duties of the public service commission shall
remain unaffected except as provided in this article.

ARTICLE 28. INTERGOVERNMENTAL RELATIONS—AIRPORTS
AND NAVIGATION.

PART I. DEFINITIONS; OPERATION OF AIRPORTS.

§8-28-1. Definitions.

When used in this article, the terms "airport" and
"aircraft" shall have the meanings ascribed to them in
section one, article two-a, chapter twenty-nine of this
code.

§8-28-2. Establishment, lease and operation of airports by
municipalities and counties; jurisdiction of county
court.

Any municipality or county may acquire, establish,
construct, lease, equip, improve, maintain and operate for
such municipality or county an airport for the use of air-
craft, and may acquire or lease for such purpose real
property within or without or partly within and partly
without the corporate limits of such municipality, or
within or without or partly within and partly without
such county, or may set apart and use for such purpose
real property owned by the municipality or county,
which is not needed for any other public use, however
such real property was acquired. Any county court now
owning or leasing or hereafter acquiring or leasing any
real property without or partly without the limits of its
county for the purpose of acquiring, establishing, con-
structing, improving, maintaining and operating an air-
port, shall have the same and all jurisdiction over such
property, its maintenance and operation, as it has with
respect to real property owned or leased and operated
§8-28-3. Acquisition of property for airport; payment therefor.

Real property necessary for such airport may be acquired by gift, or by purchase if such municipality or county is able to agree with the owners of such real property on the terms thereof, and otherwise by condemnation, in the manner provided by law under which such municipality or county is authorized to acquire real property for public use. The purchase price or award for any property acquired for airport purposes may be paid by appropriation of moneys available therefor or wholly or partly from the proceeds of sale of the bonds of such municipality or county, as the governing body or county court shall determine, subject, however, to the general provisions of law for the issuance and sale of bonds of municipalities and counties for public purposes generally.

§8-28-4. Construction, maintenance and operation of airport; expenses; rules and regulations and fees.

The governing body or county court of such municipality or county may direct or employ or vest jurisdiction in any appropriate officer, board or body of such municipality or county to locate, acquire, establish, construct, lease, equip, improve, maintain and operate such airport for such municipality or county, but the site so located and the acquisition, establishment, construction, leasing, equipment, improvement, maintenance and operation of such airport shall be subject to the approval of such governing body or county court, as the case may be. The expense of the acquisition, establishment, construction, leasing, equipment, improvement, maintenance and operation shall be a municipal or county charge, as the case may be.

The governing body or county court may adopt rules and regulations and establish fees or charges for the use of such airport, or may authorize the officer, board or body of such municipality or county having jurisdiction to adopt such rules and regulations and establish such fees and charges, subject, however, to the approval of
PART II. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC NEAR AIRPORTS.

§8-28-5. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

The governing body or county court is hereby empowered and authorized to adopt and promulgate rules and regulations to: (1) control the movement and disposition of vehicular and pedestrian traffic within one-fourth mile of any building or installation of any airport owned or operated or owned and operated by any such municipality or county court, (2) regulate and control vehicular parking within such areas by the installation of parking meters or by other methods, and (3) impose reasonable charges for the use of the parking space so metered or otherwise allocated, so as to provide maximum opportunity for the public use thereof.

Violation of any such rule and regulation shall constitute a misdemeanor and the offender, upon conviction in the manner provided by law, may be fined not less than two dollars nor more than ten dollars for each such violation.

Justices of the peace shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

PART III. JOINT OPERATION OF AIRPORTS.

§8-28-6. Airports maintained jointly; abandonment and sale thereof; suits concerning disposition, etc., of airport.

One or more municipalities or counties or both may join with another or other municipalities or counties or both for the purpose of acquiring, establishing, constructing, leasing, equipping, improving, maintaining and operating an airport. Any such airport may be located at such point as the governing bodies and county courts of the
7 municipalities and counties joining therein may agree
8 upon, and such municipalities and counties may raise, by
9 levy or otherwise as provided in this article, funds for
10 the purpose of acquiring, establishing, constructing, leas-
11 ing, equipping, improving, maintaining and operating
12 any such airport, and the municipalities and counties
13 shall agree upon the proportionate part of the cost and
14 expense of such airport to be paid by each municipality
15 and county joining therein. The provisions of sections
16 two, three, four, five, seven and eight of this article
17 shall apply to any such joint airport, and as to section
18 five, the rules and regulations authorized therein shall
19 be jointly adopted and promulgated.

20 In case any such joint airport is abandoned and such
21 airport is owned by such municipalities and counties, the
22 same may be sold with the approval of the governing
23 bodies and county courts of the municipalities and coun-
24 ties jointly owning same. The proceeds of such sale shall
25 be distributed to the municipalities and counties in the
26 proportion to which such municipalities and counties had
27 contributed to the acquisition, establishment, construc-
28 tion, equipment, improvement, maintenance and opera-
29 tion of such airport. In case of a failure of the munici-
30 palities and counties to agree upon the disposition of such
31 airport and the equipment thereat or connected there-
32 with or used in its maintenance or operation, any one
33 or more of the municipalities and counties interested
34 therein may bring a suit in the circuit court of the county
35 in which such airport or the major portion thereof is
36 located, and upon a trial of the cause, held in the manner
37 provided by law for other civil actions seeking equitable
38 relief, the court shall make such decree or decrees with
39 reference to the disposition of the property and distri-
40 bution of the proceeds or other moneys involved as to
41 the court may seem to the best interests of all the parties
42 involved, and an appeal from any such decree or decrees
43 to the supreme court of appeals shall lie as in other
44 civil actions.
PART IV. LEASE OF AIRPORTS TO OTHERS.

§8-28-7. State and political subdivisions empowered and authorized to lease airports and grounds to others.

1 The state, acting through the aeronautics commission,
2 or any municipality or county, owning, either severally
3 or jointly with other governmental units, an airport
4 and any grounds used or useful in connection therewith
5 may severally or jointly lease the same to others, for use
6 as an airport and for any other purposes incidental to
7 and not inconsistent therewith, for a term not exceeding
8 thirty years: Provided, That no lease shall be executed
9 by such owner or owners of any such airport or grounds
10 unless and until such owner or owners shall have given
11 notice by publication of the following described notice
12 as a Class II legal advertisement in compliance with the
13 provisions of article three, chapter fifty-nine of this code,
14 and the publication area for such publication shall be
15 the state if it is the state which proposes to make
16 such lease or the political subdivision or subdivisions
17 involved if it is a political subdivision or subdivisions
18 which propose to make such lease. The notice shall state
19 its or their intent to lease said airport or grounds, shall
20 accurately describe what is proposed to be leased, the
21 purpose or purposes for which the same may be used
22 and the terms of said lease, 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 pro-
25 posals. Nothing herein contained, however, shall prevent
26 such owner or owners of any such airport or grounds
27 from granting or renting landing rights for airplanes,
28 hangar space, gasoline storage space, handling facilities,
29 ticket or general office space, or any other facilities or
30 rights in connection with such airport or grounds, cover-
31 ing or affecting less than the whole thereof, without
32 notice and upon such terms as such owner or owners
33 may deem advisable. All income received by a munici-
34 pality or county court under the terms of any such lease
35 or grant shall be paid to the state sinking fund com-
36 mission to retire the bonded indebtedness, if any, created
37 for the acquisition, establishment, construction, equip-
ment, improvement, maintenance and operation of such airport or grounds, and if there be no such outstanding bonded indebtedness, then such income shall be paid into the general funds of such municipality or county.

PART V. FUNDS FOR AIRPORTS.

§8-28-8. Levy for airport; funds for its maintenance and operation.

1 The governing body of a municipality or the county court of a county to which this article is applicable may lay a levy, not to exceed five cents on each one hundred dollars of valuation, for a period not exceeding three years, and appropriate therefrom funds for the purpose of acquiring, establishing, constructing, equipping or improving an airport. Funds necessary for providing maintenance and operating expenses for such airport may be appropriated out of the general funds of the municipality or county: Provided, That nothing contained herein shall in any way affect any rights, powers and privileges of any municipality or county court under any special act of the Legislature providing for the laying of levies or the expenditure of funds for acquiring, establishing, constructing, equipping, improving, maintaining or operating an airport.

PART VI. MUNICIPALITIES IN ADJOINING STATES AND AIRPORT LAND IN THIS STATE.

§8-28-9. Construction, maintenance and operation of airports by municipalities of an adjoining state; acquisition of property therefor; property tax exempt.

1 Notwithstanding any other provision of law to the contrary, a municipality organized and existing under the laws of an adjoining state, the nearest corporate limits thereof being not more than ten miles distant from the nearest boundary of this state, may acquire or lease real property situate within this state, the nearest boundary of such real property being not greater than ten miles from the nearest corporate limits of such municipality of an adjoining state, for use in connection with the acquisition, establishment, construction, lease, equipment, improvement, maintenance or operation for
such municipality of an adjoining state of an airport
exclusively for nonprofit public use; and any such
municipality shall have the right to acquire real property
necessary for such airport by gift or by purchase, and
otherwise by condemnation, and the use of real property
in this state under the provisions hereof shall be deemed
to be a public use for which private property may be
taken or damaged, for just compensation. All property,
real and personal, acquired, held and used in this state
pursuant to the provisions of this section shall be public
property and therefore exempt from taxation in the
manner provided by section nine, article three, chapter
eleven of this code.

ARTICLE 29. INTERGOVERNMENTAL RELATIONS — REGIONAL
AIRPORTS.

PART I. AUTHORITIES AUTHORIZED; ORGANIZATION
OF AUTHORITIES; OPERATION OF AIRPORTS;
DEFINITIONS.

§8-29-1. Regional airport authorities authorized; definitions.
1 Any two or more municipalities, any two or more
2 contiguous counties, or any county or two or more con-
tiguous counties and one or more municipalities located
3 therein or partly therein, of this state, are hereby
4 authorized to create and establish one or more authori-
ties for the purpose of acquiring, establishing, construct-
ing, equipping, improving, financing, maintaining and
5 operating a regional airport or airports, as the case may
6 be, for the use of aircraft: Provided, That no such
7 municipality or county shall participate in such authority
8 unless and until the governing body or county court
9 so provides. As used in this article, the terms "airport"
10 and "aircraft" shall have the meanings ascribed to them
11 in section one, article two-a, chapter twenty-nine of this
code, the term "contiguous counties" means two or more
12 counties which constitute a compact territorial unit
13 within an unbroken boundary wherein one county
14 touches at least one other county, but does not require
15 that each county touch all of the other counties so com-
bining, and the term "authority" means a regional air-

port authority created pursuant to the provisions of this article.

§8-29-2. Authorities to be public corporations.
1 Each authority when created and established, and the members thereof, shall constitute a public corporation and as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports; state aeronautics commission.
1 Each authority is hereby empowered and authorized to acquire, establish, construct, equip, improve, finance, maintain and operate a regional airport or landing field and appurtenant facilities so located to best serve the region in which they are located. Each authority shall be subject to the jurisdiction of the state aeronautics commission to the same extent as a state or municipal airport.

§8-29-4. Management of authority vested in members; appointment and terms of members; vote of members; valuation of property contributed to an authority; participation by additional municipalities or counties without state.
1 The management and control of each authority, its property, operations, business and affairs shall be lodged in a board of not less than five nor more than twenty-one individuals who shall be known as members of the authority and who shall be appointed for terms of three years each by the municipalities and county courts contributing money or property to the authority. However, the first board shall be comprised of one member appointed by each participating municipality and one member appointed by each participating county court, and any such member shall serve a term of one year, beginning as of the date the authority is created. No more than three members shall serve from one county on the first board.
1 Each municipality or county shall have one vote for each five thousand dollars it has contributed to the
authority in the form of moneys or property. When
property is contributed, the contributing municipality or
county court and the authority shall agree in writing
at the time the contribution is made as to the fair market
value of such property, which valuation shall determine
the number of votes to be allocated to the municipality
or county on the basis thereof. For the fiscal year during
which any authority is formed, the number of votes to
which any municipality or county shall be entitled shall
be determined at the time of formation of the author-
ity and shall govern until the end of that fiscal year,
even though additional moneys or property are con-
tributed during that fiscal year. Thereafter, the number
of votes shall be determined at the end of each fiscal
year and such determination shall govern for the en-
suing fiscal year, even though additional moneys or prop-
erty are contributed during that fiscal year. Subsequent
to its formation, any authority may permit any munici-
pality or county without this state to participate in the
affairs of the authority, to appoint members of the
authority in the same manner, and to have such vote
or votes beginning as of the next ensuing fiscal year,
as prescribed by law with respect to the original par-
ticipating municipalities or counties or any combina-
tion thereof.

§8-29-5. Substitution of members.
If any member of an authority die, or resign, or be
removed, or for any other reason cease to be a member
of the authority, the municipality or the county court
(or other similar body in the case of an out-of-state
participating county) which such member represented
shall appoint another individual to fill the unexpired
portion of the term of such member.

§8-29-6. Qualification of members.
All members of the board of each authority shall be
residents of the municipality or county which said mem-
bers represent.

§8-29-7. Compensation of members.
No member of the board of an authority shall receive
any compensation, whether in form of salary, per diem
allowance or otherwise, for or in connection with his
services as such member. Each member shall, however,
be entitled to reimbursement by the authority for all
reasonable and necessary expenses actually incurred in
connection with the performance of his duties as such
member.

PART II. GENERAL POWERS OF AUTHORITIES.


1. Each authority is hereby given plenary power and
authority as follows:
2. (1) To make and adopt all necessary bylaws and
rules and regulations for its organization and operations
not inconsistent with law;
3. (2) To elect its own officers, to appoint committees
and to employ and fix the compensation for personnel
necessary for its operation;
4. (3) To enter into contracts with any person, including
both public and private corporations, or governmental
department or agency, and generally to do any and all
things necessary or convenient for the purpose of acquir-
ing, establishing, constructing, equipping, improving,
financing, maintaining and operating a public airport
to best serve the region in which it is located;
5. (4) To delegate any authority given to it by law
to any of its officers, committees, agents or employees;
6. (5) To apply for, receive and use grants-in-aid,
donations and contributions from any source or sources,
including, but not limited to, the federal government
and any department or agency thereof, and this state
subject to any constitutional and statutory limitations
with respect thereto, and to accept and use bequests,
devises, gifts and donations from any person;
7. (6) To acquire lands and hold title thereto in its
own name;
8. (7) To purchase, own, hold, sell and dispose of per-
sonal property and to sell, lease or otherwise dispose
of any real property which it may own;
9. (8) To borrow money and execute and deliver nego-
tiable notes, mortgage bonds, other bonds, debentures
and other evidences of indebtedness therefor, and give
such security therefor as shall be requisite, including
giving a mortgage or deed of trust on its airport prop-
erties and facilities or assigning or pledging the gross
or net revenues therefrom;
(9) To raise funds by the issuance and sale of revenue
bonds in the manner provided by the applicable pro-
visions of article sixteen of this chapter, it being hereby
expressly provided that for the purpose of the issuance
and sale of revenue bonds, each authority is a "governing
body" as that term is used in said article sixteen
only;
(10) To establish, charge and collect reasonable fees
and charges for services or for the use of any part of its
property or facilities, or for both services and such
use;
(11) To expend its funds in the execution of the
powers and authority herein given;
(12) To apply for, receive and use loans, grants,
donations, technical assistance and contributions from
any regional or area commissions that may be estab-
lished; and
(13) To prescribe by bylaw the manner of financial
participation by members.

PART III. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC
NEAR AIRPORTS.

§8-29-9. Rules and regulations to control vehicular and pedes-
trian traffic within quarter mile of airport; violation
of rule and regulation a misdemeanor; penalty.

The county court of the county in which any such air-
port or the major portion thereof is located is hereby em-
powered and authorized, upon request of the authority,
to adopt and promulgate rules and regulations to: (1)
control the movement and disposition of vehicular and
pedestrian traffic within one-fourth mile of any building
or installation of any such airport, (2) regulate and con-
trol vehicular parking within such areas by the installa-
tion of parking meters or by other methods, and (3) im-
pose reasonable charges for the use of the parking space
so metered or otherwise allocated, so as to provide maxi-
Violation of any such rule and regulation shall constitute a misdemeanor and the offender, upon conviction in the manner provided by law, may be fined not less than two dollars nor more than ten dollars for each such violation.

Justices of the peace shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

PART IV. INDEBTEDNESS; FUNDS; EMINENT DOMAIN; EXEMPTION FROM TAXATION; DISPOSITION OF SURPLUSES.

§8-29-10. Indebtedness of authorities.

Each authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary and advisable in connection with carrying out its purposes as hereinbefore mentioned. No indebtedness or obligation incurred by an authority shall give any right against any member of the governing body of any of said municipalities, or the county court (or other similar body in the case of an out-of-state participating county) of any of said counties, or any member of the board of the authority. No indebtedness of any nature of an authority shall constitute an indebtedness of any municipality or county or the governing body of any such municipality or the county court (or other similar body in the case of an out-of-state participating county) of any such county, or be a charge against any property of any municipality or county. The rights of creditors of an authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

§8-29-11. Agreements in connection with obtaining funds.

Each authority may, in connection with obtaining moneys or property for its purposes, enter into any agreement with any person, including the federal government, or any department, agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.
§8-29-12. Authorities to have right of eminent domain.

Whenever it shall be deemed necessary by an authority, in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of this code, and such purposes are hereby declared to be public uses for which private property may be taken or damaged:

Provided, That under no circumstances shall an authority have the right of immediate entry.

§8-29-13. Property, bonds and obligations of authorities exempt from taxation.

Each authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipality. The property of each authority shall be exempt from all municipal and county taxes. Bonds, notes, debentures and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

§8-29-14. Authorities may lease facilities.

Each authority may lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority shall deem proper. Such leases shall be for some purpose associated with airport activities, and shall be subordinate to any mortgage or deed of trust executed by the authority.

§8-29-15. Disposition of surplus of authorities.

If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and
above the amount required for the equipping, improve-
ment, maintenance and operation of the airport and for
meeting all required payments on its obligations, it shall
set aside such reserve for future equipping, improve-
ments, maintenance, operations and contingencies as it
shall deem proper and shall then apply the residue of
such surplus, if any, to the payment of any recognized
and established obligations not then due, and after all
such recognized and established obligations have been
paid off and discharged in full, the authority shall, at the
end of each fiscal year, set aside the reserve for future
equipping, improvements, maintenance, operations and
contingencies, as aforesaid, and then pay the residue of
such surplus, if any, to the municipalities and counties in
direct proportion to their contribution of moneys and
property.

§8-29-16. Contributions to authorities; funds and accounts of
authorities.

Contributions of moneys may be made to authorities
from time to time by the participating municipalities and
counties, and persons that shall desire to do so. All such
moneys and all other moneys received by an authority
shall be deposited in such banking institution or banking
institutions as the authority may direct and shall be with-
drawn therefrom in such manner as the authority may
direct. Each authority shall keep strict account of all of
its receipts and expenditures and shall each quarter
make a quarterly report thereon to the municipalities and
counties which have made contributions of moneys or
property, and such report shall contain an itemized ac-
count of its receipts and disbursements during the pre-
ceding quarter. Such report shall be made within sixty
days after the termination of the quarter. Within sixty
days after the end of each fiscal year, each authority
shall make an annual report containing a summary of its
receipts and disbursements for the preceding fiscal year,
and publish the same as a Class II-O 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 the municipalities and counties, as
provided in section one of this article. The books, records
and accounts of each authority shall be subject to audit and examination by the office of the state tax commissioner and by any other proper public official or body in the manner provided by law.

§8-29-17. Participation.

1 The municipalities and counties or any one or more of them participating therein, jointly or severally, are hereby empowered and authorized to appoint members of the said authorities and to contribute to the cost of acquiring, establishing, constructing, equipping, improving, maintaining and operating the said regional airports and appurtenant facilities.

2 Any of the municipalities or counties as provided in section one of this article is hereby empowered and authorized to convey or transfer to the authorities property of any kind heretofore acquired by the municipalities or counties for airport purposes.

PART V. DISSOLUTION OF AUTHORITIES; WORKMEN'S COMPENSATION; CONSTRUCTION.

§8-29-18. Dissolution of authority; disposition of assets after payment of debts.

1 In the event full and adequate provision is made for the payment of all of the debts of an authority, the participating municipalities or counties or any combination thereof which have contributed at least sixty percent of the total value of all moneys and property (the value of which property is determined as specified in section four of this article) contributed to the authority by the participating municipalities and counties may by resolution provide for the dissolution of the authority and for (1) the conveyance of the real and tangible personal property contributed to it to those participating municipalities and counties which contributed the same, (2) equitable distribution among the contributing municipalities and counties of any real and tangible personal property purchased or condemned by the authority or of the proceeds of sale thereof, or the fair value thereof, and (3) the equitable distribution of all moneys on hand to the participating municipalities and counties in direct proportion to the contribution of moneys by them.
§8-29-19. Employees to be covered by workmen's compensation.

1. All eligible employees of any authority shall be deemed to be within the workmen's compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

§8-29-20. Liberal construction of article.

1. The purposes of this article are to provide for the acquisition, establishment, construction, equipping, improvement, financing, maintenance and operation of regional airports in a prudent and economical manner, and this article shall be liberally construed as giving to any authority created and established hereunder full and complete power reasonably required to give effect to the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

ARTICLE 30. INTERGOVERNMENTAL RELATIONS—FLOOD CONTROL PROJECTS.

§8-30-1. Establishment and operation of flood control projects by municipalities and counties.

1. Any municipality or county may establish, construct, maintain and operate for such municipality or county a flood control project, including the removal of accumulated snags and other debris from and the clearing and straightening of the channel of navigable streams and tributaries thereof, and any such municipality or county may accept any and all benefits, moneys, services and assistance from the federal government in connection with any agreement as authorized by federal statutes and laws relating to flood control, and any such municipality or county under such agreements as are required by Section 701c, Title 33, United States Code or other federal statutes is hereby empowered and authorized to give assurances satisfactory to the secretary of the army or other proper federal authority that such municipality or county will: (a) Provide without cost to the United
States, all lands, easements and rights of way necessary for the construction of the project; (b) hold and save the United States free from damages due to the construction works; and (c) maintain and operate all the works after completion in accordance with regulations prescribed by the secretary of the army.

Any such municipality or county is hereby further empowered and authorized to levy, within all constitutional and statutory limitations, for the maintenance or operation of a flood control project; to purchase land situate therein for the same; to institute condemnation proceedings for the acquiring of any land required under the flood control project; and to authorize the issuance and sale of bonds within all constitutional and statutory limitations, as is provided under general law for the issuance and sale of bonds by municipalities and counties for public purposes generally. Any levy shall be equal and uniform throughout the municipality or county, as the case may be. Real or personal property or moneys may also be acquired for such purpose by gifts to such municipality or county.

Any municipality or county is hereby empowered and authorized to adopt zoning ordinances restricting the use of the lands and the construction of buildings and structures within the flood control area and one hundred feet on each side thereof and to enforce such ordinances by fine or imprisonment, or both, in the circuit court of the county in which the offense occurred in the case of a county ordinance, or by injunction proceedings in the circuit court of the county in which the offense occurred. Prosecution for violation of any such municipal ordinance shall be as in any other municipal ordinance violation case.

The power and authority granted by this section may be exercised by any municipality or county in cooperation with each other or separately where such flood control project is located, regardless of the sponsoring agency of such project.
ARTICLE 31. INTERGOVERNMENTAL RELATIONS—FRANCHISE OBLIGATIONS.

PART I. GRANTING OF FRANCHISE.

§8-31-1. Conditions to granting of franchise by governing body or county court; term of franchise; public service commission power and authority not affected.

1 Every municipality and every county court are hereby empowered and authorized to grant an exclusive or nonexclusive franchise to any person. No franchise, however, shall hereafter be granted by the governing body of any municipality or by the county court of any county where the application for such franchise has not been filed, with the recorder of such municipality or the clerk of such county court at least thirty days prior to the time when it is to be acted upon by such governing body or county court, and where notice of such application, stating the object of such franchise, has not been given by publication thereof as a Class II legal advertisement for which publication the publication area shall be the municipality or the county, as the case may be, wherein such franchise is to be granted. No such franchise shall be granted within thirty days after the application has been filed, nor until an opportunity has been given any person interested in the granting or refusing of such franchise to be heard. No such franchise shall hereafter be granted by any municipality or county court for a longer term than fifty years: Provided, That nothing in this section shall prevent the renewal of any such franchise for a term not exceeding fifty years, when the same shall have expired. No such franchise hereafter granted for any longer term than fifty years shall be of any force or validity. Notwithstanding the provisions of this article or any other provisions of this chapter, other general law or any charter, the failure or inability of any person to obtain from any municipality or county court a franchise for the rendering of a public service shall in no way whatever affect the power and authority granted to, and the duties and obligations imposed upon,
§8-31-2. Compelling compliance with franchise obligations; damages; forfeiture.

1 When any person has obtained or shall hereafter obtain
2 any franchise, and the terms, conditions or manner of
3 exercising such franchise are embodied in the ordi-
4 nance of the municipality or the order of the county
5 court granting such franchise, or are otherwise either
6 voluntarily assumed, or by law imposed upon such
7 person, then and in each of such cases the circuit court
8 of the county (except so far as the powers herein
9 conferred upon the circuit court are, by chapter twenty-
10 four of this code, conferred upon the public service
11 commission) in which the municipality or the major
12 portion of the territory thereof is located or for
13 which the county court acted shall have power by
14 mandamus to compel such person, and the successors
15 and assigns of such person, to use and exercise such
16 franchise in accordance with the lawful terms and
17 conditions and in the manner so prescribed in such
18 ordinance or order or otherwise lawfully so defined or
19 assumed, and to do and perform each and every lawful
20 obligation or duty attached to such franchise, whether
21 such obligation or duty be voluntarily assumed or im-
22 posed by law.

23 Such mandamus may be awarded at the instance of
24 such municipality or county, and this section shall not
25 be construed to deprive such municipality or county,
26 or any inhabitant thereof, of any other remedy to compel
27 such person to comply with the terms, conditions and
28 agreements of such franchise, or of the right to recover
29 damages for noncompliance therewith or to affect, re-
30 move or lessen the liability of such person to forfeiture
31 of such franchise for failure so to use and exercise such
32 franchise.
ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS FOR PUBLIC PURPOSES.

PART I. MUSEUMS; CULTURAL CENTERS; ETC.

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.

(a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) When a nonstock, nonprofit corporation, chartered under the laws of this state, (1) is organized for the construction, maintenance or operation of museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science, and provides in its charter that its buildings or facilities, or a designated portion thereof, shall be devoted to the use by the public for all purposes set forth in such charter without regard to race, religion, national origin or economic circumstance, and free from charge except such as is necessary to provide the means to keep the buildings, facilities and grounds in proper condition and repair, and to pay the cost of insurance, care, management, operations, teaching and attendants, so that the general public may have the benefit of such establishment for the uses set forth in such corporation's charter at as little expense as possible, (2) provides in its charter that no member trustee, or member of the board of directors (by whatever name the same may be called), of the corporation shall receive any compensation, gain or profit from such corporation, and (3) is operated in compliance with such charter provisions as aforesaid, then, notwithstanding any statutory or municipal charter provisions to the contrary, the municipality in which such nonstock, nonprofit corporation is operating, if
any, and the county court of any county in which such corporation is operating, may appropriate funds subject to the provisions and limitations set forth in subsections (c) and (d) of this section, to such nonstock, nonprofit corporation, for such public purposes: Provided, That such funds may be expended and otherwise utilized only within the municipality or county, as the case may be, making the appropriation thereof. In every such case, the governing body of any such municipality or the county court and such corporation may agree for the appointment of additional members to the board of directors of such corporation by such governing body or county court, either as regular members or in an ex officio capacity.

(c) No funds appropriated by a municipality or county court under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality or the county court, as the case may be, which made such appropriation, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body or county court, as the case may be, and shall in every event without demand make to such governing body or county court an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by any municipality or county court under the authority of this section give rise to or create any indebtedness on the part of the municipality, the governing body of such municipality, the county, such county court, any member of such governing body or the county court or any municipal or county official or employee.

PART II. AREA DEVELOPMENT CORPORATIONS.


Every municipality is hereby empowered and authorized to become associated with and to participate as a member of any area development corporation chartered as a nonstock, nonprofit corporation under the laws of
this state for the purposes of promoting, developing and advancing the business prosperity and economic welfare of the area embraced, its citizens and its industrial complex; encouraging and assisting through loans, investments or other business transactions in locating new business and industry within such area and re-habilitating and assisting existing businesses and industries therein; stimulaiting and promoting the expansion of all kinds of business and industrial activity which will tend to advance, develop and maintain economic stability and provide maximum opportunities for employment in such area; cooperating and acting in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreacational developments within such area; and furnishing money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite for the promotion, development and conduct of all types of business, agricultural and recreacational activities within each area:

Provided, That it is specified in the charter of such corporation that no member trustee or member of the board of directors (by whatever name the same may be called) of the corporation shall receive any compensation, gain or profit from such corporation, and such corporation is operated in compliance with all charter provisions. The Legislature hereby finds that the aforesaid purposes of such nonstock, nonprofit area development corporations are for the general welfare of the public and are public purposes. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

Every municipality is hereby empowered and authorized to contribute to the cost of the operations and projects of such area development corporation by appropriating for such purposes money from its general funds not otherwise appropriated. Every municipality is hereby empowered and authorized, notwithstanding any other provision of this chapter to the contrary, to transfer and convey to such area development corporation property of any kind heretofore acquired by such municipality for or adaptable to use in industrial and
economic development, such transfers or conveyances to
be without consideration or for such price and upon
such terms and conditions as such municipality shall deem
proper.

Every municipality shall require as a condition of
any such appropriation, transfer or conveyance that
the area development corporation receiving the same
shall upon demand at any time by such municipality
make a full and complete accounting thereto of all
receipts and disbursements and shall in every event
without demand, within thirty days after the close of
the quarter, make to such municipality a report con-
taining an itemized statement of its receipts and dis-
bursements during the preceding quarter, and make
available to audit and examination by the office of the
state tax commissioner and any other proper public
official or body its books, records and accounts.

Under no circumstances whatever shall any action
taken by any municipality under the authority of this
section give rise to or create any indebtedness on the
part of the municipality, the governing body of such
municipality, any member of such governing body or
any municipal official or employee.

PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit
organizations.

(a) Notwithstanding any statutory or charter pro-
visions to the contrary, every municipality is, subject to
the provisions and limitations set forth in subsections
(b) and (c) of this section, hereby empowered and au-
thesized to make application for, receive and accept
grants from the federal government, or any agency
thereof, for, on behalf of and for use by a nonstock, non-
profit corporation chartered under the laws of this state
for charitable, patriotic or philanthropic or other public
purposes and operating within the corporate limits of
said municipality. The Legislature hereby finds that the
support of such nonstock, nonprofit corporations is for
the general welfare of the public and is a public purpose.
This section is enacted in view of this finding and shall
be liberally construed in the light thereof.

(b) No federal funds received by a municipality under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body.

(c) Under no circumstances whatever shall any action taken by any municipality under the authority of this section give rise to or create any indebtedness on the part of such municipality, the governing body of such municipality, any member thereof or any municipal official or employee.

ARTICLE 33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS.

PART I. COMMISSIONS AUTHORIZED; ORGANIZATION OF COMMISSIONS.

§8-33-1. Municipal, county and municipal-county building commissions authorized.

Any municipality or county, or one or more municipalities and any county, or any two or more municipalities within any county or counties, or any combination thereof, may create and establish a municipal building commission, a county building commission, or a municipal-county building commission, as the case may be (hereinafter in this article referred to as commission or commissions). Such commissions shall be formed by an ordinance or order, as appropriate, by each governmental body establishing the same.

§8-33-2. Commissions are public corporations.

Each commission, when created, shall be a public corporation and shall have perpetual existence.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

All property, powers and duties and the management and control of each commission shall be vested in a board
consisting of representatives appointed by the governmental body or bodies creating and establishing such commission. In the case of a municipal building commission or a county building commission such board shall consist of not less than three nor more than five members and in the case of a municipal-county building commission each participating municipality shall appoint two members and each participating county shall appoint three members. All members of any board shall be appointed for terms of five years. Prior to making the initial appointments to the board, the governmental body or bodies shall make such initial appointments so that approximately one-fifth of the total number of members of the board shall be appointed for a term of one year, approximately one-fifth of the total number of members of the board shall be appointed for a term of two years, approximately one-fifth of the total number of members of the board shall be appointed for a term of three years, approximately one-fifth of the total number of members of the board shall be appointed for a term of four years, and approximately one-fifth of the total number of members of the board shall be appointed for a term of five years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

If any member of any board die, resign or for any reason cease to be a member of the board, the governmental body which such member represented shall appoint another individual to fill the unexpired portion of the term of such member. No more than two-thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office (other than the office of notary public) or employment under the United States of America, the state of West Virginia, any county or political subdivisions thereof, or any political party. All members of any board shall be residents of the municipality or county for which appointed. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary
expenses actually incurred in the discharge of his duties as a member of the board.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

1 Each commission shall have plenary power and authority to:
2 (a) Sue and be sued;
3 (b) Contract and be contracted with;
4 (c) Adopt, use and alter a common seal;
5 (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;
6 (e) Elect such officers, appoint such committee and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;
7 (f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
8 (g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;
9 (h) Sell, encumber or dispose of any property, real or personal;
10 (i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;
11 (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby
expressly provided that for the purpose of the issuance
and sale of revenue bonds, each commission is a "governing body" as that term is used in said article sixteen only;

(k) Exercise the power of eminent domain in the
manner provided in chapter fifty-four of this code for
business corporations, for the purposes set forth in sub-
division (f) of this section, which purposes are hereby
declared public purposes for which private property may
be taken or damaged;

(l) Lease its property or any part thereof, for public
purposes, to such persons and upon such terms as the
commission deems proper, but when any municipality
or county court is a lessee under any such lease, such
lease must contain a provision granting to such munici-
pality or county court the option to terminate such lease
during any fiscal year covered thereby; and

(m) Do all things reasonable and necessary to carry
out the foregoing powers.

PART III. INDEBTEDNESS; SURPLUSES; EXEMPTION FROM
TAXATION; FUNDS; PROPERTY.

§8-33-5. Indebtedness of commission.
1 No constitutional or statutory limitation with respect to
2 the nature or amount of indebtedness which may be
3 incurred by municipalities, counties or other public or
governmental bodies shall apply to the indebtedness of
4 a commission. No indebtedness of any nature of a com-
5 mission shall constitute an indebtedness of any munici-
pality or county creating and establishing such commis-
sion or a charge against any property of said munici-
6 palities or counties. No indebtedness or obligation in-
curred by any commission shall give any right against
6 any member of the governing body of any municipality
7 or any member of the county court of any county or any
8 member of the board of any commission. The rights of
9 creditors of any commission shall be solely against the
10 commission as a corporate body and shall be satisfied
11 only out of property held by it in its corporate capacity.

§8-33-6. Disposition of surplus of commission.
1 If a commission should realize a surplus over and above
2 the amount required for the improvement, maintenance
and operation of its facilities and for meeting all required payments on its obligations, it shall set aside such reserve for future improvements, maintenance, operations and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid and discharged in full, the commission shall, at the end of each fiscal year, set aside the reserve for future improvements, maintenance, operations and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the governmental bodies creating and establishing such commission in direct proportion to their financial contribution.

§8-33-7. Property, bonds and obligations of commissions exempt from taxation.

Each commission shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipality. The property of each commission shall be exempt from all municipal and county taxes. Bonds, notes, debentures and other evidences of indebtedness of each commission are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

§8-33-8. Contributions to commissions; funds and accounts of commissions; reports; audits.

Contributions may be made to each commission from time to time by the governmental body or bodies creating and establishing it, and persons that shall desire to do so. All funds received by each commission shall be deposited in such banking institution or banking institutions as the board may direct and shall be withdrawn therefrom in such manner as the board may direct. Each commission shall keep strict account of all of its receipts and expenditures and shall each quarter make a quarterly report thereon to the municipalities, counties and persons which have made contributions to
of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, each commission shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding fiscal year and publish the same as a Class II-0 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 the commission's facilities are located. The books, records and accounts of each commission shall be subject to audit and examination by the state tax commissioner and by other proper public official or body in the manner provided by law.

§8-33-9. Authority to convey or transfer property to commission.

Any municipality or county is hereby empowered and authorized to convey or transfer to a commission which it has created and established either alone or with another governmental body, property of any kind, heretofore acquired by said municipality or county, to carry out the purposes of said commission. When property is conveyed or transferred as aforesaid, the conveying or transferring municipality or county court and the board shall agree in writing at the time the conveyance or transfer is made as to the fair market value of such property. The members of the board appointed by any municipality or county court conveying or transferring property shall not participate in connection with, otherwise than to provide a quorum, or vote on, any motion or resolution by which the board agrees to the fair market value of the property so conveyed or transferred.

§8-33-10. Sale of property by commission.

In the event a majority of the governmental bodies contributing funds or property to a commission shall so direct in writing and if all indebtedness of said commission has been paid in full, the commission shall sell all or any part of its properties and assets so directed
and distribute the proceeds thereof among the government bodies creating and establishing it in direct proportion to their contributions of funds or property to the commission.

PART IV. WORKMEN'S COMPENSATION; CONSTRUCTION.

1 Each commission shall subscribe to the workmen's compensation fund of this state and pay all necessary premiums thereto, to the end that all eligible employees of such commission shall be covered by workmen's compensation.

§8-33-12. Liberal construction.
1 The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

ARTICLE 34. JUDICIAL REVIEW.

§8-34-1. General right of appeal.
1 Every person sentenced under this chapter by any mayor or police court judge or municipal court judge to imprisonment or to the payment of a fine of ten dollars or more (and in no case shall a fine of less than ten dollars be given if the defendant, his agent or attorney object thereto) shall be allowed an appeal de novo to the circuit or other court of the county exercising jurisdiction over appeals in criminal cases from justices of the peace courts in the county, upon entering into an appeal bond with surety deemed sufficient in a penalty double the amount of fine and costs, with condition that the person appealing will perform and satisfy any judgment which may be rendered against him by the circuit or such other court on such appeal. Any such appeal must be perfected within ten days from and after the date upon which the sentence is imposed. When the municipality is located in more than one county, the
appeal shall be taken to the circuit court or other court as aforesaid of the county in which the major portion of the territory of the municipality is located. If such appeal be taken, the appeal bond and other papers in the case shall be forthwith delivered by the mayor, recorder or police court judge or municipal court judge to the clerk of the court to which such appeal is taken, and such court shall proceed to try the case as upon indictment or presentment, and render such judgment, without remanding the case, as the law and the evidence may require. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the mayor or police court judge or municipal court judge, as well as in the said court.

ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

PART I. FORFEITURE OF CHARTER OR CERTIFICATE OF INCORPORATION.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

Any municipality heretofore incorporated or which shall hereafter be incorporated and which has no substantial indebtedness, and which shall fail for one year to exercise its corporate powers and privileges, or which has not twenty qualified voters, or in which there were not twenty legal votes cast at its last election, or the population of which shall be reduced below one hundred persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited.

The county court of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture of such charter or certificate of incorporation, upon the petition of one or more of its inhabitants, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county court of such county, served upon the mayor and recorder or on the last mayor or recorder thereof, shall be sufficient notice upon
which such county court shall so act, and upon the
proper proof of the allegations of such petition, any
such charter or certificate of incorporation shall be
declared forfeited and the municipal corporation dis-
solved and all debts of such municipality shall be ordered
paid and the forfeiture and dissolution shall not become
effective until such debts have been paid. Upon such
forfeiture and dissolution all interest of such municipality
in corporate funds, if any, in excess of the amounts
required to pay corporate debts shall be and the same
is hereby transferred to and vested in the state of West
Virginia to be controlled by the state auditor. If the
territory so incorporated, or a major part thereof, either
in area or in population, shall, however, within one year
next after such declaration of forfeiture and dissolution
by the county court be reincorporated under this chapter,
then the auditor of the state of West Virginia shall
convey unto such new municipality all of the rights of
the state of West Virginia in and to the corporate prop-
erty, moneys, claims, demands and taxes collected or
uncollected, of the former municipal corporation so
dissolved.

PART II. VOLUNTARY DISSOLUTION OF CLASS III CITY OR
CLASS IV TOWN OR VILLAGE.

§8-35-2. Voluntary dissolution of Class III city or Class IV
town or village.

Upon petition of twenty-five or more percent of the
legal voters of any Class III city or Class IV town or
village, the governing body thereof shall submit to the
qualified voters of such municipal corporation at the next
regular municipal election, or at a special municipal
election called for that purpose, the question of continu-
ing or dissolving such municipal corporation. It shall
be the responsibility of the governing body to verify the
total number of eligible petitioners and to determine
whether the required percentage of petitioners has been
obtained. The ballots, or ballot labels where voting
machines are used, shall have written or printed on them
the words:
For Continuance of Municipal Corporation

If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of section one of this article or this section two: Provided, however, That another election under the provisions of this section two shall not be held within two years of the last such election. Any election under the provisions of this section two shall be held, conducted and superintended and the result thereof ascertained, certified, returned and canvassed in the same manner and by the same persons as an election for municipal officers of such municipal corporation.

ARTICLE 36. CONSTITUTIONALITY AND SEVERABILITY.

§8-36-1. Constitutionality and severability.

(a) If any article, section, subsection, subdivision, provision, clause or phrase of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, subdivisions, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, subdivision, provision, clause and phrase of this chapter is declared to be severable. The Legislature hereby declares that it would have enacted the remaining articles, sections, subsections, subdivisions, provisions, clauses and phrases of this chapter even if it had known that any articles, sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this chapter even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(b) The provisions of subsection (a) of this section
shall be fully applicable to all future amendments or additions to this chapter, with like effect as if the provisions of said subsection (a) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 10. COUNTY COURTS; MUNICIPALITIES; GENERAL AUTHORITY AND DUTIES AS TO ROADS, ETC.

§17-10-17. Action for damages occasioned by defective road, bridge, street, etc.

Any person who sustains an injury to his person or property by reason of any road or bridge under the control of the county court or any road, bridge, street, alley or sidewalk in any incorporated city, town or village being out of repair due to the negligence of the county court, incorporated city, town or village may recover all damages sustained by him by reason of such injury in an action against the county court, city, town or village in which such road, bridge, street, alley or sidewalk may be, except that such city, town or village shall not be subject to such action unless it is required by charter, general law or ordinance to keep the road, bridge, street, alley or sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the action and remedy shall be against the county court. When judgment is obtained against the county court, such court shall at the time of the laying of the next annual levy, levy upon the taxable property of the district in which such injury is sustained a sufficient sum to pay such judgment with interest and costs, and the costs of collecting the same, and when it is obtained against the city, town or village the proper municipal authorities thereof shall lay such levies at the time of levying the next annual levy on the property subject to taxation in such city, town or village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit court of the county for which such county court acts or in which such city, town or village or the major portion of the territory thereof is located shall compel the laying of such levy, or the payment of such judgment, or both, by mandamus.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 12th day of March, 1969.

Governor