

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

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ENROLLED

SENATE BILL NO. 2

(By Mr. Brutten and Mr. Carroll)

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PASSED March 6, 1969

In Effect July 1, 1969 ~~Passage~~

FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE

THIS DATE 3-12-69

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**Senate Bill No. 2**

(By MR. BROTHERTON AND MR. CARRIGAN)

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[Passed March 6, 1969; in effect July 1, 1969.]

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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 forty-nine, chapters one hundred thirty-six, one hundred thirty-seven and one hundred forty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, chapter one hundred thirty-four, 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

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, franchise obligations, contributions to or involvement with nonstock, nonprofit corporations for public purposes, and building commissions; providing for judicial review generally; relating to the dissolution of municipalities; providing for revenue bond financing in connection with various 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 counties 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 negligence.

*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 repealed; 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 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 forty-nine, chapters one hundred thirty-six, one hundred thirty-seven and one hundred forty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, chapter one hundred thirty-four, acts of the Legislature, regular 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 five, 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  
2 of the basic municipal law of this state and of various  
3 statutory provisions relating to certain intergovernmental  
4 relations involving municipalities, counties and other  
5 units of government, to provide as much uniformity as  
6 possible between the powers, authority, duties and re-  
7 sponsibilities of special legislative charter municipalities  
8 and all other municipalities, and to give effect to the  
9 "Municipal Home Rule Amendment" to the constitution  
10 of this state, being section thirty-nine-(a), article six of  
11 said constitution.

12 For convenience of reference, this chapter may be  
13 known and cited as the "Municipal Code of West Vir-  
14 ginia."

## PART II. DEFINITIONS.

## §8-1-2. Definitions of terms.

1 (a) For the purpose of this chapter:

2 (1) "Municipality" is a word of art and shall mean and  
3 include any Class I, Class II and Class III city and any  
4 Class IV town or village, heretofore or hereafter incor-  
5 porated as a municipal corporation under the laws of this  
6 state;

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

20 (3) "Town or village" is a term of art and shall, not-  
21 withstanding the provisions of section ten, article two,  
22 chapter two of this code, mean, include and be limited to  
23 any Class IV town or village, as classified in section three  
24 of this article, heretofore or hereafter incorporated as a  
25 municipal corporation under the laws of this state, how-  
26 ever created and whether operating under (i) a special  
27 legislative charter, (ii) general law, or (iii) a combination  
28 of the foregoing.

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

31 (1) "Governing body" shall mean the mayor and coun-  
32 cil together, the council, the board of directors, the com-  
33 mission, or other board or body of any municipality, by  
34 whatever name called, as the case may be, charged with  
35 the responsibility of enacting ordinances and determin-  
36 ing the public policy of such municipality; and in certain  
37 articles dealing with intergovernmental relations shall  
38 also mean the county court of any county or governing

39 board of other units of government referred to in said  
40 articles;

41 (2) "Councilmen" shall mean the members of a gov-  
42 erning body, by whatever name such members may be  
43 called;

44 (3) "Mayor" shall mean the individual called mayor  
45 unless as to a particular municipality a commissioner (in  
46 a commission form of government) or the city manager  
47 (in a manager form of government) is designated or  
48 constituted by charter provision as the principal or chief  
49 executive officer or chief administrator thereof, in which  
50 event the term "mayor" shall mean as to such municipi-  
51 pality such commissioner or city manager unless as to  
52 any particular power, authority, duty or function speci-  
53 fied in this chapter to be exercised, discharged or ful-  
54 filled by the mayor it is provided by charter provision  
55 or ordinance that such particular power, authority, duty  
56 or function shall be exercised, discharged or fulfilled by  
57 the individual called mayor and not by a commissioner  
58 or city manager, in which event such particular power,  
59 authority, duty or function shall in fact be exercised,  
60 discharged or fulfilled in and for such municipality by  
61 the individual called mayor: *Provided*, That in the ex-  
62 ercise and discharge of the ex officio justice of the peace,  
63 conservator of the peace and mayor's court functions  
64 specified in this chapter, the term "mayor" shall always  
65 mean the individual called mayor;

66 (4) "Recorder" shall mean the recorder, clerk or other  
67 municipal officer, by whatever name called, charged with  
68 the responsibility of keeping the journal of the proceed-  
69 ings of the governing body of the municipality and other  
70 municipal records;

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

75 (6) "Administrative authority" shall mean the officer,  
76 commission or person responsible for the conduct and  
77 management of the affairs of the municipality in accord-

78 ance with the charter, general law and the ordinances,  
79 resolutions and orders of the governing body thereof;

80 (7) "Charter" shall mean, except where specific refer-  
81 ence is made to a particular type of charter, either a  
82 special legislative charter (whether or not amended under  
83 the provisions of former chapter eight-a of this code or  
84 under article four of this chapter, and although so  
85 amended, such special legislative charter shall, for the  
86 purposes of this chapter, remain a special legislative  
87 charter), or a home rule charter framed and adopted  
88 or revised as a whole or amended by a city under the  
89 provisions of former chapter eight-a of this code or under  
90 the provisions of article three or article four of this  
91 chapter;

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

97 (9) "Inconsistent or in conflict with" shall mean that  
98 a charter or ordinance provision is repugnant to the con-  
99 stitution of this state or to general law because such pro-  
100 vision (i) permits or authorizes that which the constitu-  
101 tion or general law forbids or prohibits, or (ii) forbids  
102 or prohibits that which the constitution or general law  
103 permits or authorizes;

104 (10) "Qualified elector," "elector," "qualified voter"  
105 or "legal voter" shall mean any individual who, at the  
106 time he offers to vote or at the time he participates in any  
107 event or activity (such as signing a petition) under the  
108 provisions of this chapter for which he must be a qualified  
109 elector, elector, qualified voter or legal voter, is a resident  
110 within the corporate limits of the municipality or within  
111 the boundaries of a territory referred to in this chapter,  
112 as the case may be, and who (i) has been a resident of  
113 the state for one year and of the municipality or territory  
114 in question for at least sixty days next preceding such  
115 election or date pertinent to any such event or activity,  
116 and (ii) in the case of a regular municipal election, special  
117 municipal election, municipal public question election or

118 any such municipal event or activity, is duly registered  
119 on the municipal registration books set up in the office  
120 of the clerk of the county court of the county in which  
121 the municipality or the major portion of the territory  
122 thereof is located under the integration of the municipal  
123 registration of voters with the "permanent registration  
124 system" of the state, or, in the event there be no such  
125 integration of the municipal registration of voters, is duly  
126 registered in the county in which he resides to vote in  
127 state-county elections, or (iii) in the case of a territory  
128 election, general election or any such territory event or  
129 activity, is duly registered in the county in which he  
130 resides to vote in state-county elections; and any chapter  
131 provision or ordinance establishing a voting residency re-  
132 quirement different than that in this definition provided  
133 shall be of no force and effect; and in any case where a  
134 particular percentage of the qualified electors, electors,  
135 qualified voters or legal voters is required under the pro-  
136 visions of this chapter in connection with any such event  
137 or activity as aforesaid, the percentage shall be deter-  
138 mined on the basis of the number of qualified electors,  
139 electors, qualified voters or legal voters, as of the time  
140 of such event or activity, unless it is impracticable to de-  
141 termine such percentage as of such time and it is provided  
142 by ordinance, resolution or order that the percentage shall  
143 be determined on the basis of the number of qualified  
144 electors, electors, qualified voters or legal voters, as of  
145 the date of the last preceding election (whether a general  
146 election, regular municipal election or special municipal  
147 election and whether or not they voted at such election)  
148 held in such municipality or territory, as the case may be;

149 (11) "Public question" shall mean any issue or propo-  
150 sition required to be submitted to the qualified voters of  
151 a municipality or of a territory referred to in this chapter  
152 for decision at an election, as the case may be;

153 (12) "Inhabitant" shall mean any individual who is a  
154 resident within the corporate limits of a municipality or  
155 within the boundaries of a territory referred to in this  
156 chapter, as the case may be;

157 (13) "Resident" shall mean any individual who main-  
158 tains a usual and bona fide place of abode within the cor-

159 porate limits of a municipality or within the boundaries of  
160 a territory referred to in this chapter, as the case may be;

161 (14) "Freeholder" shall mean any person (and in the  
162 case of an individual one who is sui juris and is not under  
163 a legal disability) owning a "freehold interest in real  
164 property";

165 (15) "Freehold interest in real property" shall mean  
166 any fee, life, mineral, coal or oil or gas interest in real  
167 property, whether legal or equitable, and whether as a  
168 joint tenant or a tenant in common, but shall not include  
169 a leasehold interest (other than a mineral, coal or oil or  
170 gas leasehold interest), a dower interest, or an interest in  
171 a right of way or easement, and the freehold interest of a  
172 church or other unincorporated association shall be con-  
173 sidered as one interest and not as an individual interest  
174 of each member thereof;

175 (16) "County court" shall mean the governmental  
176 body created by section twenty-two, article eight of the  
177 constitution of this state, or any existing tribunal created  
178 in lieu of a county court;

179 (17) "Code" shall mean the code of West Virginia, one  
180 thousand nine hundred thirty-one, as heretofore and  
181 hereafter amended; and

182 (18) "Person" shall mean any individual, firm, part-  
183 nership, corporation, company, association, joint stock as-  
184 sociation, or any other entity or organization of whatever  
185 character or description.

186 (c) The term "intergovernmental relations" is used in  
187 this chapter to mean undertakings and activities which  
188 may be undertaken or engaged in by two or more units of  
189 government acting jointly, and in certain headings in this  
190 chapter to call attention to the fact that the provisions  
191 under such headings apply to units of government in  
192 addition to municipalities.

193 (d) For the purpose of this chapter, unless the context  
194 clearly indicates to the contrary, words importing the  
195 masculine gender shall include both the masculine and  
196 feminine gender, and the phrase "charter framed and  
197 adopted or revised as a whole or amended (or words of  
198 like import) under the provisions of former chapter

199 eight-a of this code” shall include a charter framed and  
200 adopted or revised as a whole or amended under the pro-  
201 visions of former article two of former chapter eight of  
202 this code.

PART III. GENERAL PROVISIONS.

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

1 Pursuant to the mandate of the “Municipal Home Rule  
2 Amendment” to the constitution of this state, all municipi-  
3 pal corporations are hereby classified by population into  
4 four classes, as follows:

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

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

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

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

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

19 The Legislature hereby declares its interpretation of  
20 the said “Municipal Home Rule Amendment” to be that  
21 a single classification by population of municipal cor-  
22 porations in this state is required which shall exclude  
23 any other classification of municipal corporations by  
24 population for any purpose. It is, therefore, the inten-  
25 tion of the Legislature that the classification established  
26 in this section shall give effect to the constitutional man-  
27 date and shall be the only classification by population  
28 applying to municipal corporations in this state. It is  
29 the further intention of the Legislature that subsequent  
30 legislation affecting municipal corporations in this state  
31 shall treat municipal corporations differently upon the  
32 basis of population, only in accordance with the general  
33 classification established in this section.

**§8-1-4. How population determined.**

1 For any purpose pertinent to the provisions of this  
2 chapter, population shall be determined by reference to  
3 the last preceding census taken under the authority of  
4 the United States or of the Legislature of West Virginia  
5 or by the municipality pursuant to an ordinance adopted  
6 thereby, the adoption of any such ordinance being hereby  
7 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  
2 is hereby confirmed and validated. Except as otherwise  
3 provided in section six of this article, any municipality  
4 shall have all of the powers, authority, duties and re-  
5 sponsibilities conferred by law upon a municipality of  
6 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  
2 in section one of this article, each municipality is subject  
3 to the provisions contained in this chapter and may  
4 exercise the power and authority conferred by this chap-  
5 ter. In this regard, it is recognized that when the pro-  
6 visions of existing special legislative charters are com-  
7 pared with and are considered in the light of the provi-  
8 sions of this chapter, there are five basic possibilities as  
9 to the relationship between such charter provisions and  
10 the provisions of this chapter, namely: (1) As to any  
11 particular charter provisions, such charter provisions  
12 may be inconsistent or in conflict with the pertinent  
13 provisions of this chapter; (2) although relating to the  
14 same subject matter and although not inconsistent or  
15 in conflict with any provisions of this chapter, certain  
16 charter provisions may be sufficiently different from per-  
17 tinent provisions of this chapter as to indicate, as a matter

18 of practical construction, that either the charter pro-  
19 visions or the provisions of this chapter, but not both,  
20 should be applicable; (3) although varying in certain  
21 respects, certain charter provisions may be similar to  
22 and in essential harmony with corresponding provisions  
23 of this chapter; (4) as to any particular charter pro-  
24 visions, there may be no counterpart of such provisions  
25 in this chapter; and (5) as to any provisions of this  
26 chapter, there may be no counterpart charter provisions.  
27 In view of these possibilities, it becomes necessary for  
28 the Legislature to set forth certain rules of construction  
29 to be applied in addition to the usual and ordinary rules  
30 of statutory construction, and to set forth a substantive  
31 provision as to application in connection with possi-  
32 bility (2).

33 As to possibility (1), the pertinent provisions of this  
34 chapter shall supersede such conflicting or inconsistent  
35 charter provisions and shall be deemed amendments to  
36 such charters. As to possibility (2), one year from and  
37 after the effective date of this section or the effective  
38 date of any pertinent amendment to this chapter here-  
39 after adopted, such provisions of this chapter shall su-  
40 persede such charter provisions and shall be deemed  
41 amendments to such charter, unless within such one-  
42 year period an ordinance is adopted providing that such  
43 charter provisions shall be applicable, in which event  
44 such charter provisions shall be applicable so long as  
45 said ordinance remains in full force and effect. As to  
46 possibility (3), all such charter provisions shall be con-  
47 strued so as to conform to and be consistent with the  
48 pertinent provisions of this chapter. As to possibility  
49 (4), the charter provisions shall remain in operation and  
50 effect until amended or repealed by general law here-  
51 after enacted or until hereafter supplanted by a new  
52 charter or revised as a whole or amended in accordance  
53 with the provisions of this chapter. As to possibility (5),  
54 the applicable provisions of this chapter shall be deemed  
55 amendments to such charter. In determining the rela-  
56 tionship between such charter provisions and the pro-  
57 visions of this chapter in any situation not included in  
58 the possibilities outlined above, the relationship shall

59 be determined in keeping with the general concepts and  
60 principles embodied in the rules of construction set forth  
61 in this paragraph. The provisions set forth above in  
62 this paragraph shall also be applicable to the relation-  
63 ship between the pertinent provisions of various local  
64 or special acts of the Legislature (other than special leg-  
65 islative charters) pertaining to municipal matters and  
66 the provisions of this chapter.

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

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

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

95 Notwithstanding any of the foregoing provisions or  
96 any other provision of this act (even though such other  
97 provision is stated to be paramount), transactions validly  
98 entered into, causes of action which arose, and civil ac-

99 tions instituted, before the effective date of this act and  
100 the rights, duties, obligations and interest flowing there-  
101 from remain valid, enforceable and maintainable there-  
102 after and may be terminated, completed, consummated,  
103 prosecuted, maintained or enforced (1) as required or  
104 permitted by any statute or other law (including the  
105 provisions of former chapters eight and eight-a of this  
106 code and the acts repealed by this act) repealed or  
107 amended by this act as though such repeal or amend-  
108 ment had not occurred, or (2) with like effect as though  
109 this act had not been enacted.

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

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

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

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

1 Any reference in this chapter to another provision of  
2 this code and any reference elsewhere in this code or  
3 other law to a provision in this chapter shall be construed  
4 to mean the present provision or such provision as the  
5 same may be hereafter amended from time to time.  
6 Where additional provisions are added to the subject  
7 matter of any other provision so referred to, the reference  
8 shall include such additional provisions.

9     Wherever in this code, in any act, in general law, else-  
10 where in law, in any charter, in any ordinance, resolution  
11 or order of a municipality, or in any order, ordinance or  
12 resolution of a county court or other unit of government,  
13 reference is made to any section, any article, any par-  
14 ticular provision or any term of chapter eight of this code  
15 as it existed immediately prior to the effective date of this  
16 new chapter eight or to any section, any article, any par-  
17 ticular provision or any term of former chapter eight-a  
18 of this code, such reference shall henceforth be read, con-  
19 strued and understood to mean the comparable section,  
20 article, particular provision or term in this new chapter  
21 eight.

## ARTICLE 2. CREATION OF MUNICIPALITIES.

### PART I. GENERAL.

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

1     Any part of any county or counties, not within any  
2 municipality, urban in character, and containing at least  
3 one hundred inhabitants (if such part contains less than  
4 one square mile), and an average of not less than five  
5 hundred inhabitants per square mile (if such part contains  
6 one square mile or more), provided such part does not  
7 include an amount of territory disproportionate to the  
8 number of inhabitants thereof, may be incorporated,  
9 depending upon population, as a city, either a Class I,  
10 Class II or Class III city, or as a Class IV town or village,  
11 as classified in section three, article one of this chapter,  
12 upon the conditions and in the manner hereinafter pre-  
13 scribed: *Provided*, That the exact extent of the terri-  
14 tory or portions thereof to be included or excluded shall  
15 be within the reasonable discretion of the county court,  
16 taking into consideration the topography thereof, the  
17 benefits thereto from incorporation, the amount of unin-  
18 habited land required for parks and recreational use and  
19 normal growth and development and the present and  
20 probable future uses thereof, so as to prevent hardships  
21 and inequities.

**§8-2-2. Petition; survey and map.**

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

12 Such petition shall be verified by at least one of the  
13 petitioners and shall be accompanied by a map made by  
14 a professional engineer registered under the laws of this  
15 state, which map shall be based upon an actual and  
16 accurate survey of the territory to be incorporated show-  
17 ing the courses, distances and the area of the territory  
18 to be incorporated.

19 Such map shall be verified and shall be left at the resi-  
20 dence or place of business within the territory to be  
21 incorporated of some individual residing or some person  
22 doing business therein, and shall be subject to exami-  
23 nation at all reasonable hours by every person interested  
24 in such application for a period of at least ten days prior  
25 to the hearing on such petition as provided for in sec-  
26 tion three of this article.

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

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

10 Upon the date set for hearing, the county court shall  
11 hear evidence for and against the proposed incorporation,  
12 and if it shall determine that the requirements of sections

13. one and two of this article have not been met, it shall  
14. forthwith enter an order dismissing said petition.

§8-2-4. Census; bond; duties of enumerators.

1. If the court shall determine after hearing that the re-  
2. quirements of sections one and two of this article have  
3. been met, the petitioners shall provide bond in penalty  
4. prescribed by the court, with good and sufficient surety  
5. thereon, conditioned to pay all costs of taking a census,  
6. determining the qualification of electors, holding an elec-  
7. tion and ascertaining the results thereof, in the event a  
8. majority of the qualified electors vote against incorpora-  
9. tion; and thereupon the court shall fix a day or days for  
10. taking a census of the inhabitants and for determining  
11. those who are qualified electors of said territory. For the  
12. purpose of taking said census, and determining the quali-  
13. fications of the electors, said court shall appoint four  
14. enumerators for each five hundred inhabitants of said  
15. territory based upon the most reliable estimate obtain-  
16. able: *Provided*, That if the territory contains less than  
17. one square mile and the county court believes the terri-  
18. tory contains fewer than five hundred inhabitants, two  
19. enumerators shall be appointed. It shall be the duty of  
20. the enumerators so appointed to enumerate all of the  
21. inhabitants of said territory and to visit each house or  
22. dwelling therein, and to obtain the name of each known  
23. resident thereof. It shall also be the duty of the enumer-  
24. ators to examine the permanent registration records of  
25. the county or counties in which the territory is situate to  
26. determine which of such inhabitants are qualified electors  
27. therein and to compile and file with the county court a  
28. list of such qualified electors. Each enumerator shall  
29. receive for his services a sum per day, to be fixed by the  
30. county court, but not to exceed ten dollars per day, to-  
31. gether with all reasonable and necessary expenses actu-  
32. ally incurred in the discharge of such duties, which sum  
33. and expenses shall be paid by the county court and re-  
34. imbursed to it by the city, town or village if and when  
35. the city, town or village shall become incorporated, as  
36. hereinafter provided; otherwise by the petitioners. The  
37. county court shall provide an opportunity for all qualified

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

#### PART II. ELECTION.

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

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

22 nine of this code, and the publication area for such pub-  
23 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.**

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

- 11  For Incorporation  
12  Against Incorporation

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

15 Such election shall be held and conducted under the  
16 supervision of the commissioners and clerks of election  
17 appointed by the county court as aforesaid and shall be  
18 conducted as nearly as may be in accordance with the  
19 laws of this state governing general elections. The re-  
20 sults of such election shall be certified as in general elec-  
21 tions, and the returns shall be canvassed and the results  
22 declared by the county court. In the event any commis-  
23 sioner or clerk designated to serve in said election shall  
24 fail or refuse to serve, such vacancy may be filled in like  
25 manner as vacancies in such positions are filled in general  
26 elections under the laws of this state governing general  
27 elections. A recount may be had, as in general elections,  
28 upon the party or parties desiring such recount providing  
29 adequate assurance to the county court that he or they  
30 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.**

1 If the proceeding be for the incorporation of a city,  
2 and it appears to the county court, upon the returns being

3 canvassed, that a majority of the legal votes cast on the  
 4 question of incorporation were in favor of such incorpora-  
 5 tion and the court is satisfied that all of the applicable  
 6 provisions of this article have been complied with, the  
 7 court shall by order duly made and entered of record  
 8 declare that the territory in question (reciting the bound-  
 9 aries) shall thereby become a body corporate, and shall  
 10 thenceforth be known as the city of \_\_\_\_\_,  
 11 but that until a charter shall be framed and adopted as  
 12 provided in article three of this chapter, such city shall  
 13 have and exercise no powers of a municipality except the  
 14 power to frame and adopt a charter as therein provided.

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

24 "It appearing to the court that under the provisions of  
 25 article two, chapter eight of the code of West Virginia,  
 26 as amended, at an election duly held on the \_\_\_\_\_ day  
 27 of \_\_\_\_\_, 19\_\_\_\_, a majority of the legal votes  
 28 cast on the question of incorporation by the qualified  
 29 voters of the following territory, to wit: Beginning,  
 30 etc. (here recite the boundaries), were cast in favor of the  
 31 incorporation of the town or village of \_\_\_\_\_,  
 32 in the County of \_\_\_\_\_, bounded as herein set  
 33 forth; and it appearing to the satisfaction of the court  
 34 that all of the provisions of article two, chapter eight of  
 35 the code of West Virginia, as amended, have been com-  
 36 plied with by the petitioners for said incorporation, said  
 37 town or village is hereby declared to be a body corporate,  
 38 duly authorized to exercise all of the corporate powers  
 39 conferred upon towns or villages by chapter eight of the  
 40 code of West Virginia, as amended, from and after the  
 41 date of this certificate. (Signed) \_\_\_\_\_,  
 42 Clerk County Court."

43 Thereupon, the first election of officers shall be held as

44 provided in sections two, three and four, article five of  
45 this chapter.

46 If on the returns being canvassed on the question of  
47 incorporation, a majority of the legal votes cast be against  
48 incorporation, the proceeding shall be dismissed, and no  
49 subsequent proceeding for incorporation of the same  
50 territory or any portion thereof shall be considered or  
51 election thereon had within a period of three years there-  
52 after.

### PART III. JUDICIAL REVIEW.

#### §8-2-8. Judicial review.

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

### ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVIS- ING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.

#### PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

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

1 At every election on the question of incorporation of  
2 a city, under article two of this chapter, each qualified  
3 voter entitled to vote shall also be entitled to vote for  
4 a charter board consisting of eleven members if it is to  
5 be a Class I or Class II city, and of seven members if  
6 it is to be a Class III city. Members shall be elected at  
7 large and shall receive no compensation for their services,  
8 but shall be reimbursed by the city for all reasonable  
9 and necessary expenses actually incurred in the dis-  
10 charge of their duties. Any individual who has been a  
11 resident of the territory sought to be incorporated for  
12 at least two years prior to the date of said election and  
13 who shall have been qualified to vote in state-county  
14 elections for at least two years prior to the date of said

15 election shall be eligible for membership on said charter  
16 board. Nominations for said charter board shall be made  
17 by petition to the county court bearing the signatures,  
18 written in their own handwriting, of not less than two  
19 hundred qualified voters of the territory. All nominating  
20 petitions shall be filed with the county court at least  
21 twenty days prior to the date of the election on the  
22 question of incorporation. In the event of a vacancy in  
23 the nominations which shall reduce the number of can-  
24 didates below the number of members to be elected, the  
25 vacancy shall be filled by the county court. The ballots,  
26 or ballot labels where voting machines are used, shall  
27 be prepared by or at the direction of the clerk of the  
28 county court. The ballots or ballot labels for members  
29 of the charter board shall be separate from the ballots  
30 or ballot labels on the question of incorporation. Such  
31 ballots or ballot labels for members of the charter board  
32 shall be special ballots or ballot labels without party  
33 designation. The position of the names of the candidates  
34 upon the ballots or voting machines shall be inter-  
35 changed, as provided in the general election laws of this  
36 state. The ballots or voting machine directions shall bear  
37 instructions specifying the number of candidates to be  
38 voted for, and each qualified voter entitled to vote on  
39 the question of framing a charter may cast as many  
40 votes for members of the charter board as there are  
41 members to be elected. He may cumulate all of his votes  
42 for one candidate, or distribute them among several can-  
43 didates as he sees fit. The ballots or voting machine di-  
44 rections shall bear advice to this effect. Any voter who  
45 shall vote against incorporation may, nevertheless, vote  
46 for members of the charter board, and the ballots or  
47 voting machine directions shall bear advice to this effect.

48 If on the returns being canvassed on the question of  
49 incorporation, such canvassing to be done by the county  
50 court, a majority of the legal votes cast be against incor-  
51 poration, the proceeding shall be dismissed as specified  
52 in section seven, article two of this chapter, and no sub-  
53 sequent proceeding for incorporation of the same terri-  
54 tory or any portion thereof shall be considered or election  
55 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  
2 incorporation of a city, such canvassing to be done by the  
3 county court, a majority of the legal votes cast be in favor  
4 of such incorporation, then the legal votes cast for mem-  
5 bers of the charter board shall be counted and canvassed  
6 by the county court, and the candidates in the number to  
7 be chosen who received the highest number of votes shall  
8 be declared elected. The charter board shall be convened  
9 at a suitable place within the territory, by the member  
10 receiving the highest number of votes, not less than five  
11 days nor more than ten days after the canvass of the  
12 returns. He shall notify the other members of the board  
13 in writing of the time and place of the first meeting of the  
14 charter board. At such first meeting, the board shall per-  
15 fect its organization by electing a chairman and secretary  
16 from its membership and by determining the rules to  
17 govern its proceedings. Any vacancy in the membership  
18 of the board occurring before a charter is approved by  
19 the qualified voters of the incorporated territory shall be  
20 filled by appointment by majority action of the remaining  
21 members, and any vacancy occurring after approval of a  
22 charter as aforesaid shall be filled as specified in section  
23 nine of this article. A journal shall be kept by the secre-  
24 tary, in which journal shall be entered, upon demand by  
25 any member, the vote by ayes and nays on any question.  
26 A majority of the members of said board shall constitute  
27 a quorum. The board shall specify the manner for nomi-  
28 nating and electing candidates for the first elective offices  
29 provided for in the proposed charter at the election to be  
30 held on the question of approval of the charter. It shall  
31 fix the date of said election and it shall do and provide all  
32 other things necessary for making nominations and hold-  
33 ing and conducting such election. Any qualified voter and  
34 any freeholder of the incorporated territory may file with  
35 said charter board any written material bearing upon the  
36 purposes of the board, and the board shall give such  
37 material so filed such consideration as it may deem  
38 proper. The charter drafting process may be carried on  
39 through committees, but their work shall be advisory

40 only. The charter board shall complete its draft of a  
41 charter within ninety days after its first meeting. It shall  
42 be the duty of the charter board to provide in the charter  
43 so drafted for a form of city government in accordance  
44 with one of the following plans:

45 Plan I—“*Mayor-Council Plan.*” Under this plan:

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

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

53 Plan II—“*Strong-Mayor Plan.*” Under this plan:

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

58 (2) The council shall be the governing body;

59 (3) The mayor shall be the administrative authority;  
60 and

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

65 Plan III—“*Commission Government.*” Under this plan:

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

69 (2) The members of the commission shall be a com-  
70 missioner of public affairs, a commissioner of finance, a  
71 commissioner of public safety, a commissioner of public  
72 works and a commissioner of streets: *Provided*, That a  
73 charter for a Class I or Class II city may, and a charter  
74 for a Class III city shall, provide for a commission of  
75 three members, viz., a commissioner of finance, a com-  
76 missioner of public works and a commissioner of public  
77 safety;

78 (3) The members of the commission shall elect a  
79 mayor from among their membership;

80 (4) The commission shall be the governing body and  
81 administrative authority; and

82 (5) Officers and employees, other than members of the  
83 commission, shall be appointed in accordance with this  
84 chapter by the commissioners or by each commissioner  
85 with respect to his department, as the charter may pre-  
86 scribe.

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

88 (1) There shall be a council of not less than five nor  
89 more than eleven members, elected either at large or  
90 from such geographical districts as may be established  
91 by the charter, or partly at large and partly from such  
92 geographical districts, and the charter may empower the  
93 council to change, from time to time, such districts with-  
94 out amending the charter: *Provided, however,* That the  
95 change of such districts shall not take effect during the  
96 terms of office of the members of such council making  
97 such change;

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

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

103 (4) The manager shall be the administrative authority.  
104 He shall manage the affairs of the city under the sup-  
105 ervision of the council and he shall be responsible  
106 to such council. He shall appoint or employ, in accord-  
107 ance with this chapter, all subordinates and employees  
108 for whose duties or work he is responsible to the coun-  
109 cil.

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

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

1 The draft of said charter shall, upon completion, be

2 certified by the secretary of said charter board to the  
3 attorney general of the state. It shall be his duty to  
4 examine the draft and advise whether it is consistent in  
5 all respects with the constitution and general law of this  
6 state. The attorney general, if satisfied that the pro-  
7 posed charter is consistent in all respects with the con-  
8 stitution and general law of this state, shall so certify  
9 to the charter board within thirty days after receipt of  
10 such draft. If the attorney general is not satisfied that  
11 the proposed charter is consistent in all respects with  
12 the constitution and general law of this state, he shall  
13 certify, within thirty days after receipt of such draft, to  
14 the charter board in what respects the same does not  
15 conform to the constitution or general law of this state.

**§8-3-4. Same—Hearing and notice.**

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

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

1 A charter board shall have thirty days after the con-  
2 clusion of the hearing required by section four of this  
3 article or receipt of the certificate of the attorney general  
4 required by section three of this article, whichever shall  
5 occur later, to make any changes it may consider neces-  
6 sary or desirable in its charter draft.  
7 At least three copies of the completed charter draft shall  
8 be signed by at least a majority of the members of the  
9 board, and two copies shall be filed with the clerk of  
10 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  
2 voters of the incorporated territory for approval or rejection  
3 at a special election ordered by the county court  
4 to be held not less than thirty days nor more than ninety  
5 days following the date on which the two copies of the  
6 completed charter were filed with the clerk of the county  
7 court, at which election the officers provided for by said  
8 proposed charter and to be elected shall be voted upon in  
9 the manner provided in said proposed charter. The county  
10 court shall cause notice of the date, hours, place and purpose  
11 of such election to be given by publication thereof as  
12 a Class II-0 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 incorporated territory. The first of said publications  
16 shall be made not less than thirty days prior to the date  
17 fixed for the election. Each such notice of election shall  
18 state that upon request any qualified voter and any  
19 freeholder of the incorporated territory may obtain a  
20 copy of the proposed charter from a designated person  
21 at a designated place.

22 For the purpose of holding and conducting said election,  
23 the county court shall divide the incorporated territory  
24 into one or more precincts, consisting of not more  
25 than five hundred qualified voters in each precinct; shall  
26 arrange for and provide at its expense polling places,  
27 registration books, challenges and other election supplies  
28 as provided for by law in general elections; and  
29 shall appoint three commissioners of election and two  
30 clerks from the qualified voters of said incorporated  
31 territory for each precinct so established, subject, however,  
32 to the provisions of section eleven, article four of  
33 this chapter. Such election shall be held and conducted  
34 under the supervision of the commissioners and clerks  
35 of election appointed by the county court as aforesaid  
36 and shall be conducted as nearly as may be in accordance  
37 with the laws of this state governing general elections.  
38 The results of such election, both as to approval or re-

39 jection of the proposed charter and the election of offi-  
40 cers, shall be certified as in general elections, and the  
41 returns shall be canvassed and the results declared by  
42 the county court. In the event any commissioner or clerk  
43 designated to serve in said election shall fail or refuse  
44 to serve, such vacancy may be filled in like manner as  
45 such vacancies are filled in general elections under the  
46 laws of this state governing general elections. A recount  
47 may be had, as in general elections, upon the party or  
48 parties desiring such recount providing adequate as-  
49 surance to the county court that he or they will pay all  
50 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 ma-  
2 jority of the legal votes cast at the election thereon,  
3 the charter shall take effect on July first next after  
4 the date of the election, if the interim exceeds sixty  
5 days; otherwise on July first of the second fiscal year  
6 after its approval. If approved as aforesaid, one of the  
7 signed copies of the charter on file with the clerk of  
8 the county court, together with a certified copy of the  
9 declaration of the results of the election showing the  
10 total legal votes cast for and against approval, shall be  
11 certified forthwith by the clerk of the county court to  
12 the clerk of the House of Delegates, in his capacity as  
13 keeper of the rolls. The same shall be preserved by  
14 said clerk of the House of Delegates as an authentic  
15 public record. After the effective date of a charter so  
16 filed, all courts shall take judicial notice of its provisions.

17 The clerk of the county court shall certify to the  
18 county court the other signed copy of the charter  
19 previously filed with him, which copy so certified shall  
20 be spread upon the records of said court for public  
21 examination.

**§8-3-8. Same—Rejection; rewriting or altering draft; new charter board.**

1 If the proposed charter shall be rejected by a majority  
2 of the legal votes cast at the election thereon, the elec-  
3 tion of officers shall be void, except that the candidate

4 who shall receive the highest number of legal votes  
5 cast for the office of mayor, if a mayor is to be elected,  
6 otherwise the candidate for any city office who shall  
7 receive the highest number of legal votes cast at the  
8 election, shall, within ten days thereafter, require such  
9 charter board to reconvene for the purpose of rewrit-  
10 ing or altering the draft of the rejected charter in such  
11 manner as to it shall seem proper. Any three hundred  
12 qualified voters of said incorporated territory may, how-  
13 ever, within ten days after the determination of the  
14 results of the election at which such charter is rejected,  
15 petition the clerk of the county court for the election  
16 of a new charter board, in which case the court shall  
17 thereupon call a new election for members of the charter  
18 board in the same manner as the original election and  
19 with nominations to be made and any vacancies to be  
20 filled in the same manner as in the first instance, as  
21 provided in section one of this article. The duties  
22 of the new charter board shall be the same as those of  
23 the former board, and as many successive charter boards  
24 may be elected as may be necessary until a charter for  
25 such territory is framed and approved by the qualified  
26 voters of the incorporated territory. The rewritten or  
27 altered proposed charter or the charter draft of a new  
28 or any succeeding charter board, as the case may be,  
29 shall be submitted to the attorney general and the  
30 qualified voters of said incorporated territory in the  
31 same manner and with like notice and proceedings as  
32 required in the first instance, and such proceedings shall  
33 continue until the qualified voters of said incorporated  
34 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 amend-  
ing a charter.

1 The members of the charter board of a city elected  
2 under the provisions of this article whose draft of a  
3 charter is approved by the qualified voters of the city  
4 shall hold office for a term of six years following the

5 approval of such charter. Any vacancy occurring during  
6 that period shall be filled temporarily by appointment  
7 by majority action of the remaining members, and a  
8 successor shall be elected at the next regular municipal  
9 election in the same manner as elective city officers,  
10 such successor to hold office for the remainder of the  
11 term.

12 During such six-year period as aforesaid, the board  
13 shall make a continuing study of the functioning of the  
14 city government and may, by a two-thirds vote of its  
15 members, not less than four years after such charter  
16 shall have taken effect, require the submission to the  
17 qualified voters of the city of the question of whether  
18 the charter shall be revised as a whole, such submission  
19 to be in accordance with the pertinent provisions of  
20 article four of this chapter. In the event revision as a  
21 whole is voted pursuant to such submission, the board  
22 as then constituted shall proceed to prepare a revision  
23 of the charter as a whole and the process of revision  
24 as a whole as so initiated shall be the same as that for  
25 the framing and adoption of a charter under the perti-  
26 nent provisions of said article four of this chapter. Dur-  
27 ing such six-year period as aforesaid, by a two-thirds  
28 vote of its members, at any time not less than one year  
29 after such charter shall have taken effect, the board may  
30 require the submission of one or more proposed charter  
31 amendments to the qualified voters of the city, in accord-  
32 ance with the pertinent provisions of article four of  
33 this chapter.

### PART III. EXPENSES OF INCORPORATION.

#### §8-3-10. Expenses of incorporation.

1 The first governing body of any municipality incor-  
2 porated under the provisions of article two of this chap-  
3 ter shall provide for reimbursement to the county court  
4 of all costs of incorporation, including, but not limited  
5 to, the cost of publishing notices, of taking the enumera-  
6 tion of inhabitants, of ascertaining the qualification of  
7 electors, and of holding, conducting and superintending  
8 the elections called for thereunder and the returning,  
9 certifying and canvassing of the results thereof. The

10 first governing body of any city incorporated under  
11 said article two shall also provide for reimbursement  
12 of the charter board or boards and the members thereof  
13 for all reasonable and necessary expenses actually in-  
14 curred in the performance of its and their duties.

**ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN  
IMMEDIATELY FOLLOWING INCORPORATION; RE-  
VISING OR AMENDING A CHARTER; ELECTIONS  
AND EXPENSES.**

**PART I. FRAMING AND ADOPTING CHARTER—GENERAL.**

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

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

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

18 (c) The governing body of a city shall provide by  
19 ordinance for a special municipal election on said question  
20 if a petition bearing the signatures, written in their own  
21 handwriting, of fifteen percent of the qualified voters  
22 of the city, if a Class I or Class II city, or ten percent  
23 of the qualified voters of the city, if a Class III city,  
24 expressly requesting that a special municipal election  
25 be called for the purpose be presented to the governing  
26 body more than one hundred twenty days prior to the  
27 date of the next general election or next regular municipi-  
28 pal election.

29 (d) If the question is to be submitted at a general  
30 election or a regular municipal election and not a special  
31 municipal election, then in determining the general elec-  
32 tion or regular municipal election at which the question  
33 shall be submitted, the following provisions of this sub-  
34 section (d) shall govern and control:

35 (1) If the question is to be submitted under the pro-  
36 visions of subsection (a) of this section, the question shall  
37 be submitted at the next general election or next regular  
38 municipal election, whichever first occurs after the ordi-  
39 nance is adopted under the provisions of said subsection  
40 (a); or

41 (2) If the question is to be submitted under the pro-  
42 visions of subsection (b) of this section, the question shall  
43 be submitted at the next general election or next regular  
44 municipal election, whichever first occurs after the peti-  
45 tion is filed under the provisions of said subsection (b),  
46 if there is at least one hundred twenty days between the  
47 filing of the petition and the date of the election, and  
48 otherwise, at the next general election or next regular  
49 municipal election occurring after said interval of at least  
50 one hundred twenty days after the filing of said petition.

51 (e) Any special municipal election held in accordance  
52 with the provisions of subsection (a) of this section shall  
53 be held not less than thirty nor more than sixty days  
54 after the ordinance providing for same shall have been  
55 adopted, and any special municipal election held in ac-  
56 cordance with the provisions of subsection (b) of this  
57 section shall be held not less than thirty nor more than  
58 sixty days after the petition shall have been presented to  
59 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.**

1 The ordinance providing for submission to the qualified  
2 voters of the city of the question of whether a charter  
3 shall be framed shall make provision for voting for a  
4 charter board concurrently with the voting on the ques-  
5 tion of whether a charter shall be framed. A charter

6 board shall consist of eleven members in a Class I or  
7 Class II city and seven members in a Class III city. Mem-  
8 bers shall be elected at large and shall receive no com-  
9 pensation for their services, but shall be reimbursed by  
10 the city for all reasonable and necessary expenses actu-  
11 ally incurred in the discharge of their duties. Any in-  
12 dividual who has been a resident and qualified voter  
13 of the city for at least two years prior to the date of  
14 election of members shall be eligible for membership  
15 on said charter board.

16 In the initiatory ordinance, the governing body of a Class  
17 I or Class II city may nominate five candidates, and that of  
18 a Class III city three candidates, for membership on the  
19 charter board. Other nominations, or all of the nomina-  
20 tions if the governing body does not make any, shall be  
21 made by petition to the governing body bearing the signa-  
22 tures, written in their own handwriting, of not less than  
23 two hundred qualified voters of the city. Nominating peti-  
24 tions may be filed at any time after the adoption of the  
25 initiatory ordinance and not less than twenty days prior  
26 to the date of the election. In the event of a vacancy in  
27 the nominations which shall reduce the number of candi-  
28 dates below the number of members to be elected, the  
29 vacancy shall be filled by the governing body.

30 Notice of any election at which the question of whether  
31 a charter shall be framed shall be voted upon shall  
32 consist of the initiatory ordinance and a brief prefatory  
33 statement setting out the date and hours of the election,  
34 naming the candidates, if any, nominated by the gov-  
35 erning body for membership on the charter board as  
36 above provided and stating how and within what time  
37 limit other nominations may be made. The governing  
38 body shall cause such notice to be published as a Class  
39 II-0 legal advertisement in compliance with the provi-  
40 sions of article three, chapter fifty-nine of this code, and  
41 the publication area for such publication shall be the  
42 city. The first publication shall be made not less than  
43 thirty days prior to the date of the election.

44 Each qualified voter entitled to vote on the question  
45 of framing a charter may cast as many votes for mem-  
46 bers of the charter board as there are members to be

47 elected. He may cumulate all his votes for one candidate  
48 or distribute them among the several candidates as he  
49 sees fit.

50 The ballots, or ballot labels where voting machines are  
51 used, pertaining to the question of framing a charter  
52 shall be separate from the ballots or ballot labels for  
53 members of the charter board. The position of the names  
54 of the candidates upon the ballots or voting machines  
55 shall be interchanged, as provided in the general election  
56 laws of this state. A voter who shall vote "No" on the  
57 question may, nevertheless, vote for such candidates.  
58 The ballots or voting machine directions shall bear in-  
59 structions to this effect, and also instructions which shall  
60 indicate the number of candidates for which the voter  
61 may vote (which shall be the same as the number of  
62 members to be elected), and that cumulative voting is  
63 permitted. Special ballots or ballot labels without party  
64 designation shall be used at every election held under this  
65 article even though the election is held at the same time as  
66 some other election. The ballots or ballot labels shall be  
67 prepared by or at the direction of the recorder of the city.

68 After such an election, the legal votes on the question  
69 shall be counted and canvassed. If a majority of the legal  
70 votes cast on the question be in the negative, the proceed-  
71 ing shall be at an end, and the question shall not be sub-  
72 mitted again, without a petition of the qualified voters  
73 as provided for in subsection (b), section one of this  
74 article, for at least two years. If a majority of the legal  
75 votes cast on the question be in the affirmative, the legal  
76 votes cast for members of the charter board shall be  
77 counted and canvassed and the candidates, in the number  
78 to be chosen, who receive the highest number of votes  
79 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.**

1 All of the pertinent provisions of article three of this  
2 chapter pertaining to the charter drafting and adoption

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

13 percent of the qualified voters of the city, if a Class III  
14 city, expressly requesting that a special municipal elec-  
15 tion be called for the purpose be presented to the gov-  
16 erning body more than one hundred twenty days prior  
17 to the date of the next regular municipal election.

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

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

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

23 Rejection of the proposed charter by a majority of  
24 the legal votes cast shall have the same effect as a  
25 majority vote against the question of framing a charter  
26 as specified in section two of this article, and no further  
27 effort shall be made to have a charter approved until  
28 the question of framing a charter is again submitted to  
29 the qualified voters of the city and is approved by a  
30 majority vote, subject to the two-year limitation set  
31 forth in said section two of this article.

**§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.**

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

**PART II. REVISING OR AMENDING A CHARTER.****§8-4-7. Revising or amending a charter.**

1 A special legislative charter or a charter framed and  
2 adopted or revised as a whole under the provisions of  
3 former chapter eight-a of this code, under article three  
4 of this chapter or under this article four, as the case  
5 may be, may be revised as a whole in like manner as a  
6 charter may be framed and adopted under the provisions  
7 of this article four, except that the question submitted  
8 shall be "Shall the charter be revised as a whole by  
9 representatives of the people?", but no such revision  
10 as a whole shall be made within four years of the effective  
11 date of such a charter or of the last preceding revision  
12 as a whole, whichever be later, as the case may be. A  
13 revision as a whole may also be initiated in the manner  
14 specified in section nine, article three of this chapter  
15 or in the manner specified in said section nine considered  
16 in pari materia with the provisions of section three of  
17 this article four. If a majority of the legal votes cast  
18 on the question be in the negative or if the proposed  
19 charter revised as a whole is rejected by a majority  
20 of the legal votes cast at the election thereon, the pro-  
21 visions of sections two and three of this article relating  
22 to a negative vote on the question of framing a charter  
23 and to rejection of a proposed charter shall govern and  
24 control.

25 The qualified voters of a city may amend a special

26 legislative charter or a charter framed and adopted or  
27 revised as a whole under the provisions of former chapter  
28 eight-a of this code, under article three of this chapter  
29 or under this article four, as the case may be, but no  
30 amendment shall be made within one year of the effective  
31 date of such a charter or of the last preceding revision  
32 of such charter as a whole, whichever be later, as the  
33 case may be. An amendment or amendments may be  
34 initiated in the same manner provided in this article for  
35 the framing of a charter, in the manner specified in  
36 section nine, article three of this chapter, or in the man-  
37 ner specified in said section nine considered in *pari*  
38 *materia* with the provisions of section three of this  
39 article four. The governing body of a city shall provide  
40 by ordinance for a special municipal election to pass  
41 upon a proposed charter amendment or amendments if  
42 (1) such governing body by the affirmative vote of two-  
43 thirds of its members shall determine and specify that  
44 a special municipal election is necessary; or (2) a petition  
45 bearing the signatures, written in their own handwrit-  
46 ing, of fifteen percent of the qualified voters of the city,  
47 if a Class I or Class II city, or ten percent of the quali-  
48 fied voters of the city, if a Class III city, expressly re-  
49 questing that a special municipal election be called for  
50 the purpose has been filed with the governing body more  
51 than one hundred twenty days prior to the date of the  
52 next regular municipal election. In all other cases, a  
53 proposed charter amendment or amendments shall be  
54 submitted by ordinance at the next regular municipal  
55 election. Any proposed amendment or amendments shall  
56 be set out in full in the ordinance submitting same. The  
57 date of any special municipal election for the purpose  
58 shall be fixed by the ordinance providing for same, but  
59 any such special municipal election shall be held not  
60 less than thirty nor more than sixty days after such  
61 ordinance shall have been adopted. Notice of any elec-  
62 tion at which a proposed amendment or amendments  
63 shall be voted upon shall state the date and hours thereof,  
64 and shall set out the proposed amendment or amendments  
65 at length or state that copies may be obtained by any  
66 qualified voter or any freeholder of the city from a

67 designated person at a stated place, upon request. Such  
68 notice shall be published as in the case of a notice of  
69 an election on the question of whether a charter shall  
70 be framed, as specified in section two of this article. A  
71 charter amendment or amendments approved, or such  
72 of them as may be approved, by a majority of the  
73 legal votes cast at the election thereon shall take effect  
74 on the date that the declaration of the results showing  
75 approval by the voters has been made by the govern-  
76 ing body and entered in the minutes of the governing  
77 body. One copy of the amendment or amendments, to-  
78 gether with a certified copy of the declaration of results  
79 attached thereto, shall be certified forthwith by the  
80 recorder of the city to the clerk of the House of Dele-  
81 gates, as keeper of the rolls, and another to the clerk  
82 of the county court for recording in the office of such  
83 clerk of the county court. The same shall be preserved  
84 by said clerk of the House of Delegates as an authentic  
85 public record. After the effective date of an amend-  
86 ment or amendments so filed, all courts shall take judi-  
87 cial notice of such amendment or amendments.

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

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

1 Whenever the governing body of any city shall deem  
2 it expedient to amend the charter of any such city  
3 (whether such charter be a special legislative charter  
4 or a charter framed and adopted or revised as a whole  
5 under the provisions of former chapter eight-a of this  
6 code, under article three of this chapter or under this  
7 article four, as the case may be), it shall, by ordinance,  
8 set out in its proper record book the proposed amend-  
9 ment or amendments in full. The governing body shall  
10 set a date, time and place for a public hearing thereon,  
11 which date shall not be less than thirty days after the  
12 date of the first publication hereinafter required. The

13 governing body shall cause the proposed amendment or  
14 amendments, together with a notice of the date, time and  
15 place fixed for the hearing thereon, to be published as a  
16 Class II-0 legal advertisement in compliance with the pro-  
17 visions of article three, chapter fifty-nine of this code,  
18 and the publication area for such publication shall be  
19 the city. The notice shall state that the proposed amend-  
20 ment or amendments will be considered on the date  
21 and at the time and place fixed by the governing body  
22 and that any qualified voter or any freeholder of the  
23 city may appear and file objections, in writing, and also  
24 that if no objections are filed the said amendment or  
25 amendments shall become operative on and after a date  
26 fixed in the notice, which date shall be not less than ten  
27 days after the date of the hearing. If no objections are  
28 filed, or if objections are filed and are withdrawn at the  
29 time of the hearing, or within ten days thereafter, the  
30 governing body shall, by ordinance, adopt the amendment  
31 or amendments as an amendment or amendments to the  
32 charter, and cause a copy of the amendment or amend-  
33 ments, ordinance and transcript of the proceedings to  
34 be certified to the clerk of the House of Delegates, as  
35 keeper of the rolls, and to be recorded in the office of  
36 the clerk of the county court. The same shall be pre-  
37 served by such clerk of the House of Delegates as an  
38 authentic public record. The amendment or amend-  
39 ments shall take effect on the effective date specified in  
40 the notice as aforesaid. After the effective date, all courts  
41 shall take judicial notice of such amendment or amend-  
42 ments.

43 If, on the date and at the time and place set for the  
44 hearing, objections to the amendment or amendments  
45 are filed and are not withdrawn then or within ten days  
46 thereafter, the governing body may abandon the pro-  
47 posed amendment or amendments to which objections  
48 have been filed, or it may submit the proposed amendment  
49 or amendments, either as a unit or separately, at the  
50 next regular municipal election, or at a special mu-  
51 nicipal election if such governing body by the affirmative  
52 vote of two-thirds of its members shall determine and  
53 specify that a special municipal election is necessary

54 and if the date of such regular municipal election shall  
55 be more than six months from such date, for ratification  
56 or rejection. Notice of any election at which the proposed  
57 amendment or amendments shall be voted upon shall  
58 state the date and hours thereof and shall set out the  
59 proposed amendment or amendments at length or state  
60 that copies may be obtained by any qualified voter or  
61 any freeholder of the city from a designated person at  
62 a stated place, upon request. The governing body shall  
63 cause such notice to be published as a Class II-0 legal  
64 advertisement in compliance with the provisions of article  
65 three, chapter fifty-nine of this code, and the publication  
66 area for such publication shall be the city. The amend-  
67 ment or amendments approved, or such of them as may  
68 be approved, by a majority of the legal votes cast at the  
69 election thereon shall take effect on the date that the  
70 declaration of the results showing approval by the voters  
71 has been made by the governing body and entered in  
72 the minutes of the governing body. One copy of the  
73 amendment or amendments, together with a certified  
74 copy of the declaration of results attached thereto, shall  
75 be certified forthwith by the recorder of the city to the  
76 clerk of the House of Delegates, as keeper of the rolls,  
77 and another to the clerk of the county court for recording  
78 in the office of such clerk of the county court. The same  
79 shall be preserved by said clerk of the House of Dele-  
80 gates as an authentic public record. After the effective  
81 date of an amendment or amendments so filed, all courts  
82 shall take judicial notice of such amendment or amend-  
83 ments. If a majority of the legal votes cast at the elec-  
84 tion thereon be against any proposed amendment, the  
85 same shall not be proposed again under the provisions  
86 of this section for at least one year.

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

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

1 A charter revision as a whole or a charter amendment  
2 or amendments may be proposed with alternative pro-  
3 visions for submission to the qualified voters and the

4 same may be voted upon separately without prejudice to  
5 the primary question of whether the proposed charter  
6 revision as a whole or the amendment or amendments  
7 shall be adopted and without prejudice to the other pro-  
8 visions thereof.

### PART III. ELECTIONS; EXPENSES.

#### §8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.

1 The governing body of a city shall canvass the returns  
2 within relatively the same time with reference to an  
3 election held under the provisions of this article and in  
4 the same manner as county courts are required to do with  
5 respect to general elections, and shall declare the results  
6 of any such election. This requirement shall apply to any  
7 election held under the provisions of this article, whether  
8 it be a special municipal election or voting conducted in  
9 conjunction with a general election or a regular municipal  
10 election. The canvass and declaration of results shall be  
11 entered in the minutes of the governing body on the date  
12 made. Unless otherwise provided by charter provision,  
13 any such special municipal election or voting conducted  
14 in conjunction with a general election or a regular munic-  
15 ipal election shall be held and conducted under the super-  
16 vision at each precinct of three commissioners of election  
17 and two clerks who shall be appointed by the governing  
18 body and shall be conducted as nearly as may be in ac-  
19 cordance with the laws of this state governing general  
20 elections, subject, however, in the case of a special munic-  
21 ipal election to the provisions of section eleven of this  
22 article. For any special municipal election or voting con-  
23 ducted in conjunction with a general election or a regular  
24 municipal election, in accordance with the provisions of  
25 this article, the governing body shall arrange for and  
26 provide at its expense registration books, challenges and  
27 other election supplies as provided by law in general elec-  
28 tions, and polling places in any such special municipal  
29 election or with respect to any such voting conducted in  
30 conjunction with a regular municipal election. In the  
31 event any commissioner or clerk appointed by the gov-

32 erning body shall fail or refuse to serve, such vacancy  
33 may be filled in like manner as such vacancies are filled  
34 in general elections under the laws of this state governing  
35 general elections, except that the governing body shall  
36 act in the place and stead of the county court. A recount  
37 may be had, as in general elections, upon the party or  
38 parties desiring such recount providing adequate assur-  
39 ance to the governing body that he or they will pay all  
40 costs of such recount.

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

1 In any special election upon the question of the ap-  
2 proval or rejection of a proposed charter to be held under  
3 the provisions of article three of this chapter and in any  
4 special municipal election to be held under the provisions  
5 of this article four, the proponents and opponents of the  
6 proposed charter, the question of framing or revising a  
7 charter, the proposed charter revision as a whole or the  
8 proposed charter amendment or amendments, as the case  
9 may be, shall be entitled to representation among the  
10 election officials appointed to serve at each polling place.  
11 Election officials representing the proponents and oppo-  
12 nents shall be designated as follows:

13 (1) The proponents and opponents, or either, of the  
14 proposed charter, the question of framing or revising a  
15 charter, the proposed charter revision as a whole or the  
16 proposed charter amendment or amendments, as the case  
17 may be, if organized, may, not less than fifteen days prior  
18 to the date fixed for the special election or special municip-  
19 al election, as the case may be, file with the county  
20 court as to a special charter election to be held under the  
21 provisions of article three of this chapter or the governing  
22 body in all other cases a list of individuals to serve as  
23 election officials to represent their organization or organ-  
24 izations and if a list is so filed the county court or govern-  
25 ing body, as the case may be, shall appoint as election  
26 officials to represent such organization or organizations  
27 the individuals so nominated: *Provided*, That any such  
28 organization has as members at least five percent of the  
29 qualified voters of the incorporated territory or city, and  
30 any such organization, within ten days after the official

31 notice of such special election or special municipal elec-  
 32 tion, as the case may be, was published for the first time,  
 33 submitted to the county court or governing body, as the  
 34 case may be, a statement showing the name, officers and  
 35 members thereof: *Provided, however,* That no individual  
 36 shall be a member of more than one such organization; or

37 (2) If the proponents and opponents, or either, of the  
 38 proposed charter, the question of framing or revising a  
 39 charter, the proposed charter revision as a whole, or the  
 40 proposed charter amendment or amendments, as the case  
 41 may be, are not organized as aforesaid, or if no such list  
 42 is filed as aforesaid, the county court or governing body,  
 43 as the case may be, shall, not less than ten days prior to  
 44 the date fixed for the special election or special municipal  
 45 election, as the case may be, appoint as representatives of  
 46 proponents and opponents, or either, as the case may be,  
 47 an equal number of persons known to be in favor of the  
 48 proposed charter, the question of framing or revising a  
 49 charter, the proposed charter revision as a whole or the  
 50 proposed charter amendment or amendments, as the case  
 51 may be, and of persons known to be opposed to the pro-  
 52 posed charter, the question of framing or revising a  
 53 charter, the proposed charter revision as a whole or the  
 54 proposed charter amendment or amendments, as the case  
 55 may be, to act as election officials at each polling place.

**§8-4-12. Expenses.**

1 The governing body of a city shall make full provision  
 2 for all expenses incurred in advertising, holding and con-  
 3 ducting any election or voting under the provisions of  
 4 this article and all other proper expenses incurred in  
 5 complying with the provisions of this article, including  
 6 the expenses of a charter board and the members thereof,  
 7 as specified in section two of this article.

**ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND  
 COMPENSATION OF OFFICERS; GENERAL PROVI-  
 SIONS RELATING TO OFFICERS AND EMPLOYEES;  
 ELECTIONS AND PETITIONS GENERALLY; CON-  
 FFLICT OF INTEREST.**

**PART I. FIRST ELECTION OF OFFICERS.**

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

1 The first election of officers of a city shall be held, con-

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-  
sioners of election.**

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

**§8-5-3. When first election of officers of a town or village held;  
notice.**

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

**§8-5-4. Conducting first election of officers of a town or village;  
certificate of election; terms of first officers.**

1 Such commissioners, or the individuals acting as such,

2 shall preside and act as commissioners of such election,  
3 and all of the laws applicable to the election of district  
4 officers shall apply to such election, if not inconsistent  
5 with the provisions of this article. Such commissioners  
6 shall, within five days after such election, issue a cer-  
7 tificate to the individuals elected, which certificate  
8 shall be recorded among the records of such town or  
9 village. All officers elected at the first election of offi-  
10 cers held by a town or village, which first election is  
11 held after the effective date of this article, shall be elected  
12 for a term which shall expire on the thirtieth of June  
13 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  
2 election of officers thereof shall be held on the first  
3 Tuesday in June of the appropriate year, unless other-  
4 wise provided in the charter thereof, at which election  
5 officers shall be elected for a two-year or four-year term,  
6 as the charter may provide, unless some other term is  
7 provided in the charter. Officers of a city may be elected  
8 for a four-year term at the same election at which a  
9 proposed charter, proposed charter revision as a whole  
10 or charter amendment, as the case may be, providing  
11 for four-year terms is voted upon and approved by a  
12 majority of the legal votes cast, but the ballots, or ballot  
13 labels where voting machines are used, for the election  
14 of officers must bear information to the effect that the  
15 officers are being elected for four-year terms in the event  
16 the proposed charter, the proposed charter revision as  
17 a whole or charter amendment, as the case may be, is  
18 approved as aforesaid.

19 After the first election of officers of a town or village,  
20 the regular election of officers thereof shall be held on  
21 the first Tuesday in June of the appropriate year, unless  
22 otherwise provided in the special legislative charter  
23 thereof, at which election officers shall be elected for  
24 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  
29 calling for four-year terms and approval of such propo-  
30 sition by a majority of the legal votes cast with respect  
31 thereto. Officers of a town or village may be elected for  
32 a four-year term at the same election at which the propo-  
33 sition calling for four-year terms is voted upon and  
34 approved by a majority of the legal votes cast, but the  
35 ballots, or ballot labels where voting machines are used,  
36 for the election of officers must bear information to  
37 the effect that the officers are being elected for four-  
38 year terms in the event the proposition is approved as  
39 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

2 municipality, there shall be elected a mayor and council-  
3 men, who together shall form the governing body of the  
4 municipality, and a recorder.

5 (b) When a municipality has not been divided into  
6 wards or election districts, there shall be at least five  
7 councilmen, but when the municipality has been divided  
8 into wards or election districts, the governing body may,  
9 by ordinance, determine the number of councilmen to be  
10 elected from each ward or election district. When it is  
11 deemed necessary, the governing body may, by ordinance,  
12 increase the number of wards or election districts and  
13 change the boundaries thereof, such wards or election  
14 districts to be made as nearly equal as may be, in  
15 population, and when the municipality shall be divided  
16 into wards or election districts, or there shall be an  
17 increase in the number of wards or election districts  
18 as aforesaid, the governing body may increase the number  
19 of councilmen and direct an election to be held at the next  
20 regular municipal election in such ward or wards or elec-  
21 tion district or districts so that each ward or election  
22 district may have its full number of councilmen residing  
23 therein and may have equal representation on the gov-  
24 erning body. When a municipality has been divided into  
25 wards or election districts, the governing body may, by  
26 ordinance, also provide for the election of councilmen at  
27 large in addition to the councilmen to be elected from  
28 each ward or election district. The provisions of this sub-  
29 section (b) shall be applicable to any municipality except  
30 to the extent otherwise provided in the charter of such  
31 municipality.

32 (c) Unless otherwise provided by charter provision or  
33 ordinance, the mayor, recorder and councilmen must be  
34 residents of the municipality, must be qualified voters  
35 entitled to vote for members of its governing body, and  
36 for the year preceding their election must have been  
37 assessed with and paid real or personal property taxes to  
38 the municipality upon at least one hundred dollars' worth  
39 of property therein, except that the city manager in a  
40 manager form of government need only be a resident of  
41 the city at the time of his appointment: *Provided*, That  
42 for two years after the date of his discharge, the eligibility

43 of any honorably discharged veteran of the armed forces  
44 of the United States for any of such offices in any munici-  
45 pality shall not be affected or impaired by reason of his  
46 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  
2 municipality shall, unless otherwise provided in the  
3 charter thereof, within twenty days after his election or  
4 appointment and before he shall enter upon the duties  
5 of his office, take and subscribe to the oath of office pre-  
6 scribed for district officers, which may be done before  
7 any person authorized by law to administer oaths, or  
8 before the mayor or recorder of such municipality. The  
9 oath, together with the certificate of the officer adminis-  
10 tering the same, shall be filed, recorded and preserved  
11 in the office of the recorder of the municipality, and a  
12 certified copy of such oath and certificate shall be filed  
13 and recorded in the office of the clerk of the county court  
14 of the county in which the municipality or the major  
15 portion of the territory thereof is located.

**§8-5-9. Terms of office.**

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

**§8-5-10. Vacancies in elective offices; how filled.**

1 Unless otherwise provided by charter provision or  
 2 ordinance, when a vacancy shall occur from any cause  
 3 in any municipal elective office, the vacancy, until the  
 4 next succeeding regular municipal election and until the  
 5 qualification of an elected successor, shall be filled by  
 6 appointment by the governing body from among the  
 7 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  
 2 state, the provisions of this article, and other applicable  
 3 provisions of this chapter, any city may by charter pro-  
 4 vision, and the governing body of any municipality, con-  
 5 sistent with the provisions of its charter, if any, may  
 6 by ordinance, determine and prescribe the officers or  
 7 positions which are to be filled by election, appointment  
 8 or employment, the number, method of selection, tenure,  
 9 qualifications, residency requirements, powers and duties  
 10 of municipal officers and employees, and the method of  
 11 filling any vacancies which may occur.

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

1 Notwithstanding any charter provision to the contrary,  
 2 the governing body of every municipality shall by ordi-  
 3 nance fix or cause to be fixed the salary or compensation  
 4 of every municipal officer and employee: *Provided*, That  
 5 the salary of any officer shall not be increased or dimin-  
 6 ished during his term.

7 The governing body of every municipality shall have  
 8 plenary power and authority to provide by ordinance  
 9 for the allowance of time off of officers and employees  
 10 with pay for vacations and illness, as additional con-  
 11 sideration 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,  
 2 it shall be the duty of each city by charter provision or

3 each municipality by ordinance to make provision for  
4 integrating the conduct of all municipal elections with the  
5 system of "permanent registration of voters." Such  
6 charter provision or ordinance shall, to the extent reason-  
7 ably applicable, parallel the provisions of chapter three  
8 of this code which integrate county-state elections with  
9 the "permanent registration system."

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

1 Except as otherwise provided by charter provision or  
2 ordinance or this code, municipal executive committees  
3 shall exercise similar functions and be governed by the  
4 same laws in regard to municipal primary elections and  
5 regular municipal elections as county executive committees  
6 in regard to county-state primary and general elections,  
7 so far as the same may be applicable. All expenses  
8 of conducting municipal primary elections and regular  
9 municipal elections shall be paid by the municipality. The  
10 provisions of chapter three of this code, referring more  
11 particularly to primary elections and general elections,  
12 shall, so far as the same can be applied and so far as not  
13 otherwise provided by charter provision or ordinance,  
14 govern the conduct of municipal primary elections and  
15 regular municipal elections, as the case may be. No municipal  
16 primary election shall be held on the day of the  
17 county-state primary election nor less than twenty-five  
18 days immediately preceding the regular municipal election,  
19 unless a shorter period of time is established by  
20 charter or ordinance.

**§8-5-15. Tie vote.**

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

**§8-5-16. Judicial review.**

1 A writ of error shall lie to the circuit court in accord-  
2 ance with the provisions of article three, chapter fifty-  
3 eight of this code from any order of a county court order-  
4 ing an election to be held under the provisions of this  
5 chapter. Upon the filing of a petition for a writ of error,  
6 all proceedings shall be suspended or stayed pending final  
7 adjudication of the matters involved.

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

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

1 All elections ordered and held by a county court under  
2 the provisions of this chapter shall be canvassed by such  
3 county court. All elections ordered and held by a mu-  
4 nicipality under the provisions of this chapter shall be  
5 canvassed by the governing body of such municipality.

6 Any contest of a public question election ordered and  
7 held by a county court, or by a municipality, under the  
8 provisions of this chapter, shall be heard and decided by  
9 the county court or governing body of the municipality,  
10 as the case may be, and any such contest shall be con-  
11 ducted in the manner to be provided in article seven,  
12 chapter three of this code for contests of an election on a  
13 public question. Any such election may be contested by  
14 a qualified elector or voter or by a freeholder interested  
15 therein.

16 Any contest by any candidate or candidates of an elec-  
17 tion of charter board members or of the first officers of a  
18 city, which election is held under the provisions of article  
19 three of this chapter, shall be heard and decided by the  
20 county court, and any such contest shall be conducted in  
21 the manner provided in said article seven, chapter three

22 of this code for election contests for county or district  
23 officers in general elections.

24 Any contest by any candidate or candidates of an elec-  
25 tion of charter board members, which election is held  
26 under the provisions of article four of this chapter, or of  
27 officers of a municipality (other than the first officers of  
28 a city) shall be heard and decided by the governing body  
29 thereof, and any such contest shall be conducted in the  
30 manner provided in said article seven, chapter three of  
31 this code for election contests for county or district  
32 officers in general elections.

**§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  
2 governing body of a municipality, or other body or offi-  
3 cer, to which or to whom any petition is presented under  
4 the provisions of this chapter, as the case may be, to  
5 determine the sufficiency of any such petition, and where  
6 no time limit is prescribed for the making of such de-  
7 termination, the same shall be accomplished within a  
8 reasonable period of time. Any such determination, where  
9 there is no other express right of judicial review pro-  
10 vided, shall be reviewable by the circuit court of the  
11 county upon certiorari to the county court, governing  
12 body, or other body or officer, as the case may be, in  
13 accordance with the provisions of article three, chapter  
14 fifty-three of this code; and in the case of a governing  
15 body, the appropriate circuit court shall be the circuit  
16 court of the county in which the municipality or the  
17 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  
2 to provide by charter provision, and every municipality  
3 shall have plenary power and authority to provide by  
4 ordinance, that it shall be unlawful for the governing  
5 body, or any member thereof, or other officer or officers  
6 thereof, to be interested personally, either directly or

7 indirectly, or as a member, manager, officer or stock-  
8 holder of any partnership, business, firm or corporation,  
9 in any contract furnishing material, services or supplies  
10 to the municipality, or to any contractor, or workmen  
11 for the municipality, or in any manner whatsoever,  
12 whereby the taxpayers of such municipality shall become  
13 the paymaster, either directly or indirectly, or to adopt  
14 any other provisions, deemed appropriate, pertaining  
15 to conflict of interest or possible conflict of interest. Any  
16 violation of any such charter or ordinance provision by  
17 any member of the governing body or other officer or  
18 officers thereof, shall be a misdemeanor and, upon con-  
19 viction thereof, such member or officer shall be fined not  
20 less than fifty nor more than five hundred dollars, and  
21 shall automatically be removed from office.

#### ARTICLE 6. ANNEXATION.

##### PART I. GENERAL.

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

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

##### PART II. ANNEXATION BY ELECTION.

##### §8-6-2. Petition for annexation.

1 Five percent or more of the freeholders of a munici-  
2 pality desiring to have territory annexed thereto may  
3 file their petition in writing with the governing body  
4 thereof, setting forth the change proposed in the metes  
5 and bounds of the municipality, and asking that a vote  
6 be taken upon the proposed change. Such petition shall  
7 be verified and shall be accompanied by an accurate sur-  
8 vey map showing the territory which would be annexed  
9 to the corporate limits by the proposed change. The gov-  
10 erning body, upon bond in penalty prescribed by the gov-  
11 erning body with good and sufficient surety being given  
12 by petitioners, and conditioned to pay the costs of such  
13 election if a majority of the legal votes cast are against  
14 the proposed change in boundary, shall thereupon order  
15 a vote of the qualified voters of such municipality to be

16 taken upon the proposed change on a date and at a time  
17 and place therein to be named in the order, not less than  
18 twenty nor more than thirty days from the date thereof.  
19 The governing body shall, at the same time, order a vote  
20 of all of the qualified voters of the additional territory,  
21 and of all of the freeholders of such additional territory,  
22 whether they reside or have a place of business therein or  
23 not, to be taken upon the question on the same day, at  
24 some convenient place in or near such additional terri-  
25 tory: *Provided*, That the additional territory to be in-  
26 cluded shall conform to the requirements of section one,  
27 article two of this chapter, and the determination that the  
28 additional territory does so conform shall be reviewable  
29 by the circuit court of the county in which the municipal-  
30 ity or the major portion of the territory thereof, including  
31 the area proposed to be annexed, is located upon cer-  
32 tiorari to the governing body, in accordance with the  
33 provisions of article three, chapter fifty-three of this  
34 code. The governing body shall cause the order to be  
35 published, at the cost of the municipality, as a Class II-0  
36 legal advertisement in compliance with the provisions  
37 of article three, chapter fifty-nine of this code, and the  
38 publication area for such publication shall be the mu-  
39 nicipality and the additional territory. The first publi-  
40 cation must be at least fourteen days prior to the date  
41 upon which the vote is to be taken. The order so pub-  
42 lished shall contain an accurate description by metes and  
43 bounds of the additional territory proposed to be an-  
44 nexed to the corporate limits by the proposed change,  
45 and, if practicable, shall also contain a popular descrip-  
46 tion of such additional territory.

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

53  For Annexation

54  Against Annexation

55 Any freeholder which is a firm or corporation may vote  
56 by its manager, president, or executive officer duly desig-

57 nated in writing by such firm or corporation. Even though  
 58 an individual who is a qualified voter of the municipality  
 59 or the territory is also a freeholder of the territory, such  
 60 person shall be entitled to vote only once.

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

66 If a majority of all of the legal votes cast both in the  
 67 municipality and in the territory are in favor of the  
 68 proposed annexation, then the governing body shall pro-  
 69 ceed as specified in the immediately succeeding section  
 70 of this article.

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

1 The governing body of such municipality shall enter  
 2 the results of such election in its minutes, and, when the  
 3 annexation proposed is adopted, as provided in the im-  
 4 mediately preceding section of this article, shall forward  
 5 a certificate to such effect to the county court of the  
 6 county wherein the municipality or the major portion of  
 7 the territory thereof, including the annexed territory, is  
 8 located; and such court shall thereupon enter an order in  
 9 substance as follows:

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

15 "Beginning at (here recite the boundaries as changed).  
 16 It is, therefore, ordered that such annexation to said cor-  
 17 porate limits be, and the same is hereby approved and  
 18 confirmed, and the clerk of this court is directed to de-  
 19 liver to the said governing body a certified copy of this  
 20 order as soon as practicable after the rising of this court."

21 After the date of such order, the corporate limits of the  
 22 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  
2 provide for the annexation of additional territory without  
3 ordering a vote on the question if (1) sixty percent of the  
4 qualified voters of such additional territory file with the  
5 governing body their petition to be annexed, and (2)  
6 sixty percent of all freeholders of such additional terri-  
7 tory, whether they reside or have a place of business  
8 therein or not, file with the governing body their petition  
9 to be annexed: *Provided*, That the additional territory  
10 shall conform to the requirements of section one, article  
11 two of this chapter, and the determination that the addi-  
12 tional territory does so conform or that the requisite  
13 number of petitioners have filed the required petitions  
14 shall be reviewable by the circuit court of the county in  
15 which the municipality or the major portion of the terri-  
16 tory thereof, including the area proposed to be annexed,  
17 is located upon certiorari to the governing body, in ac-  
18 cordance with the provisions of article three, chapter fifty-  
19 three of this code. A qualified voter of the additional terri-  
20 tory who is also a freeholder of the additional territory  
21 may join only in the voters' petition of such additional ter-  
22 ritory. It shall be the responsibility of the governing body  
23 to enumerate and verify the total number of eligible peti-  
25 tioners, in each category, from the additional territory. In  
26 determining the total number of eligible petitioners, in  
27 each category, a qualified voter of the additional territory  
28 who is also a freeholder of the additional territory shall  
29 be counted only as a qualified voter and if all of the  
30 eligible petitioners are qualified voters, then only a voters'  
31 petition shall be required. If satisfied that the additional  
32 territory conforms to the requirements of section one,  
33 article two of this chapter and that the petition is suffi-  
34 cient in every respect, the governing body shall enter  
35 such fact upon its journal and forward a certificate to  
36 that effect to the county court of the county wherein the  
37 municipality or the major portion of the territory thereof,  
38 including the additional territory, is located. The county  
39 court shall thereupon enter an order along the lines of

40 the order described in the immediately preceding section  
41 of this article. After the date of such order, the corporate  
42 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-  
2 porate limits by making a minor boundary adjustment,  
3 the governing body of such municipality may apply to  
4 the county court of the county wherein the municipality  
5 or the major portion of the territory thereof, including  
6 the territory to be annexed, is located for permission to  
7 effect such annexation by minor boundary adjustment.

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

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

22 If the freeholders of the area proposed to be annexed  
23 who are present or are represented at the hearing are not  
24 substantially opposed to the proposed boundary change,  
25 the court may enter an order changing the corporate  
26 limits of the municipality as requested, which order may  
27 be reviewed by the circuit court as an order of a county  
28 court ordering an election may be reviewed under section  
29 sixteen, article five of this chapter. After the date of  
30 such order, the corporate limits of the municipality shall  
31 be as set forth therein, unless judicial review is sought  
32 under the provisions of said section sixteen. If the pro-  
33 posed change is substantially opposed at the hearing by  
34 any such freeholder, the court shall dismiss the applica-

35 tion. Dismissal of any such application shall not preclude  
36 proceedings in accordance with the provisions of sec-  
37 tions two and three or section four of this article. The  
38 municipality shall pay the costs of all proceedings under  
39 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  
2 provisions of this article, it shall be the duty of the gov-  
3 erning body of the municipality to notify the county  
4 assessor of such annexation, and upon being so notified,  
5 it shall be the duty of such assessor to see to it that the  
6 properties situate within the newly annexed area are  
7 assessed with the municipal ad valorem taxes for the  
8 current fiscal year and subsequent fiscal years or the  
9 ensuing and subsequent fiscal years, depending upon the  
10 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 de-  
2 creased only in accordance with the provisions of this  
3 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 munic-  
2 ipality desiring to decrease the corporate limits thereof  
3 may file their petition in writing with the governing body  
4 thereof, setting forth the change proposed in the metes  
5 and bounds of the municipality, and asking that a vote  
6 be taken upon the proposed change. Such petition shall  
7 be verified and shall be accompanied by an accurate  
8 survey map showing the territory which would be elimi-  
9 nated from the corporate limits by the proposed change.  
10 The governing body, upon bond in penalty prescribed

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

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

- 38  For Decrease of Corporate Limits  
 39  Against Decrease of Corporate Limits

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

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

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

1 The governing body of such municipality shall enter

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

9 "A certificate of the governing body of the municipi-  
 10 pality of \_\_\_\_\_ was this day filed showing that  
 11 a decrease has been made, in the manner required by  
 12 law, in the corporate limits thereof, and that by such  
 13 decrease the said corporate limits are as follows:

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

20 After the date of such order, the corporate limits of  
 21 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- ment.

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

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

13 If satisfied that the change sought is only a minor  
 14 boundary adjustment, the county court shall order pub-  
 15 lication of a notice of the proposed decrease in the cor-

16 porate limits and of the date and time set by the court  
 17 for a hearing on such proposal. Publication shall be as  
 18 in the case of an order calling for an election, as set  
 19 forth in section two of this article. A like notice shall  
 20 be prominently posted at not less than five public places  
 21 within the territory which would be eliminated from  
 22 the corporate limits by the proposed change.

23 If the freeholders of such territory who are present  
 24 or are represented at the hearing are not substantially  
 25 opposed to the proposed boundary change, the court may  
 26 enter an order decreasing the corporate limits of the  
 27 municipality as requested, which order may be reviewed  
 28 by the circuit court as an order of a county court order-  
 29 ing an election may be reviewed under section sixteen,  
 30 article five of this chapter. After the date of such order,  
 31 the corporate limits of the municipality shall be as set  
 32 forth therein, unless judicial review is sought under the  
 33 provisions of said section sixteen. If the proposed change  
 34 is substantially opposed at the hearing by any such free-  
 35 holder, the court shall dismiss the application. Dismissal  
 36 of any such application shall not preclude proceedings  
 37 in accordance with the provisions of sections two and  
 38 three of this article. The municipality shall pay the costs  
 39 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  
2 of the resolution to the county court of the county  
3 wherein the municipality or the portion thereof greatest  
4 in population is located. If the court receives a copy  
5 or copies of a like resolution or resolutions from the  
6 governing body or bodies of one or more municipalities  
7 also proposing such consolidation, it shall be the duty  
8 of the court to call, by written order, a special election  
9 to be held within such municipalities for a determina-  
10 tion, by the qualified voters of the respective munic-  
11 ipalities, upon the question of consolidation. When two or  
12 more adjoining municipalities in different counties in this  
13 state desire to consolidate and become one municipality,  
14 the county court or clerk thereof referred to in this arti-  
15 cle shall be the court or clerk of the county wherein the  
16 consolidating municipality having the greatest population  
17 is located or if such consolidating municipality is itself  
18 located in more than one county, the county wherein the  
19 portion thereof greatest in population is located. The  
20 order shall set the date for the special elections, which  
21 date shall be not less than thirty nor more than sixty  
22 days from the date of the order, and shall be the same  
23 date in each of the municipalities concerned.

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

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

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

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

5 The question of the consolidation of the same munic-

6 palities shall not be submitted to the voters thereof more  
7 often than once in two years.

**§8-8-5. Ballots or ballot labels; expenses of special elections.**

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

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

7  For Consolidation

8  Against Consolidation

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

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

1 The county court shall furnish sealed ballot boxes or  
2 voting machines to the proper officers of the municipali-  
3 ties wherein the special elections are to be held. The  
4 municipal officers responsible for the custody of the bal-  
5 lots or voting machines shall, immediately upon the  
6 closing of the polls, transmit the ballot boxes, sealed  
7 and unopened, or the voting machines to the county  
8 court. The county court shall proceed to count and  
9 canvass the votes cast, and shall forthwith certify over  
10 their signatures the results of the canvass, showing dis-  
11 tinctly in their certificate the number of votes for and  
12 the number of votes against the consolidation in each  
13 of the municipalities, and also the number of qualified  
14 voters in each municipality who voted on the question.

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

1 If a majority of the legal votes cast by the qualified  
2 voters of each of the municipalities are shown by such  
3 certificate to have been cast in favor of the consolida-  
4 tion, the county court shall endorse said certificate to  
5 that effect and shall cause the same to be filed forth-  
6 with in the office of the clerk of the county court, and  
7 to be published as a Class I legal advertisement in  
8 compliance with the provisions of article three, chapter

9 fifty-nine of this code, and the publication area for such  
10 publication shall be each of the municipalities so voting.

**§8-8-8. Effective date of consolidation.**

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

**PART II. APPLICABLE CHARTER AND ORDINANCES.**

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

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

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

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

**§8-8-10. Ward representation.**

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

7 The commission provided for in section eleven of this  
8 article shall give careful attention to the provisions of  
9 this section before proceeding with its prescribed duties.

## PART III. COMMISSION ON WARDS AND ELECTION DISTRICTS.

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

1 Within one week after the filing and publication pro-  
2 vided for in section seven of this article, a joint commis-  
3 sion shall be formed consisting of the mayor and the  
4 recorder of each municipality, and three inhabitants of  
5 each municipality appointed by the governing body  
6 thereof.

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

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

31 The lines fixed and determined by the commission shall  
32 be those of the new municipality until changed in ac-  
33 cordance with law. Wards, if any, shall be formed of  
34 contiguous territory. No election district shall be in more  
35 than one ward. In dividing the new municipality into  
36 wards and election districts, the commission shall have  
37 regard for, and shall take into consideration, the elec-  
38 tion laws of this state, as well as the population in all

39 wards and election districts, and shall divide and ar-  
40 range the same so that each will contain, as nearly as  
41 possible, an equal number of inhabitants.

42 A notice setting forth the ward lines, if any, and election  
43 district lines as fixed by the commission shall be pub-  
44 lished by the clerk thereof as a Class I legal advertise-  
45 ment in compliance with the provisions of article three,  
46 chapter fifty-nine of this code, and the publication area  
47 for such publication shall be each of the municipalities  
48 concerned. The notice shall be published within seven  
49 consecutive days next succeeding the filing of the certifi-  
50 cate with the clerk of the county court. The expenses of  
51 the publication shall be paid by the new municipality.  
52 Upon the completion of the publication, the wards, if any,  
53 and election districts of the consolidating municipalities  
54 shall be superseded. The commission shall appoint, in  
55 accordance with the charter of the new municipality, if  
56 any, election officials to serve at the election provided for  
57 by section twelve of this article.

58 The commission may employ an engineer and an at-  
59 torney to assist in performing its duties. The commission  
60 may provide for compensation to be allowed to its clerk,  
61 engineer and attorney, which shall be paid by the new  
62 municipality. The commission members shall not receive  
63 compensation for their services, but all reasonable and  
64 necessary expenses actually incurred by them in the per-  
65 formance of their duties, when itemized and sworn to by  
66 the chairman and clerk, shall be paid by the new munic-  
67 ipality.

#### PART IV. ELECTION OF NEW OFFICERS.

##### §8-8-12. Election of new officers.

1 Notwithstanding any provision to the contrary in the  
2 charter, if any, which shall apply to the new municipality,  
3 an election shall be held on the first Tuesday in June  
4 next preceding the date when the consolidation becomes  
5 effective for the election of officers for the new munic-  
6 ipality. The officers shall be elected and the election shall  
7 be conducted otherwise in accordance with the charter,  
8 if any, which shall apply to the new municipality and

9 as though the consolidation had become effective and  
10 if there be no charter, then in accordance with the pro-  
11 visions of article five of this chapter governing regular  
12 municipal elections.

13 Individuals elected to office at the election held under  
14 the provisions of this section shall take office upon the  
15 day the consolidation becomes effective, for the term  
16 specified by the charter, if any, applying to the new mu-  
17 nicipality, and if there be no charter, then for such term  
18 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.

1 When the consolidation becomes effective, the terms  
2 of office of all officers and officials of the consolidating  
3 municipalities, elected or appointed, shall, except as  
4 herein otherwise provided, cease and be at an end.

5 Policemen and firemen of the consolidating muni-  
6 cipalities shall, when the consolidation becomes effective,  
7 continue as policemen and firemen of the new muni-  
8 cipality. They shall be subject to the orders and control  
9 of the mayor of the new municipality, until the heads  
10 of the police and fire departments are chosen and placed  
11 in charge thereof.

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

#### PART VI. RIGHTS, PROPERTIES, FUNDS, TAXES, OBLIGATIONS, PERMITS, LICENSES, ETC.

##### §8-8-14. Succession to rights and properties of superseded municipalities.

1 The new municipality shall, when the consolidation  
2 becomes effective, be vested with all the rights and prop-  
3 erties of the municipalities of which it was formed, and  
4 shall be responsible and liable for all contracts, debts  
5 and obligations of such municipalities. However, the  
6 lands and property in a municipality superseded under  
7 this article shall not be taxed or assessed for the debts  
8 or obligations of another municipality thus superseded.

9 The lands and properties in each of the constituent and  
10 superseded municipalities shall be taxed and assessed  
11 for the debts and obligations of its superseded govern-  
12 ment 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  
2 of the superseded municipalities and remaining out-  
3 standing and unpaid, and all other moneys due and  
4 owing such municipality, when the consolidation becomes  
5 effective shall be collected by the new municipality and  
6 shall be applied to the purposes for which raised or  
7 owing, and if not raised or owing for a specific purpose,  
8 shall be applied to the reduction or payment of the  
9 bonded or other indebtedness, if any, of the superseded  
10 municipality.

11 Proceedings pending to enforce the payment or col-  
12 lection of taxes and assessments in any of the super-  
13 seded municipalities shall be carried to completion by  
14 the proper officers of the new municipality; and all taxes  
15 and assessments theretofore levied and assessed by any  
16 of the superseded municipalities shall be valid and ef-  
17 fectual as if originally levied and assessed by the new  
18 municipality. The governing body of the new munici-  
19 pality is authorized to perform all necessary acts to con-  
20 firm and effectuate such levies and assessments.

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

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

7 The mayor of the new municipality shall supervise and  
8 direct the transfer of all personal property, books, papers,  
9 vouchers or other documents belonging to the superseded  
10 municipalities, to the proper officers of the new govern-  
11 ment. He shall also cause a complete inventory to be  
12 made of all assets, real and personal, received by the new  
13 government.

14 The tax commissioner shall cause an audit and settle-  
15 ment of the accounts of the officers of the superseded  
16 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  
2 any of the superseded municipalities shall, subject to  
3 their conditions, remain in full force and effect and be  
4 recognized by the new municipality until the expiration  
5 of the term for which they were granted. However, this  
6 section shall not be construed to prevent the revocation  
7 of any such permit or license before its expiration in any  
8 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  
2 before any board or department, wherein one of the  
3 superseded municipalities is a party, or in which it is  
4 interested, or by the determination of which it might be  
5 affected, shall abate by reason of the consolidation, but  
6 the new municipality shall be substituted in the place  
7 and stead of such superseded municipality, and the suit,  
8 action or proceeding shall continue as if the consolidation  
9 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  
2 governing body of every municipality shall be presided  
3 over at its meetings by the mayor, or, in his absence, by  
4 the recorder, or, in the absence of both the mayor and the  
5 recorder, by one of its members selected by a majority of  
6 the members of the governing body present. A majority  
7 of the members of the governing body shall be necessary  
8 to constitute a quorum for the transaction of business.  
9 No member of the governing body of any municipality  
10 shall vote upon any ordinance, order, measure, resolution  
11 or proposition, in which he may be interested other than  
12 as a citizen of such municipality.

**§8-9-2. Mayor and recorder may vote; tie vote.**

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

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

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

7 At each meeting of the governing body, a journal of the  
8 proceedings of the last meeting shall be read, and cor-  
9 rected, if erroneous, and signed by the presiding officer  
10 for the time being: *Provided*, That the reading of the  
11 journal of the proceedings of the last meeting may be  
12 dispensed with by majority vote of the governing body  
13 if the members thereof have received and examined a  
14 copy of the journal or a synopsis thereof prior to the  
15 meeting at which the journal is signed. Upon the call of  
16 any member, the yeas and nays on any question shall be  
17 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.**

1 When not otherwise provided by charter provision or  
2 general law, the mayor of every municipality shall be  
3 the chief executive officer of such municipality, shall have  
4 the powers and authority granted in this section, and  
5 shall see that the ordinances, orders, bylaws, acts, reso-  
6 lutions, rules and regulations of the governing body  
7 thereof are faithfully executed. He shall have jurisdic-  
8 tion to hear and determine any and all alleged violations  
9 thereof and to convict and sentence persons therefor. He  
10 shall also be ex officio a justice and conservator of the

11 peace within the municipality, and shall, within the  
12 same, have and exercise all of the powers, both civil  
13 and criminal, and perform all duties vested by law in  
14 a justice of the peace, except that he shall have no juris-  
15 diction in civil cases or causes of action arising without  
16 the corporate limits of the municipality. He shall have  
17 the same power to issue attachments in civil suits as a  
18 justice of his county has, though the cause of action  
19 arose without the corporate limits of his municipality,  
20 but he shall have no power to try the same and such  
21 attachments shall be returnable and be heard before  
22 some justice of his county. Upon complaint he shall  
23 have authority to issue a search warrant in connection  
24 with the violation of a municipal ordinance. Any search  
25 warrant, warrant of arrest or other process issued by  
26 him may be directed to the chief of police or any mem-  
27 ber of the police department or force of the municipality,  
28 and the same may be executed at any place within the  
29 county or counties in which the municipality is lo-  
30 cated. He shall have control of the police of the muni-  
31 cipality and may appoint special police officers whenever  
32 he deems it necessary, except when otherwise provided  
33 by law, and subject to the police civil service provisions  
34 of article fourteen of this chapter if such civil service  
35 provisions are applicable to his municipality, and it shall  
36 be his duty especially to see that the peace and good  
37 order of the municipality are preserved, and that persons  
38 and property therein are protected; and to this end he  
39 may cause the arrest and detention of all riotous and  
40 disorderly individuals in the municipality before issuing  
41 his warrant therefor. He shall have power to issue  
42 executions for all fines, penalties and costs imposed by  
43 him, or he may require the immediate payment thereof,  
44 and, in default of such payment, he may commit the  
45 party in default to the jail of the county or counties in  
46 which such municipality is located, or other place of  
47 imprisonment within the corporate limits of such mu-  
48 nicipality, if there be one, until the fine or penalty and  
49 costs shall be paid, but the term of imprisonment in  
50 such case shall not exceed thirty days. He shall, from  
51 time to time, recommend to the governing body such

52 measures as he may deem needful for the welfare of  
53 the municipality. The expense of maintaining any indi-  
54 vidual committed to a county jail by him, except it be  
55 to answer an indictment, or be under the provisions of  
56 sections eight and nine, article eighteen, chapter fifty  
57 of this code, shall be paid by the municipality and taxed  
58 as part of the costs of the proceeding. The mayor shall  
59 not receive any money belonging to the state or to indi-  
60 viduals, unless he shall give the bond and security re-  
61 quired of a justice of the peace and all of the provisions  
62 of article one, chapter fifty of this code relating to moneys  
63 received by justices shall apply to like moneys received  
64 by such mayor.

#### PART II. POLICE COURT OR MUNICIPAL JUDGE.

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

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

#### PART III. RECORDER.

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

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

9 corder shall perform the duties of the mayor and be in-  
10 vested 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.**

1 To carry into effect the powers and authority conferred  
2 upon any municipality or its governing body by the pro-  
3 visions of this chapter or any past or future act of the  
4 Legislature of this state, the governing body shall have  
5 plenary power and authority to make and pass all needful  
6 ordinances, orders, bylaws, acts, resolutions, rules and  
7 regulations, not contrary to the constitution and laws of  
8 this state; and, for a violation thereof, to prescribe reason-  
9 able penalties in the form of fines, forfeitures and im-  
10 prisonment in the county jail or the place of imprison-  
11 ment in such municipality, if there be one, for a term not  
12 exceeding thirty days. Such fines, forfeitures and im-  
13 prisonment shall be recovered, imposed or enforced under  
14 the judgment of the mayor of such municipality or the  
15 individual lawfully exercising his functions, or the police  
16 court judge or municipal court judge of a city, if there be  
17 one, and may be suspended upon such reasonable condi-  
18 tions as may be imposed by such mayor, other authorized  
19 individual or judge. Any municipality may also maintain  
20 a civil action in the name of the municipality in the circuit  
21 court of the county in which the municipality or the  
22 major portion of the territory thereof is located to obtain  
23 an injunction to compel compliance with, or to enjoin a  
24 violation or threatened violation of, any ordinance of  
25 such municipality, and such circuit court shall have juris-  
26 diction to grant the relief sought.

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

1 The fact that an ordinance vests in the governing body  
2 or some other body or officer a discretion to do, or refuse  
3 to do, a given thing, shall not invalidate such ordinance  
4 when it would be impractical to lay down by ordinance  
5 for all cases a uniform guide for exercising such discre-  
6 tion. This section shall not be construed to mean that a

7 delegation of discretion in any other case shall necessarily  
8 invalidate an ordinance. However, if, in any case, a dele-  
9 gated discretion is exercised in an arbitrary or discrimi-  
10 natory manner, such ordinance, as so applied, shall be  
11 unlawful and void.

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

1 In the following enumerated cases, the action of a gov-  
2 erning body shall, except where otherwise provided in  
3 this code, be by ordinance:

4 (1) Levying taxes or providing for the collection of  
5 fees of any kind;

6 (2) Requiring a license to do business;

7 (3) Relating to offenses and penalties;

8 (4) Authorizing the issuance of bonds or other forms  
9 of indebtedness;

10 (5) Providing for a public improvement;

11 (6) Providing for the purchase of private property by  
12 the municipality or for the sale of property belonging to  
13 the municipality;

14 (7) Laying out or vacating a public street, avenue,  
15 road, alley or way;

16 (8) Relating to planning and zoning;

17 (9) Granting franchises to public utilities;

18 (10) Providing for a contractual or other agreement  
19 with another jurisdiction; and

20 (11) Relating to such other matters as the charter may  
21 require.

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

**§8-11-4. Ordinance procedures.**

1 (a) Notwithstanding any charter provision to the con-  
2 trary, which charter provision was in effect on the effec-  
3 tive date of this section, it shall not be necessary, except  
4 where otherwise provided in this code, for the governing  
5 body of any municipality to publish in a newspaper any  
6 proposed ordinance prior to the adoption thereof or any  
7 enacted ordinance subsequent to the adoption thereof,  
8 and any and all ordinances of every municipality shall be

9 adopted in accordance with the following requirements,  
10 except where different or additional requirements are  
11 specified in other provisions of this code, in which event  
12 such other different or additional requirements shall be  
13 applicable:

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

21 (2) At least five days before the meeting at which a  
22 proposed ordinance, the principal object of which is the  
23 raising of revenue for the municipality, is to be finally  
24 adopted, the governing body shall cause notice of the  
25 proposed adoption of said proposed ordinance to be pub-  
26 lished as a Class I-0 legal advertisement in compliance  
27 with the provisions of article three, chapter fifty-nine of  
28 this code, and the publication area for such publication  
29 shall be the municipality. The notice shall state the sub-  
30 ject matter and general title or titles of such proposed  
31 ordinance, the date, time and place of the proposed final  
32 vote on adoption, and the place or places within the  
33 municipality where such proposed ordinance may be in-  
34 spected by the public. A reasonable number of copies of  
35 the proposed ordinance shall be kept at such place or  
36 places and be made available for public inspection. Said  
37 notice shall also advise that interested parties may appear  
38 at the meeting and be heard with respect to the proposed  
39 ordinance.

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

42 (b) Notwithstanding any charter provision to the con-  
43 trary, which charter provision was in effect on the effec-  
44 tive date of this section, the governing body of any munic-  
45 ipality may adopt, by ordinance, building codes, housing  
46 codes, plumbing codes, sanitary codes, electrical codes,  
47 fire prevention codes, or any other technical codes dealing  
48 with general public health, safety or welfare, or a combi-  
49 nation of the same, or a comprehensive code of ordi-

50 nances, in the manner prescribed in this subsection (b).  
51 Before any such ordinance shall be adopted, the code  
52 shall be either printed or typewritten and shall be pre-  
53 sented in pamphlet form to the governing body of the  
54 municipality at a regular meeting, and copies of such code  
55 shall be made available for public inspection. The ordi-  
56 nance adopting such code shall not set out said code in  
57 full, but shall merely identify the same. The vote on  
58 adoption of said ordinance shall be the same as on any  
59 other ordinance. After adoption of the ordinance, such  
60 code or codes shall be certified by the mayor and shall be  
61 filed as a permanent record in the office of the recorder,  
62 who shall not be required to transcribe and record the  
63 same in the ordinance book as other ordinances are tran-  
64 scribed and recorded. Consistent with the provisions of  
65 subsection (a) of this section, it shall not be necessary  
66 that any such ordinance, either as proposed or after  
67 adoption, be published in any newspaper, and it shall not  
68 be necessary that the code itself be so published, but  
69 before final adoption of any such proposed ordinance,  
70 notice of the proposed adoption of such ordinance and  
71 code shall be given by publication as herein provided  
72 for ordinances the principal object of which is the raising  
73 of revenue for the municipality, which notice shall also  
74 state where, within the municipality, the code or codes  
75 will be available for public inspection.

76 (c) By a charter framed and adopted, revision of a  
77 charter as a whole, or a charter amendment or amend-  
78 ments, as the case may be, subsequent to the effective  
79 date of this section, a city may require any or all ordi-  
80 nances to be published in a newspaper prior to the adop-  
81 tion thereof, may expressly adopt the provisions of this  
82 section, may specify other additional requirements for the  
83 enactment of ordinances, or may prescribe a procedure  
84 for the enactment of ordinances in greater detail than  
85 prescribed in this section, but a city shall not, except  
86 in an emergency as specified in subsection (d) of this  
87 section or except as otherwise provided in this code, have  
88 the power and authority to lessen or reduce the require-  
89 ments of this section.

90 (d) The governing body of a municipality may enact

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

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND  
 ALLIED RELATIONS OF MUNICIPALITIES, GOV-  
 ERNING BODIES AND MUNICIPAL OFFICERS  
 AND EMPLOYEES; SUITS AGAINST MUNICIPAL-  
 TIES.**

**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  
 2 municipality shall have plenary power and authority:  
 3 (1) To have and use a common seal;  
 4 (2) To contract and be contracted with;  
 5 (3) To institute, maintain and defend any civil action  
 6 or other proceeding in any court;  
 7 (4) To take, purchase, hold and lease as lessee (on  
 8 an annual fiscal year basis where tax revenues are to be  
 9 used to make the rental payments required under any  
 10 such lease, with or without an option to renew such  
 11 lease each year for another such period), for any mu-  
 12 nicipal purpose, real or personal property within or with-  
 13 out the corporate limits of the municipality, and to acquire  
 14 by condemnation real or personal property within or  
 15 without the corporate limits of the municipality for the  
 16 purposes set forth in and in accordance with the pro-  
 17 visions of chapter fifty-four of this code, subject, however,  
 18 to any limitations or qualifications set forth in this chap-  
 19 ter eight; and  
 20 (5) To take by gift, donation, grant, bequest or devise  
 21 and to hold and administer, real or personal property  
 22 within or without the corporate limits of the munic-  
 23 ipality, absolutely, in trust or otherwise, for any public,  
 24 charitable or municipal purpose, and to do all things  
 25 necessary, useful, convenient or incidental to carry out  
 26 the purpose of such gift, donation, grant, bequest, devise

27 or trust, and to manage, sell, lease or otherwise dispose  
28 of the same in accordance with such terms and condi-  
29 tions as may be prescribed by the donor, grantor or  
30 testator and accepted by the municipality.

#### PART II. HOME RULE POWERS FOR CITIES.

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

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

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

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

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

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

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

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

29 (7) The operation and maintenance of passenger  
30 transportation services and facilities, if authorized  
31 by the public service commission, and if so author-  
32 ized, such transportation system may be operated  
33 without the corporate limits of such city, but may

34 not be operated within the corporate limits of another  
35 municipality without the consent of the governing body  
36 thereof;

37 (8) The furnishing of all local public services;

38 (9) The government, protection, order, conduct, safety  
39 and health of persons or property therein;

40 (10) The adoption and enforcement of local police, sani-  
41 tary and other similar regulations; and

42 (11) The imposition and enforcement of penalties for  
43 the violation of any of the provisions of its charter or  
44 of any of its ordinances.

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

49 (c) Any city is hereby authorized and empowered to  
50 require, for the purpose of inquiring into and investi-  
51 gating matters of concern to the city or its inhabitants,  
52 the attendance and testimony of witnesses and the pro-  
53 duction of evidence. In case of the failure or refusal of  
54 a witness to appear and testify or to produce evidence,  
55 the governing body may invoke the aid of the circuit  
56 court of the county in which the city or the major  
57 portion of the territory thereof is located. Upon proper  
58 showing, the circuit court shall issue an order requiring  
59 the witness to appear and give testimony and produce  
60 evidence concerning the matter in question. A person  
61 who fails or refuses to obey the order of the circuit court  
62 may be punished by the court as for contempt. A claim  
63 that any such testimony or evidence may tend to in-  
64 criminate the person giving the testimony or evidence  
65 shall not excuse the witness, but such testimony or evi-  
66 dence shall not be used against the witness in any  
67 criminal prosecution.

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

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

1 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 and disposal works, or a combined city waterworks and  
12 sewerage system in accordance with the provisions of  
13 article twenty of this chapter, or any combination of the  
14 foregoing, and confer such powers and authority and  
15 duties upon one or more independent boards created by  
16 charter provision, whose members shall be elected by the  
17 qualified voters of the city, or appointed, in the manner  
18 provided by charter provision. Unless and until abolished  
19 by other charter provision, such board or boards so  
20 created shall have complete and exclusive jurisdiction of  
21 the exercise and discharge of the municipal powers and  
22 authority and duties so conferred upon it or them, inde-  
23 pendent of control by the governing body and adminis-  
24 trative authority of the city. Such boards shall have the  
25 powers and authority and perform the duties conferred  
26 and required by general law.

27 The provisions of this section shall be construed as  
28 conferring additional powers and authority upon cities,  
29 and shall not be construed as affecting any powers and  
30 authority heretofore conferred upon any city by general,  
31 special or local law or by special legislative charter, or  
32 parts thereof; however, whenever a board is established  
33 by charter provision in accordance with the provisions of  
34 this section in connection with a municipal public works,  
35 a city waterworks system, or combined city waterworks  
36 and sewerage system, as aforesaid, such board shall act  
37 in lieu of the governing body of the city with respect  
38 thereto, and the provisions of said articles sixteen, nine-  
39 teen and twenty of this chapter authorizing the establish-  
40 ment of a board with respect to any such public works,  
41 waterworks system or combined waterworks and sewer-  
42 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  
2 all of the following:

3 (1) The initiation of ordinances by petition bearing  
4 the signatures, written in their own handwriting, of not  
5 less than ten percent of the qualified voters of such city;

6 (2) The submission to the qualified voters of such city  
7 of a proposed ordinance at a regular municipal election  
8 or special municipal election upon petition bearing the  
9 signatures, written in their own handwriting, of not less  
10 than ten percent of the qualified voters of such city or  
11 upon resolution of the governing body of such city; and

12 (3) The holding of a special municipal election to sub-  
13 mit to the qualified voters of such city the question of the  
14 recall of an elected officer upon petition bearing the  
15 signatures, written in their own handwriting, of not less  
16 than twenty percent of the qualified voters of such city.  
17 Not more than one recall election shall be held with  
18 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 govern-  
ing 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;

16 (2) To provide for the opening and excavation of  
17 streets, avenues, roads, alleys, ways, sidewalks, cross-  
18 walks and public places belonging to the municipality  
19 and regulate the conditions under which any such open-  
20 ing may be made;

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

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

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

37 (6) To establish, construct, alter, operate and main-  
38 tain, or discontinue, bridges, tunnels and ferries and ap-  
39 proaches thereto;

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

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

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

52 (10) To prohibit the accumulation and require the dis-  
53 posal of garbage, refuse, wastes, ashes, trash and other  
54 similar matters;

55 (11) To construct, establish, acquire, equip, maintain  
56 and operate incinerator plants and equipment and all

57 other facilities for the efficient removal and destruction of  
58 garbage, refuse, wastes, ashes, trash and other similar  
59 matters;

60 (12) To regulate or prohibit the purchase or sale of  
61 articles intended for human use or consumption which  
62 are unfit for such use or consumption, or which may be  
63 contaminated or otherwise unsanitary;

64 (13) To prevent injury or annoyance to the public or  
65 individuals from anything dangerous, offensive or un-  
66 wholesome;

67 (14) To regulate the keeping of gunpowder and other  
68 combustibles;

69 (15) To make regulations guarding against danger or  
70 damage by fire;

71 (16) To arrest, convict and punish any individual for  
72 carrying about his person any revolver or other pistol,  
73 dirk, bowie knife, razor, slung shot, billy, metallic or  
74 other false knuckles, or any other dangerous or other  
75 deadly weapon of like kind or character;

76 (17) To arrest, convict and punish any person for im-  
77 porting, printing, publishing, selling or distributing any  
78 pornographic publications;

79 (18) To arrest, convict and punish any person for  
80 keeping a house of ill fame, or for letting to another per-  
81 son any house or other building for the purpose of being  
82 used or kept as a house of ill fame, or for knowingly per-  
83 mitting any house owned by him or under his control to  
84 be kept or used as a house of ill fame, or for loafing, board-  
85 ing or loitering in a house of ill fame, or frequenting  
86 same;

87 (19) To prevent and suppress conduct and practices  
88 which are immoral, disorderly, lewd, obscene and  
89 indecent;

90 (20) To prevent the illegal sale of intoxicating liquors,  
91 drinks, mixtures and preparations;

92 (21) To arrest, convict and punish any individual for  
93 driving or operating a motor vehicle while intoxicated or  
94 under the influence of liquor, drugs or narcotics;

95 (22) To arrest, convict and punish any person for  
96 gambling or keeping any gaming table, commonly called  
97 "A, B, C," or "E, O," table or faro bank or keno table, or

98 table of like kind, under any denomination, whether the  
99 gaming table be played with cards, dice or otherwise, or  
100 any person who shall be a partner or concerned in in-  
101 terest, in keeping or exhibiting such table or bank, or  
102 keeping or maintaining any gaming house or place, or  
103 betting or gambling for money or anything of value;

104 (23) To provide for the elimination of hazards to  
105 public health and safety and to abate or cause to be abated  
106 anything which in the opinion of a majority of the gov-  
107 erning body is a public nuisance;

108 (24) To license, or for good cause to refuse to license  
109 in a particular case, or in its discretion to prohibit in all  
110 cases, the operation of pool and billiard rooms and the  
111 maintaining for hire of pool and billiard tables notwith-  
112 standing the general law as to state licenses for any such  
113 business and the provisions of section four, article thirteen  
114 of this chapter; and when the municipality, in the exer-  
115 cise of its discretion, shall have refused to grant a license  
116 to operate a pool or billiard room, mandamus shall not  
117 lie to compel such municipality to grant such license,  
118 unless it shall clearly appear that the refusal of the  
119 municipality to grant such license is discriminatory or  
120 arbitrary; and in the event that the municipality deter-  
121 mines to license any such business, the municipality shall  
122 have plenary power and authority, and it shall be the  
123 duty of its governing body, to make and enforce reason-  
124 able ordinances regulating the licensing and operation of  
125 such businesses;

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

128 (26) To regulate or prohibit the keeping of animals or  
129 fowls and to provide for the impounding, sale or destruc-  
130 tion of animals or fowls kept contrary to law or found  
131 running at large;

132 (27) To arrest, convict and punish any person for cruel-  
133 ly, unnecessarily or needlessly beating, torturing, mutila-  
134 ting, killing or overloading or overdriving, or wilfully  
135 depriving of necessary sustenance, any domestic animal;

136 (28) To provide for the regular building of houses or  
137 other structures, for the making of division fences by the

138 owners of adjacent premises and for the drainage of lots  
139 by proper drains and ditches;

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

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

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

149 (32) To erect, establish, construct, acquire, improve,  
150 maintain and operate a gas system, an electric system, a  
151 waterworks system, or sewer system and sewage treat-  
152 ment and disposal system, or any combination of the  
153 foregoing (subject to all of the pertinent provisions of  
154 articles nineteen and twenty of this chapter and particu-  
155 larly to the limitations or qualifications on the right of  
156 eminent domain set forth in said articles nineteen and  
157 twenty), within or without the corporate limits of the  
158 municipality, or partly within and partly without the  
159 corporate limits of the municipality, except that the mu-  
160 nicipality shall not erect any such system partly without  
161 the corporate limits of the municipality to serve persons  
162 already obtaining service from an existing system of the  
163 character proposed, and where such system is by the  
164 municipality erected, or has heretofore been so erected,  
165 partly within and partly without the corporate limits of  
166 the municipality, the municipality shall have the right to  
167 lay and collect charges for service rendered to those  
168 served within and those served without the corporate  
169 limits of the municipality, and to prevent injury to such  
170 system or the pollution of the water thereof and its main-  
171 tenance in a healthful condition for public use within the  
172 corporate limits of the municipality;

173 (33) To acquire watersheds, water and riparian rights,  
174 plant sites, rights of way and any and all other property  
175 and appurtenances necessary, appropriate, useful, con-  
176 venient or incidental to any such system, waterworks or  
177 sewage treatment and disposal works, as aforesaid, sub-

178 ject to all of the pertinent provisions of articles nineteen  
179 and twenty of this chapter;

180 (34) To establish, construct, acquire, maintain and  
181 operate and regulate markets, and prescribe the time of  
182 holding the same;

183 (35) To regulate and provide for the weighing of ar-  
184 ticles sold or for sale;

185 (36) To establish, construct, acquire, maintain and  
186 operate public buildings, municipal buildings or city halls,  
187 auditoriums, arenas, jails, juvenile detention centers or  
188 homes, motor vehicle parking lots, or any other public  
189 works;

190 (37) To establish, construct, acquire, provide, equip,  
191 maintain and operate recreational parks, playgrounds and  
192 other recreational facilities for public use, and in this  
193 connection also to proceed in accordance with the pro-  
194 visions of article two, chapter ten of this code;

195 (38) To establish, construct, acquire, maintain and  
196 operate a public library or museum or both for public use;

197 (39) To provide for the appointment and financial sup-  
198 port of a library board in accordance with the provisions  
199 of article one, chapter ten of this code;

200 (40) To establish and maintain a public health unit in  
201 accordance with the provisions of section two, article two,  
202 chapter sixteen of this code, which unit shall exercise its  
203 powers and perform its duties subject to the supervision  
204 and control of the West Virginia board of health and state  
205 department of health;

206 (41) To establish, construct, acquire, maintain and  
207 operate hospitals, sanitarium and dispensaries;

208 (42) To acquire, by purchase, condemnation or other-  
209 wise, land within or near the corporate limits of the  
210 municipality for providing and maintaining proper places  
211 for the burial of the dead and to maintain and operate the  
212 same and regulate interments therein upon such terms  
213 and conditions as to price and otherwise as may be de-  
214 termined by the governing body, and, in order to carry  
215 into effect such authority the governing body may acquire  
216 any cemetery or cemeteries already established;

217 (43) To exercise general police jurisdiction over any  
218 territory without the corporate limits owned by the mu-

- 219 nicipality or over which it has a right of way;
- 220 (44) To protect and promote the public morals, safety,  
221 health, welfare and good order;
- 222 (45) To adopt rules for the transaction of business and  
223 the government and regulation of its governing body;
- 224 (46) Except as otherwise provided, to require and take  
225 such bonds from such officers, when deemed necessary,  
226 payable to the municipality, in its corporate name, with  
227 such sureties and in such penalty as the governing body  
228 may see fit, conditioned upon the faithful discharge of  
229 their duties;
- 230 (47) To require and take from such employees and  
231 contractors such bonds in such penalty, with such sureties  
232 and with such conditions, as the governing body may  
233 see fit;
- 234 (48) To investigate and inquire into all matters of  
235 concern to the municipality or its inhabitants;
- 236 (49) To establish, construct, require, maintain and  
237 operate such instrumentalities, other than free public  
238 schools, for the instruction, enlightenment, improvement,  
239 entertainment, recreation and welfare of the munici-  
240 pality's inhabitants as the governing body may deem  
241 necessary or appropriate for the public interest;
- 242 (50) To create, maintain and operate a system or sys-  
243 tems for the enumeration, identification and registration,  
244 or either, of the inhabitants of the municipality and visi-  
245 tors thereto, or such classes thereof as may be deemed  
246 advisable;
- 247 (51) To appropriate and expend not exceeding twenty-  
248 five cents per capita per annum for advertising the mu-  
249 nicipality and the entertainment of visitors;
- 250 (52) To conduct programs to improve community re-  
251 lations and public relations generally and to expend  
252 municipal revenue for such purposes;
- 253 (53) To reimburse applicants for employment by the  
254 municipality for travel and other reasonable and neces-  
255 sary expenses actually incurred by such applicants in  
256 traveling to and from such municipality to be inter-  
257 viewed;
- 258 (54) To provide revenue for the municipality and ap-  
259 propriate the same to its expenses; and

260 (55) To provide penalties for the offenses and viola-  
261 tions of law mentioned in this section, subject to the pro-  
262 visions of section one, article eleven of this chapter, and  
263 such penalties shall not exceed any penalties provided in  
264 this chapter and chapter sixty-one of this code for like  
265 offenses and violations.

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

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

1 Every municipality is hereby empowered and author-  
2 ized to become a member of an association or league  
3 having for its general purpose the exchange and dis-  
4 semination of information and ideas designed for the  
5 more efficient administration and conduct of municipal  
6 government and affairs. In order to finance the main-  
7 tenance of such an organization, each municipality is  
8 hereby empowered and authorized to pay into such an  
9 organization annual dues or membership fees in an  
10 amount to be fixed by the members thereof at the annual  
11 meeting of such organization. Such dues or member-  
12 ship fees may be appropriated by the governing body  
13 as a current expense item and included in the annual  
14 budget.

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

1 (a) Every municipality shall have plenary power and  
2 authority to contract and expend public funds for the  
3 purchase of one or more policies of public liability in-  
4 surance, with or without a sharing in the cost thereof  
5 by the officers, agents and employees of such munici-  
6 pality, providing the municipality and its officers, agents  
7 and employees insurance coverage for legal liability of  
8 said municipality and its officers, agents and employees  
9 for bodily injury, personal injury or damage (including,  
10 but not limited to, false arrest and false imprisonment)  
11 and property damage, and affording said municipality  
12 and its officers, agents and employees insurance coverage  
13 against any and all legal liability arising from, growing  
14 out of, by reason of or in any way connected with, any

15 acts or omissions of said municipality, or its officers,  
16 agents or employees in the performance of their official  
17 duties. So long as the coverage aforesaid is obtained  
18 and remains in full force and effect as to the police offi-  
19 cers of a municipality, the bond specified in section five,  
20 article seven, chapter sixty-one of this code shall not  
21 be required as to such police officers.

22 (b) Every municipality shall also have plenary power  
23 and authority to provide for the indemnification of its  
24 officers, agents and employees against any and all lia-  
25 bility, losses, damages, expenses and costs, including court  
26 costs and reasonable and necessary attorney fees, arising  
27 from, growing out of, by reason of or in any way con-  
28 nected with any acts or omissions of said officers, agents  
29 or employees in the performance of their official duties.  
30 Such indemnification may be provided by a self-funding  
31 program, by expenditures from the general fund, or by  
32 the purchase of insurance as provided in subsection (a)  
33 of this section, with or without financial contribution or  
34 participation by such officers, agents and employees.  
35 Prior to the expenditure of any public funds pursuant  
36 to the power and authority conferred by the provisions  
37 of this subsection (b), the governing body shall determine  
38 by ordinance applicable to an entire class or classes of  
39 officers, agents or employees the manner in which such  
40 power and authority shall be exercised.

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

1 Every municipality shall have plenary power and  
2 authority to negotiate for, secure and adopt for the regu-  
3 lar employees thereof (other than provisional, temporary,  
4 emergency and intermittent employees) who are in em-  
5 ployee status with such municipality on and after the  
6 effective date of this section, a policy or policies of group  
7 insurance written by a carrier or carriers chartered under  
8 the laws of any state and duly licensed to do business  
9 in this state and covering life; health; hospital care; sur-  
10 gical or medical diagnosis, care, and treatment; drugs  
11 and medicines; remedial care; other medical supplies  
12 and services; or any other combination of these; and  
13 any other policy or policies of group insurance which

14 in the discretion of the governing body bear a reasonable  
15 relationship to the foregoing coverages. The provisions  
16 and terms of any such group plan or plans of insurance  
17 shall be approved in writing by the insurance commis-  
18 sioner of this state as to form, rate and benefits.

19 The municipality is hereby authorized and empowered  
20 to pay the entire premium cost, or any portion thereof,  
21 of said group policy or policies. Whenever the above-  
22 described regular employees shall indicate in writing  
23 that they have subscribed to any of the aforesaid in-  
24 surance plans on a group basis and the entire cost thereof  
25 is not paid by the municipality, the municipality is hereby  
26 authorized and empowered to make periodic premium  
27 deductions of the amount of the contribution each such  
28 subscribing employee is required to make for such par-  
29 ticipation from the salary or wage payments due each  
30 such subscribing employee as specified in a written as-  
31 signment furnished to the municipality by each such  
32 subscribing employee.

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

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

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

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

1 (a) Every municipality may provide for the cen-  
2 tralized purchasing of materials, supplies and equipment;  
3 and the term "equipment," for the purposes of this sec-

4 tion, shall include, but not be limited to, motor vehicles.  
5 Every municipality may, by agreement with the state  
6 director of the division of purchases of the department  
7 of finance and administration, purchase the same through  
8 such department, or may enter into agreements with  
9 one or more other municipalities, counties or county  
10 boards of education, or any combination thereof, for  
11 centralized purchasing for all governmental units which  
12 are parties to such agreement.

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

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

1 Notwithstanding any other provision of this code or  
2 any charter provision to the contrary, the governing  
3 body of every municipality shall have plenary power  
4 and authority to enter into and execute a lease agreement  
5 for the obtaining of equipment or material. Any such  
6 lease agreement shall not be void or voidable because  
7 it also provides (a) that title to the equipment or ma-  
8 terial shall vest in the municipality at or before the  
9 expiration of the leasehold term upon fulfillment of the  
10 terms and conditions stipulated in such lease agreement;  
11 (b) for application of the annual rental payments made  
12 thereunder toward the purchase price of such equip-  
13 ment or material, although such total rental payments  
14 under any such agreement are in excess of the cash price  
15 of the equipment or material described therein, whether  
16 such excess be by way of interest or a time-price dif-  
17 ferential; and (c) that the risk of loss of the equipment  
18 or material shall be borne by the municipality. Any

19 such lease agreement shall be void, however, unless such  
20 agreement provides that the municipality shall have the  
21 following options thereunder during each fiscal year of  
22 the agreement: (1) the option to terminate the agree-  
23 ment and return the equipment or material without any  
24 further obligation on the part of the municipality; (2)  
25 the option to continue the agreement for an additional  
26 rental period not to exceed one year in length; and, when  
27 the agreement contains the provisions described in (a),  
28 (b) and (c) above, (3) the option to pay in advance at  
29 any time during any fiscal year the balance due under  
30 such agreement, with an appropriate rebate of the un-  
31 earned interest or time-price differential.

32 The funds for the initial rental payment under any  
33 such agreement must be legally at the disposal of the  
34 municipality for expenditure in the fiscal year in which  
35 such agreement is executed, and in the event the mu-  
36 nicipality elects during any subsequent fiscal year to  
37 continue the agreement for any additional rental period  
38 or to pay in advance the balance due, the funds for the  
39 additional rental period or the funds to be used to pay  
40 the balance in advance must be legally at the disposal  
41 of the municipality for expenditure in the fiscal year  
42 in which the municipality elects to continue the agree-  
43 ment or to pay in advance the balance due, as the case  
44 may be.

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

1 Every municipality shall have plenary power and  
2 authority to enter into a lease with the owner or owners  
3 of any real property situate within the corporate limits  
4 of such municipality by which such real property is  
5 demised, leased and let to such municipality for an off-  
6 street parking facility (including parking lots, buildings,  
7 ramps, parking meters and other appurtenances deemed  
8 necessary, appropriate or incidental to the regulation,  
9 control and parking of motor vehicles), which off-street  
10 parking facility is hereby declared to be a municipal  
11 public work, and every such municipality shall have  
12 plenary power and authority to establish, maintain and

13 operate such parking facility. Every such lease shall be  
14 authorized by an ordinance adopted by the municipality.  
15 Every municipality shall have this power and authority  
16 whether such real property is at the time of the execu-  
17 tion of such lease already equipped, maintained and  
18 operated, in whole or in part, as a parking facility or  
19 whether such real property is at such time unimproved  
20 and is to be, under the terms of the lease, improved by  
21 the installation of parking meters, lighting equipment,  
22 pavement or other equipment necessary, appropriate,  
23 useful, convenient or incidental to the use of such prop-  
24 erty for such purpose.

25 Any such ordinance may provide that the police force  
26 or department of such municipality shall police the  
27 parking facility; and that overtime parking at the facility  
28 or other violations of the ordinance shall be a misde-  
29 meanor punishable as provided in said ordinance. Any  
30 such ordinance shall also provide for the collection of  
31 reasonable charges for the use of such parking facility  
32 by the public generally, and any such ordinance may  
33 be amended from time to time. Any lease entered into  
34 by and between any such municipality and the owner  
35 or owners of any such real property may contain such  
36 terms and conditions as may be agreed upon between  
37 the parties, not inconsistent with any of the provisions  
38 of this section or other provisions of law. The ordinance  
39 authorizing any such lease may also specify terms and  
40 conditions which must be contained in such lease.

41 Under no circumstances whatever shall any obligation  
42 incurred under the provisions of this section or any  
43 such lease be deemed to be or create an indebtedness of  
44 the municipality, the governing body or any member  
45 thereof, any officer thereof, or other municipal official,  
46 and all of the expenses of whatever kind, nature or  
47 character incident to the establishment, maintenance and  
48 operation of such parking facility, including, but not  
49 limited to, such rental payments as are provided for in  
50 the lease and the cost of policing the facility, shall be  
51 paid solely from revenues derived from such parking  
52 facility, and from revenues derived from other parking  
53 facilities or meters not pledged to pay for such other

54 parking facilities or meters. No member of the governing  
55 body of any such municipality, or any officer thereof,  
56 or other municipal official, shall under any circumstances  
57 be personally liable under any such lease or upon any  
58 obligation of any kind, nature or character arising under  
59 the provisions of this section.

60 The power and authority herein granted shall be in  
61 addition to and not in derogation of any power and  
62 authority vested in any municipality under any consti-  
63 tutional, statutory or charter provision now or hereafter  
64 in effect. This section shall, without reference to any  
65 other provisions of this code or any other statute or any  
66 charter, be deemed full authority for the acquisition of  
67 any such real property by lease for a parking facility,  
68 for the establishment, maintenance and operation of  
69 any such parking facility and for the enactment of an  
70 ordinance as hereinbefore specified. This section shall  
71 be construed as an additional alternative method for  
72 providing off-street parking facilities, and shall not in  
73 any way limit the provisions of article sixteen of this  
74 chapter authorizing the establishment, maintenance, op-  
75 eration and financing of such facilities by the issuance  
76 of revenue bonds.

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

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

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

4 (1) Regulate the erection, construction, repair or al-  
5 teration of structures of every kind within the corporate  
6 limits of the municipality, prohibit, within specified ter-  
7 ritorial limits, the erection, construction, repair or al-  
8 teration of structures of wood or other combustible  
9 material, and regulate excavations upon private property;

10 (2) Regulate electric wiring by prescribing minimum  
11 specifications to be followed in the installation, altera-  
12 tion or repair thereof; and

13 (3) Regulate plumbing by prescribing the minimum

14 specifications to be followed in the installation, altera-  
15 tion or repair of plumbing, including equipment, water  
16 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  
2 plenary power and authority to require a permit as a  
3 condition precedent to the erection, construction, repair  
4 or alteration of any structure or of any equipment or  
5 part of a structure which is regulated by state law or  
6 municipal ordinance.

**§8-12-15. Municipal inspection.**

1 The governing body of every municipality shall have  
2 plenary power and authority to provide for the entering  
3 and inspection of private premises to aid in the enforce-  
4 ment of any state law or municipal ordinance: *Provided,*  
5 That this section shall not be construed as purporting to  
6 authorize an unreasonable search and seizure prohibited  
7 by section six, article three of the constitution of this  
8 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  
2 upon every municipality to adopt ordinances regulating  
3 the repair, alteration or improvement, or the vacating and  
4 closing or removal or demolition, or any combination  
5 thereof, of any dwellings or other buildings unfit for  
6 human habitation due to dilapidation, defects increasing  
7 the hazard of fire, accidents or other calamities, lack of  
8 ventilation, light or sanitary facilities or any other condi-  
9 tions prevailing in any dwelling or building, whether  
10 used for human habitation or not, which would cause  
11 such dwellings or other buildings to be unsafe, unsani-  
12 tary, dangerous or detrimental to the public welfare.

13 The governing body in formally adopting such ordi-  
14 nances shall designate the enforcement agency, which  
15 shall consist of the mayor, the municipal engineer or  
16 building inspector and one member at large, to be selected

17 by and to serve at the will and pleasure of the mayor.  
18 The ranking health officer and fire chief shall serve as  
19 ex officio members of such enforcement agency.

20 Any ordinance adopted pursuant to the provisions of  
21 this section shall provide fair and equitable rules of pro-  
22 cedure and any other standards deemed necessary to  
23 guide the enforcement agency, or its agents, in the in-  
24 vestigation of dwelling or building conditions, and in con-  
25 ducting hearings: *Provided*, That any entrance upon  
26 premises for the purpose of making examinations shall  
27 be made in such manner as to cause the least possible in-  
28 convenience to the persons in possession.

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

37 All complaints or orders issued by the enforcement  
38 agency shall be served in accordance with the law of this  
39 state concerning the service of process in civil actions, and  
40 shall, in addition thereto, be posted in a conspicuous place  
41 on the premises affected by the complaint or order:  
42 *Provided, however*, That no ordinance shall be adopted  
43 without providing therein for the right to apply to the  
44 circuit court for a temporary injunction restraining the  
45 enforcement agency pending final disposition of the cause.  
46 In the event such application is made, a hearing thereon  
47 shall be had within twenty days, or as soon thereafter as  
48 possible, and the court shall enter such final order or  
49 decree as the law and justice may require. Costs shall be  
50 imposed in such manner as in the discretion of the court  
51 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 sys-  
2 tem, an electric system, a waterworks or other public

3 utility, and the governing body thereof shall deem it for  
4 the best interest of such municipality that such utility be  
5 sold or leased, it shall be lawful for the governing body,  
6 by ordinance legally adopted, to submit to the qualified  
7 voters of such municipality, at any regular municipal  
8 election or at any special municipal election called for  
9 that purpose, the question of making or effecting such  
10 sale or lease. In such case the governing body shall, in  
11 the ordinance submitting such question to a vote, set  
12 forth in full the terms of such proposed sale or lease, the  
13 name of the proposed purchaser or lessee and the date  
14 of such election, and a notice containing this information  
15 shall be published as a Class II-0 legal advertisement in  
16 compliance with the provisions of article three, chapter  
17 fifty-nine of this code, and the publication area for such  
18 publication shall be such municipality. Such election  
19 shall be held in all respects in compliance with the pro-  
20 visions of chapter three of this code, so far as the same are  
21 applicable and not inconsistent herewith, and the pro-  
22 visions of article five of this chapter. If a majority of the  
23 legal votes cast at such election upon such question be in  
24 favor of the proposed sale or lease of such utility, the gov-  
25 erning body, upon the ascertainment of the result of such  
26 election, shall have full power and authority to proceed  
27 to execute or effect such sale or lease in accordance with  
28 the terms and conditions prescribed in the ordinance as  
29 aforesaid, and shall have power to do any and all things  
30 necessary or incident thereto; *Provided*, That if at any  
31 time after such election and before the execution of the  
32 authority under the ordinance, any person should present  
33 to the governing body an offer to buy such public utility  
34 at a greater price than the sale price which shall have  
35 been so voted upon and authorized or to lease the same  
36 upon terms which the governing body, in its discretion,  
37 shall consider more advantageous to the municipality  
38 than the terms of the lease which shall have been author-  
39 ized by vote as aforesaid, the governing body shall have  
40 the power to accept such subsequent offer, and to make  
41 such sale or such lease to the person making the offer,  
42 without resubmitting the question to a vote; but, if a sale  
43 shall have been authorized by vote as aforesaid, and such

44 subsequent proposition be for a lease, or, if a lease shall  
45 have been so authorized, and the subsequent proposition  
46 shall be for a sale, the governing body shall have no  
47 power to accept the same without submitting the question  
48 thereof to a vote of the people as first above provided.  
49 Before any such second or subsequent proposition shall  
50 be submitted to a vote, after a sale or lease shall have  
51 been authorized at an election held hereunder, the person  
52 making such proposition shall furnish bond, with security  
53 to be approved by the governing body, in a penalty of  
54 not less than twenty-five percent of such proposed bid,  
55 conditioned to carry such proposition into execution, if  
56 the same shall be approved at the election to be called  
57 thereon. In any case where any such public utility shall  
58 be sold or leased by the governing body as hereinabove  
59 provided, no part of the moneys derived from such sale  
60 or lease shall be applied to the payment of current ex-  
61 penses of the municipality, but the proceeds of such sale  
62 or lease shall be applied in payment and discharge of any  
63 bonded indebtedness created in respect to such public  
64 utility, and in case there be no bonded indebtedness, the  
65 governing body, in its discretion, shall have the power  
66 and authority to expend all such moneys when received  
67 for the purchase or construction of fire-fighting equip-  
68 ment and buildings for housing such equipment, a munic-  
69 ipal building or city hall, and the necessary land upon  
70 which to locate the same, or for the construction of paved  
71 streets, avenues, roads, alleys, ways, sidewalks, sewers  
72 and other like permanent improvements, and for no other  
73 purposes. In case there be a surplus after the payment of  
74 such bonded indebtedness, the surplus shall be used as  
75 aforesaid.

76 The requirements of this section shall not apply to the  
77 sale or lease of any part of the properties of any such  
78 public utility determined by the governing body to be  
79 unnecessary for the efficient rendering of the service of  
80 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

2 real or personal property (other than a public utility  
3 which shall be sold or leased in accordance with the pro-  
4 visions of section seventeen of this article) as authorized  
5 in article five, chapter one of this code, or to the United  
6 States of America or any agency or instrumentality there-  
7 of for a public purpose for an adequate consideration,  
8 without considering alone the present commercial or  
9 market value of such property. In all other cases, any  
10 municipality is hereby empowered and authorized to sell  
11 any of its real or personal property for a fair and adequate  
12 consideration, such property to be sold at public auction  
13 at a place designated by the governing body, but before  
14 making any such sale, notice of the time, terms and place  
15 of sale, together with a brief description of the property to  
16 be sold, shall be published as a Class II legal advertise-  
17 ment in compliance with the provisions of article three,  
18 chapter fifty-nine of this code, and the publication area  
19 for such publication shall be the municipality: *Provided*,  
20 That the requirements of notice and public auction shall  
21 not apply to the sale of any one item or piece of property  
22 of less value than one thousand dollars, and under no cir-  
23 cumstances shall the provisions of this section be con-  
24 strued as being applicable to any transaction involving the  
25 trading in of municipally owned property on the pur-  
26 chase of new or other property for the municipality, and  
27 every municipality shall have plenary power and author-  
28 ity to enter into and consummate any such trade-in  
29 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

10 more than one mile beyond the corporate limits, and such  
11 powers and authority shall not extend into the corporate  
12 limits of another municipality without the consent of the  
13 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

10 (2) To finance public improvements by the levy and  
11 collection of special assessments or other benefit taxes in  
12 the manner and to the extent permitted by article  
13 eighteen of this chapter and by any other general law.  
14 The entire cost of sidewalk construction, including curb-  
15 ing, may be imposed upon the owners of abutting prop-  
16 erty and made a lien thereon which shall have priority  
17 over all other liens except tax liens.

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

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

**§8-13-3. Capitation tax.**

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

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

1 Whenever anything, for which a state license is re-  
2 quired, is to be done within the corporate limits of any  
3 municipality, the governing body thereof shall have  
4 plenary power and authority, unless prohibited by gen-  
5 eral law, to require a municipal license therefor and for  
6 the use of the municipality to impose a reasonable tax  
7 thereon which may not exceed the amount of the state

8 license tax. Upon proper application for such municipal  
9 license and payment of the prescribed reasonable tax  
10 by any person who has a valid and subsisting state license,  
11 such municipal license shall be issued.

**§8-13-5. Business and occupation or privilege tax.**

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

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

**§8-13-6. Amusement tax.**

1 Every municipality shall have plenary power and  
2 authority to levy and collect an admission or amusement  
3 tax upon any public amusement or entertainment con-  
4 ducted within the corporate limits thereof for private  
5 profit or gain. The tax shall be levied upon the pur-  
6 chaser and added to and collected by the seller with the  
7 price of admission, or other charge for the amusement  
8 or entertainment. The tax shall not exceed two percent  
9 of the admission price or charge, but a tax of one cent  
10 may be levied and collected in any case.

11 Any ordinance imposing such tax shall contain rea-  
12 sonable rules and regulations governing the collection  
13 thereof by the seller and the method of his payment  
14 and accounting therefor to the municipality.

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

1 Every municipality shall have plenary power and  
2 authority to levy and collect a tax upon all purchases  
3 of intoxicating liquors from the alcohol beverage control  
4 commissioner within such municipality: *Provided*, That  
5 no municipality shall have authority to levy or collect  
6 any such tax on the intoxicating liquors sold by or pur-  
7 chased from holders of a license issued under the pro-  
8 visions of article seven, chapter sixty of this code. The  
9 tax shall be levied upon the purchaser and shall be added  
10 to and collected with the price of purchase. The tax shall  
11 not exceed three percent of the purchase price.

12 A copy of any ordinance imposing the tax authorized  
13 by this section shall be certified by the mayor of the  
14 municipality to the West Virginia alcohol beverage con-  
15 trol commissioner. The commissioner by appropriate  
16 rules and regulations shall provide for the collection of  
17 such tax and for distribution thereof to the respective  
18 municipalities for which the same shall be collected.  
19 Such rules and regulations shall provide that all such  
20 taxes shall be deposited with the state treasurer and  
21 distributed quarterly by the treasurer upon warrants of  
22 the auditor payable to the municipality.

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

**§8-13-8. License tax on horse racing.**

1 Every municipality within the corporate limits of  
2 which a horse race track is located in whole or in part  
3 shall have plenary power and authority to impose upon  
4 the operator of the track a daily license tax for the privi-  
5 lege of conducting horse racing within the corporate  
6 limits of the municipality. Such daily license tax shall

7 not exceed the amount of the daily license tax due from  
8 such operator to the state under the provisions of article  
9 twenty-three, chapter nineteen of this code. The daily  
10 license tax hereby authorized shall not be applicable  
11 to any local, county or state fair, horse show or agri-  
12 cultural or livestock exposition at which horse racing  
13 is conducted for not more than six days. A municipal  
14 license tax on horse racing may be imposed under the  
15 provisions of this section but not under the provisions of  
16 section four of this article.

**§8-13-9. Motor vehicle operator's tax.**

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

**§8-13-10. Domestic animal tax.**

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

**§8-13-11. Preservation of prior taxing powers of cities.**

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

**PART II. BORROWING POWER.**

**§8-13-12. Borrowing power.**

1 Every municipality shall have plenary power and  
2 authority to borrow money on the general faith and  
3 credit of the municipality for any municipal purpose,  
4 in the manner and subject to the limitations provided  
5 by law for the issuance of general obligation bonds.

## PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

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

1 Notwithstanding any charter provision to the contrary,  
2 every municipality which furnishes any essential or special  
3 municipal service, including, but not limited to, police and  
4 fire protection, parking facilities on the streets or otherwise,  
5 parks and recreational facilities, street cleaning, street  
6 lighting, street maintenance and improvement, sewerage  
7 and sewage disposal, and the collection and disposal of gar-  
8 bage, refuse, waste, ashes, trash and any other similar mat-  
9 ter, shall have plenary power and authority to provide by  
10 ordinance for the installation, continuance, maintenance or  
11 improvement of such service, to make reasonable regula-  
12 tions with respect thereto, and to impose by ordinance  
13 upon the users of such service, subject to the provisions of  
14 chapter twenty-four of this code, reasonable rates, fees  
15 and charges to be collected in the manner specified  
16 in the ordinance. The municipality shall not, however,  
17 have a lien on any property as security for payments  
18 due under such ordinance. Notwithstanding the pro-  
19 visions of section four, article eleven of this chapter,  
20 any ordinance enacted or substantially amended under  
21 the provisions of this section shall be published as a  
22 Class II legal advertisement in compliance with the  
23 provisions of article three, chapter fifty-nine of this code,  
24 and the publication area for such publication shall be  
25 such municipality. In the event thirty percent of the  
26 qualified voters of the municipality by petition duly  
27 signed by them in their own handwriting and filed with  
28 the recorder of the municipality within fifteen days after  
29 the expiration of such publication protest against such  
30 ordinance as enacted or amended, the ordinance shall  
31 not become effective until it shall be ratified by a ma-  
32 jority of the legal votes cast thereon by the qualified  
33 voters of such municipality at a regular municipal elec-  
34 tion or special municipal election, as the governing body  
35 shall direct. Voting thereon shall not take place until  
36 after notice of such submission shall have been given  
37 by publication as above provided for the publication  
38 of the ordinance after it is adopted or substantially

39 amended. The powers and authority hereby granted to  
40 municipalities and to the governing bodies thereof are  
41 in addition and supplemental to the powers and authority  
42 named in any charters thereof. Notwithstanding any  
43 other provisions of this section, in the event rates, fees  
44 and charges herein provided for shall be imposed by  
45 the governing body of any municipality for the purpose  
46 of replacing and in amounts approximately sufficient to  
47 replace in its general fund such amounts as shall be  
48 appropriated to be paid out of ad valorem taxes upon  
49 property within the municipality pursuant to an election  
50 duly called and held under the constitution and laws  
51 of the state to authorize the issuance and sale of general  
52 obligation bonds of the municipality for public im-  
53 provement purposes, in the call for which election it  
54 shall be stated that the governing body of the munici-  
55 pality proposes to impose rates, fees and charges in  
56 specified amounts under this section for the use of one  
57 or more of the services above specified, which shall be  
58 related to the public improvement proposed to be made  
59 with the proceeds of the bonds, no notice, publication of  
60 notice, or referendum or election or other condition or  
61 prerequisite to the imposition of such rates, fees and  
62 charges shall be required or necessary other than the  
63 legal requirements for issuance and sale of such general  
64 obligation bonds.

#### PART IV. PENALTIES.

##### §8-13-14. Penalties.

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

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

##### §8-13-15. Collection of municipal taxes, fines and assessments.

1 Unless otherwise provided, it shall be the duty of the  
2 treasurer of the municipality, or other individual who  
3 may be designated by general law, by charter provision  
4 or by the governing body, to collect and promptly pay

5 into the municipal treasury all taxes, fines, special assess-  
6 ments and other moneys due the municipality. All such  
7 taxes, fines, special assessments (except assessments for  
8 permanent or semi-permanent public improvements) and  
9 other moneys due the municipality are hereby declared  
10 to be debts owing to the municipality, for which the  
11 debtor shall be personally liable, and the treasurer, or  
12 other individual so designated, may enforce this liability  
13 by appropriate civil action in any court of competent  
14 jurisdiction, and is hereby vested with the same rights to  
15 distrain for the same as is vested in the sheriff for the  
16 collection of taxes. Such treasurer or other individual  
17 shall give bond, conditioned according to law, in such  
18 penalty and with such security as the governing body  
19 may require.

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

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

**PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.**

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

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

**§8-13-18. Audits and accounts.**

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

**§8-13-19. Capital reserve fund.**

1 The governing body of every municipality shall have  
2 plenary power and authority to establish a special fund  
3 to be known as the "capital reserve fund." The fund shall  
4 consist of unexpended balances of other funds which may  
5 be transferred to the fund, with the approval of the state  
6 tax commissioner, at the end of the fiscal year, and any  
7 other moneys authorized by law to be used for the pur-  
8 poses of the fund.

9 The fund shall be used, from time to time, for the con-  
10 struction, reconstruction, purchase or replacement of, or  
11 addition to, municipal buildings, public works, equipment,  
12 machinery, motor vehicles or other capital assets. Ex-  
13 penditures shall be made from the fund only in accord-  
14 ance with an appropriation made pursuant to the annual  
15 budget.

16 If a municipality accumulates its capital reserve fund  
17 for more than two years, the proceeds of the fund shall  
18 be transmitted to the state sinking fund commission on or  
19 before the first day of September of each year. The pro-  
20 ceeds of the fund may be withdrawn by the municipality  
21 upon reasonable notice in writing to the state sinking  
22 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.**

1 Every municipality shall have plenary power and au-  
2 thority to transfer to the general fund of such munici-  
3 pality any unexpended balances of funds raised to pay  
4 the interest on and create sinking funds for any bonded

5 indebtedness where said bonded indebtedness has been  
6 fully paid off and discharged, or where there remains no  
7 other bonded debt within such taxing district to which  
8 such unexpended balances might be applied, as well as  
9 any balance remaining in any fund levied and collected  
10 under authority of any special levy election.

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

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

**§8-13-21. Disposition of certain funds.**

1 Every municipality which has raised, or which shall  
2 hereafter raise, by taxation or otherwise, any funds for  
3 any municipal public works, and is unable to obtain the  
4 necessary materials and equipment on account of priority  
5 restrictions imposed by the federal government on the  
6 sale of such materials and equipment, or for any other  
7 reason, shall have plenary power and authority, by proper  
8 resolution of its governing body, to place said funds in a  
9 special fund until such time as such materials and equip-  
10 ment shall become available to said municipality. When  
11 such materials and equipment shall become available to  
12 said municipality, it shall, by proper resolution of its  
13 governing body, direct the use of said funds for the pur-  
14 pose 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.**

1 No money shall be paid out of any municipal treasury

2 except upon an order duly signed by the municipal of-  
3 ficers authorized to sign such order: *Provided*, That such  
4 signatures may be made by means of such mechanical or  
5 electrical device as the governing body may select. Such  
6 mechanical or electrical device for the making of such  
7 signatures shall be safely kept in the office of the treas-  
8 urer or recorder so that no one shall have access thereto  
9 except the municipal officers authorized to sign such  
10 orders, the treasurer or recorder and such of their respec-  
11 tive employees as may be authorized to have access  
12 thereto.

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

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

#### PART VII. MUNICIPAL FINANCIAL STATEMENTS.

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

1 Every city, within four weeks after the beginning of  
2 each fiscal year, shall prepare on a form to be prescribed  
3 by the state tax commissioner and cause to be published  
4 a sworn statement revealing (a) the receipts and expend-  
5 itures of the city during the previous fiscal year arranged  
6 under descriptive headings, (b) the name of each person

7 who received more than fifty dollars from any fund dur-  
8 ing the previous fiscal year, together with the amount  
9 received and the purpose for which paid, and (c) all debts  
10 of the city, the purpose for which each debt was con-  
11 tracted, its due date, and to what date the interest thereon  
12 has been paid. Such statement shall be published as a  
13 Class I legal advertisement in compliance with the provi-  
14 sions of article three, chapter fifty-nine of this code, and  
15 the publication area for such publication shall be the city.

16 Every city shall transmit to any resident of such city  
17 requesting the same a copy of any published statement  
18 for the fiscal year designated, supplemented by a docu-  
19 ment listing the names of each person who received less  
20 than fifty dollars from any fund during such fiscal year  
21 and showing the amount paid to each and the purpose for  
22 which paid.

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

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

44 The statement required by the first paragraph of this  
45 section and the statement required by the third para-  
46 graph of this section shall be sworn to by the recorder of  
47 the municipality and the mayor thereof and two members

48 of the governing body of such municipality. As soon as  
49 practicable following the close of the fiscal year, a copy  
50 of any statement herein required shall be filed by the  
51 municipality with the state tax commissioner, and the  
52 clerk of the county court of the county, and the clerk of  
53 the circuit court of the circuit, in which the municipality  
54 or the major portion of the territory thereof is located.  
55 If the governing body fail or refuse to perform any of the  
56 duties set forth in this section, every member of such  
57 governing body and the recorder thereof concurring in  
58 such failure or refusal shall be guilty of a misdemeanor,  
59 and, upon conviction thereof, shall be fined not less than  
60 ten nor more than one hundred dollars. If any of the  
61 provisions of this section are violated, it shall be the duty  
62 of the prosecuting attorney of the county in which the  
63 municipality or the major portion of the territory thereof  
64 is located to immediately present the evidence thereof  
65 to the grand jury if in session, and if not in session, he  
66 shall cause such violations to be investigated by the next  
67 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 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  
2 authority to protect persons and property within the  
3 municipality and preserve law and order therein, and,  
4 for this purpose, to provide for, establish, equip and main-  
5 tain a police force or department. The police force or  
6 department in each municipality shall be subject to the  
7 authority, control and discipline of the administrative  
8 authority.

9 For the purposes of this article, the term "paid police  
10 department" shall be taken to mean only a municipal  
11 police department maintained and paid for out of public  
12 funds and whose employees are paid on a full-time basis

13 out of public funds. The term shall not be taken to  
 14 mean a department whose employees are paid nominal  
 15 salaries or wages or are only paid for services actually  
 16 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.**

1 In any paid police department of any municipality  
 2 now or hereafter operated under police civil service as  
 3 provided in subsequent sections of this article, the mem-  
 4 bers of any such department subject to and under civil  
 5 service shall not be required to be on duty more than  
 6 five days in any calendar week, nor more than eight  
 7 hours in any one day, unless they shall be compensated  
 8 as hereinafter in this section provided. For any time  
 9 spent on duty by any member of a paid police depart-  
 10 ment under civil service in excess of eight hours in any  
 11 one day or in excess of forty hours in any one week,  
 12 such member shall, notwithstanding any other provi-  
 13 sions of this code to the contrary, be paid, at a rate not  
 14 less than his regular rate of pay, for each full hour or  
 15 allowed equal time off: *Provided*, That in time of mu-  
 16 nicipal emergency as hereinafter in this section defined,  
 17 the foregoing provisions with respect to additional pay  
 18 or time off shall not apply. A municipal emergency for  
 19 purposes of this section shall mean an unusual or ab-  
 20 normal condition beyond the municipality's control and  
 21 a condition beyond its reasonable power to remove or  
 22 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.**

1 The chief and any member of the police force or de-  
 2 partment of a municipality and any municipal sergeant  
 3 shall have all of the powers, authority, rights and privi-  
 4 leges within the corporate limits of the municipality  
 5 with regard to the arrest of persons, the collection of  
 6 claims, and the execution and return of any search war-

7 rant, warrant of arrest or other process, which can legally  
8 be exercised or discharged by a constable of a district  
9 within the same. In order to arrest for the violation  
10 of municipal ordinances and as to all matters arising  
11 within the corporate limits and coming within the scope  
12 of his official duties, the powers of any chief, policeman  
13 or sergeant shall extend anywhere within the county or  
14 counties in which the municipality is located, and any  
15 such chief, policeman or sergeant shall have the same  
16 authority of pursuit and arrest beyond his normal juris-  
17 diction as has a sheriff. For an offense committed in his  
18 presence, any such officer may arrest the offender without  
19 a warrant and take him before the mayor or police court or  
20 municipal court to be dealt with according to law. He and  
21 his sureties shall be liable to all the fines, penalties and for-  
22 feitures which a constable of a district is liable to, for any  
23 failure or dereliction in such office, to be recovered in the  
24 same manner and in the same courts in which such fines,  
25 penalties and forfeitures are recovered against a consta-  
26 ble. In addition to the mayor, or police court judge or mu-  
27 nicipal court judge, if any, of a city, the chief of police of  
28 any municipality and in the absence from the stationhouse  
29 of the chief of police the captains of police and lieutenants  
30 of police shall each have authority to administer oaths to  
31 complainants and to issue arrest warrants thereon for all  
32 violations of the ordinances of such municipality.

33 It shall be the duty of the mayor and police officers  
34 of every municipality and any municipal sergeant to  
35 aid in the enforcement of the criminal laws of the state  
36 within the municipality, independently of any charter  
37 provision or any ordinance or lack of an ordinance with  
38 respect thereto, and to cause the arrest of or arrest any  
39 offender and take him before a regular or ex officio  
40 justice of the peace of the county to be dealt with ac-  
41 cording to the law. Failure on the part of any such official  
42 or officer to discharge any duty imposed by the provi-  
43 sions of this section shall be deemed official misconduct  
44 for which he may be removed from office. Any such  
45 official or officer shall have the same authority to execute  
46 a warrant issued by a justice of the peace, and the same

47 authority to arrest without a warrant for offenses com-  
48 mitted in his presence, as a constable.

### PART III. POLICE MATRONS.

#### §8-14-4. Police matrons.

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

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

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

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

26 In every station to which a police matron is attached,  
27 sufficient and proper accommodations shall be provided  
28 by those having charge of the police and fiscal affairs of  
29 the city, for all women confined therein, under arrest,  
30 and in case such accommodations shall be insufficient  
31 and improper, the matron shall notify the mayor, and  
32 it shall be the duty of the mayor promptly to lay the  
33 matter before the governing body and it shall be the  
34 duty of such governing body to provide, at the expense  
35 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 au-  
2 thority to provide by ordinance for the appointment of  
3 special school zone police officers, who shall have the  
4 duty of controlling and directing traffic upon designated  
5 parts of the streets, avenues, roads, alleys or ways at  
6 or near schools, and who, in the performance of such  
7 duty, shall be vested with all the powers of local police  
8 officers. Such special school zone police officers shall  
9 be in uniform, shall display a badge or other sign of  
10 authority, shall serve at the will and pleasure of the  
11 appointing authority, and shall not come within the  
12 civil service provisions of this article or the policemen's  
13 pension and relief fund provisions of article twenty-two  
14 of this chapter. The governing body of the municipality  
15 may require such special school zone police officers to  
16 give bond, payable to the municipality, in its corporate  
17 name, with such sureties and in such penalty as the gov-  
18 erning body may see fit, conditioned for the faithful per-  
19 formance 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  
2 all paid police departments of Class I and Class II cities  
3 shall be made only according to qualifications and fitness  
4 to be ascertained by examinations, which, so far as prac-  
5 ticable, shall be competitive, as hereinafter provided.  
6 No individual except the chief of police shall be appointed,  
7 promoted, reinstated, removed, discharged, suspended or  
8 reduced in rank or pay as a paid member of any paid  
9 police department, regardless of rank or position, of any  
10 Class I or Class II city in any manner or by any means  
11 other than those prescribed in the following sections  
12 of this article.

13 The term "member of a paid police department," when-

14 ever used in the following sections of this article, shall  
15 mean and include any individual employed in a paid  
16 police department who is clothed with the police power of  
17 the state in being authorized to carry deadly weapons,  
18 make arrests, enforce traffic and other municipal ordi-  
19 nances, issue summons for violations of traffic and other  
20 municipal ordinances, and perform other duties which are  
21 within the scope of active, general law enforcement.  
22 The term "appointing officer," as used in the following  
23 sections of this article, shall be construed to mean the  
24 Class I or Class II city officer in whom the power of  
25 appointment of members of a paid police department is  
26 vested by charter provision or ordinance of the city.

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

1 In every Class I and Class II city having a paid police  
2 department, there shall be a "Policemen's Civil Service  
3 Commission." The commission shall consist of three com-  
4 missioners, one of whom shall be appointed by the mayor  
5 of the city; one of whom shall be appointed by the local  
6 fraternal order of police; and the third shall be appointed  
7 by the local chamber of commerce, or if there be none, by  
8 a local businessmen's association. The individuals ap-  
9 pointed commissioners shall be qualified voters of the city  
10 for which they are appointed; and at least two of said  
11 commissioners shall be individuals in full sympathy with  
12 the purposes of the civil service provisions of this article.  
13 Not more than two of the said commissioners, at any one  
14 time, shall be adherents of the same political party. Of  
15 the three original appointments in each city, the first com-  
16 missioner shall be appointed by the mayor and shall serve  
17 for six years from the date of his appointment; the second  
18 commissioner shall be appointed by the local fraternal  
19 order of police and shall serve for four years from the  
20 date of his appointment; and the third commissioner shall  
21 be appointed by the local chamber of commerce or local  
22 businessmen's association and shall serve for two years  
23 from the date of his appointment. In the event there is  
24 no local chamber of commerce or local businessmen's  
25 association at the time any appointment is to be made by  
26 it, such appointment shall be made by the other two com-

27 missioners by mutual agreement. After the original ap-  
28 pointments, all appointments shall be made for periods of  
29 four years each by the appointing authority hereinbefore  
30 designated. In the event that any commissioner of said  
31 civil service commission shall cease to be a member there-  
32 of by virtue of death, final removal or other cause, a new  
33 commissioner shall be appointed to fill the unexpired term  
34 of said commissioner within ten days after said ex-  
35 commissioner shall have ceased to be a member of said  
36 commission. Such appointment shall be made by the of-  
37 ficer or body who in the first instance appointed the com-  
38 missioner who is no longer a member of the commission,  
39 except that in the case of a vacancy in an appointment  
40 made by the governor, which vacancy occurs after the  
41 effective date of this article, the appointment for the un-  
42 expired term shall be made by the mayor. Each year the  
43 three members of the commission shall, together, elect  
44 one of their number to act as president of the commission,  
45 who shall serve as president for one year. The mayor  
46 may, at any time, remove any commissioner or commis-  
47 sioners for good cause, which shall be stated in writing  
48 and made a part of the records of the commission: *Pro-*  
49 *vided*, That once the mayor has removed any commis-  
50 sioner, the mayor shall within ten days thereafter file in  
51 the office of the clerk of the circuit court of the county  
52 in which the city or the major portion of the territory  
53 thereof is located a petition setting forth in full the reason  
54 for said removal and praying for the confirmation by  
55 said circuit court of the action of the mayor in so remov-  
56 ing the said commissioner. A copy of said petition shall  
57 be served upon the commissioner so removed simultane-  
58 ously with its filing in the office of the clerk of the circuit  
59 court and shall have precedence on the docket of said  
60 court and shall be heard by said court as soon as practi-  
61 cable upon the request of the removed commissioner or  
62 commissioners. All rights herein vested in said circuit  
63 court may be exercised by the judge thereof in vacation.  
64 In the event that no term of the circuit court is being  
65 held at the time of the filing of said petition, and the judge  
66 thereof cannot be reached in the county wherein the peti-  
67 tion was filed, said petition shall be heard at the next

68 succeeding term of said circuit court, whether regular or  
69 special, and the commissioner or commissioners so re-  
70 moved shall remain removed until a hearing is had upon  
71 the said petition of the mayor. The court or the judge  
72 thereof in vacation shall hear and decide the issues pre-  
73 sented by said petition. The mayor or commissioner or  
74 commissioners, as the case may be, against whom the  
75 decision of the court or the judge thereof in vacation shall  
76 be rendered, shall have the right to petition the supreme  
77 court of appeals for a review of the decision of the circuit  
78 court or the judge thereof in vacation as in other civil  
79 cases. In the event that the mayor shall fail to file his  
80 petition in the office of the clerk of the circuit court, as  
81 hereinbefore provided, within ten days after the removal  
82 of said commissioner or commissioners, such commis-  
83 sioner or commissioners shall immediately resume his or  
84 their position or positions as a member or members of the  
85 policemen's civil service commission.

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

102 No commissioner shall hold any other office (other than  
103 the office of notary public) under the United States, this  
104 state, or any municipality, county or other political sub-  
105 division thereof; nor shall any commissioner serve on  
106 any political committee or take any active part in the  
107 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  
2 policemen's civil service commission and shall supply  
3 to the commission without extra compensation all neces-  
4 sary clerical and stenographic services for the work of  
5 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  
2 departments of government of every Class I and Class  
3 II city having a paid police department to cause suitable  
4 and convenient rooms and accommodations to be assigned  
5 and provided, furnished, heated and lighted for carrying  
6 on the work and examinations of the commission. The  
7 commission may order from the proper authorities the  
8 necessary stationery, postage stamps, official seal and  
9 other articles to be supplied, and the necessary printing  
10 to be done, for its official use. It shall be the duty of  
11 the officers of every such city to aid the commission in  
12 all proper ways in carrying out the civil service provi-  
13 sions of this article, and to allow the reasonable use  
14 of public buildings, and to heat and light the same, for  
15 holding examinations and investigations, and in all proper  
16 ways to facilitate the same.

17 All Class I and Class II cities subject to the civil  
18 service provisions of this article are hereby required to  
19 appropriate sufficient funds for the purpose of carrying  
20 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  
2 I and Class II city 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: *Pro-*  
7 *vided*, That all rules and regulations shall be approved  
8 by the mayor and the governing body before they go

9 into effect, but when so approved shall not be changed  
10 or rescinded except by the commission with the approval  
11 of the mayor and the governing body: *Provided, how-*  
12 *ever,* That if the mayor and governing body take no action  
13 on a proposed rule and regulation or a proposed change  
14 or rescission submitted to them within a period of twenty  
15 days from the date of submission, then the same shall  
16 become effective as though approved by the mayor and  
17 governing 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  
21 commission or by any officer having authority to make  
22 appointments to office, shall be kept and preserved for  
23 a period of ten years, and all such records, recommenda-  
24 tions of former employees excepted, and all written  
25 causes of removal, filed with it, shall, subject to reason-  
26 able regulation, be open to public inspection.

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

38 (4) Have the power to subpoena and require the  
39 attendance of witnesses, and the production thereby of  
40 books and papers pertinent to the investigations and  
41 inquiries herein authorized, and examine them and such  
42 public records as it shall require, in relation to any matter  
43 which it has the authority to investigate. The fees of  
44 such witnesses for attendance and travel shall be the  
45 same as for witnesses before the circuit courts of this  
46 state, and shall be paid from the appropriation for the  
47 incidental expenses of the commission. All officers in  
48 the public service, and their deputies, clerks, subordinates  
49 and employees shall attend and testify when requirea

50 to do so by said commission. Any disobedience to, or  
51 neglect of, any subpoena issued by the said commis-  
52 sioners, or any one of them, to any person, shall be held  
53 a contempt of court, and shall be punished by the circuit  
54 court of the county in which the city or the major por-  
55 tion of the territory thereof is located, or the judge  
56 thereof in vacation, as if such subpoena had been issued  
57 therefrom. The judge of such court shall, upon the appli-  
58 cation of any one of said commissioners, in any such  
59 case, cause the process of said court to issue to compel  
60 such person or persons disobeying or neglecting any  
61 such subpoena to appear and to give testimony and  
62 produce evidence before the said commissioners, or any  
63 one of them, and shall have the power to punish any  
64 such contempt.

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

**§8-14-11. Rules and regulations for all examinations; proba-  
tionary appointments.**

1 The policemen's civil service commission in each Class  
2 I and Class II city shall make rules and regulations pro-  
3 viding for both competitive and medical examinations for  
4 appointments and promotions to all positions in the paid  
5 police department in such city, and for such other mat-  
6 ters as are necessary to carry out the purposes of the civil  
7 service provisions of this article. Any such commission  
8 shall have the power and authority to require by rules  
9 and regulations a physical fitness examination as a part  
10 of its competitive examination or as a part of its medical  
11 examination. Due notice of the contents of all such rules  
12 and regulations and of any modifications thereof shall be  
13 given, by mail, in due season, to the appointing officer;  
14 and said rules and regulations and any modifications

15 thereof shall also be printed for public distribution. All  
16 original appointments to any positions in a paid police de-  
17 partment subject to the civil service provisions of this  
18 article shall be for a probationary period of one year:  
19 *Provided*, That at any time during the probationary  
20 period the probationer may be discharged for just cause,  
21 in the manner provided in section twenty of this article.  
22 If, at the close of this probationary term, the conduct or  
23 capacity of the probationer has not been satisfactory to the  
24 appointing officer, the probationer shall be notified, in  
25 writing, that he will not receive absolute appointment,  
26 whereupon his employment shall cease; otherwise, his re-  
27 tention in the service shall be equivalent to his final ap-  
28 pointment.

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

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

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

19 Blank forms for such applications shall be furnished by  
20 the commission, without charge, to all individuals re-  
21 questing the same. The commission may require, in con-  
22 nection with such application, such certificates of citizens,  
23 physicians and others, having pertinent knowledge con-

24 cerning the applicant, as the good of the service may re-  
25 quire.

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

52 Any applicant for original appointment must have been  
53 a resident for one year, during some period of time prior  
54 to the date of his application, of the city in which he  
55 seeks to become a member of the paid police department:  
56 *Provided*, That if the commission deems it necessary it  
57 may consider for original appointment applicants who  
58 are not residents of the city but who have been residents  
59 of the county in which the city or any portion of the  
60 territory thereof is located for a period of at least one  
61 year.

**§8-14-13. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.**

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

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

23 All applicants for appointment or promotion to any  
24 position in a paid police department of a Class I or Class  
25 II city who have passed the competitive examination  
26 specified above shall, before being appointed or promoted,  
27 undergo a medical examination which shall be conducted  
28 under the supervision of a board composed of two doctors  
29 of medicine appointed for such purpose by the appointing  
30 officer of the city. Such board must certify that an appli-  
31 cant is free from any bodily or mental defects, deformity  
32 or diseases which might incapacitate him from the per-  
33 formance of the duties of the position desired and is phys-  
34 ically fit to perform such duties before said applicant shall  
35 be appointed or promoted to any position. Notwithstand-  
36 ing the first sentence of this paragraph, in the event the  
37 commission deems it expedient, the medical examination  
38 may be given prior to the competitive examination, and if

39 the medical examination is not passed as aforesaid, the ap-  
40 plicant shall not be admitted to the competitive exami-  
41 nation.

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

1 The commission may refuse to examine an applicant, or  
2 after examination to certify as eligible one, who is found  
3 to lack any of the established preliminary requirements  
4 for the examination or position for which he applies; or  
5 who is physically so disabled as to be rendered unfit for  
6 the performance of the duties of the position desired; or  
7 who is addicted to the habitual use of intoxicating liquors  
8 or drugs; or who has been guilty of any crime or of in-  
9 famous or notoriously disgraceful conduct; or who has  
10 been dismissed from public service for delinquency or  
11 misconduct; or who has made a false statement of any ma-  
12 terial fact, or practiced or attempted to practice any decep-  
13 tion or fraud, in his application, in any such examination,  
14 or in securing his eligibility; or who refuses to comply  
15 with the rules and regulations of the commission.

16 If any applicant feels aggrieved by the action of the  
17 commission in refusing to examine him, or after exami-  
18 nation in refusing to certify him as eligible, the commis-  
19 sion shall, at the request of such applicant, appoint a date,  
20 time and place for a public hearing; at which time such  
21 applicant may appear, by himself or counsel, or both, and  
22 the commission shall then review its refusal to make  
23 such examination or certification, and testimony shall be  
24 taken. The commission shall subpoena, at the expense  
25 of the applicant, any competent witnesses requested by  
26 him. After such review, the commission shall file in its  
27 records the testimony taken and shall again make a de-  
28 cision, which decision shall be final and not subject to  
29 judicial review, but under no circumstances shall the  
30 provisions of this article be construed, in the case of a  
31 refusal to examine an applicant for promotion or to cer-  
32 tify an applicant as eligible for promotion, as depriving  
33 such applicant of his right to seek a writ of mandamus,  
34 if the application for such writ is made within twenty  
35 days from the date of the decision refusing to examine  
36 or to certify him as eligible for promotion.

**§8-14-15. Appointments from list of eligibles.**

1 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.**

1 Whenever there are urgent reasons for filling a vacancy

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

**§8-14-17. Vacancies filled by promotions; eligibility for promo-  
tion; rights of chief.**

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 positions  
4 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

24 office of such chief of police shall be added to the time  
25 served by such member during the entire time he was a  
26 member of said paid police department prior to his ap-  
27 pointment as chief, and shall in all cases of removal,  
28 except for removal for good cause, retain the regular  
29 rank within said paid police department which he held  
30 at the time of his appointment to the office of chief of  
31 police or which he has attained during his term of service  
32 as chief of police. The provisions of this section shall be  
33 construed to apply and to inure to the benefit of all indi-  
34 viduals who have ever been subject to the provisions of  
35 this article. The commission shall have the power to  
36 determine in each instance whether an increase in salary  
37 constitutes a promotion.

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

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

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

1 (a) No member of any paid police department of a  
2 Class I or Class II city shall engage in any political  
3 activity of any kind, character or nature whatsoever,  
4 except to cast his vote at any election, or shall act as  
5 an election official in any election, municipal, county  
6 or state. Any member of any such paid police depart-  
7 ment violating the provisions of this section shall have  
8 his appointment vacated and he shall be removed, in  
9 accordance with the pertinent provisions of this section.

10 (b) Any three residents of any such city may file  
11 their written petition with the policemen's civil service  
12 commission thereof setting out therein the grounds upon  
13 which a member of the paid police department of such  
14 city should be removed for a violation of subsection  
15 (a) of this section. Notice of the filing of such petition  
16 shall be given by said commission to the accused mem-  
17 ber, which notice shall require the said member to file  
18 a written answer to the charges set out in the petition  
19 within thirty days of the date of said notice. The said  
20 petition and answer thereto, if any, shall be entered upon  
21 the records of the commission. If such answer is not  
22 filed within the time stated, or any extension thereof  
23 for cause which in the discretion of the commission may  
24 be granted, an order shall be entered by the commission  
25 declaring the appointment of said member vacated; if  
26 such answer is filed within the time stated, or any exten-  
27 sion thereof for cause which in the discretion of the  
28 commission may be granted, the accused member may  
29 demand within such period a public hearing on the  
30 charges, or the commission may, in its discretion and  
31 without demand therefor, set a time for a public hearing  
32 on said charges, which hearing shall be within thirty  
33 days of the filing of said answer, subject, however, to  
34 any continuances which may in the discretion of the  
35 commission be granted. A written record of all testi-  
36 mony taken at such hearing shall be kept and preserved  
37 by the commission, which record shall be sealed and  
38 not be open to public inspection, if no appeal be taken  
39 from the action of the commission. The commission at  
40 the conclusion of the hearing, or as soon thereafter as  
41 possible, shall enter an order sustaining in whole or in  
42 part the charges made, or shall dismiss the charges as  
43 unfounded. In the event the charges are sustained in  
44 whole or in part, the order shall also declare the ap-  
45 pointment of said member to be vacated and thereupon  
46 the proper municipal authorities shall immediately re-  
47 move said member from the police force and from the  
48 payroll of said city. Notice of the action of the commission  
49 shall be given by registered letter to the mayor and  
50 chief of police of the city; and for failure to immediately

51 comply with the order of the commission such officer or  
52 officers shall be punished for contempt, upon appli-  
53 cation of the commission to the circuit court of the county  
54 in which the city or the major portion of the territory  
55 thereof is located.

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

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

1 (a) No member of any paid police department subject  
2 to the civil service provisions of this article shall be re-  
3 moved, discharged, suspended or reduced in rank or pay  
4 except for just cause, which shall not be religious or  
5 political, except as hereinbefore provided in section nine-  
6 teen of this article; and no such member shall be removed,  
7 discharged, suspended or reduced except as provided by  
8 the civil service provisions of this article, and in no event  
9 until he shall have been furnished with a written state-  
10 ment of the reasons for such action. For the purpose of  
11 the remainder of this subsection and subsections (b) and  
12 (c) of this section, the term "suspension" shall mean only  
13 (1) a suspension in excess of ten days, or (2) a suspension  
14 in any calendar year which when added to any previous  
15 suspension or suspensions within the same calendar year  
16 results in a total period of suspension in excess of ten  
17 days within such same calendar year, and for the purpose  
18 of the remainder of this subsection and said subsections  
19 (b) and (c), a member shall not be considered to be  
20 suspended or sought to be suspended unless his suspen-  
21 sion meets the foregoing definition of said term. In every  
22 case of such removal, discharge, suspension or reduction,  
23 a copy of the statement of reasons therefor and of the  
24 written answer thereto, if the member sought to be re-  
25 moved, discharged, suspended or reduced desires to file  
26 such written answer, shall be furnished to the policemen's  
27 civil service commission and entered upon its records. If

28 the member sought to be removed, discharged, suspended  
29 or reduced shall demand it, the commission shall grant  
30 him a public hearing, which hearing shall be held within  
31 a period of ten days from the filing of the charges in  
32 writing or the written answer thereto, whichever shall  
33 last occur. At such hearing the burden shall be upon the  
34 removing, discharging, suspending or reducing officer,  
35 hereinafter in this section referred to as "removing of-  
36 ficer," to justify his action, and in the event the removing  
37 officer fails to justify his action before the commission,  
38 then the member removed, discharged, suspended or re-  
39 duced shall be reinstated with full pay, forthwith and  
40 without any additional order, for the entire period during  
41 which he may have been prevented from performing his  
42 usual employment, and no charges shall be officially re-  
43 corded against his record. A written record of all testi-  
44 mony taken at such hearing shall be kept and preserved  
45 by the commission, which record shall be sealed and not  
46 be open to public inspection, if no appeal be taken from  
47 the action of the commission.

48 (b) In the event that the commission shall sustain the  
49 action of the removing officer, the member removed, dis-  
50 charged, suspended or reduced shall have an immediate  
51 right of appeal to the circuit court of the county wherein  
52 the city or the major portion of the territory thereof is  
53 located. In the event that the commission shall reinstate  
54 the member removed, discharged, suspended or reduced,  
55 the removing officer shall have an immediate right of  
56 appeal to said circuit court. Any appeal must be taken  
57 within ninety days from the date of entry by the commis-  
58 sion of its final order; upon an appeal being taken and  
59 docketed with the clerk of the circuit court of said county,  
60 the circuit court shall proceed to hear the appeal upon  
61 the original record made before the commission and no  
62 additional proof shall be permitted to be introduced. The  
63 circuit court's decision shall be final, but the member or  
64 removing officer, as the case may be, against whom the  
65 decision of the circuit court is rendered shall have the  
66 right to petition the supreme court of appeals for a review  
67 of the circuit court's decision, as in other civil cases. Such  
68 member or removing officer shall also have the right,

69 where appropriate, to seek in lieu of an appeal, a writ of  
70 mandamus.

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

75 (d) If for reasons of economy or other reasons it shall  
76 be deemed necessary by any Class I or Class II city to  
77 reduce the number of paid members of its paid police  
78 department, said city shall follow the procedure set forth  
79 in this subsection (d). The reduction in members of the  
80 said paid police department of said city shall be effected  
81 by suspending the last man or men, including probation-  
82 ers, who have been appointed to said paid police depart-  
83 ment. Such removal shall be accomplished by suspending  
84 the number desired in the inverse order of their appoint-  
85 ment: *Provided*, That in the event the said paid police  
86 department shall again be increased in numbers to the  
87 strength existing prior to such reduction of members the  
88 said members suspended under the terms of this subsec-  
89 tion shall be reinstated in the inverse order of their sus-  
90 pension before any new appointment to said paid police  
91 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.**

1 Any Class III city or Class IV town or village having  
2 a paid police department and which has not prior to  
3 the effective date of this article established a police civil  
4 service system, may, by ordinance, provide for an elec-  
5 tion to determine whether the civil service provisions  
6 of this article shall apply to such city, town or village.  
7 Such election shall be held at the first regular municipal  
8 or general election held therein after the adoption of said  
9 ordinance and shall be conducted and the results thereof  
10 ascertained as provided by law for other elections. The  
11 ballots, or ballot labels where voting machines are used,  
12 shall have printed thereon:

- 13            For Police Civil Service  
14            Against Police Civil Service

15       If a majority of all of the legal votes cast on this  
16 question be against police civil service, then none of the  
17 civil service provisions of this article shall apply within  
18 such city, town or village. If a majority of all of the  
19 legal votes cast on this question be for police civil serv-  
20 ice, then all of the civil service provisions of this article  
21 shall apply within such city, town or village with like  
22 effect as if such Class III city or Class IV town or village  
23 were a Class I or Class II city: *Provided*, That all mem-  
24 bers of the paid police department of such city, town  
25 or village who were so employed by such city, town  
26 or village on the date of the election and who, as of  
27 such date, have had four or more years' service as mem-  
28 bers of any paid police department (including the years  
29 any member occupied the office of chief of any such  
30 paid police department) shall be considered to have  
31 been appointed as members under the civil service  
32 provisions of this article and shall hold their positions  
33 as members in accordance therewith. All members of  
34 the paid police department of such city, town or village  
35 who do not have, as of the date of such election, four  
36 or more years' service as members of a paid police de-  
37 partment (including the years any member occupied the  
38 office of chief of any such paid police department) shall  
39 be subject to all examinations provided for in the civil  
40 service provisions of this article for members, except  
41 that if any such individual has sustained an injury or  
42 injuries in the line of duty while in police service, such  
43 injury or injuries shall not disqualify such individual  
44 under the medical examination required under the civil  
45 service provisions of this article.

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

**§8-14-22. Offenses and penalties.**

1       Any individual who makes an appointment or pro-  
2 motion to any position, or selects an individual for em-  
3 ployment, contrary to the civil service provisions of this

4 article, or wilfully refuses or neglects otherwise to com-  
5 ply with, or to conform to, any of the civil service pro-  
6 visions of this article, or violates any of such provisions,  
7 shall be deemed guilty of a misdemeanor.

8 Any commissioner or examiner, or any other indi-  
9 vidual, who shall wilfully, by himself or in cooperation  
10 with one or more persons, defeat, deceive or obstruct any  
11 individual with respect to his right of examination or  
12 registration according to the civil service provisions of  
13 this article, or to any rules and regulations prescribed  
14 pursuant thereto, or who shall wilfully or corruptly,  
15 falsely mark, grade, estimate, or report upon any such  
16 examination or proper standing of any individual so  
17 examined, registered or certified, pursuant to the civil  
18 service provisions of this article, or aid in so doing, or  
19 who shall wilfully or corruptly furnish to any individual  
20 any special or secret information, for the purpose of  
21 either improving or injuring the prospects or chances  
22 of appointment or promotion to any position of any  
23 individual so examined, registered or certified, or to be  
24 so examined, registered or certified, or who shall im-  
25 personate any other individual, or permit or aid in any  
26 manner any other individual to impersonate him, in  
27 connection with any such examination or registration,  
28 or application or request to be examined or registered,  
29 shall, for each offense, be deemed guilty of a misdemeanor.

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

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

1 All acts, whether general, special, local or special leg-  
2 islative charters, or parts thereof, in relation to any civil  
3 service measure affecting any paid police department in-  
4 consistent with the civil service provisions of this article  
5 shall be, and the same are, hereby repealed insofar as

6 such inconsistencies shall exist. It is intended by the  
7 civil service provisions of this article to furnish a com-  
8 plete and exclusive system for the appointment, pro-  
9 motion, reinstatement, removal, discharge, suspension and  
10 reduction of all members of all paid police departments  
11 subject to the civil service provisions of this article.

12 The status or tenure of all members of any paid police  
13 department subject to the civil service provisions of  
14 this article, which members were employed on the ef-  
15 fective date of this article, shall not be affected by the  
16 enactment of this article, but all such members shall be  
17 subject to all of the civil service provisions of this article  
18 with like effect as if they had been appointed members  
19 hereunder.

20 When a Class III city which does not have a police  
21 civil service system becomes a Class II city for which  
22 police civil service is made mandatory by the provisions  
23 of this article, all members of the paid police depart-  
24 ment of such city who were employed by such city on  
25 the effective date of the transition of such city to a Class  
26 II city and who, as of such date, have had four or more  
27 years' service as members of any paid police department  
28 (including the years any member occupied the office  
29 of chief of any such paid police department) shall be  
30 considered to have been appointed as members under  
31 the civil service provisions of this article and shall hold  
32 their positions as members in accordance therewith. All  
33 members of the paid police department of such city who  
34 do not have, as of such date, four or more years' service  
35 as members of a paid police department (including the  
36 years any member occupied the office of chief of any  
37 such paid police department) shall be subject to all  
38 examinations provided for in the civil service provisions  
39 of this article for members, except that if any such  
40 individual has sustained an injury or injuries in the line  
41 of duty while in police service, such injury or injuries  
42 shall not disqualify such individual under the medical  
43 examination required under the civil service provisions  
44 of this article.

45 Any police civil service system established in accord-  
46 ance with the provisions of former article five-a of this

47 chapter or this article fourteen shall be or remain man-  
 48 datory and shall be governed by the provisions of this  
 49 article fourteen (with like effect, in the case of a Class  
 50 III city or Class IV town or village, as if such Class III  
 51 city or Class IV town or village were a Class I or Class  
 52 II city), and shall not be affected by the transition from  
 53 one class of municipal corporation to a lower class as  
 54 specified in section three, article one of this chapter.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-  
 MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-  
 MENTS.**

**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  
 2 plenary power and authority to provide for the preven-  
 3 tion and extinguishment of fires, and, for this purpose,  
 4 it may, among other things, regulate how buildings shall  
 5 be constructed, procure proper engines and implements,  
 6 provide for the organization, equipment and govern-  
 7 ment of volunteer fire companies or of a paid fire de-  
 8 partment, prescribe the powers and duties of such com-  
 9 panies or department and of the several officers, pro-  
 10 vide for the appointment of officers to have command  
 11 of fire fighting, prescribe what their powers and duties  
 12 shall be, and impose on those who fail or refuse to obey  
 13 any lawful command of such officers any penalty which  
 14 the governing body is authorized by law to impose for  
 15 the violation of an ordinance. It may give authority  
 16 to any such officer or officers to direct the pulling down  
 17 or destroying of any fence, house, building or other  
 18 thing, if deemed necessary to prevent the spreading of  
 19 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  
 2 to prevent the spreading of a fire, as specified in section  
 3 one of this article, shall be entitled to recover from the  
 4 municipality the actual property damage which he may

5 have sustained by reason of the same having been pulled  
6 down or destroyed: *Provided*, That no one shall recover  
7 compensation for property which would have been de-  
8 stroyed by fire, if the same had not been pulled down  
9 or destroyed under direction as specified in section one  
10 of this article, but recovery may be had only for what  
11 could have been saved with ordinary care and diligence  
12 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-  
2 thority to contract to render services in the prevention  
3 and extinguishment of fires upon property located within  
4 three miles of its corporate limits: *Provided*, That no con-  
5 tract entered into under the authority of this section shall  
6 operate to impose any greater or different obligation or  
7 liability upon the municipality than that with respect to  
8 property within its corporate limits: *Provided, however*,  
9 That nothing contained in this section shall be construed  
10 as requiring any municipality to contract to render such  
11 services, but if a municipality shall elect to make such  
12 contract with any property owner, the same shall not be  
13 cancelled or annulled without the consent of such prop-  
14 erty owner, or such owner's successor, so long as the latter  
15 shall not be in default: *Provided further*, That if a mu-  
16 nicipality shall elect to contract with respect to any prop-  
17 erty, it shall, if requested, contract on the basis and terms  
18 contracted with respect to other property located at ap-  
19 proximately the same distance from fireplugs, or other  
20 fixed fire apparatus of said municipality. Any contract  
21 entered into under the authority of this section shall re-  
22 quire the property owner to pay as consideration for said  
23 services an annual payment equivalent to eighty percent  
24 of the annual tax levied for current municipal purposes  
25 upon property within said municipality of like assessed  
26 valuation to the property under contract. No contract  
27 entered into under the authority of this section, and  
28 nothing herein contained, shall be construed as requiring  
29 or permitting any municipality to install or maintain any

30 special or additional apparatus or equipment beyond that  
31 necessary for the protection of property within its cor-  
32 porate limits.

33 The annual payments due under any such contract shall  
34 be payable on or before the first day of October of each  
35 calendar year in which such contract shall remain in  
36 effect, or upon such day as may be hereafter provided as  
37 the due date of the first installment of ad valorem taxes.  
38 If any annual payment shall be in default for a period of  
39 more than thirty days it shall bear interest at the same  
40 rate as that provided for delinquent property taxes, and  
41 shall be a lien upon the property subject to contract, pro-  
42 vided a notice of such lien is recorded in the proper deed  
43 of trust book in the office of the clerk of the county court  
44 of the county in which such property or the major portion  
45 thereof is located. Such lien shall be void at the expira-  
46 tion of one year after such defaulted annual payment  
47 shall have become due, unless within such year a civil  
48 action seeking equitable relief to enforce the same shall  
49 have been instituted by said municipality. The munici-  
50 pality may by civil action collect any annual payment  
51 and the interest thereon at any time within five years  
52 after such payment shall have become due; and upon  
53 default in any annual payment, the municipality may  
54 cancel the contract involved.

55 Any contract made under the authority of this section  
56 shall inure to the benefit of and be binding upon the suc-  
57 cessors in title of the person making the same; and such  
58 person, upon conveying the property subject to such con-  
59 tract, shall no longer be liable under such contract, except  
60 as to annual payments due prior to said conveyance and  
61 remaining unpaid.

62 Any property owner may cancel any such contract with  
63 respect to the property of such owner upon giving a  
64 thirty-day written notice to the municipality, if such  
65 owner is not in default with respect to any annual pay-  
66 ment due thereunder, except that if such notice be given  
67 subsequent to July first of any calendar year, the next  
68 succeeding annual payment shall be made by said prop-  
69 erty owner as soon as the amount thereof is ascertainable.  
70 Upon cancellation as aforesaid, the municipality shall de-

71 liver to the property owner a recordable release dis-  
72 charging such owner and such property from any further  
73 lien or obligation with respect to said annual payments.  
74 The annual payments due under any such contract shall  
75 be made to such officials as the municipality, in such con-  
76 tract, shall designate to receive them, who shall likewise  
77 have authority to receive notice of cancellation, and  
78 execute upon behalf of such municipality the release for  
79 which provision is hereinbefore made.

#### PART II. VOLUNTEER FIRE COMPANIES.

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

1 Any number of persons, not less than twenty nor more  
2 than sixty-four, residing within the corporate limits of a  
3 municipality without a paid fire department may form  
4 themselves into a company for extinguishing fires therein.  
5 A writing stating the formation of such company, with  
6 the names of the members thereof subscribed thereto,  
7 shall be recorded in the office of the clerk of the county  
8 court of the county wherein such municipality or the ma-  
9 jor portion of the territory thereof is located, after which  
10 the members of the company shall elect its officers, includ-  
11 ing a commander, and make rules and regulations for ef-  
12 fecting its object consistent with the laws of the state and  
13 the ordinances of such municipality. A volunteer fire  
14 company shall be subject to the authority of the govern-  
15 ing body.

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

1 Every member of a volunteer fire company shall, upon  
2 any alarm of fire, attend, according to the ordinances of  
3 the municipality and the company's rules and regulations,  
4 and endeavor to extinguish the fire.  
5 In addition to the meetings required by the ordinances  
6 of the municipality and the rules and regulations of the  
7 company, semiannual meetings of the company shall be  
8 held in April and October, on such days as the com-  
9 mander thereof may appoint, to examine the state of the  
10 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.

**§8-15-6. Dissolution of volunteer fire company.**

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. When-  
11 ever 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 obligations; dissolution.**

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

14 laws of this state to bring about the dissolution of such  
15 corporation. Upon the entry of any such order, it shall be  
16 the duty of the members of such corporation to comply  
17 therewith.

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

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

PART III. PAID FIRE DEPARTMENTS.

**§8-15-9. Establishment and maintenance of paid fire department.**

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

**§8-15-10. Hours of duty for firemen in a paid fire department.**

1 The members of a paid fire department shall not be re-  
2 quired to remain on duty in excess of one hundred twenty  
3 hours during any fourteen consecutive days' period. The  
4 members of any such paid fire department shall, by major-  
5 ity vote, determine the schedule of hours to be worked in  
6 any twenty-four hour period: *Provided*, That the mem-  
7 bers of any paid fire department shall not remain on duty  
8 for more than twenty-four consecutive hours except in  
9 case of a conflagration requiring the service of more than  
10 one-half of the department. The chief executive officer

11 of the department is hereby empowered, authorized and  
12 directed to make the necessary assignments as provided  
13 in this section.

#### 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.**

1 All appointments and promotions to all positions in all  
2 paid fire departments shall be made only according to  
3 qualifications and fitness to be ascertained by examina-  
4 tions, which, so far as practicable, shall be competitive, as  
5 hereinafter provided. No individual shall be appointed,  
6 promoted, reinstated, removed, discharged, suspended or  
7 reduced in rank or pay as a paid member of any paid fire  
8 department, regardless of rank or position, in any manner  
9 or by any means other than those prescribed in the follow-  
10 ing sections of this article: *Provided*, That in all municipi-  
11 talities in which the office of fire chief of a paid fire de-  
12 partment was not covered by the provisions of former  
13 article six-a of this chapter on the first day of January,  
14 one thousand nine hundred forty-nine, such office in such  
15 municipality shall be excepted from the civil service pro-  
16 visions of this article fifteen until such time as the gov-  
17 erning body of said municipality shall, by appropriate  
18 ordinance or resolution adopted by a majority of its mem-  
19 bers, elect to place the office of fire chief under the civil  
20 service provisions of this article; but until the office of  
21 any such fire chief is placed under the civil service pro-  
22 visions of this article by said governing body as afore-  
23 said, the member of any such paid fire department now  
24 occupying such office or hereafter appointed to such office  
25 shall in all cases of removal, except for removal for good  
26 cause, revert to the status he held in such paid fire depart-  
27 ment at the time of his appointment to the office of such  
28 fire chief. The term "appointing officer" as used in the  
29 following sections of this article shall be construed to  
30 mean the municipal officer in whom the power of appoint-

31 ment of members of a paid fire department is vested by  
32 charter provision or ordinance of the municipality.

**§8-15-12. Firemen's civil service commission created.**

1 In every municipality having a paid fire department,  
2 there shall be a "Firemen's Civil Service Commission."  
3 The commission shall consist of three commissioners, one  
4 of whom shall be appointed by the mayor of the municipi-  
5 pality; one of whom shall be appointed by the local trades  
6 board in the event that said board shall exist in the mu-  
7 nicipality, or in case no such board exists in the municipi-  
8 pality, then by the paid international association of fire  
9 fighters; and the third shall be appointed by the local  
10 chamber of commerce, or if there be none, by a local  
11 businessmen's association. The individuals appointed com-  
12 missioners shall be qualified voters of the municipality  
13 for which they are appointed; and at least two of said  
14 commissioners shall be individuals in full sympathy with  
15 the purposes of the civil service provisions of this article.  
16 Not more than two of the said commissioners, at any one  
17 time, shall be adherents of the same political party. Of  
18 the three original appointments in each municipality, the  
19 first commissioner shall be appointed by the mayor and  
20 shall serve for six years from the date of his appoint-  
21 ment; the second commissioner shall be appointed by the  
22 local trades board, or in the absence of such board, by  
23 the international association of fire fighters, and shall  
24 serve for four years from the date of his appointment;  
25 and the third commissioner shall be appointed by the  
26 local chamber of commerce or local businessmen's associa-  
27 tion and shall serve for two years from the date of his  
28 appointment. In the event there is no local chamber of  
29 commerce or local businessmen's association at the time  
30 any appointment is to be made by it, such appointment  
31 shall be made by the other two commissioners by mutual  
32 agreement. After the original appointments, all appoint-  
33 ments shall be made for periods of four years each by the  
34 appointing authority hereinbefore designated. In the  
35 event that any commissioner of said civil service commis-  
36 sion shall cease to be a member thereof by virtue of  
37 death, final removal or other cause, a new commissioner

38 shall be appointed to fill the unexpired term of said com-  
39 missioner within ten days after said ex-commissioner  
40 shall have ceased to be a member of said commission.  
41 Such appointment shall be made by the officer or body  
42 who in the first instance appointed the commissioner who  
43 is no longer a member of the commission. Each year the  
44 three members of the commission shall, together, elect  
45 one of their number to act as president of the commission,  
46 who shall serve as president for one year. The mayor  
47 may, at any time, remove any commissioner or commis-  
48 sioners for good cause, which shall be stated in writing  
49 and made a part of the records of the commission: *Pro-*  
50 *vided*, That once the mayor has removed any commis-  
51 sioner, the mayor shall within ten days thereafter file in  
52 the office of the clerk of the circuit court of the county in  
53 which the municipality or the major portion of the terri-  
54 tory thereof is located a petition setting forth in full the  
55 reason for said removal and praying for the confirmation  
56 by said circuit court of the action of the mayor in so re-  
57 moving the said commissioner. A copy of said petition  
58 shall be served upon the commissioner so removed simul-  
59 taneously with its filing in the office of the clerk of the  
60 circuit court and shall have precedence on the docket of  
61 said court and shall be heard by said court as soon as  
62 practicable upon the request of the removed commis-  
63 sioner or commissioners. All rights herein vested in said  
64 circuit court may be exercised by the judge thereof in  
65 vacation. In the event that no term of the circuit court  
66 is being held at the time of the filing of said petition, and  
67 the judge thereof cannot be reached in the county where-  
68 in the petition was filed, said petition shall be heard at  
69 the next succeeding term of said circuit court, whether  
70 regular or special, and the commissioner or commissioners  
71 so removed shall remain removed until a hearing is had  
72 upon the petition of the mayor. The court or the judge  
73 thereof in vacation shall hear and decide the issues pre-  
74 sented by said petition. The mayor or commissioner or  
75 commissioners, as the case may be, against whom the  
76 decision of the court or the judge thereof in vacation shall  
77 be rendered, shall have the right to petition the supreme  
78 court of appeals for a review of the decision of the circuit

79 court or the judge thereof in vacation as in other civil  
80 cases. In the event that the mayor shall fail to file his  
81 petition in the office of the clerk of the circuit court, as  
82 hereinbefore provided, within ten days after the removal  
83 of said commissioner or commissioners, such commission-  
84 er or commissioners shall immediately resume his or  
85 their position or positions as a member or members of the  
86 firemen's civil service commission.

87 Any resident of the municipality shall have the right  
88 at any time to file charges against and seek the removal of  
89 any member of the firemen's civil service commission of  
90 such municipality. Such charges shall be filed in the form  
91 of a petition in the office of the clerk of the circuit court of  
92 the county in which the municipality or the major por-  
93 tion of the territory thereof is located, and a copy of said  
94 petition shall be served upon the commissioner or com-  
95 missioners sought to be removed. Said petition shall be  
96 matured for hearing and heard by said circuit court or the  
97 judge thereof in vacation in the same manner as civil  
98 proceedings in the circuit courts of this state are heard,  
99 and the party against whom the circuit court's decision is  
100 rendered shall have the right to petition the supreme  
101 court of appeals for a review of the action of the circuit  
102 court, as in other civil cases.

103 No commissioner shall hold any other office (other than  
104 the office of notary public) under the United States, this  
105 state or any municipality, county or other political sub-  
106 division thereof; nor shall any commissioner serve on any  
107 political committee or take any active part in the manage-  
108 ment of any political campaign.

**§8-15-13. Recorder ex officio clerk of commission; clerical and  
and stenographic services.**

1 The recorder of the municipality shall be ex officio clerk  
2 of the firemen's civil service commission and shall supply  
3 to the commission without extra compensation all neces-  
4 sary clerical and stenographic services for the work of the  
5 commission.

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

1 It shall be the duty of the mayor and the heads of the

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

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

**§8-15-15. Powers, authority and duties of firemen's civil serv-  
ice commission.**

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 effec-  
16 tive 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

21 commission or by any officer having authority to make ap-  
22 pointments to office, shall be kept and preserved for a  
23 period of ten years, and all such records, recommenda-  
24 tions of former employees excepted, and all written causes  
25 of removal, filed with it, shall, subject to reasonable regu-  
26 lation, be open to public inspection.

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

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

62 fore the said commissioners, or any one of them, and shall  
63 have the power to punish any such contempt.

64 (5) Make an annual report to the mayor showing its  
65 own actions, and its rules and regulations, and all of the  
66 exceptions thereto in force, and the practical effects there-  
67 of, and any suggestions it may have for the more effectual  
68 accomplishment of the purposes of the civil service pro-  
69 visions of this article. Such report shall be made available  
70 for public inspection within five days after the same shall  
71 have been delivered to the mayor of the municipality.

**§8-15-16. Rules and regulations for all examinations; proba-  
tionary appointments.**

1 The firemen's civil service commission in each mu-  
2 nicipality shall make rules and regulations providing for  
3 both competitive and medical examinations for appoint-  
4 ments and promotions to all positions in the paid fire  
5 department in such municipality, and for such other  
6 matters as are necessary to carry out the purposes of the  
7 civil service provisions of this article. Any such com-  
8 mission shall have the power and authority to require  
9 by rules and regulations a physical fitness examination  
10 as a part of its competitive examination or as a part  
11 of its medical examination. Due notice of the contents  
12 of such rules and regulations and of any modifications  
13 thereof shall be given, by mail, in due season, to the  
14 appointing officer; and said rules and regulations and  
15 any modifications thereof shall also be printed for public  
16 distribution. All original appointments to any positions  
17 in a paid fire department subject to the civil service  
18 provisions of this article shall be for a probationary  
19 period of six months: *Provided*, That at any time dur-  
20 ing the probationary period the probationer may be dis-  
21 charged for just cause, in the manner provided in section  
22 twenty-five of this article. If, at the close of this proba-  
23 tionary term, the conduct or capacity of the probationer  
24 has not been satisfactory to the appointing officer, the  
25 probationer shall be notified, in writing, that he will  
26 not receive absolute appointment, whereupon his em-  
27 ployment shall cease; otherwise, his retention in the  
28 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 mu-  
2 nicipality shall require individuals applying for admission  
3 to any competitive examination provided for under the  
4 civil service provisions of this article or under the rules  
5 and regulations of said commission to file in its office,  
6 within a reasonable time prior to the proposed exami-  
7 nation, a formal application in which the applicant shall  
8 state under oath or affirmation:

9 (1) His full name, residence and post-office address;

10 (2) His United States citizenship, age and the place  
11 and date of his birth;

12 (3) His state of health, and his physical capacity for  
13 the public service;

14 (4) His business and employments and residences for  
15 at least three previous years; and

16 (5) Such other information as may reasonably be  
17 required, touching upon the applicant's qualifications  
18 and fitness for the public service.

19 Blank forms for such applications shall be furnished  
20 by the commission, without charge, to all individuals  
21 requesting the same. The commission may require, in  
22 connection with such application, such certificates of  
23 citizens, physicians and others, having pertinent knowl-  
24 edge concerning the applicant, as the good of the service  
25 may require.

26 No application for original appointment shall be re-  
27 ceived if the individual applying is less than twenty-  
28 one years of age or more than thirty-five years of age  
29 at the date of his application: *Provided*, That in the  
30 event any applicant formerly served upon the paid  
31 fire department of the municipality to which he makes  
32 application, for a period of more than six months, and  
33 resigned from the department at a time when there were  
34 no charges of misconduct or other misfeasance pending  
35 against such applicant, within a period of two years next  
36 preceding the date of his application, and at the time of  
37 his application resides within the corporate limits of the  
38 municipality in which the paid fire department to which he  
39 seeks appointment by reinstatement is located, then

40 such individual shall be eligible for appointment by  
41 reinstatement in the discretion of the firemen's civil  
42 service commission, even though such applicant shall  
43 be over the age of thirty-five years, and such applicant,  
44 providing his former term of service so justifies, may  
45 be appointed by reinstatement to the paid fire depart-  
46 ment without a competitive examination, but such ap-  
47 plicant shall undergo a medical examination; and if such  
48 individual shall be so appointed by reinstatement to the  
49 paid fire department, he shall be the lowest in rank in  
50 the department next above the probationers of the de-  
51 partment.

52 Any applicant for original appointment must have  
53 been a resident for one year, during some period of time  
54 prior to the date of his application, of the municipality in  
55 which he seeks to become a member of the paid fire de-  
56 partment: *Provided*, That if the commission deems it  
57 necessary it may consider for original appointment appli-  
58 cants who are not residents of the municipality but who  
59 have been residents of the county in which the munici-  
60 pality or any portion of the territory thereof is located for  
61 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.**

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

11 Adequate public notice of the date, time and place of  
12 every competitive examination, together with informa-  
13 tion as to the kind of position to be filled, shall be given  
14 at least one week prior to such competitive examination.  
15 The said commission shall adopt reasonable rules and

16 regulations for permitting the presence of representatives  
17 of the press at any such competitive examination. The  
18 commission shall post, in a public place at its office, the  
19 eligible list, containing the names and grades of those who  
20 have passed such competitive examinations for positions  
21 in the paid fire department, and shall indicate thereon  
22 such appointments as may be made from said list.

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

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

1 The commission may refuse to examine an applicant,  
2 or after examination to certify as eligible one, who is  
3 found to lack any of the established preliminary require-  
4 ments for the examination or position for which he ap-  
5 plies; or who is physically so disabled as to be rendered  
6 unfit for the performance of the duties of the position  
7 desired; or who is addicted to the habitual use of intoxi-  
8 cating liquors or drugs; or who has been guilty of any  
9 crime or of infamous or notoriously disgraceful conduct;  
10 or who has been dismissed from public service for de-  
11 linquency or misconduct; or who has made a false state-  
12 ment of any material fact, or practiced or attempted to  
13 practice any deception or fraud, in his application, in any

14 such examination, or in securing his eligibility; or who  
15 refuses to comply with the rules and regulations of the  
16 commission.

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

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

1 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  
2 the firemen's civil service commission of any vacancy in  
3 a position which he desires to fill, and shall request the  
4 certification of eligibles. The commission shall forthwith  
5 certify, from the eligible list, the names of the three indi-  
6 viduals thereon who received the highest averages at  
7 preceding competitive examinations held under the civil  
8 service provisions of this article within a period of three  
9 years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole  
10 reference to the relative merit and fitness of the candi-  
11 dates, make an appointment from the three names so  
12  
13  
14

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 ics, 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-

11 petitive examination, in the manner prescribed in section  
12 twenty of this article; but such provisional appointment  
13 shall not continue for a longer period than three months,  
14 nor shall successive provisional appointments be made  
15 to the same position, under the provisions of this section.

**§8-15-22. Vacancies filled by promotions; eligibility for promotion.**

1 Vacancies in positions in a paid fire department shall be  
2 filled, so far as practicable, by promotions from among  
3 individuals holding positions in the next lower grade in  
4 the department. Promotions shall be based upon merit  
5 and fitness to be ascertained by competitive examinations  
6 to be provided by the firemen's civil service commission  
7 and upon the superior qualifications of the individuals  
8 promoted, as shown by their previous service and ex-  
9 perience: *Provided*, That no individual shall be eligible  
10 for promotion from the lower grade to the next higher  
11 grade until such individual shall have completed at least  
12 two years' service in the next lower grade in the depart-  
13 ment. The commission shall have the power to determine  
14 in each instance whether an increase in salary constitutes  
15 a promotion.

**§8-15-23. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.**

1 No question in any form of application or in or during  
2 any examination shall be so framed as to elicit informa-  
3 tion concerning the political or religious opinions or  
4 affiliations of any applicant; nor shall inquiry be made  
5 concerning such opinions or affiliations; and all disclo-  
6 sures thereof shall be discountenanced. No discrimination  
7 shall be exercised, threatened or promised by any indi-  
8 vidual in a paid fire department against, or in favor of, an  
9 applicant, eligible, or member of a paid fire department  
10 because of his political or religious opinions or affiliations.

**§8-15-24. Political activity of members of paid fire departments prohibited.**

1 No member of any paid fire department shall engage  
2 in any political activity of any kind, character or nature

3 whatsoever, except to cast his vote at any election, or  
4 shall act as an election official in any election, municipal,  
5 county or state. Any member of any paid fire department  
6 violating the provisions of this section shall have his ap-  
7 pointment vacated and he shall be removed, in accordance  
8 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.**

1 (a) No member of any paid fire department subject  
2 to the civil service provisions of this article shall be  
3 removed, discharged, suspended or reduced in rank or  
4 pay except for just cause, which shall not be religious  
5 or political, except as hereinbefore provided in section  
6 twenty-four of this article; and no such member shall  
7 be removed, discharged, suspended or reduced except as  
8 provided by the civil service provisions of this article, and  
9 in no event until he shall have been furnished with a  
10 written statement of the reasons for such action. For  
11 the purpose of the remainder of this subsection and sub-  
12 sections (b) and (c) of this section, the term "suspension"  
13 shall mean only (1) a suspension in excess of fifteen  
14 days, or (2) a suspension in any calendar year which  
15 when added to any previous suspension or suspensions  
16 within the same calendar year results in a total period  
17 of suspension in excess of fifteen days within such same  
18 calendar year, and for the purpose of the remainder of  
19 this subsection and said subsections (b) and (c), a  
20 member shall not be considered to be suspended or  
21 sought to be suspended unless his suspension meets the  
22 foregoing definition of said term. In every case of such  
23 removal, discharge, suspension or reduction, a copy of  
24 the statement of reasons therefor and of the written  
25 answer thereto, if the member sought to be removed,  
26 discharged, suspended or reduced desires to file such  
27 written answer, shall be furnished to the firemen's civil  
28 service commission and entered upon its records. If the  
29 member sought to be removed, discharged, suspended  
30 or reduced shall demand it, the commission shall grant  
31 him a public hearing, which hearing shall be held within  
32 a period of ten days from the filing of the charges in

33 writing or the written answer thereto, whichever shall  
34 last occur. At such hearing the burden shall be upon  
35 the removing, discharging, suspending or reducing offi-  
36 cer, hereinafter in this section referred to as "removing  
37 officer," to justify his action, and in the event the re-  
38 moving officer fails to justify his action before the com-  
39 mission, then the member removed, discharged, sus-  
40 pended or reduced shall be reinstated with full pay,  
41 forthwith and without any additional order, for the  
42 entire period during which he may have been prevented  
43 from performing his usual employment, and no charges  
44 shall be officially recorded against his record. A written  
45 record of all testimony taken at such hearing shall be  
46 kept and preserved by the commission, which record  
47 shall be sealed and not be open to public inspection, if  
48 no appeal be taken from the action of the commission.

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

72 (c) The removing officer and the member sought to  
73 be removed, discharged, suspended or reduced shall at

74 all times, both before the commission and upon appeal,  
75 be given the right to employ counsel to represent them.  
76 (d) If for reasons of economy or other reasons it  
77 shall be deemed necessary by any such municipality to  
78 reduce the number of paid members of its paid fire  
79 department, said municipality shall follow the procedure  
80 set forth in this subsection (d). The reduction in  
81 members of the said paid fire department of said mu-  
82 nicipality shall be effected by suspending the last man  
83 or men, including probationers, who have been appointed  
84 to said paid fire department. Such removal shall be  
85 accomplished by suspending the number desired in the  
86 inverse order of their appointment: *Provided*, That in  
87 the event the said paid fire department shall again be  
88 increased in numbers to the strength existing prior to  
89 such reduction of members the said members suspended  
90 under the terms of this subsection shall be reinstated  
91 in the inverse order of their suspension before any new  
92 appointment to said paid fire department shall be made.

**§8-15-26. Offenses and penalties.**

1 Any individual who makes an appointment or promo-  
2 tion to any position, or selects an individual for employ-  
3 ment, contrary to the civil service provisions of this arti-  
4 cle, or wilfully refuses or neglects otherwise to comply  
5 with, or to conform to, any of the civil service provisions  
6 of this article, or violates any of such provisions, shall be  
7 deemed guilty of a misdemeanor.

8 Any commissioner or examiner, or any other individ-  
9 ual, who shall wilfully, by himself or in cooperation with  
10 one or more persons, defeat, deceive or obstruct any in-  
11 dividual with respect to his right of examination or regis-  
12 tration according to the civil service provisions of this  
13 article, or to any rules and regulations prescribed pur-  
14 suant thereto, or who shall wilfully or corruptly, falsely  
15 mark, grade, estimate, or report upon any such examina-  
16 tion or proper standing of any individual so examined,  
17 registered or certified, pursuant to the civil service pro-  
18 visions of this article, or aid in so doing, or who shall  
19 wilfully or corruptly furnish to any individual any special  
20 or secret information, for the purpose of either improv-

21 ing or injuring the prospects or chances of appointment  
22 or promotion to any position of any individual so exam-  
23 ined, registered or certified, or to be so examined, regis-  
24 tered or certified, or who shall impersonate any other  
25 individual, or permit or aid in any manner any other  
26 individual to impersonate him, in connection with any  
27 such examination or registration, or application or re-  
28 quest to be examined or registered, shall, for each offense,  
29 be deemed guilty of a misdemeanor.

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

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

1 All acts, whether general, special, local or special legis-  
2 lative charters, or parts thereof, in relation to any civil  
3 service measure affecting any paid fire department incon-  
4 sistent with the civil service provisions of this article  
5 shall be, and the same are, hereby repealed insofar as such  
6 inconsistencies shall exist. It is intended by the civil  
7 service provisions of this article to furnish a complete and  
8 exclusive system for the appointment, promotion, rein-  
9 statement, removal, discharge, suspension and reduction  
10 of all members of all paid fire departments in all munici-  
11 palities. The status or tenure of all members of any paid  
12 fire department, which members were employed on the  
13 effective date of this article, shall not be affected by the  
14 enactment of this article, but all such members shall be  
15 subject to all of the civil service provisions of this article  
16 with like effect as if they had been appointed members  
17 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.**

1 As used in this article, the terms "municipal public

2 works" or "works" or "projects" shall be construed to  
3 mean and include the construction, reconstruction, es-  
4 tablishment, acquisition, improvement, renovation, ex-  
5 tension, enlargement, increase, equipment, maintenance,  
6 repair (including replacements) and operation of jails,  
7 jail facilities, municipal buildings, police stations, fire  
8 stations, libraries, museums, other public buildings, in-  
9 cinerator plants, land fill or other garbage disposal sys-  
10 tems, hospitals, piers, docks, terminals, airports, drain-  
11 age systems, flood control systems, flood walls, culverts,  
12 bridges (including approaches, causeways, viaducts, un-  
13 derpasses and connecting roadways), public markets,  
14 cemeteries, motor vehicle parking facilities (including  
15 parking lots, buildings, ramps, curb-line parking, meters  
16 and other facilities deemed necessary, appropriate, use-  
17 ful, convenient or incidental to the regulation, control  
18 and parking of motor vehicles), stadiums, gymnasiums,  
19 sports arenas, auditoriums, public recreation centers,  
20 public recreation parks, swimming pools, roller skating  
21 rinks, ice skating rinks, tennis courts, golf courses, polo  
22 grounds, or the grading, regrading, paving, repaving, sur-  
23 facing, resurfacing, curbing, recurbing, widening or other-  
24 wise improving of any street, avenue, road, alley or way,  
25 or the building or renewing of sidewalks, where such  
26 works or projects will be made self-supporting, and the  
27 cost thereof, together with the interest thereon, will be  
28 returned within a reasonable period, not exceeding forty  
29 years, by means of tolls, fees, rents, special assessments  
30 or charges other than taxation; and the terms shall mean  
31 and include any work or project as a whole, and all  
32 integral parts thereof, including all necessary, appro-  
33 priate, useful, convenient or incidental appurtenances and  
34 equipment in connection with any one or more of the  
35 above.

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

1 Every municipality is and any two or more municipi-  
2 palities acting jointly, whether situate in the same county  
3 or different counties; are, hereby empowered and au-  
4 thorized to construct, reconstruct, establish, acquire,

5 improve, renovate, extend, enlarge, increase, own, equip,  
6 repair (including replacements), maintain and operate  
7 any municipal public works, together with all appur-  
8 tenances necessary, appropriate, useful, convenient or  
9 incidental for or to the maintenance and operation of  
10 such works, and shall have plenary power and authority  
11 to acquire by gift, grant, purchase, condemnation or other-  
12 wise, and thereafter hold, all necessary lands, rights,  
13 easements, rights of way, franchises and other property  
14 therefor within or without, or partly within and partly  
15 without, the corporate limits of any such municipality  
16 or municipalities, and to issue revenue bonds to pay the  
17 costs of such public works and properties: *Provided,*  
18 That this section shall not be construed to authorize any  
19 municipality to construct, reconstruct, establish, acquire,  
20 improve, renovate, extend, enlarge, increase, own, equip,  
21 repair (including replacements), maintain or operate any  
22 works which would render a service already being ade-  
23 quately rendered within such municipality. No obli-  
24 gation shall be incurred by any municipality in such  
25 construction, reconstruction, establishment, acquisition,  
26 improvement, renovation, extension, enlargement or in-  
27 crease, except such as is payable solely from the funds  
28 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  
2 parking facility, any municipality involved therein shall  
3 have the plenary power and authority, in order to help  
4 finance the same, to use any revenue derived from other  
5 parking meters or other parking facilities, unless such  
6 revenue is otherwise pledged to pay for such other park-  
7 ing meters or other parking facilities.

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

14 When the cost of the municipal public works is to be

15 paid by special assessment against the abutting prop-  
16 erty, represented by assessment certificates which con-  
17 stitute a lien upon such property and said assessment  
18 certificates are pledged by any municipality to retire  
19 revenue bonds issued and sold to pay the cost thereof,  
20 the payor of such assessment certificate shall have the  
21 right to pay the same at any time before maturity, to-  
22 gether with interest thereon to date of payment, and  
23 upon the payment of such assessment certificate the treas-  
24 urer of such municipality shall deliver to the payor a  
25 release for such lien, and the funds received therefrom  
26 shall by said treasurer be deposited in a special fund to  
27 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.**

1 The construction, reconstruction, establishment, ac-  
2 quisition, improvement, renovation, extension, enlarge-  
3 ment, increase, equipment, repair (including replace-  
4 ments), custody, maintenance and operation of any such  
5 works, and the collection of revenues therefrom, shall  
6 be under the supervision and control of the governing  
7 body, or of a committee, by whatever name called, com-  
8 posed of all or a portion of the governing body when  
9 only one municipality is involved, or of a board or  
10 commission appointed by such governing body when  
11 only one municipality is involved or appointed by the  
12 governing bodies when two or more municipalities take  
13 joint action under the provisions of this article, as may  
14 be provided by the governing body or bodies.

15 When such supervision and control are vested in a  
16 committee, board or commission, the governing body or  
17 bodies, as the case may be, may provide, by ordinance  
18 or ordinances, for said committee, board or commission  
19 to exercise such of the functions of the governing body  
20 or bodies in connection with the matter as it or they  
21 deem proper, and may provide for said committee, board  
22 or commission to receive such compensation as such  
23 body or bodies may deem proper, all of which author-  
24 ity and compensation shall be specifically provided for

25 by ordinance or ordinances. Any such committee, board  
26 or commission shall consist of the number of members  
27 fixed in the ordinance or ordinances creating the same,  
28 and the manner and mode of the selection and appoint-  
29 ment of the members of any such board or commission  
30 shall be stated in such ordinance or ordinances. The  
31 members of any such board or commission appointed  
32 by the governing body or bodies shall be chosen without  
33 regard to their political affiliations, but with regard to  
34 their business and professional experience or standing  
35 as citizens in the community. All compensation and ex-  
36 penses, including attorney's fees, of such committee, board  
37 or commission shall be paid solely from funds provided  
38 under the authority of this article. Any such committee,  
39 board or commission shall have the power to establish  
40 bylaws, rules and regulations for its own government.

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

54 The governing body or bodies also, in its or their dis-  
55 cretion, may provide by ordinance or ordinances for the  
56 leasing of a municipal public works and provide for the  
57 custody, maintenance and operation thereof by a lessee  
58 in accordance with the provisions of such ordinance or  
59 ordinances and lease contract executed pursuant thereto:  
60 *Provided*, That the lessee shall pay to the municipality  
61 or municipalities for the use and occupancy of such  
62 municipal public works so leased an amount sufficient  
63 to provide a sinking fund for the payment of the bonds  
64 and the interest thereon and all other charges mentioned  
65 in section seventeen of this article.

## PART III. GENERAL POWERS AND AUTHORITY.

## §8-16-5. Powers of board.

1 The board shall have plenary power and authority to  
2 take all steps and proceedings, and to make and enter  
3 into all contracts or agreements necessary, appropriate,  
4 useful, convenient or incidental to the performance of  
5 its duties and the execution of its powers and authority  
6 under this article: *Provided*, That any contract or agree-  
7 ment relating to the financing, or the construction, re-  
8 construction, establishment, acquisition, improvement,  
9 renovation, extension, enlargement, increase or equip-  
10 ment of any such works, and any trust indenture with  
11 respect thereto as hereafter provided for, shall be ap-  
12 proved by the governing body or bodies.

13 The board may employ engineers, architects, inspec-  
14 tors, superintendents, managers, collectors, attorneys and  
15 such other employees as in its judgment may be neces-  
16 sary in the execution of its powers and duties, and may  
17 fix their compensation, all of whom shall do such work  
18 as the board may direct. All such compensation and  
19 expenses incurred in carrying out the provisions of this  
20 article shall be paid solely from funds provided under  
21 the authority of this article, and the board shall not exer-  
22 cise or carry out any power or authority herein given  
23 it so as to bind said board or any municipality beyond  
24 the extent to which money shall have been, or may be  
25 provided under the authority of this article. No contract  
26 or agreement with any contractor or contractors for labor  
27 or materials, or both, exceeding in amount the sum of  
28 one thousand dollars shall be made without advertising  
29 for bids, which bids shall be publicly opened and an  
30 award made to the lowest responsible bidder, with power  
31 and authority in the board to reject any and all bids.  
32 After the construction, reconstruction, establishment,  
33 acquisition, renovation or equipment of any such works,  
34 the board shall maintain, operate, manage and control  
35 the same, and may order and complete any improvements,  
36 extensions, enlargements, increase or repair (including  
37 replacements) of and to the works that the board may  
38 deem expedient, if funds therefor be available, or are

39 made available, as provided in this article, and shall  
40 establish rules and regulations for the use, maintenance  
41 and operation of the works, and do all things necessary  
42 or expedient for the successful operation thereof. All  
43 public ways or public works damaged or destroyed by  
44 the board in carrying out its authority under this article  
45 shall be restored or repaired by the board and placed in  
46 their original condition, as nearly as practicable, if re-  
47 quested so to do by proper authority, out of the funds  
48 provided under the authority of this article.

**§8-16-6. Preliminary expenses.**

1 All necessary preliminary expenses actually incurred  
2 by the board of any municipality or municipalities in the  
3 making of surveys or estimates of cost and of revenues,  
4 employment of engineers or other employees, the giving  
5 of notices, the taking of options, and all other expenses of  
6 whatsoever nature necessary to be paid prior to the issue,  
7 sale and delivery of the revenue bonds herein provided  
8 for, may be paid by the municipality or municipalities, to  
9 be reimbursed and repaid out of the proceeds of the sale  
10 of such revenue bonds to be used for the construction, re-  
11 construction, establishment, acquisition, improvement, re-  
12 novation, extension, enlargement, increase, equipment or  
13 repair (including replacements) of such works as here-  
14 inafter provided.

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

1 Before any municipality or municipalities shall, under  
2 the provisions of this article, construct, reconstruct, estab-  
3 lish, acquire, improve, renovate, extend, enlarge, increase,  
4 equip or repair (including replacements) any municipal  
5 public works, the governing body, or the governing body  
6 of each participating municipality, shall enact an or-  
7 dinance or ordinances, which shall (a) set forth a brief and  
8 general description of the works, including a reference to  
9 the preliminary report or plans and specifications which  
10 shall theretofore have been prepared; (b) set forth the  
11 estimated cost thereof; (c) order the construction, recon-  
12 struction, establishment, acquisition, improvement, re-  
13 novation, extension, enlargement, increase, equipment or

14 repair (including replacements) of such works; (d) direct  
15 that municipal revenue bonds be issued pursuant to this  
16 article, in such amount as may be found necessary to pay  
17 the cost of the works; and (e) contain such other provi-  
18 sions as may be necessary or proper in the premises.  
19 When two or more municipalities take joint action under  
20 the provisions of this article, a certified copy of each such  
21 ordinance shall be filed in the office of the clerk of the  
22 county court of the county or counties in which the mu-  
23 nicipalities are located and in the office of the state tax  
24 commissioner, and when any such municipality is located  
25 in more than one county, the filing for that municipality  
26 shall be in the office of the clerk of the county court in  
27 which the major portion of the territory of such munici-  
28 pality is located. Before any such ordinance shall become  
29 effective, it shall be published as a Class II legal adver-  
30 tisement in compliance with the provisions of article  
31 three, chapter fifty-nine of this code, and the publication  
32 area for such publication shall be such municipality or  
33 each such municipality, as the case may be. Said notice  
34 shall specify a date, time and place for a public hearing,  
35 the date being not less than ten days after the first publi-  
36 cation of said notice at which time and place all parties  
37 and interests may appear before the governing body of  
38 the municipality or each such municipality and may be  
39 heard as to whether or not said ordinance shall be put into  
40 effect. At such hearing all objections and suggestions shall  
41 be heard and the governing body or each such governing  
42 body shall take such action as it or they shall deem proper  
43 in the premises: *Provided*, That if at any such hearing  
44 written protest is filed by thirty percent or more of the  
45 freeholders of the municipality for which the hearing is  
46 held, then the governing body of said municipality shall  
47 not take further action unless four-fifths of the members  
48 of said governing body assent thereto: *Provided, however*,  
49 That in case written protest is filed by thirty percent or  
50 more of the freeholders as herein provided, any such gov-  
51 erning body shall have authority to appoint a committee  
52 to consist of one proponent, one opponent and the third  
53 to be selected by these two, to determine whether or not  
54 thirty percent of the freeholders have in fact protested

55 and said committee shall report its findings to any such  
56 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-

37 *ever*, That the exercise of such option, or the contract for  
38 such purchase, or such purchase shall in no event create  
39 any obligation of any such municipality, or create any  
40 debt, liability or claim, except such as may be discharged  
41 or paid from the funds provided under the authority of  
42 this article.

43 In the event of the acquisition of any works already  
44 constructed by purchase or condemnation, the board at  
45 or before the time of the adoption of any ordinance de-  
46 scribed in section seven hereof, shall cause to be deter-  
47 mined what reconstruction, improvement, renovation, ex-  
48 tension, enlargement, increase, equipment or repair (in-  
49 cluding replacements) will be necessary, in order that  
50 such works may be effective for their purpose, and an  
51 estimate of the cost thereof shall be included in the esti-  
52 mate of the cost required by section seven hereof, and the  
53 same shall be made upon the acquisition of the works and  
54 as a part of the cost thereof: *Provided further*, That no  
55 municipality or municipalities shall, under the authority  
56 conferred by this article, condemn any existing privately  
57 owned works in operation at the date of the condemna-  
58 tion.

#### PART V. REVENUE BOND FINANCING.

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

1 Whenever any municipality or municipalities now, or  
2 hereafter, shall own and maintain and operate any of the  
3 works herein referred to, whether constructed, recon-  
4 structed, established or acquired under the provisions of  
5 this article or not, and shall desire to improve, renovate,  
6 extend, enlarge, increase, equip or repair (including re-  
7 placements) the same, it may issue revenue bonds, under  
8 the provisions of this article, to pay for the same, and the  
9 procedure therefor, including fixing all rates and the com-  
10 putation of the amount thereof, shall be the same as in  
11 this article provided for the issuance of bonds for the  
12 construction, reconstruction, establishment or acquisition  
13 of any such works in or by any such municipality which  
14 has not theretofore owned and maintained and operated  
15 any such works: *Provided*, That no existing obligations  
16 or rights shall be affected or impaired thereby.

**§8-16-10. Items of expense included in cost of works.**

1 The cost of the works shall be deemed to include the  
2 cost of construction, reconstruction, establishment or ac-  
3 quisition thereof, the cost of all land, rights, easements,  
4 rights of way, franchises and other property, real or per-  
5 sonal, deemed necessary, appropriate, useful, convenient  
6 or incidental therefor or thereto and for the improvement,  
7 renovation, extension, enlargement, increase, equipment  
8 or repair (including replacements) determined upon; the  
9 interest upon bonds prior to and during the project and  
10 for six months after completion thereof; engineering and  
11 legal expense; expenses for estimates of cost and of reve-  
12 nues; expenses for plans, specifications and surveys; other  
13 expenses necessary or incident to determining the feasi-  
14 bility or practicability of the enterprise; administrative  
15 expenses; and such other expenses as may be necessary or  
16 incident to the financing herein authorized, the project,  
17 the placing of the works in operation and the performance  
18 of the things herein required or permitted in connection  
19 with any thereof.

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

1 Nothing in this article contained shall be so construed  
2 as to authorize or permit any municipality or municipi-  
3 palities to make any contract or incur any obligation of  
4 any kind or nature, except such as shall be discharged or  
5 payable solely from the funds provided under the author-  
6 ity of this article. Funds for the payment of the entire  
7 cost of the works shall be provided by the issuance of  
8 revenue bonds of the municipality or municipalities, the  
9 principal and interest of which bonds shall be payable  
10 solely from the special fund for such payment herein pro-  
11 vided for, and said bonds shall not in any respect be a  
12 corporate indebtedness of such municipality or municipi-  
13 palities. All such bonds and the interest thereon, and all  
14 properties and revenues and income derived from such  
15 municipal public works, shall be exempt from all taxa-  
16 tion by this state, or any county, municipality, political  
17 subdivision or agency thereof. All of the details of such

18 bonds and the issuance thereof shall be determined by  
19 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  
2 six percent per annum, payable annually, or at shorter  
3 intervals, and shall mature at such time or times, not ex-  
4 ceeding forty years, as may be determined by the or-  
5 dinance or ordinances authorizing the issuance of such  
6 bonds. Such bonds may be made redeemable before ma-  
7 turity, at the option of the municipality or municipalities  
8 issuing the same, to be exercised by said board, at not  
9 more than the par value thereof, and at a premium of  
10 not more than five percent, under such terms and condi-  
11 tions as may be fixed by the ordinance or ordinances  
12 authorizing the issuance of the bonds. The principal and  
13 interest of the bonds may be made payable in any lawful  
14 medium. Such ordinance or ordinances shall determine  
15 the form of the bonds, including the interest coupons to  
16 be attached thereto, and shall fix the denomination or  
17 denominations of such bonds, and the place or places of  
18 the payment of the principal and interest thereof, which  
19 may be at any banking institution or trust company with-  
20 in or without the state. When two or more municipalities  
21 take joint action under the provisions of this article, the  
22 bonds shall be issued by the participating municipalities  
23 either as separate or joint bonds, as the governing bodies  
24 thereof may agree, and when separate bonds are issued,  
25 the amount of the bonds to be issued by each participating  
26 municipality shall be fixed by agreement of the governing  
27 bodies of the participating municipalities set forth in the  
28 ordinance of each participating municipality authorizing  
29 the issuance of such bonds. The bonds shall contain a  
30 statement on their face that the municipality or municipa-  
31 lities issuing the same shall not be obligated to pay the  
32 same, or the interest thereon, except from the special  
33 fund derived from the net revenue of the works, or the  
34 prorata part thereof, as provided for in section eleven  
35 hereof. All such bonds shall be, and shall have and are

36 hereby declared to have all the qualities and incidents of,  
37 negotiable instruments, under the uniform commercial  
38 code of this state. Provision may be made for the registra-  
39 tion of any of the bonds in the name of the owner as to  
40 principal alone; but bonds shall be executed in such man-  
41 ner as the governing body or bodies may direct. The bonds  
42 shall be sold by the governing body or bodies in such  
43 manner as may be determined to be for the best interest  
44 of the municipality or municipalities: *Provided*, That said  
45 bonds shall not be negotiated at a price lower than a  
46 price which when computed to maturity upon standard  
47 tables of bond values will show a net return of more than  
48 six percent per annum to the purchaser upon the amount  
49 paid therefor. Any surplus of the bond proceeds over and  
50 above the cost of the project shall be paid into the sink-  
51 ing fund hereinafter provided for. If the proceeds of the  
52 bonds, by error or calculation or otherwise, shall be less  
53 than the cost of the project, additional bonds may in like  
54 manner be issued to provide the amount of such deficit,  
55 and, unless otherwise provided in the ordinance or or-  
56 dinances authorizing the issuance of the bonds first issued,  
57 or in the trust indenture hereinafter authorized, shall be  
58 deemed to be of same issue, and shall be entitled to pay-  
59 ment without preference or priority of the bonds first  
60 issued; and if any preference or priority of the bonds  
61 first issued is provided for in the ordinance or ordinances  
62 authorizing the issuance of the bonds first issued or in said  
63 trust indenture, such preference or priority shall not ex-  
64 tend to an amount exceeding ten percent of the original  
65 issue. Prior to the preparation of the definite bonds, in-  
66 terim certificates may, under like restrictions, be issued  
67 with or without coupons exchangeable for definite bonds  
68 upon the issuance of the latter.

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

1 No municipal official or officer or member of the board  
2 shall in any event be personally liable upon any contract  
3 or obligation of any kind or character executed under the  
4 authority herein contained, even if said undertaking  
5 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  
2 ordinance or ordinances authorizing the issuance of the  
3 bonds or in the trust indenture hereinafter referred to,  
4 that additional bonds may thereafter be authorized and  
5 issued at one time, or from time to time, under such  
6 limitations and restrictions as may be set forth in said  
7 ordinance or ordinances, or trust indenture, or all of these,  
8 for the purpose of improving, renovating, extending, en-  
9 larging, increasing, equipping or repairing (including re-  
10 placements) the works when deemed necessary in the  
11 public interest, such additional bonds to be secured, and  
12 be payable from the revenues of the works, as provided  
13 for in section nine of this article.

**§8-16-15. How proceeds of bonds applied.**

1 All moneys received from the sale of any bonds issued  
2 under the authority of this article, after reimbursements  
3 and repayments to said municipality or municipalities of  
4 all amounts advanced for preliminary expenses, as pro-  
5 vided in section six of this article, shall be applied solely  
6 to the payment of the cost of the project, or to the appur-  
7 tenant sinking fund, and there shall be, and there is here-  
8 by, created and granted a lien upon such moneys, until so  
9 applied, in favor of the holders of the bonds or the trustees  
10 hereinafter provided for.

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

1 In the discretion and at the option of the governing  
2 body or bodies such bonds may be secured by a trust in-  
3 denture by and between such municipality or municipali-  
4 ties and a corporate trustee, which may be a trust com-  
5 pany or banking institution having powers of a trust  
6 company within or without the state. The ordinance or  
7 ordinances authorizing the issuance of the revenue bonds,  
8 and fixing the details thereof, may provide that such trust  
9 indenture may contain such provisions for protecting and  
10 enforcing the rights and remedies of bondholders as may  
11 be reasonable and proper, not in violation of law, includ-  
12 ing covenants setting forth the duties of the municipality

13 or municipalities and the board in relation to the con-  
14 struction, reconstruction, establishment, acquisition, im-  
15 provement, renovation, extension, enlargement, increase  
16 and equipment of the project and the repair (including  
17 replacements), maintenance, operation and insurance  
18 thereof, and the custody, safeguarding and application of  
19 all moneys, and may provide that the project shall be  
20 contracted for, carried out and paid for, under the  
21 supervision and approval of the consulting engineers em-  
22 ployed or designated by the board and satisfactory to the  
23 original bond purchasers, their successors, assignees or  
24 nominees, who may be given the right to require the  
25 security given by contractors and by any depository of  
26 the proceeds of bonds or revenues of the works or other  
27 moneys pertaining thereto be satisfactory to such pur-  
28 chasers, their successors, assignees or nominees. Such in-  
29 denture may set forth the rights and remedies of the  
30 bondholders or such trustee, or both. Except as in this  
31 article otherwise provided, the governing body or bodies  
32 may provide by ordinance or ordinances or in such trust  
33 indenture for the payment of the proceeds of the sale of  
34 the bonds and the revenues of the works to such officer,  
35 board or depository, as such body or bodies may deter-  
36 mine for the custody thereof, and for the method of dis-  
37 tribution thereof, with such safeguards and restrictions as  
38 such body or bodies may determine.

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

1 Before the issuance of any such bonds, the governing  
2 body or bodies shall, by ordinance or ordinances, pro-  
3 vide for a sinking fund for the payment of the bonds and  
4 the interest thereon, and the payment of the charges of  
5 banking institutions or trust companies for making  
6 payment of such bonds and interest, out of the net  
7 revenues of said works, and shall set aside and pledge a  
8 sufficient amount of the net revenues of the works hereby  
9 defined to mean the revenues of the works remaining  
10 after the payment of the reasonable expenses of repair  
11 (including replacements), maintenance and operation,  
12 such amount to be paid by the board into the sinking fund

13 at intervals, to be determined by ordinance or ordinances  
14 adopted prior to the issuance of the bonds, for (a) the  
15 interest upon such bonds as such interest shall fall due;  
16 (b) the necessary fiscal agency charges for paying bonds  
17 and interest; (c) the payment of the bonds as they fall  
18 due, or if all bonds mature at one time, the proper main-  
19 tenance of a sinking fund sufficient for the payment there-  
20 of at such time; and (d) a margin for safety and for the  
21 payment of premium upon bonds retired by call or  
22 purchase as herein provided, which margin, together with  
23 unused surplus of such margin carried forward from the  
24 preceding year, shall equal ten percent of all other  
25 amounts so required to be paid into the sinking fund.  
26 Such required payments shall constitute a first charge  
27 upon all the net revenues of the works. Prior to the is-  
28 suance of the bonds, the board may, by ordinance or  
29 ordinances, be given the right to use or direct the trustee  
30 or the state sinking fund commission to use such sinking  
31 fund, or any part thereof, in the purchase of any of the  
32 outstanding bonds payable therefrom, at the market  
33 prices thereof, but not exceeding the price, if any, at  
34 which the same shall in the same year be payable or re-  
35 deemable, and all bonds redeemed or purchased shall  
36 forthwith be cancelled, and shall not again be issued.  
37 After the payments into the sinking fund as herein re-  
38 quired, the board may at any time in its discretion trans-  
39 fer all or any part of the balance of the net revenues,  
40 after reserving an amount deemed by the board sufficient  
41 for repair (including replacements), maintenance and  
42 operation for an ensuing period of not less than twelve  
43 months and for depreciation, into the sinking fund, or into  
44 a fund for improvement, renovation, extension, enlarge-  
45 ment, increase or equipment for or to the works.

46 All amounts for the sinking fund and interest, as and  
47 when set apart for the payment of same, shall be remitted  
48 to the state sinking fund commission at such periods as  
49 shall be designated in the ordinance or ordinances, but in  
50 any event at least thirty days previous to the time interest  
51 or principal payments become due, to be retained and  
52 paid out by said commission consistent with the provi-  
53 sions of this article and the ordinance or ordinances pur-

54 suant to which such bonds have been issued. The state  
55 sinking fund commission is hereby authorized to act as  
56 fiscal agent for the administration of such sinking fund  
57 under any ordinance or ordinances passed or adopted pur-  
58 suant to the provisions of this article and shall invest all  
59 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  
3 and maintain just and equitable rates or charges for the  
4 use and services rendered, or the improvement or protec-  
5 tion of property provided or afforded, by such works, to be  
6 paid by the person using the same, receiving the services  
7 thereof, or owning the property improved or protected  
8 thereby, and may readjust such rates or charges from  
9 time to time. When two or more municipalities take joint  
10 action under the provisions of this article, such rates or  
11 charges shall be established by each participating munici-  
12 pality, with the concurrence of the other participating  
13 municipality or municipalities as to the amount of such  
14 rates or charges, and such rates or charges may be the  
15 same with respect to each municipality, or they may be  
16 different.

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

29 All rates or charges shall be sufficient in each year for  
30 the payment of the proper and reasonable expenses of  
31 repair (including replacements), maintenance and opera-

32 tion of the works, and for the payment of the sums herein  
33 required to be paid into the sinking fund.

34 Revenues collected pursuant to the provisions of this  
35 section shall be deemed the revenues of the works. No  
36 such rates or charges shall be established until after a  
37 public hearing at which all the users of the works and  
38 owners of the property served, or to be served thereby,  
39 and others interested, shall have an opportunity to be  
40 heard concerning the proposed rates or charges. After in-  
41 troduction of the proposed ordinance fixing such rates or  
42 charges and before the same is finally adopted, notice of  
43 such hearing, setting forth the proposed schedule of such  
44 rates or charges, shall be given by publishing the same as  
45 a Class I-0 legal advertisement in compliance with the  
46 provisions of article three, chapter fifty-nine of this code,  
47 and the publication area for such publication shall be  
48 such municipality or each such municipality, as the case  
49 may be. Said notice shall be published at least five days  
50 before the date fixed in such notice for the hearing, which  
51 hearing may be adjourned from time to time. No other  
52 or further notice to parties in interest shall be required.

53 After such hearing the ordinance establishing rates or  
54 charges, either as originally proposed or introduced, or  
55 as modified and amended, shall be adopted and put into  
56 effect. A copy of the schedule of such rates and charges so  
57 established shall be kept on file in the office of the board  
58 having charge of such works, and also in the office of  
59 the governing body or bodies, and shall be open to inspec-  
60 tion by all parties in interest. The rates or charges so  
61 established for any class of users or property served shall  
62 be extended to cover any additional class of users or  
63 property thereafter served which fall within the same  
64 class, without the necessity of any hearing or notice. Any  
65 change or adjustment of rates or charges may be made  
66 in the same manner as such rates or charges were origi-  
67 nally established as hereinabove provided. The aggregate  
68 of the rates or charges shall always be sufficient for the  
69 expenses of repair (including replacements), maintenance  
70 and operation, and for the sinking fund payments. If any  
71 rate or charge so established shall not be paid within  
72 thirty days after the same is due, the amount thereof may

73 be recovered by the board in a civil action in the name  
74 of the municipality or municipalities, and in the case of  
75 charges due for services rendered, such charges, if not  
76 paid when due, may, if the governing body so provide in  
77 the ordinance provided for under section seven of this  
78 article, constitute a lien upon the premises served by such  
79 works, which lien may be foreclosed against such lot,  
80 parcel of land or building so served, in accordance with  
81 the laws relating to the foreclosure of liens on real  
82 property. Upon failure of any person receiving any such  
83 service to pay for the same when due, the board may dis-  
84 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  
2 fixed under the provisions of the immediately preceding  
3 section of this article, such party shall have the right to  
4 appeal to the public service commission at any time  
5 within thirty days after the fixing of such rates by the  
6 governing body, but the rates so fixed by the governing  
7 body shall remain in full force and effect, until set aside,  
8 altered 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  
2 bonds under the provisions of this article shall install  
3 and maintain a proper system of accounting, showing the  
4 amount of revenues received and the application of the  
5 same, and the governing body or bodies shall, at least  
6 once a year, cause such accounts to be properly audited  
7 by a competent auditor, and the report of such auditor  
8 shall be open for inspection at all proper times to any  
9 taxpayer or resident of said municipality or municipali-  
10 ties, or person receiving service from said works, or any  
11 holder of bonds issued under the provisions of this article,  
12 or anyone acting for and in behalf of such taxpayer,  
13 resident, person or bondholder. The treasurer of such  
14 municipality or each such municipality, or other official  
15 or institution specifically charged with the duty, shall  
16 be the custodian or custodians of the funds derived from

17 income received from said works, and shall give proper  
18 bond or bonds for the faithful discharge of his or its or  
19 their duties as such custodian or custodians, which bond  
20 or bonds shall be fixed and approved by the governing  
21 body or bodies. All of the funds received as income from  
22 said works under the provisions of this article and all  
23 funds received from the sale of revenue bonds issued  
24 therefor shall be kept separate and apart from other funds  
25 of the municipality or municipalities, and separate ac-  
26 counts shall be maintained for the several items required  
27 to be set up by the provisions of section seventeen of  
28 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  
2 shall be subject to the same rates or charges established  
3 as hereinbefore provided, or to rates or charges estab-  
4 lished in harmony therewith, for service rendered to  
5 the municipality or municipalities and shall pay such  
6 rates or charges, when due, from corporate funds, and  
7 the same shall be deemed to be a part of the revenues  
8 of the works as herein defined, and may be applied as  
9 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  
2 a statutory mortgage lien upon such municipal public  
3 works constructed, reconstructed, established, acquired,  
4 improved, renovated, extended, enlarged, increased,  
5 equipped or repaired (including replacements) under  
6 the provisions of this article, which shall exist in favor  
7 of the holder of said bonds, and each of them, and to  
8 and in favor of the holder of the coupons attached to  
9 said bonds, and such municipal public works shall remain  
10 subject to such statutory mortgage lien until payment  
11 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  
2 of this article upon which any lien or other encumbrance  
3 exists, unless at the time such property is acquired a  
4 sufficient sum of money be deposited in trust to pay  
5 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  
2 attached thereto, and the trustee, if any, except to the  
3 extent that the rights herein given may be restricted  
4 by the ordinance authorizing the issuance of the bonds  
5 or by the trust indenture, may by civil action, man-  
6 damus or other proper proceeding enforce the statutory  
7 mortgage lien created and granted in section twenty-two  
8 of this article, protect and enforce any and all rights  
9 granted hereunder or under any such ordinance or trust  
10 indenture, and may enforce and compel performance of  
11 all duties required by the provisions of this article or  
12 by any such ordinance or trust indenture to be per-  
13 formed by the municipality or municipalities, or by the  
14 board or any officer, including the making and collect-  
15 ing of reasonable and sufficient rates or charges for  
16 services rendered by the works. If there be default in  
17 the payment of the principal of or interest upon any  
18 of the bonds, or of both principal and interest, any court  
19 having jurisdiction shall appoint a receiver to administer  
20 the works on behalf of the municipality or municipali-  
21 ties, and the bondholders or trustee, or both, except as  
22 so restricted, with power to charge and collect rates  
23 or charges sufficient to provide for the payment of the  
24 expenses of repair (including replacements), mainte-  
25 nance and operation, and also to pay any bonds and  
26 interest outstanding, and to apply the income or other  
27 revenue in conformity with this article, and the said ordi-  
28 nance or trust indenture, or both, and the power herein  
29 provided for the appointment of a receiver and the ad-  
30 ministration by the court of the works on behalf of the  
31 municipality or municipalities, and the bondholders or

32 trustee, or both, shall apply to cases where such works  
33 are operated by a lessee of the municipality or municipi-  
34 palities as well as to cases where works are operated by  
35 the municipality or municipalities. In case a receiver  
36 is appointed for works operated by a lessee of a municipi-  
37 pality or municipalities, the lease agreement then exist-  
38 ing between the municipality or municipalities and the  
39 lessee ipso facto thereby shall be terminated and all  
40 property, equipment, bills receivable and assets of every  
41 kind, used in connection with the operation of such  
42 works, shall pass to the receiver and upon the termina-  
43 tion of such receivership, such works, equipment, prop-  
44 erty, bills receivable and assets of every kind then in the  
45 hands of the receiver thereupon shall pass to the municipi-  
46 pality or municipalities.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.

**§8-16-25. Article confers additional power and authority; ex-  
traterritorial jurisdiction.**

1 The power and authority herein granted shall be in  
2 addition to and not in derogation of any power and au-  
3 thority vested in any municipality under any constitu-  
4 tional, statutory or charter provisions which may now  
5 or hereafter be in effect. For all purposes of this article,  
6 municipalities shall have jurisdiction for ten miles outside  
7 of the corporate limits thereof, except where such zone  
8 would overlap with the zone of another municipality, in  
9 which event the meridian line of the overlapping zone  
10 shall be the dividing line of their respective jurisdictions,  
11 except that one municipality shall have jurisdiction  
12 within such ten-mile zone and may overlap into the zone  
13 of another municipality or municipalities with the con-  
14 sent thereof.

**§8-16-26. Construction of power and authority conferred.**

1 This article shall, without reference to any other statute  
2 or charter provision, be deemed full authority for the  
3 construction, reconstruction, establishment, acquisition,  
4 improvement, renovation, extension, enlargement, in-  
5 crease, equipment, repair (including replacements), main-  
6 tenance and operation of the works herein provided for,

7 and for the issuance and sale of the bonds by this article  
 8 authorized, and shall be construed as an additional al-  
 9 ternative method therefor, and for the financing thereof,  
 10 and no petition or other or further proceeding in respect  
 11 to any such project, or to the issuance or sale of bonds  
 12 under this article, and no publication of any ordinance,  
 13 notice or proceeding relating to any such project, or to  
 14 the issuance or sale of such bonds shall be required, except  
 15 such as are prescribed in this article, any provisions of  
 16 other statutes of the state to the contrary notwithstanding.

**§8-16-27. Article liberally construed.**

1 This article being necessary for the public health, safety  
 2 and welfare shall be liberally construed to effectuate the  
 3 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.**

1 In elaboration of the provisions of section eight, article  
 2 one of this chapter, wherever in this code, in any act,  
 3 in general law, elsewhere in law, in any charter, in any  
 4 ordinance, resolution or order, or in any ordinance, reso-  
 5 lution or order of a county court, reference is made to the  
 6 term "municipal authorities" or "municipal authority"  
 7 within the meaning of the provisions of former article  
 8 four-a of this chapter, such reference shall henceforth  
 9 be read, construed and understood to mean "governing  
 10 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.**

1 It is hereby declared to be the purpose and policy of  
 2 the Legislature in enacting this article to provide for a  
 3 simplified method of low cost municipal improvements  
 4 which cannot be practicably accomplished out of municip-  
 5 al revenues or in accordance with the procedures estab-  
 6 lished in article eighteen of this chapter. This article shall  
 7 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.**

1 Every municipality is hereby empowered and author-  
2 ized, in addition to any other rights, power or authority  
3 conferred upon it, to make improvements upon the terms  
4 and conditions and in the manner hereinafter in this  
5 article set forth.

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

1 Upon the filing of a written petition for the making of  
2 an improvement, together with the bond hereinafter de-  
3 scribed, by (1) a petitioner stating in said petition the  
4 willingness of said petitioner to pay all of the total cost  
5 of said improvement, or (2) a petitioner owning the great-  
6 er amount of frontage of property abutting upon any por-  
7 tion of a street, alley, public way or easement, or sewer  
8 right of way or easement, upon or in which said improve-  
9 ment is to be made, the governing body shall, by ordi-  
10 nance or resolution, order the engineer to investigate the  
11 improvement and to prepare a memorandum describing  
12 the portions of the streets, alleys, public ways or ease-  
13 ments, or sewer rights of way or easements, proposed to  
14 be improved, and certifying the reasonable necessity of  
15 the improvement, the plans and specifications for the im-  
16 provement and a list of all items comprising the total cost  
17 of the improvement, with an estimate of the cost of each  
18 item.

19 There shall be stated, specified or described in the peti-  
20 tion the name and mailing address of the petitioner, the  
21 part or parts of the therein named streets, alleys, public  
22 ways or easements, or sewer rights of way or easements,  
23 desired improved, the improvement desired and whether  
24 the petitioner will pay all of the total cost or whether he  
25 desires the total cost to be apportioned among all of the  
26 abutters. In any case where two or more petitioners file  
27 the petition and it is stated therein that they intend to pay  
28 all of the total cost of the improvement, it shall also be

29 stated therein either that they desire to have such total  
30 cost apportioned among them on a prorata basis of their  
31 abutting footages according to a list of such footages com-  
32 piled by them and contained in the petition or that they  
33 desire to pay such total cost according to a list of per-  
34 centage shares formulated by them and contained in the  
35 petition.

36 Any petition filed under the provisions of this article  
37 shall be signed by the petitioner. A bond shall be given by  
38 the petitioner with good security to be approved by the  
39 governing body in the penal sum of one thousand dollars.  
40 The bond shall bind the petitioner (jointly and severally,  
41 in the case of more than one petitioner) to pay all charges  
42 and assessments imposed upon such petitioner under the  
43 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.**

1 If the engineer certifies in his memorandum that the  
2 improvement is not reasonably necessary, or that the  
3 estimated total cost is more than one thousand dollars,  
4 or both, the governing body shall notify the petitioner of  
5 the adverse report in the engineer's memorandum, and of  
6 a date (at least ten days from the date of the mailing of  
7 the notice as provided below), time and place of a meet-  
8 ing of the governing body, at which the engineer shall be  
9 present and the petitioner may object to or be heard on  
10 any part of the engineer's memorandum concerned with  
11 the said adverse report. The notice shall be given by mail-  
12 ing a copy thereof to the petitioner at the address listed  
13 in the petition unless the petitioner shall have notified the  
14 governing body in writing of a change in his mailing ad-  
15 dress, in which case the notice shall be mailed according  
16 to such change. The governing body may modify the  
17 memorandum in accordance with the evidence introduced  
18 at said meeting; but if no evidence is introduced, the  
19 engineer's memorandum shall be accepted. In any case  
20 where the petition fails because there is no reasonable  
21 necessity for the improvement or because the estimated

22 total cost of the improvement is more than one thousand  
23 dollars, or because of both reasons, the petitioner shall be  
24 charged with all municipal expenses in connection there-  
25 with, except salaries and wages of regular municipal  
26 officials and employees, which charge shall be made by  
27 ordinance or resolution of the governing body; and a  
28 statement of such charge shall be mailed to the petitioner  
29 at the proper address, determined as aforesaid.

30 For convenience of reference herein, the term "engi-  
31 neer's memorandum" shall mean, as the case may be, his  
32 original memorandum, or his memorandum as modified  
33 in accordance with the provisions of this section or sec-  
34 tion 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  
2 and the accompanying bond have been found to be regu-  
3 lar, and when the engineer's memorandum indicates that  
4 the proposed improvement is reasonably necessary and  
5 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  
2 pay all of the total cost, the governing body shall, as soon  
3 as the petition is granted as provided in section six of  
4 this article, order, by ordinance or resolution, the proper  
5 municipal authorities to proceed with the accomplishment  
6 of the improvement according to the plans and specifica-  
7 tions 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  
2 desires the total cost to be apportioned among all of the  
3 abutters, the governing body shall, as soon as the petition  
4 is granted, cause notice to be given to all abutters that the  
5 petition has been granted; that the engineer's memoran-  
6 dum, certifying reasonable necessity, the plans and specifi-

7 cations and the cost estimates, will be reconsidered, before  
 8 work is started, at a public meeting of the governing body  
 9 on the date and at the time and place named in the notice;  
 10 and that all abutters will be given an opportunity to pro-  
 11 test or be heard concerning any or all particulars of the  
 12 engineer's memorandum at that meeting or an adjourn-  
 13 ment thereof. Such notice to abutters may be by service on  
 14 such abutters in the manner in which process commencing  
 15 a civil action under the law of this state is permitted to be  
 16 served, at least ten days before said meeting. In lieu of  
 17 such service of such notice, the following described notice,  
 18 or one in substantially the same form, may be given, and  
 19 shall be deemed to have been served on all such abutters,  
 20 by publication of such notice as a Class II legal advertise-  
 21 ment in compliance with the provisions of article three,  
 22 chapter fifty-nine of this code, and the publication area for  
 23 such publication shall be such municipality:

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

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

48 cost of such improvement among the owners, as of .....  
 49 ..... (the date of the first publication of this  
 50 notice), of the abutting property.

51 The engineer's memorandum above described and the  
 52 granting of the petition will be reconsidered by the .....  
 53 ..... (council, board of directors, commis-  
 54 sioners or other governing body) at a public meeting to  
 55 be held on the ..... day of ....., 19....,  
 56 at ..... M. at ..... Any abut-  
 57 ting owner or interested party will be given an oppor-  
 58 tunity to protest or be heard at said meeting or an ad-  
 59 journment thereof.

60 ..... (name of recorder)  
 61 ..... (official position)."

62 An affidavit of publication of the notice, made by the  
 63 newspaper publisher, or some person authorized to do so  
 64 on behalf of such publisher, and a copy of the notice shall  
 65 be made a part of the minutes of the governing body and  
 66 spread on its records of the meeting described in the  
 67 notice. The service of said notice upon all persons owning  
 68 any interest in any property abutting upon any portion  
 69 of said street, alley, public way or easement, or sewer  
 70 right of way or easement, to be improved shall conclu-  
 71 sively be deemed to have been given when such news-  
 72 paper publication shall have been completed.

73 Any part or parts of the engineer's memorandum may  
 74 be modified or remodified at the protest meeting in ac-  
 75 cordance with the evidence introduced at such meeting,  
 76 including the extent of the portions of the streets, alleys,  
 77 public ways or easements, or sewer rights of way or ease-  
 78 ments, proposed to be improved as designated in the engi-  
 79 neer's memorandum. If, after modification or remodelica-  
 80 tion at such protest meeting, the memorandum indicates  
 81 that the improvement is not reasonably necessary or that  
 82 its estimated total cost is more than one thousand dollars,  
 83 or both, then the petition shall be automatically revoked;  
 84 and the petitioner shall be charged with all municipal  
 85 expense in connection therewith except the salaries and  
 86 wages of regular municipal employees, which charge shall  
 87 be made by ordinance or resolution of the governing body  
 88 and a statement of said charge shall be mailed to the

89 petitioner at the proper address, determined as aforesaid.  
90 If the engineer's memorandum has not been so modified  
91 or remodified at the protest meeting as to render the peti-  
92 tion automatically revoked as provided above, the govern-  
93 ing body shall order, by ordinance or resolution, the  
94 proper municipal authorities to proceed with the accomp-  
95 lishment of the improvement according to the plans and  
96 specifications in the engineer's memorandum, as modified  
97 or remodified at the protest meeting in the event that  
98 they were modified or remodified.

**§8-17-9. Accomplishment of the improvement; use of municip-  
pal employees and equipment; contracts; account  
of costs.**

1 When the proper municipal authorities shall have been  
2 ordered by the governing body to proceed under the pro-  
3 visions of either section seven or section eight of this  
4 article, they shall do so without delay. The improvement  
5 shall be accomplished, as far as possible without inter-  
6 fering with normal municipal services, with the municipi-  
7 tality's regular employees and equipment; but contracts  
8 may be made with reputable persons for the improve-  
9 ment. Said authorities shall keep an account of all items  
10 of cost connected therewith that affect the total cost of  
11 the improvement. Upon completion of the improvement,  
12 said proper municipal authorities shall deliver the ac-  
13 count of costs to the engineer.

**§8-17-10. Apportionment among petitioners only; limit on  
total cost chargeable to petitioners; notice.**

1 Where the willingness of the petitioner to pay all of the  
2 total cost is stated in the petition, the engineer shall  
3 compute the actual total cost as soon as the improvement  
4 is completed and the account called for in section nine of  
5 this article is furnished to him; and, where more than  
6 one petitioner filed the petition, the engineer shall assess  
7 the amount owed by each petitioner according to the  
8 method indicated in the petition as prescribed in section  
9 four of this article: *Provided*, That if the actual total cost  
10 exceeds one thousand dollars, the municipality shall be  
11 responsible for such excess over one thousand dollars, and

12 if the actual total cost is less than one thousand dollars  
13 but exceeds the estimated total cost by more than ten  
14 percent of the latter, the municipality shall be responsible  
15 for such excess over one hundred ten percent of the esti-  
16 mated total cost.

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

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

1 Where the petitioner indicated in the petition his desire  
2 to have the total cost apportioned among all of the abut-  
3 ters, the engineer shall, as soon as the governing body  
4 has ordered the proper municipal authorities to proceed  
5 with the improvement under the provisions of section  
6 eight of this article, determine or cause to be determined  
7 the several frontages abutting on the improvement, a  
8 brief description thereof and the owners of such front-  
9 ages as of the date of service of, or the date of the first  
10 publication of, a notice under the provisions of section  
11 eight of this article; and he shall keep an account of all  
12 items of cost connected therewith that affect the total  
13 cost. As soon as the improvement is completed and the  
14 account called for in section nine of this article has been  
15 furnished to him, the engineer shall compute the actual  
16 total cost of the improvement.

17 The total cost shall be personally borne by such own-  
18 ers of abutting property, including the petitioner, as of  
19 the date of service of, or the date of the first publication  
20 of, a notice under the provisions of section eight of this  
21 article; and the amount of the assessment against each  
22 shall be apportioned by the engineer on the basis of the  
23 formula next hereinafter set forth. Each lot or parcel  
24 of land so abutting shall be assessed with that portion  
25 of the total cost of the entire project which is represented

26 by the proportion which the abutting frontage in feet  
27 of such lot or parcel bears to the total abutting frontage  
28 in feet of all the lots or parcels of land abutting on the  
29 streets, alleys, public ways or easements, or sewer rights  
30 of way or easements, so improved: *Provided*, That if  
31 the character of the improvements shall be substantially  
32 different upon different streets, alleys, public ways or  
33 easements, or sewer rights of way or easements, or por-  
34 tions thereof, the cost may be equitably apportioned to  
35 the respective streets, alleys, public ways or easements,  
36 or sewer rights of way or easements, or portions thereof,  
37 in proportion to the character and cost of the improve-  
38 ments respectively thereon; and the part of the cost so  
39 apportioned to each respective street, alley, public way  
40 or easement, or sewer right of way or easement, or por-  
41 tion thereof, shall be apportioned to and assessed against  
42 the respective lots or parcels of land abutting thereupon  
43 in the proportion as hereinabove provided: *Provided*,  
44 *however*, That if any part of the street, alley, public way  
45 or easement improved is used by a railway then the cost  
46 of the portion of any improvements between the rails  
47 and for two feet outside said rails shall be assessed  
48 against and wholly borne by the owner of the railway:  
49 *Provided further*, That if there be any property abutting  
50 on the portion of the street, alley, public way or ease-  
51 ment, or sewer right of way or easement, so improved  
52 which it has been determined by the governing body, and  
53 shown in the ordinance or resolution authorizing the  
54 improvement, not to be specially benefited by the im-  
55 provement, or for other reasons would not be liable to  
56 assessment for any of, or for some part of, the cost of  
57 improvements, then the cost of the improvements abut-  
58 ting such part of said street, alley, public way or ease-  
59 ment, or sewer right of way or easement, as is so deter-  
60 mined to be nonassessable, shall be apportioned among,  
61 assessed against and borne by the remaining property  
62 abutting upon the portion of the street, alley, public way  
63 or easement, or sewer right of way or easement, im-  
64 proved in proportion to the frontage of such remaining  
65 abutting property as hereinabove provided: *And pro-*  
66 *vided further*, That if such improvement includes the

67 building, renewing or repairing of sidewalks on only  
68 one side of a street, alley, public way or easement, then  
69 the cost of such improvement shall be assessed only on  
70 the property abutting on that side where the sidewalks  
71 are so built, constructed or repaired: *Provided*, That if  
72 there be property abutting the street, alley, public way  
73 or easement, or sewer right of way or easement, so  
74 improved which is owned by the United States of  
75 America, and, for that reason, not legally subject to  
76 assessment, then the municipality shall pay the propor-  
77 tionate part of the cost of the improvement which other-  
78 wise would be assessable against such federally owned  
79 property: *Provided, however*, That if the actual total  
80 cost exceeds one thousand dollars, the municipality shall  
81 be responsible for such excess over one thousand dollars,  
82 and if the actual total cost is less than one thousand  
83 dollars but exceeds the estimated total cost by more  
84 than ten percent of the latter, the municipality shall be  
85 responsible for such excess over one hundred ten per-  
86 cent of the estimated total cost.

87 The engineer shall formulate a report showing the  
88 chargeable total cost to be apportioned among, assessed  
89 against and borne by the abutters, the names of the  
90 abutters (including the petitioner), the several frontages  
91 owned by said abutters, a brief description thereof and  
92 the proper amount of the chargeable total cost to be  
93 assessed personally against each abutter, and shall deliver  
94 such report to the governing body. The governing body  
95 shall thereupon give notice to the abutters to be assessed  
96 that, on or after a date named in said notice, an assess-  
97 ment may be laid personally against the abutters as  
98 embodied in said report. Said notice shall state that the  
99 abutters so named, or other interested party, may on  
100 said date appear before the governing body to move  
101 the correction or revision of such proposed assessment.  
102 Said notice shall show the same facts embodied in the  
103 engineer's report hereinabove described and shall be  
104 published as a Class II legal advertisement in compliance  
105 with the provisions of article three, chapter fifty-nine of  
106 this code, and the publication area for such publication  
107 shall be the municipality. On or after the date so ad-

108 vertised, the governing body may revise, amend, correct  
109 and verify the report according to the evidence intro-  
110 duced by the contesting abutters or by the engineer, and  
111 shall thereafter proceed by ordinance or resolution to  
112 lay the assessments, as corrected and verified, against  
113 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 municipi-  
5 pality, county, board of education or other public body,  
6 or consist of property owned by or used for, a church, or  
7 a religious, charitable, educational or eleemosynary insti-  
8 tution, for purposes not subject to taxation, the owners  
9 of such property, as of the date of service of, or the date  
10 of the first publication of, a notice under the provisions  
11 of section eight of this article, shall nevertheless be  
12 assessed with their proper proportion of the total cost of  
13 said improvement, and it shall be the duty of the owners  
14 or those persons having charge of the fiscal affairs of such  
15 owners or the management of any such property or insti-  
16 tution to make proper arrangements for the payment of  
17 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 default to petitioner.**

1 Assessments made under the provisions of section  
2 eleven of this article shall be due the municipality within  
3 sixty days after the adoption by the governing body of  
4 the ordinance or resolution laying the assessment; and  
5 upon payment of an assessment by an abutter, he shall  
6 be given a receipt therefor, a copy of which shall be re-  
7 tained by the municipality; and, upon payment in due  
8 course of all such assessments pertaining to an improve-  
9 ment, the petitioner shall be automatically discharged on

10 his bond. If any such assessment, in whole or in part, be  
11 not paid within said sixty days, the governing body shall  
12 determine the total amount in default and shall charge  
13 said amount to the petitioner by ordinance or resolution;  
14 and a statement of the charge shall be mailed to the peti-  
15 tioner at the proper address, determined as aforesaid.

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

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

10 Any petitioner who is forced to pay, either by collection  
11 on the bond or by voluntary payment to avoid collection  
12 on the bond, any sum which should have been paid by  
13 another petitioner or any other abutter shall have a right  
14 of action against any such defaulter for the amount that  
15 the defaulter should have paid, with interest at six per-  
16 cent from the date that the defaulter was in default; and  
17 where a petitioner makes a voluntary payment for any  
18 such defaulter to avoid collection on the bond, a receipt  
19 shall be given to him, and a copy retained by the munici-  
20 pality, showing the petitioner who made such payment,  
21 the defaulter for whom the payment was made and the  
22 charge or assessment for which the defaulter was in  
23 default, which receipt shall be prima facie evidence of  
24 the petitioner's right to collect from the defaulter named  
25 in said receipt the amount specified therein, with interest  
26 as above stated.

**PART V. CUMULATIVE AUTHORITY.**

**§8-17-15. Cumulative authority.**

1 The power and authority herein granted shall be in  
2 addition to and not in derogation of any power and au-  
3 thority vested in any municipality under any constitu-

4 tional, statutory or charter provisions which may now  
5 or hereafter be in effect.

**ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDE-  
WALKS 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 im-  
provements.**

1 Every municipality is hereby empowered and author-  
2 ized, in addition to any other rights, power and authority  
3 conferred upon it, upon the terms, conditions and in the  
4 manner hereinafter set forth, to grade or regrade, pave  
5 or repave, surface or resurface, curb or recurb, streets  
6 (which term is used in this article to include avenues and  
7 roads), alleys, public ways or easements, or portions  
8 thereof, and to build or renew sidewalks, and to construct,  
9 provide or renew any of such improvements or other  
10 permanent public improvements in any streets, alleys,  
11 public ways or easements, or portions thereof, in such  
12 municipality, and, if deemed advisable, to construct storm  
13 and sanitary sewers, or all or a part of a storm or sanitary  
14 or combined storm and sanitary sewer system in any  
15 streets, alleys, public ways or easements, or sewer rights  
16 of way or easements, or portions thereof, independently  
17 or in conjunction with other of such improvements, and  
18 to assess the costs of any or all of such improvements on  
19 abutting property.

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

1 Upon the petition in writing of persons owning the  
2 greater amount of frontage of property abutting upon any  
3 portion of a street, alley, public way or easement, or sewer  
4 right of way or easement, for any permanent improve-  
5 ment (which term is used in this section and the succeed-  
6 ing sections of this article to include any reimprovement)  
7 authorized in section one of this article, the governing  
8 body of any municipality may, after giving notice to  
9 abutting property owners as hereinafter in this article

10 provided, by ordinance or resolution declare the necessity  
11 or convenience of such improvement and order and cause  
12 such portions of such streets, alleys, public ways or ease-  
13 ments, or sewer rights of way or easements, to be graded,  
14 regraded, paved, repaved, surfaced, resurfaced, curbed,  
15 recurbed, sewerred, resewerred, permanently improved  
16 (which term is used in this section and the succeeding  
17 sections of this article to also mean reimproved) with  
18 sidewalks or otherwise permanently improved with suit-  
19 able material, or any one or more of such improvements  
20 without the others, as may be determined by the govern-  
21 ing body, to be made or constructed within such municipi-  
22 pality or within such part or parts thereof as the govern-  
23 ing body may determine, and such governing body may  
24 specially assess the entire cost of such improvements, or  
25 any part thereof, upon the property abutting on both  
26 sides of the portions of the streets, alleys, public ways or  
27 easements, or sewer rights of way or easements, im-  
28 proved.

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

**§8-18-3. Notice to abutting owners before authorizing improve-  
ments; form of notice; affidavit of publication.**

1 Before the adoption of such ordinance or resolution  
2 of necessity or convenience, the governing body shall  
3 cause notice to be given to owners of abutting property  
4 that such ordinance or resolution will be considered  
5 before adoption at a public meeting of the governing  
6 body at a date, time and place named in the notice and  
7 that all persons shall at that meeting, or an adjournment  
8 thereof, be given an opportunity to protest or be heard  
9 concerning the adoption or rejection of said ordinance

10 or resolution. Such notice to owners of property abut-  
 11 ting on the portion of the street, alley, public way or  
 12 easement, or sewer right of way or easement, to be  
 13 improved may be by service on such owners in the man-  
 14 ner in which process commencing a civil action under  
 15 the laws of this state is permitted to be served at least  
 16 ten days before said meeting. In lieu of such service of  
 17 such notice, the following described notice, or one in sub-  
 18 stantially the same form, may be given, and shall be  
 19 deemed to have been served on all such owners of abut-  
 20 ting property, by publication of such notice as a Class  
 21 II legal advertisement in compliance with the provi-  
 22 sions of article three, chapter fifty-nine of this code, and  
 23 the publication area for such publication shall be such  
 24 municipality:

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

31 Proposals have been made to the .....  
 32 (council, board of directors, commissioners or other gov-  
 33 erning body) of the ..... (city, town or village)  
 34 of ..... (name of municipality) to permanently  
 35 improve the portion of the ..... (street, alley, public  
 36 way or easement, or sewer right of way or easement)  
 37 above described in ..... (name of municipality)  
 38 by ..... (grading, regrading, paving, repaving,  
 39 surfacing, resurfacing, curbing or recurbing, building or  
 40 renewing of sidewalks, or the constructing of sanitary  
 41 or storm sewers, or other general description of the  
 42 proposed improvements) as the ..... (council,  
 43 board of directors, commissioners or other governing  
 44 body) may deem proper, and to assess the cost of such  
 45 improvements on the property abutting said portion of  
 46 said ..... (street, alley, public way or easement,  
 47 or sewer right of way or easement).

48 The proposals to make such improvements, and the  
 49 plans, specifications, profiles and estimates therefor, will  
 50 be considered by the ..... (council, board of

51 directors, commissioners or other governing body) at a  
 52 public meeting to be held on the..... day of.....,  
 53 19....., at ..... M. at ..... Any abutting owner  
 54 or interested party will be given an opportunity to pro-  
 55 test or be heard at said meeting or an adjournment  
 56 thereof.

57 .....(name of recorder)  
 58 .....(official position)."

59 An affidavit of publication of the notice, made by the  
 60 newspaper publisher, or some person authorized to do  
 61 so on behalf of such publisher, and a copy of the notice  
 62 shall be made a part of the minutes of the governing body  
 63 and spread on its records of the meeting described in the  
 64 notice. The service of said notice upon all persons own-  
 65 ing any interest in any property abutting upon any por-  
 66 tion of said street, alley, public way or easement, or  
 67 sewer right of way or easement, to be improved shall  
 68 conclusively be deemed to have been given when such  
 69 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.**

1 After hearing held pursuant to notice as provided in  
 2 section three of this article, the governing body, by ordi-  
 3 nance or resolution, may authorize such improvements  
 4 and the assessing of the total cost or any part thereof on  
 5 abutting property as herein provided. In the same or sub-  
 6 sequent ordinances or resolutions, but before advertising  
 7 for bids from contractors, the governing body shall cause  
 8 to be prepared plans, specifications and estimates of the  
 9 cost of the proposed improvements under the supervision  
 10 of the engineer for the municipality. Such plans, specifi-  
 11 cations and estimates shall show the proposed grade and  
 12 sufficient data for any owner of abutting property to cal-  
 13 culate approximately what proportionate part of the esti-  
 14 mated cost thereof might be assessed against his property,  
 15 and shall be filed with the recorder and open to the in-

16 spection of interested persons before advertisement for  
17 bids of contractors and before the meeting at which such  
18 bids may be accepted or rejected. Before advertising for  
19 bids of contractors, such governing body shall consider  
20 said plans, specifications and estimates and may amend or  
21 modify them, and before advertising for bids shall by ordi-  
22 nance or resolution approve such plans, specifications and  
23 estimates as so amended and modified. Such ordinance or  
24 resolution shall also provide for advertisement for bids,  
25 for the letting of a contract or contracts for the work to  
26 the lowest responsible bidder, with right reserved to such  
27 governing body to reject any and all bids, and shall pro-  
28 vide for supervision of such work by the mayor, city  
29 manager, if any, municipal engineer, if any, or other  
30 person or committee designated by the governing body.  
31 Such ordinance or resolution shall also provide for pay-  
32 ment of the cost of the work when completed. The gov-  
33 erning body shall provide in such ordinance or resolution  
34 for the payment by abutting property owners of the cost  
35 of the work in equal installments payable over a period  
36 of not less than five years nor more than ten years from  
37 the date of assessment, with interest at the rate of six  
38 percent per annum from the date of assessment, and in  
39 said ordinance or resolution the governing body shall fix  
40 the number of installments in which the amounts assessed  
41 shall be payable: *Provided*, That each of said assessments  
42 or the installments thereof then remaining unpaid shall  
43 be payable at any time after assessment without interest  
44 after the date such payment is made: *Provided, however*,  
45 That on failure of the owner of the property assessed to  
46 pay any installment as and when due, and if such default  
47 continues for sixty days, then at the option of the govern-  
48 ing body (if neither assessment certificates nor bonds are  
49 issued as hereinafter in this article provided), or the  
50 holder of the assessment certificates (if the assessments  
51 are evidenced by such certificates), or the holder of any  
52 bonds secured by such assessments (if bonds are issued),  
53 the entire balance due may be declared immediately due  
54 and payable and the municipality, or the holder of the  
55 certificates, or bonds, as the case may be, may forthwith  
56 proceed to enforce the collection thereof: *Provided fur-*

57 *ther*, That if the amounts to be assessed against abutting  
58 property be less than two dollars for each abutting front  
59 foot of property, then said governing body is authorized  
60 to make the same payable in one lump sum or in install-  
61 ments, with interest, over a period of less than five years  
62 from the date of assessment.

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

1 When the improvement of such street, alley, public  
2 way or easement, or sewer right of way or easement, has  
3 been completed, the governing body shall cause the engi-  
4 neer, or other person charged by the governing body with  
5 the supervision of the work of improvement, to make a  
6 report showing the several frontages abutting thereon,  
7 the total cost, the respective amounts chargeable upon  
8 each lot or parcel of land assessed abutting thereon and  
9 the proper amounts to be assessed against the respective  
10 abutting lots or parcels of land as provided herein, with  
11 a description of the abutting lots and parcels of land as to  
12 ownership, frontage and location. The governing body  
13 shall thereupon give notice to the owners of the property  
14 to be assessed that on or after a date named in said notice  
15 an assessment may be laid against the property so im-  
16 proved as embodied in said report. Said notice shall state  
17 that the owner or owners whose property is to be assessed,  
18 or other interested party, may on said date appear before  
19 the governing body to move the revision or correction of  
20 such proposed assessment. Such notice shall be published  
21 as a Class II legal advertisement in compliance with the  
22 provisions of article three, chapter fifty-nine of this code,  
23 and the publication area for such publication shall be the  
24 municipality. Said notice shall show the total cost of the  
25 improvement, the several frontages abutting thereon and  
26 the respective amounts to be assessed against the abutting  
27 property, with a description of the respective abutting  
28 lots and parcels of land as to ownership, frontage and  
29 location. On or after the date so advertised, the governing  
30 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 sewer on two or more sides then such corner lot,  
35 or acreage which has not been divided into lots, is to be

36 charged only with the side first sewerred unless two hun-  
37 dred feet or more in depth measured from such first  
38 sewerred side, in which event the corner lot, or acreage  
39 which has not been divided into lots, shall be charged  
40 only with the footage in excess of two hundred feet. Any  
41 lot, or any acreage which has not been divided into lots,  
42 having such a depth of two hundred feet or more and  
43 abutting on two or more streets, alleys, public ways or  
44 easements, or sewer rights of way or easements, one in  
45 the front and one in the rear of said lot, or said acreage  
46 which has not been divided into lots, shall be assessed on  
47 both of said streets, alleys, public ways or easements, or  
48 sewer rights of way or easements, if a sewer is constructed  
49 on both such streets, alleys, public ways or easements,  
50 or sewer rights of way or easements. Where a corner lot,  
51 or an acreage which has not been divided into lots, has  
52 been assessed on both ends, it shall not be assessed on the  
53 side, and where it has been assessed on the side, it shall  
54 not be assessed on either end.

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

**§8-18-7. What total cost to include.**

1 In ascertaining the total cost of the improvements in  
2 any project undertaken pursuant to the provisions of  
3 this article, there shall be included the cost and ex-  
4 pense of surveys, engineering and attorneys' fees, the  
5 printing and publishing in relation thereto, and the  
6 cost and expense of all labor, work, supervision, inspec-

7 tion, equipment leased, and materials furnished and used  
8 in completing said improvements.

**§8-18-8. Apportionment and assessment of cost.**

1 The cost of the entire project, including the cost of all  
2 improvements at and within intersections, shall be ap-  
3 portioned to, and assessed against and borne by the prop-  
4 erties abutting upon the streets, alleys, public ways or  
5 easements, or sewer rights of way or easements, in or  
6 upon which the improvements involved in the project  
7 shall have been made. Each lot or parcel of land so  
8 abutting shall be assessed, subject to the provisions of  
9 section six of this article respecting assessment for sewer  
10 improvement of corner lots, acreage not divided into lots  
11 and lots or acreage sewered on more than one side or end,  
12 with that portion of the total cost of the entire project  
13 which is represented by the proportion which the abut-  
14 ting frontage in feet of such lot or parcel of land bears to  
15 the total abutting frontage in feet of all the lots or par-  
16 cels of land abutting on the streets, alleys, public ways or  
17 easements, or sewer rights of way or easements, so im-  
18 proved: *Provided*, That if the character of the improve-  
19 ments shall be substantially different upon different  
20 streets, alleys, public ways or easements, or sewer rights  
21 of way or easements, or portions thereof, the cost may be  
22 equitably apportioned to the respective streets, alleys,  
23 public ways or easements, or sewer rights of way or ease-  
24 ments, or portions thereof, in proportion to the character  
25 and cost of the improvements respectively thereon and  
26 the part of the cost so apportioned to each respective  
27 street, alley, public way or easement, or sewer right of  
28 way or easement, or portion thereof, shall be apportioned  
29 to and assessed against the respective lots or parcels of  
30 land abutting thereupon in the proportion as hereinabove  
31 provided: *Provided, however*, That if any part of the  
32 street, alley, public way or easement improved is used  
33 by a railway, then the cost of the portion of any improve-  
34 ments between the rails and for two feet outside said rails  
35 shall be assessed against and wholly borne by the owner  
36 of the railway: *Provided further*, That property shall be  
37 assessed only to the extent it is benefited and if there be

38 any property abutting on the portion of the street, alley,  
39 public way or easement, or sewer right of way or ease-  
40 ment, so improved which it has been determined by the  
41 governing body, and shown in the ordinance or resolu-  
42 tion authorizing the improvements, not to be specially  
43 benefited by the improvements, or not to be specially  
44 benefited to the full extent of the cost of the improve-  
45 ments, or for other reasons would not be liable to assess-  
46 ment for any of, or for some part of, the cost of improve-  
47 ments, then the cost of the improvements abutting such  
48 part of said street, alley, public way or easement, or sewer  
49 right of way or easement, or so much thereof as is so  
50 determined to be nonassessable, shall be apportioned  
51 among, assessed against and borne by the remaining  
52 property abutting upon the streets, alleys, public ways or  
53 easements, or sewer rights of way or easements, improved  
54 in proportion, subject to the aforesaid provisions of sec-  
55 tion six of this article, to the frontage of such remaining  
56 abutting property as hereinabove provided: *And provided*  
57 *further*, That if such improvements include the building  
58 or renewal of sidewalks on only one side of a street, alley,  
59 public way or easement, then the cost of such sidewalk  
60 shall be assessed only on the property abutting on that  
61 side where the sidewalks are so built or renewed: *Pro-*  
62 *vided*, That in apportioning and assessing the cost of  
63 sewers or sewer systems the provisions of section six of  
64 this article shall be observed: *Provided, however*, That if  
65 there be property abutting the street, alley, public way or  
66 easement, or sewer right of way or easement, so improved  
67 which is owned by the United States of America, and,  
68 for that reason, not legally subject to assessment, then the  
69 municipality shall pay the proportionate part of the cost  
70 of the improvement which otherwise would be assessable  
71 against such federally owned property.

72 In apportioning the cost to any lot or parcel of land in  
73 any situation not covered in this article, the cost shall be  
74 apportioned equitably, as determined by the governing  
75 body, in keeping with the concepts and principles ex-  
76 pressed in this article and the special benefit to the  
77 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.**

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 municipi-  
5 pality, county, board of education or other public body,  
6 or consist of property owned by, or used for, a church,  
7 or a religious, charitable, educational or eleemosynary  
8 institution, for purposes not subject to taxation, such  
9 property shall nevertheless be assessed with its proper  
10 proportion of the cost of said improvement, and it shall  
11 be the duty of those persons having charge of the fiscal  
12 affairs of such owner or the management of any such  
13 property or institution to make proper arrangements for  
14 the payment of, and cause to be paid, such assessments  
15 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.**

1 The property abutting the portion of the street, alley,  
2 public way or easement, or sewer right of way or ease-  
3 ment, improved shall be subject to a lien, from the  
4 date of the ordinance or resolution laying the assessment,  
5 for the payment of the cost of the improvements assessed  
6 against said property. A notice of the liens of said  
7 assessments referring to the assessing ordinance or  
8 resolution, and setting forth a list of the property assessed,  
9 described respectively as to amounts of assessment and  
10 ownership, frontage and location of the property, shall  
11 be certified by the recorder of the municipality to the  
12 clerk of the county court of the county wherein the  
13 improvement or any part thereof is located. The county  
14 clerk shall record the same in a proper trust deed book  
15 and index the same in the name of each owner of abutting  
16 property assessed. From the date of the assessment, the  
17 municipality (if neither assessment certificates nor bonds  
18 are issued as hereinafter in this article provided), or

19 the holder of the assessment certificates (if the assess-  
20 ments are evidenced by such certificates), or the holders  
21 of the bonds secured by such assessments (if bonds  
22 are issued), shall have such liens and shall be entitled  
23 to enforce the same in its, his or their name or the  
24 name of the municipality to the extent of the amount,  
25 principal and interest, of such assessments and against  
26 the said property, as to any assessment not paid as and  
27 when due. Said assessments shall be and constitute  
28 liens in the hands of the municipality, or the holders of  
29 said certificates, or the holders of said bonds, as the  
30 case may be, upon the respective lots and parcels of land  
31 assessed and shall have priority over all other liens  
32 except those for land taxes due the state, county and  
33 municipality, and except any liens for pre-existing  
34 special assessments. Said assessments and interest  
35 thereon shall be paid by the owners of the property  
36 assessed as and when the installments are due. The  
37 municipality, or the holders of any such certificates,  
38 or the holders of any such bonds, as the case may be,  
39 may enforce the lien thereof in any proper suit, and  
40 when default in the payment, as and when due, of any  
41 assessment, principal or interest, or installment, shall  
42 occur and such default shall have continued for more  
43 than sixty days, the municipality, or the holders of any  
44 such certificates, or the holders of any such bonds, as  
45 the case may be, may declare the whole unpaid balance  
46 due and payable and by proper civil action seeking  
47 equitable relief enforce the lien thereof, upon process  
48 issued and served according to law upon the owner or  
49 owners of the lots or parcels of land subject to said  
50 lien at the time such suit may be brought as shown  
51 by the records of the clerk of the county court of the  
52 county in which said lots or parcels of land are located.

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

1 The governing body shall also determine and provide  
2 in the ordinance or resolution laying the assessments,  
3 adopted in accordance with the provisions of section  
4 five of this article, if such provision was not made in  
5 the ordinance or resolution adopted in accordance with  
6 the provisions of section four of this article, the method

7 of paying for the work, for the cost of which assess-  
8 ments are levied as in this article provided, whether  
9 by an appropriation from funds in the treasury of the  
10 municipality unappropriated to be repaid from the col-  
11 lection of the assessments, or by the issuance of cer-  
12 tificates as hereinafter provided, or from the proceeds  
13 of bonds issued in anticipation of the collection of special  
14 assessments to be made against the abutting property  
15 owners as provided for in section fourteen of this article.

PART V. FINANCING IMPROVEMENTS BY USE OF UNAPPROPRIATED  
FUNDS TO BE REPAID 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 pro-  
ceeds of bonds.**

1 If the governing body shall determine by ordinance  
2 or resolution as in this article provided to pay for the  
3 work completed, for the cost of which assessments are  
4 levied as in this article provided, from unappropriated  
5 funds in the treasury of the municipality, it shall be  
6 the duty of the governing body immediately to certify  
7 such assessments to the treasurer for collection in ac-  
8 cordance with the terms provided in the ordinance or  
9 resolution authorizing the improvements.

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

23 Whenever all installments of an assessment for such  
24 improvements shall be paid in full to the treasurer he,  
25 on behalf of the municipality, shall execute and deliver

26 to the party paying the same a release of the lien there-  
27 for, which may be recorded in the office of the clerk  
28 of the county court as other releases of liens; and when-  
29 ever any such assessments shall not be in the hands  
30 of the treasurer for collection, but the same shall be  
31 shown to the satisfaction of the municipal auditor or  
32 other official performing the duties of auditor for the  
33 municipality to have been paid in full to any officer  
34 entitled to receive the same, such auditor or such other  
35 official or the mayor, in cases where the municipality  
36 has no auditor or such other official, may in like manner  
37 execute such release.

PART VI. FINANCING IMPROVEMENTS BY ISSUANCE OF  
ASSESSMENT CERTIFICATES.

**§8-18-13. 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 elect-  
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 municipi-

26 pality for those items of the cost and expense advanced  
27 by the municipality and referred to in section seven of  
28 this article. Said certificates payable to the bearer shall  
29 be assignable by delivery of the certificates and be en-  
30 forceable by the holder. The municipality issuing such  
31 certificates shall not be held as guarantor or in any way  
32 liable for the payment of bearer certificates.

**PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.**

**§8-18-14. Issuance of bonds.**

1 Every municipality is hereby empowered and au-  
2 thorized to issue its bonds for any improvements under  
3 the provisions of this article in anticipation of special  
4 assessments to be made upon the property abutting  
5 upon the streets, alleys, public ways or easements, or  
6 sewer rights of way or easements, so improved, and such  
7 bonds may be in such an amount as will be sufficient  
8 to pay the entire estimated cost and expense of such  
9 improvements for which such special assessments are  
10 levied. Such municipality is also authorized to sell such  
11 bonds, but the price for which they are sold shall not be  
12 below the par value of such bonds. Such bonds shall be  
13 payable in not to exceed ten years from the date of the  
14 issuance thereof, and shall bear interest at not to exceed  
15 six percent per annum, payable annually; and in the  
16 issuance and sale of such bonds, the municipality shall  
17 be governed by all the restrictions and limitations of  
18 the constitution of this state, and by the restrictions and  
19 limitations of the statutes of this state with respect to  
20 the issuance and sale of other bonds, so far as they are  
21 not in conflict with the provisions of this article; and  
22 the assessments shall be collected as provided in sections  
23 ten and twelve of this article, and as paid and collected  
24 shall be applied to the liquidation of such bonds and the  
25 interest thereon; and if by reason of penalties collected  
26 with delinquent assessments there be any balance after  
27 the payment of such bonds and all accrued interest and  
28 cost, such balance shall be turned into the municipal  
29 treasury to the credit of the interest and sinking fund of  
30 the municipality: *Provided*, That no such municipality  
31 shall by sale or issuance of such bonds cause the aggre-

32 gate of its indebtedness of every kind whatsoever to  
33 exceed five percent of the value of taxable property  
34 therein: *Provided, however,* That nothing herein con-  
35 tained shall be construed as authorizing any such munici-  
36 pality to become indebted in any other manner or for  
37 any other purpose, to an amount, including its existing  
38 indebtedness, in the aggregate exceeding two and one-  
39 half percent of the value of the taxable property therein,  
40 as provided in section three, article one, chapter thirteen  
41 of this code, except for the purpose of grading, regrading,  
42 paving, repaving, surfacing, resurfacing, curbing, recurb-  
43 ing, building or renewing sidewalks, or constructing  
44 sewers or otherwise improving or reimproving the streets,  
45 alleys, public ways or easements, or sewer rights of way  
46 or easements, of such municipality, as provided for in  
47 this article; nor shall such municipality make such is-  
48 suance and sale without at the same time providing for  
49 the collection of a direct annual tax sufficient to pay  
50 annually the interest on such debt and the principal  
51 thereof within and not exceeding ten years. All of the  
52 assessments, interest and penalties collected from the  
53 abutting property owners on account of the grading,  
54 regrading, paving, repaving, surfacing, resurfacing, curb-  
55 ing, recurbing, building or renewing sidewalks, or con-  
56 structing sewers or otherwise improving or reimprov-  
57 ing the streets, alleys, public ways or easements, or sewer  
58 rights of way or easements, of any such municipality,  
59 under the provisions of this article, shall annually be  
60 applied to the annual tax required to pay the interest on  
61 such debt and such principal within and not exceeding  
62 ten years; and in the event that the assessments, interest  
63 and penalties so collected do not amount to a sum suffi-  
64 cient to pay annually the interest on such debt and the  
65 principal thereof within and not exceeding ten years,  
66 then the governing body of such municipality shall  
67 collect so much of such levy as will pay annually the  
68 interest on such debt and the principal thereof within  
69 and not exceeding ten years.

**§8-18-15. Bonds to pay municipality's share of cost of improve-  
ments.**

1 Every municipality is also empowered and authorized

2 to issue and sell its bonds, as provided in this article for  
3 the sale of other bonds, to pay any part of the cost of  
4 such improvements to be paid by the municipality, and  
5 such municipality may levy taxes in addition to all other  
6 taxes authorized by law, to pay such bonds and interest  
7 thereon: *Provided*, That the total indebtedness of the  
8 municipality for all purposes shall not exceed five per-  
9 cent of the total value of all taxable property therein.

**§8-18-16. Bond issue to be authorized by voters.**

1 No bonds shall be issued under the provisions of this  
2 article unless and until the question of issuing such  
3 bonds shall have first been submitted to a vote of the  
4 qualified voters of the municipality, and shall have re-  
5 ceived three-fifths of all of the votes cast at such election  
6 for or against the same. The governing body of any  
7 municipality empowered and authorized to issue bonds  
8 under the provisions of this article may provide by ordi-  
9 nance for an annual election, at which the question shall  
10 be submitted to the people as to whether the municipality  
11 shall issue bonds, for the purposes and under the pro-  
12 visions of this article, to an amount not to exceed in  
13 the ensuing year the amount recommended by such  
14 ordinance for such ensuing year. The ordinance provid-  
15 ing for such election need not specify in detail the loca-  
16 tion of the improvements contemplated to be paid for  
17 during the ensuing year out of such aggregate issue au-  
18 thorized for such year, but, before issuing any such  
19 bonds, the governing body shall adopt an ordinance or  
20 resolution as in this article provided, authorizing the im-  
21 provements to be made. It shall be a sufficient descrip-  
22 tion of the purpose for which such election is held if the  
23 ordinance calling the same shall recite that the govern-  
24 ing body proposes to issue bonds for the purpose of grad-  
25 ing, regrading, paving, repaving, surfacing, resurfacing,  
26 curbing, recurbing, building or renewing sidewalks, or  
27 constructing sewers or otherwise improving or reimprov-  
28 ing the streets, alleys, public ways or easements, or sewer  
29 rights of way or easements, of such municipality at such  
30 time as to the governing body shall seem fit during the  
31 ensuing year ending on the \_\_\_\_\_ day of \_\_\_\_\_,  
32 19\_\_\_\_, to an amount not exceeding in the aggregate dur-

33 ing said year the sum of \$..... When the gov-  
34 erning body shall have once been authorized by a vote  
35 of the qualified voters to issue bonds for such purposes  
36 and to a sum not to exceed the amount set forth in the  
37 ordinance calling such election, no further election shall  
38 be necessary for the issuing of bonds during such en-  
39 suing year up to the amount stipulated in such ordinance  
40 calling such election, but the governing body shall, from  
41 time to time during such ensuing year, by ordinance  
42 authorize the issuance of such bonds in such sums, and  
43 authorize such improvements the cost of which shall  
44 be paid from the proceeds of such bonds, as said govern-  
45 ing body shall determine. The aggregate amount of bonds  
46 authorized by such annual election shall not be exceeded  
47 during such ensuing year, unless the same be authorized  
48 by a special bond election held at a subsequent time in  
49 such year and duly called as provided for the calling of  
50 the annual bond election. The provisions of article one,  
51 chapter thirteen of this code, concerning bond elections  
52 shall, so far as they are not in conflict with the provisions  
53 of this article, apply to the annual bond elections and  
54 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  
2 may be made to the treasurer of the municipality or the  
3 holder of the assessment certificates. If payment is made  
4 to the treasurer he shall require all interest to be paid  
5 which is owed up to the time of payment, and notify the  
6 holder of the certificate, if informed of the holder's ad-  
7 dress, that he has received such payment, and make  
8 payment to the holder on presentation for cancellation  
9 of the certificate representing such payment. If payment  
10 is made to the holder of the certificate, the holder shall  
11 deliver to the payor certificates marked "paid" repre-  
12 senting the payments made of principal and interest.  
13 On presentation to the treasurer for cancellation of all  
14 certificates of principal and interest for the whole assess-  
15 ment made against a specific piece of property assessed,  
16 the treasurer shall on request execute and deliver a re-  
17 lease 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 im-  
2 provements where an assessment has heretofore been  
3 laid or may hereafter be laid for the cost thereof, which  
4 said assessment is or shall be void or voidable by reason  
5 of errors, irregularities or defects in the proceedings  
6 under which such improvements were made, or in case  
7 such assessment shall have been made against the wrong  
8 person or property, or shall have been omitted to be  
9 made in a case where the same was proper, it shall be  
10 the duty of the governing body within ten years after  
11 the completion of such improvements, or after any court  
12 shall have declared such assessment invalid, to cause  
13 notice to be given to any person or persons against whom  
14 the cost of said improvements might properly be or have  
15 been assessed, of its intention to lay such assessment and  
16 fixing a date, time and place at which the owner or  
17 owners may appear and show cause against the same.  
18 Said notice shall be served in the manner provided in  
19 this article for the giving of notices in assessment pro-  
20 ceedings, or in any other manner provided by law. At  
21 the time and place specified in the notice aforesaid or at  
22 any time thereafter, the governing body shall proceed  
23 to lay and levy an assessment or assessments for the  
24 cost of such improvements as would have been lawful  
25 under proper proceedings at the time said improvements  
26 were completed, unless the owner or owners so notified  
27 shall show good cause against the same. The reassessment  
28 or reassessments so laid shall be a lien upon the property  
29 liable therefor in the manner hereinabove provided from  
30 the date of the completion of the improvements, with  
31 interest therefrom, and proper assessment certificates  
32 may be issued, recordation had, and the payment thereof  
33 and the lien thereof may be enforced in the same manner  
34 and upon the same terms as would have been proper  
35 at the time of the completion of the said improvements  
36 had the assessments therefor been then properly laid  
37 and levied.

## PART X. LIMITATION ON ADDITIONAL ASSESSMENTS.

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

1 When the cost of grading or regrading, paving or re-  
2 paving, surfacing or resurfacing, curbing or recurbing  
3 or other work permanently improving streets, alleys,  
4 public ways or easements, or of building or renewing  
5 sidewalks, or constructing sewers, has been assessed  
6 against abutting property under the provisions of this  
7 article, no part of the cost of a similar permanent im-  
8 provement of the same portion of the same street, alley,  
9 public way or easement, or sewer right of way or ease-  
10 ment, shall be assessed against such abutting property  
11 within ten years after completion of the last preceding  
12 similar such improvement for which assessments have  
13 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.**

1 This article shall be liberally construed to accomplish  
2 the purpose of providing reasonable, economical and  
3 expeditious means for municipalities to provide per-  
4 manent improvements and to assure to the contractors  
5 making such improvements, or persons directly or indi-  
6 rectly financing the same, security in the payment of  
7 the cost and expense of such improvements; and nothing  
8 in this article shall be construed as imposing a time  
9 limit on a certificate holder or bond holder for the  
10 enforcement of his rights.

11 Moreover, the validity and enforcement of the assess-  
12 ments in this article provided shall not be impaired by  
13 the issuance and sale of bonds, as provided in article  
14 one of chapter thirteen of this code, for the same im-  
15 provements, nor by the application, in whole or in part,  
16 of the proceeds of any such bond issue to the cost of  
17 any such improvement prior to collection of said assess-  
18 ments.

**§8-18-21. Cumulative authority.**

1 The power and authority herein granted shall be in

2 addition to and not in derogation of any power and  
3 authority vested in any municipality under any consti-  
4 tutional, statutory or charter provisions which may now  
5 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; defini-  
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

6 and improvements to an existing waterworks system,  
 7 within the corporate limits of said municipality and  
 8 within the area extending twenty miles beyond the  
 9 corporate limits of such municipality, notwithstanding  
 10 any provision or limitation to the contrary in any other  
 11 law or charter: *Provided*, That such municipality shall  
 12 not serve or supply water facilities or services within  
 13 the corporate limits of any other municipality without  
 14 the consent of the governing body of such other municipi-  
 15 pality.

16 When used in this article, the term "waterworks  
 17 system" shall be construed to mean and include a water-  
 18 works system in its entirety or any integral part thereof,  
 19 including mains, hydrants, meters, valves, standpipes,  
 20 storage tanks, pump tanks, pumping stations, intakes,  
 21 wells, impounding reservoirs, pumps, machinery, puri-  
 22 fication plants, softening apparatus, and all other facil-  
 23 ities necessary, appropriate, useful, convenient or in-  
 24 cidental 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.**

1 The governing body of any Class III city or Class IV  
 2 town or village is hereby prohibited from selling, leas-  
 3 ing or otherwise disposing of its municipally owned  
 4 waterworks system, unless upon submission of the ques-  
 5 tion of the proposed sale, lease or other disposition to  
 6 the qualified voters of said city, town or village for  
 7 ratification or rejection at any regular municipal election  
 8 or special municipal election, three-fifths of the legal  
 9 votes cast shall be in favor of ratification. Should any  
 10 such city, town or village desire to sell, lease or otherwise  
 11 dispose of its waterworks system, it shall publish the  
 12 following described notice immediately prior to the reg-  
 13 ular municipal election or special municipal election,  
 14 as specified by the governing body, as a Class II legal  
 15 advertisement in compliance with the provisions of article  
 16 three, chapter fifty-nine of this code, and the publication

17 area for such publication shall be such city, town or  
18 village. The notice shall set forth the terms and condi-  
19 tions of such sale, lease or other disposition of said water-  
20 works system, the price or other consideration which  
21 has been agreed upon, the name of the purchaser or  
22 purchasers or lessee or lessees, and such other informa-  
23 tion as the governing body may deem necessary, and  
24 each ballot, or ballot label where voting machines are  
25 used, shall have written or printed thereon the following  
26 words:

27  For Ratification

28  Against Ratification

29 Such election shall be held under the superintendence  
30 of the commissioners of election appointed by the gov-  
31 erning body of such city, town or village and the results  
32 of such election shall be certified under oath and re-  
33 turned by said election commissioners to the governing  
34 body as soon as may be after such election.

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

### PART III. RIGHT OF EMINENT DOMAIN.

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

1 For the purpose of acquiring, constructing, establishing  
2 or extending any waterworks system, or for the purpose  
3 of constructing any additions, betterments or improve-  
4 ments to any waterworks system, or for the purpose of  
5 acquiring any property necessary, appropriate, useful,  
6 convenient or incidental for or to any waterworks system,  
7 under the provisions of this article, the municipality shall  
8 have the right of eminent domain as provided in chapter  
9 fifty-four of this code: *Provided*, That such right of emi-  
10 nent domain for the acquisition of a complete privately

11 owned waterworks system shall not be exercised without  
12 prior approval of the public service commission, and in  
13 no event shall any municipality construct, establish or  
14 extend beyond the corporate limits of said municipality a  
15 municipal waterworks system under the provisions of this  
16 article to supply service in competition with an existing  
17 privately or municipally owned waterworks system in  
18 such municipality or within the proposed extension of  
19 such system, unless a certificate of public convenience and  
20 necessity therefor shall have been issued by the public  
21 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.**

1 Whenever a municipality shall, under the provisions of  
2 this article, determine to acquire (by purchase or other-  
3 wise), construct, establish, extend or equip a waterworks  
4 system, it shall cause an estimate to be made of the cost  
5 thereof, and shall, by ordinance, provide for the issuance  
6 of revenue bonds under the provisions of this article,  
7 which ordinance shall set forth a brief description of the  
8 contemplated undertaking, the estimated cost thereof, the  
9 amount, rate or rates of interest, the time and place of  
10 payment, and other details in connection with the issuance  
11 of the bonds. Such bonds shall be in such form and shall  
12 be negotiated in such manner and upon such terms as  
13 the governing body of such municipality may by ordi-  
14 nance specify. All such bonds and the interest thereon,  
15 and all properties and revenues and income derived from  
16 such waterworks system, shall be exempt from all tax-  
17 ation by this state, or any county, municipality, political  
18 subdivision or agency thereof. Such bonds shall bear  
19 interest at not more than six percent per annum, pay-  
20 able semiannually, and shall be payable at such times,  
21 not exceeding forty years from their date, and at such  
22 place or places, within or without the state, as shall be  
23 prescribed in the ordinance providing for their issuance.  
24 Such ordinance shall also declare that a statutory  
25 mortgage lien shall exist upon the property so to be  
26 acquired, constructed, established, extended or equipped,

27 fix minimum rates or charges for water to be collected  
28 prior to the payment of all of said bonds and shall pledge  
29 the revenues derived from the waterworks system for  
30 the purpose of paying such bonds and interest thereon,  
31 which pledge shall definitely fix and determine the  
32 amount of revenues which shall be necessary to be set  
33 apart and applied to the payment of the principal of and  
34 interest upon the bonds and the proportion of the balance  
35 of such revenues which are to be set aside as a proper  
36 and adequate depreciation account, and the remainder  
37 shall be set aside for the reasonable and proper mainte-  
38 nance and operation thereof. The rates or charges to be  
39 charged for the services from such waterworks system  
40 shall be sufficient at all times to provide for the payment  
41 of interest upon all bonds and to create a sinking fund  
42 to pay the principal thereof as and when the same become  
43 due, and reasonable reserves therefor, and to provide  
44 for the repair, maintenance and operation of the water-  
45 works system, and to provide an adequate depreciation  
46 fund, and to make any other payments which shall be  
47 required or provided for in the ordinance authorizing  
48 the issuance of said bonds.

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

1 After the ordinance for any project under this article  
2 has been adopted, the ordinance, together with the fol-  
3 lowing described notice, shall be published as a Class II  
4 legal advertisement in compliance with the provisions of  
5 article three, chapter fifty-nine of this code, and the  
6 publication area for such publication shall be such munici-  
7 pality. The notice to be published with said ordinance  
8 shall state that said ordinance has been adopted, and that  
9 the municipality contemplates the issuance of the bonds  
10 described in the ordinance, and that any person interested  
11 may appear before the governing body, upon a certain  
12 date which shall not be less than ten days subsequent to  
13 the date of the last publication of such ordinance and  
14 notice, and present protests. At such hearing all protests  
15 and suggestions shall be heard and the governing body  
16 shall take such action as it shall deem proper in the  
17 premises: *Provided*, That if at such hearing written pro-

18 test is filed by thirty percent or more of the freeholders  
19 of the municipality, then the governing body of said  
20 municipality shall not take further action unless four-  
21 fifths of the qualified members of said governing body  
22 assent thereto.

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

1 Bonds herein provided for shall be issued in such  
2 amounts as may be necessary to provide sufficient funds  
3 to pay all costs of acquisition, construction, establishment,  
4 extension or equipment, including engineering, legal and  
5 other expenses, together with interest to a date six  
6 months subsequent to the estimated date of completion.  
7 Bonds issued under the provisions of this article are  
8 hereby declared to be negotiable instruments, and the  
9 same shall be executed by the proper legally constituted  
10 authorities of the municipality and be sealed with the  
11 corporate seal of the municipality, and in case any of  
12 the officers whose signatures appear on the bonds or  
13 coupons shall cease to be such officers before delivery of  
14 such bonds, such signatures shall nevertheless be valid and  
15 sufficient for all purposes the same as if they had re-  
16 mained in office until such delivery. All signatures on  
17 the bonds or coupons and the corporate seal may be mech-  
18 anically reproduced if authorized in the ordinance author-  
19 izing the issuance of the bonds. Said bonds shall not  
20 be negotiated at a price lower than a price which when  
21 computed to maturity upon standard tables of bond  
22 values will show a net return of more than six percent per  
23 annum to the purchaser upon the amount paid therefor.

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

1 Bonds issued under the provisions of this article shall  
2 be payable solely from the revenues derived from such  
3 waterworks system, and such bonds shall not in any event  
4 constitute an indebtedness of such municipality within  
5 the meaning of any constitutional or statutory provision  
6 or limitation, and it shall be plainly stated on the face  
7 of each bond that the same has been issued under the  
8 provisions of this article, and that it does not constitute

9 an indebtedness of such municipality within any constitu-  
10 tional or statutory provision or limitation. Subject to the  
11 provisions of subsection (b), section twelve of this article,  
12 the ordinance authorizing the issuance of the bonds may  
13 contain such covenants and restrictions upon the issuance  
14 of additional revenue bonds thereafter as may be deemed  
15 necessary or advisable for the assurance of payment of  
16 the bonds thereby authorized and as may thereafter be  
17 issued.

**§8-19-8. Lien of bondholders.**

1 There shall be and there is hereby created and granted  
2 a statutory mortgage lien upon the waterworks system  
3 so acquired, constructed, established, equipped or ex-  
4 tended from the proceeds of bonds hereby authorized to  
5 be issued, which shall exist in favor of the holder of  
6 said bonds and each of them, and to and in favor of the  
7 holder of the coupons attached to said bonds, and such  
8 waterworks system shall remain subject to such statu-  
9 tory mortgage lien until payment in full of the principal  
10 of and interest upon said bonds.

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

**§8-19-9. 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  
10 waterworks system may be applied and the securing,  
11 use and disposition thereof, including, if deemed desir-  
12 able, the appointment of a trustee or depository for any  
13 of such funds;

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

23 (c) The fixing, establishing and collecting of such  
24 rates or charges for the use of the services and facilities  
25 of the waterworks system, including the parts thereof  
26 heretofore or hereafter acquired, constructed, established,  
27 extended or equipped and the revision of same from  
28 time to time, as will always provide revenues at least  
29 sufficient to provide for all expenses of repair, mainte-  
30 nance and operation of such waterworks system, the  
31 payment of the principal of and interest upon all bonds  
32 or other obligations payable from the revenues of such  
33 waterworks system, and all reserve and other funds  
34 required by the terms of the ordinance authorizing the  
35 issuance of such bonds;

36 (d) The transfer from the general funds of the mu-  
37 nicipality to the account or accounts of the waterworks  
38 system of an amount equal to the cost of furnishing the  
39 municipality or any of its departments, boards or agen-  
40 cies with the services and facilities of such waterworks  
41 system;

42 (e) Subject to the provisions of subsection (b), sec-  
43 tion twelve of this article, limitations or restrictions upon  
44 the issuance of additional bonds or other obligations  
45 payable from the revenues of such waterworks system,  
46 and the rank or priority, as to lien and source and

47 security for payment from the revenues of such water-  
48 works system, between bonds payable from such rev-  
49 enues;

50 (f) The manner and terms upon which all bonds  
51 and other obligations issued hereunder may be declared  
52 immediately due and payable upon the happening of  
53 a default in the payment of the principal of or interest  
54 thereon, or in the performance of any covenant or  
55 agreement with bondholders, and the manner and  
56 terms upon which such defaults may be declared cured  
57 and the acceleration of the maturity of such bonds  
58 rescinded and repealed;

59 (g) Budgets for the annual repair, maintenance and  
60 operation of such waterworks system and restrictions  
61 and limitations upon expenditures for such purposes,  
62 and the manner of adoption, modification, repeal or  
63 amendment thereof, including the approval of such  
64 budgets by consulting engineers designated by holders  
65 of bonds issued hereunder;

66 (h) The amounts of insurance to be maintained upon  
67 such waterworks system, or any part thereof, and the  
68 use and disposition of the proceeds of any insurance;  
69 and

70 (i) The keeping of books of account, relating to such  
71 undertakings and the audit and inspection thereof, and  
72 the furnishing to the holders of bonds issued hereunder  
73 or their representatives, reports prepared, certified or  
74 approved by accountants designated or approved by the  
75 holders of bonds issued hereunder.

76 Any such ordinance or trust indenture may also con-  
77 tain such other additional covenants as shall be deemed  
78 necessary or desirable for the security of the holders  
79 of bonds issued hereunder, notwithstanding that such  
80 other covenants are not expressly enumerated above,  
81 it being the intention hereof to grant to municipalities  
82 plenary power and authority to make any and all  
83 covenants or agreements necessary in order to secure  
84 greater marketability for bonds issued hereunder as  
85 fully and to the same extent as such covenants or agree-  
86 ments could be made by a private corporation rendering  
87 similar services and facilities and to grant to munici-

88 palities full and complete power and authority to enter  
89 into any contracts, covenants or agreement with holders  
90 of bonds issued hereunder not inconsistent with the  
91 constitution of this state.

**§8-19-10. Operating contract.**

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

**§8-19-11. Rates or charges for water must be sufficient to pay  
bonds, etc.; disposition of surplus.**

1 Rates or charges for water fixed precedent to the  
2 issuance of bonds shall not be reduced until all of said  
3 bonds shall have been fully paid, and may, whenever  
4 necessary, be increased in amounts sufficient to provide  
5 for the payment of the principal of and interest upon  
6 such bonds, and to provide proper funds for the depre-  
7 ciation account and repair, maintenance and operation  
8 charges. If any surplus shall be accumulated in the  
9 repair, maintenance and operation fund which shall be  
10 in excess of the cost of repairing, maintaining and oper-  
11 ating the waterworks system during the remainder of  
12 the fiscal year then current, and the cost of repairing,  
13 maintaining and operating the said waterworks system  
14 during the fiscal year then next ensuing, then any such  
15 excess may be transferred to either the depreciation  
16 account or to the bond and interest redemption account,  
17 and if any surplus shall be accumulated in the depre-  
18 ciation account over and above that which the munic-  
19 ipality shall find may be necessary for the probable

20 replacements which may be needed during the then  
21 present fiscal year, and the next ensuing fiscal year,  
22 such excess may be transferred to the bond and interest  
23 redemption account, and if any surplus shall exist in  
24 the bond and interest redemption account the same shall  
25 be applied insofar as possible in the purchase or retire-  
26 ment of outstanding revenue bonds payable from such  
27 account.

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

1 (a) Every municipality issuing bonds under the pro-  
2 visions of this article shall thereafter, so long as any  
3 of such bonds remain outstanding, repair, maintain and  
4 operate its waterworks system as hereinafter provided  
5 and shall charge, collect and account for revenues there-  
6 from as will be sufficient to pay all repair, maintenance  
7 and operation costs, provide a depreciation fund, retire  
8 the bonds and pay the interest requirements of the  
9 bonds as the same become due. The ordinance pursuant  
10 to which any such bonds are issued shall pledge the  
11 revenues derived from the waterworks system to the  
12 purposes aforesaid and shall definitely fix and determine  
13 the amount of revenues which shall be necessary and  
14 set apart in a special fund for the bond requirements.  
15 The amounts as and when so set apart into said special  
16 fund for the bond requirements shall be remitted to  
17 the state sinking fund commission to be retained and  
18 paid out by said commission consistent with the pro-  
19 visions of this article and the ordinance pursuant to  
20 which such bonds have been issued. The bonds hereby  
21 authorized shall be issued in such amounts as may be  
22 determined necessary to provide funds for the purpose  
23 for which they are authorized, and in determining the  
24 amount of bonds to be issued it shall be proper to in-  
25 clude interest on the bonds for a period not beyond six  
26 months from the estimated date of completion.

27 (b) If the proceeds of the bonds, because of error  
28 or otherwise, shall be less than the cost of the property  
29 or undertaking for which authorized, additional bonds  
30 may be issued to provide the amount of such deficit and  
31 such additional bonds shall be deemed to be of the

32 same issue and shall be entitled to payment from the  
33 same fund without preference or priority over the bonds  
34 first authorized and issued.

35 (c) If the proceeds of the bonds shall exceed the  
36 cost of the property or undertaking, the surplus shall  
37 be converted into the fund for the retirement of the  
38 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.

**§8-19-14. Bonds for additions, betterments and improvements.**

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.

**§8-19-15. System of accounts; audit.**

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 with  
4 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,  
etc.; receivership.**

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

1 Any municipality is hereby empowered and authorized  
2 to accept grants, and procure loans or temporary advances,  
3 for the purpose of paying part or all of the cost of acquisi-  
4 tion, construction, establishment, extension or equipment  
5 of waterworks systems and the construction of additions,  
6 betterments and improvements thereto, from the United  
7 States of America or any federal or public agency or  
8 department of the United States or any private agency,  
9 corporation or individual, which loans or temporary ad-  
10 vances may be repaid out of the proceeds of bonds  
11 authorized to be issued under the provisions of this article  
12 and to enter into the necessary contracts and agreements  
13 to carry out the purposes hereof with the United States  
14 of America or any federal or public agency or department  
15 of the United States, or with any private agency, corpo-  
16 ration or individual.

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

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

1 This article shall, without reference to any other  
2 statute or charter provision, be deemed full authority for  
3 the acquisition, construction, establishment, extension,  
4 equipment, additions, betterment, improvement, repair,  
5 maintenance and operation of or to the waterworks sys-  
6 tem herein provided for and for the issuance and sale  
7 of the bonds by this article authorized, and shall be  
8 construed as an additional and alternative method there-  
9 for and for the financing thereof, and no petition, refer-

10 endum or election or other or further proceeding with  
11 respect to any such undertaking or to the issuance or sale  
12 of bonds under the provisions of this article and no pub-  
13 lication of any resolution, ordinance, notice or proceeding  
14 relating to any such undertaking or to the issuance or  
15 sale of such bonds shall be required, except as prescribed  
16 by this article, any provisions of other statutes of the  
17 state to the contrary notwithstanding: *Provided*, That all  
18 functions, powers and duties of the state department of  
19 health shall remain unaffected by this article.

20 This article shall be construed as cumulative authority  
21 for any undertaking herein authorized, and shall not be  
22 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.**

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

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

1 This article is necessary for the public health, safety  
2 and welfare and shall be liberally construed to effectuate  
3 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  
2 equip and thereafter repair, maintain and operate a com-  
3 bined waterworks and sewerage system either wholly  
4 within or partly within and partly without the corporate  
5 limits thereof, under the provisions of this article, and  
6 any municipality owning and operating either a water-  
7 works or a sewerage system, but not both, may acquire,  
8 construct, establish and equip the waterworks or sewerage  
9 system which it does not then own and operate, and in  
10 either of such cases such municipality may provide by  
11 ordinance that when such waterworks or sewerage system,  
12 or both, shall have been acquired, constructed, estab-  
13 lished and equipped, the same shall thereafter be owned,  
14 repaired, maintained and operated as a combined under-  
15 taking under the provisions of this article, and any  
16 municipality already owning and operating an existing  
17 waterworks system and an existing sewerage system may  
18 by ordinance combine the same into a single undertaking  
19 under the provisions of this article.

20 Any municipality which has combined its waterworks  
21 and sewerage system under the provisions of this article,  
22 or pursuant to provisions of any other law, may hereafter  
23 construct extensions, additions, betterments and improve-  
24 ments to either the waterworks system or the sewerage  
25 system of said combined waterworks and sewerage sys-  
26 tem, or both, and may finance the acquisition, construc-  
27 tion, establishment and equipment of any such water-  
28 works or sewerage system, or both, or the construction of  
29 extensions, additions, betterments and improvements to  
30 either the waterworks system or the sewerage system of  
31 such combined waterworks and sewerage system, or both,  
32 by the issuance of revenue bonds under the provisions of  
33 this article.

34 Notwithstanding the provisions of any other law or  
35 charter to the contrary, any such municipality may serve  
36 and supply the area included within twenty miles out-  
37 side its corporate limits with the water or sewer services  
38 and facilities, or both, of its combined waterworks and  
39 sewerage system: *Provided*, That such water or sewer  
40 services and facilities shall not be served or supplied  
41 within the corporate limits of any other municipality  
42 without the consent of the governing body of such other  
43 municipality.

44 When used in this article, the term "waterworks sys-  
45 tem" shall be construed to mean and include a water-  
46 works system in its entirety or any integral part thereof,  
47 including mains, hydrants, meters, valves, standpipes,  
48 storage tanks, pump tanks, pumping stations, intakes,  
49 wells, impounding reservoirs, pumps, machinery, purifica-  
50 tion plants, softening apparatus, and all other facilities  
51 necessary, appropriate, useful, convenient or incidental  
52 in connection with or to a water supply system; the term  
53 "sewerage system" shall be construed to mean and in-  
54 clude any or all of the following: A sewage treatment  
55 plant or plants, collecting, intercepting and outlet sewers,  
56 lateral sewers, drains, force mains, conduits, pumping  
57 stations, ejector stations and all other appurtenances, ex-  
58 tensions, additions and improvements necessary, appro-  
59 priate, useful, convenient or incidental for the collection,  
60 treatment and disposal in a sanitary manner of sewage  
61 and industrial wastes; and the term "combined water-  
62 works and sewerage system" shall be construed to mean  
63 and include a waterworks and sewerage system, which a  
64 municipality determines by ordinance to operate in com-  
65 bination.

#### PART II. RIGHT OF EMINENT DOMAIN.

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

1 For the purpose of acquiring, constructing, establishing  
2 or extending any waterworks system or any sewerage  
3 system, or a combined waterworks and sewerage system,  
4 or for the purpose of constructing any additions, better-  
5 ments or improvements to any such waterworks or  
6 sewerage system, or a combined waterworks and sewer-

7 age system, or for the purpose of acquiring any prop-  
8 erty necessary, appropriate, useful, convenient or inci-  
9 dental for or to any waterworks or sewerage system, or  
10 combined waterworks and sewerage system, under the  
11 provisions of this article, the municipality shall have the  
12 right of eminent domain as provided in chapter fifty-four  
13 of this code: *Provided*, That such right of eminent  
14 domain for the acquisition of a complete privately owned  
15 waterworks system shall not be exercised without prior  
16 approval of the public service commission, and in no  
17 event shall any municipality construct, establish or ex-  
18 tend beyond the corporate limits of said municipality a  
19 municipal waterworks system or a combined waterworks  
20 and sewerage system under the provisions of this article  
21 to supply service in competition with an existing pri-  
22 vately or municipally owned waterworks system or com-  
23 bined waterworks and sewerage system in such municipi-  
24 pality or within the proposed extension of such system,  
25 unless a certificate of public convenience and necessity  
26 therefor shall have been issued by the public service com-  
27 mission.

#### PART III. REVENUE BOND FINANCING.

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

1 The governing body of any municipality availing itself  
2 of the provisions of this article shall adopt an ordinance  
3 describing in a general way the contemplated project.  
4 If it is intended to include in the combined waterworks  
5 and sewerage system any existing waterworks system  
6 or any existing sewerage system, or both, such ordinance  
7 shall provide that it or they be so included in such com-  
8 bined system and shall describe in a general way such  
9 existing waterworks or sewerage system or both to be  
10 included in the combined waterworks and sewerage  
11 system. Such ordinance shall state the means provided  
12 for refunding any obligations unpaid and outstanding  
13 payable solely from the revenues of any such waterworks  
14 or sewerage system, or both. Such ordinance shall deter-  
15 mine the period of usefulness of the contemplated proj-  
16 ect. If it is intended to acquire, construct, establish and  
17 equip a combined waterworks and sewerage system or

18 any part thereof, or to construct extensions, additions,  
19 betterments and improvements to either the waterworks  
20 system or the sewerage system of said combined water-  
21 works and sewerage system, or both, the ordinance shall  
22 describe in a general way the works or property or sys-  
23 tem to be acquired, constructed, established or equipped  
24 or the extensions, additions, betterments and improve-  
25 ments to be constructed. Such ordinance shall fix the  
26 amount of revenue bonds proposed to be issued, the in-  
27 terest rate or rates, and any other details in connection  
28 with such bonds deemed advisable. Such ordinance may  
29 state that the bonds, or such ones thereof as may be  
30 specified, shall, to the extent and in the manner pre-  
31 scribed, be subordinated and be junior in standing, with  
32 respect to principal and interest and the security thereof,  
33 to such other bonds as are designated in the ordinance.

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

1 After the ordinance for any project under the pro-  
2 visions of this article has been adopted, the ordinance,  
3 together with the following described notice, shall be  
4 published as a Class II legal advertisement in compli-  
5 ance with the provisions of article three, chapter fifty-  
6 nine of this code, and the publication area for such publi-  
7 cation shall be such municipality. The notice to be  
8 published with said ordinance shall state that said ordi-  
9 nance has been adopted, and that the municipality con-  
10 templates the issuance of the bonds described in the ordi-  
11 nance, and that any person interested may appear be-  
12 fore the governing body, upon a certain date which shall  
13 not be less than ten days subsequent to the date of the  
14 last publication of such ordinance and notice, and pre-  
15 sent protests. At such hearing all protests and sugges-  
16 tions shall be heard and the governing body shall take  
17 such action as it shall deem proper in the premises:  
18 *Provided*, That if at such hearing written protest is filed  
19 by thirty percent or more of the freeholders of the  
20 municipality, then the governing body of said munic-  
21 ipality shall not take further action unless four-fifths of  
22 the qualified members of said governing body assent  
23 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,  
2 construction, establishment or equipment of any such  
3 waterworks or sewerage system, or a combined water-  
4 works and sewerage system, and for the purpose of  
5 paying the cost of constructing any extensions, addi-  
6 tions, betterments or improvements to either the water-  
7 works or sewerage system of said combined waterworks  
8 and sewerage system, or both, any such municipality  
9 may issue revenue bonds under the provisions of this  
10 article. All such bonds may be authorized, issued and  
11 sold pursuant to ordinance in installments at different  
12 times or an entire issue or series may be sold at one time.  
13 Such bonds shall bear interest at a rate not to exceed  
14 six percent per annum, payable semiannually, and shall  
15 mature within the period of usefulness of the project  
16 involved, to be determined by the governing body and  
17 in any event within a period of not more than forty  
18 years. Such bonds may be in such denomination or de-  
19 nominations, may be in such form, either coupon or  
20 registered, may carry such registration and conversion  
21 privileges, may be executed in such manner, may be pay-  
22 able in such medium of payment, at such place or places,  
23 may be subject to such terms of redemption, with or  
24 without a premium, may be declared to become due  
25 before the maturity date thereof, may provide for the  
26 replacement of mutilated, destroyed, stolen or lost bonds,  
27 may be authenticated in such manner and upon com-  
28 pliance with such conditions, and may contain such other  
29 terms and covenants, as may be provided by ordinance  
30 of the governing body of the municipality. Notwith-  
31 standing the form or tenor thereof, and in the absence  
32 of an express recital on the face thereof that the bond  
33 is nonnegotiable, all such bonds shall at all times be, and  
34 shall be treated as, negotiable instruments for all pur-  
35 poses. Said bonds and the interest thereon, together  
36 with all properties and facilities of said municipality  
37 owned or used in connection with said combined water-  
38 works or sewerage system, and all the moneys, revenues

39 and other income of such municipality derived from  
40 such combined waterworks and sewerage system shall  
41 be exempt from all taxation by this state or any county,  
42 municipality, political subdivision or agency thereof.  
43 Such bonds may be sold in such manner as the govern-  
44 ing body shall determine and if issued to bear interest  
45 at the rate of six percent per annum shall be sold for  
46 not less than par and accrued interest. If any such bonds  
47 shall be issued to bear interest at a rate of less than six  
48 percent per annum, the minimum price at which they  
49 may be sold shall be such that the interest cost to such  
50 municipality of the proceeds of such bonds shall not  
51 exceed six percent per annum computed to maturity  
52 according to the standard table of bond values: *Provided,*  
53 *That if the governing body of the municipality deter-*  
54 *mines to sell any revenue bonds of such combined water-*  
55 *works and sewerage system for refunding purposes, such*  
56 *bonds shall be sold at not less than par and accrued*  
57 *interest and the proceeds deposited at the place of pay-*  
58 *ment of the bonds, obligations or securities being re-*  
59 *funded thereby. In case any officer whose signature*  
60 *appears on such bonds or coupons attached thereto shall*  
61 *cease to be such officer before the delivery of the bonds*  
62 *to the purchaser, such signature shall nevertheless be*  
63 *valid and sufficient for all purposes, with the same effect*  
64 *as if he had remained in office until the delivery of the*  
65 *bonds. All signatures on the bonds or coupons and the*  
66 *corporate seal may be mechanically reproduced if author-*  
67 *ized in the ordinance authorizing the issuance of the*  
68 *bonds. Such bonds shall have all the qualities of negotia-*  
69 *ble instruments under the law of this state.*

70 Whenever a waterworks and sewerage system is in-  
71 cluded in a combined waterworks and sewerage system  
72 under the provisions of this article and there are unpaid  
73 and outstanding revenue bonds or any other obligations  
74 or securities previously issued which are payable solely  
75 from the revenues of such waterworks or such sewerage  
76 system or any part thereof, such outstanding bonds, obli-  
77 gations or securities may be refunded by the issuance  
78 and sale or exchange therefor of revenue bonds to be  
79 issued under the provisions of this article. Whenever

80 any outstanding bonds, obligations or securities previ-  
81 ously issued which are payable solely from the revenues  
82 of any waterworks or sewerage system included in a  
83 combined waterworks and sewerage system under the  
84 provisions of this article are refunded and the refunding  
85 is to be accomplished by exchange, such outstanding  
86 bonds, obligations or securities shall be surrendered and  
87 exchanged for revenue bonds of such combined water-  
88 works and sewerage system of a total principal amount  
89 which shall not be more and may be less than the  
90 principal amount of the bonds, obligations or securities  
91 surrendered and exchanged plus the interest to accrue  
92 thereon to the date of surrender and exchange, and if  
93 the refunding is to be accomplished through the sale of  
94 revenue bonds of such combined waterworks and sewer-  
95 age system the total principal amount of such revenue  
96 bonds which may be sold for refunding purposes shall  
97 not exceed the principal amount of the bonds, obligations  
98 or securities being refunded plus the interest to accrue  
99 thereon to the retirement date or the next succeeding  
100 interest payment date, whichever date may be earlier.  
101 Provision may be made that each bond to be exchanged  
102 for refunding bonds shall be kept intact and shall not be  
103 cancelled or destroyed until the refunding bonds, and  
104 interest thereon, have been finally paid and discharged;  
105 but each such bond shall be stamped with a legend to the  
106 effect that the same has been refunded pursuant to the  
107 provisions of this article.

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

1 Bonds issued under the provisions of this article shall  
2 be payable solely from the revenues derived from the  
3 combined waterworks and sewerage system, and such  
4 bonds shall not in any event constitute an indebtedness of  
5 such municipality within the meaning of any constitu-  
6 tional or statutory provision or limitation and it shall be  
7 plainly stated on the face of each bond that the same  
8 has been issued under the provisions of this article, and  
9 that it does not constitute an indebtedness of such munic-  
10 ipality within any constitutional or statutory provision

11 or limitation. The ordinance authorizing the issuance of  
12 the bonds may contain such covenants and restrictions  
13 upon the issuance of additional revenue bonds thereafter  
14 as may be deemed necessary or advisable for the assur-  
15 ance of payment of the bonds thereby authorized and as  
16 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-  
3 works and sewerage system which shall exist in favor  
4 of the holder of bonds hereby authorized to be issued,  
5 and each of them, and to and in favor of the holder of  
6 the coupons attached to said bonds, and such combined  
7 waterworks and sewerage system shall remain subject  
8 to such statutory mortgage lien until payment in full  
9 of the principal of and interest upon said bonds.

10 Any municipality in acquiring an existing waterworks  
11 system may provide that payment therefor shall be made  
12 by issuing revenue bonds and delivering the same at  
13 such prices as may be agreed upon within the limitations  
14 prescribed in section five hereof. Any revenue bonds  
15 so issued in payment for such an existing waterworks  
16 system shall for all purposes be regarded as partaking  
17 of the nature of and as being secured by a purchase  
18 money mortgage upon the property so acquired; and  
19 the holders thereof shall have, in addition to any other  
20 remedies and rights prescribed by this article, such  
21 remedies and rights as may now or hereafter exist in law  
22 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

10 combined waterworks and sewerage system may be ap-  
11 plied and the securing, use and disposition thereof, in-  
12 cluding, if deemed desirable, the appointment of a trustee  
13 or depository for any of such funds;

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

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

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

45 (e) Limitations or restrictions upon the issuance of  
46 additional bonds or other obligations payable from the  
47 revenues of such combined waterworks and sewerage  
48 system, and the rank or priority, as to lien and source  
49 and security for payment from the revenues of such

50 combined waterworks and sewerage system, between  
51 bonds payable from such revenues;

52 (f) The manner and terms upon which all bonds and  
53 other obligations issued hereunder may be declared  
54 immediately due and payable upon the happening of a  
55 default in the payment of the principal of or interest  
56 thereon, or in the performance of any covenant or agree-  
57 ment with bondholders, and the manner and terms upon  
58 which such defaults may be declared cured and the accel-  
59 eration of the maturity of such bonds rescinded and  
60 repealed;

61 (g) Budgets for the annual repair, maintenance and  
62 operation of such combined waterworks and sewerage  
63 system and restrictions and limitations upon expenditures  
64 for such purposes, and the manner of adoption, modifica-  
65 tion, repeal or amendment thereof, including the ap-  
66 proval of such budgets by consulting engineers desig-  
67 nated by holders of bonds issued hereunder;

68 (h) The amounts of insurance to be maintained upon  
69 such combined waterworks and sewerage system, or any  
70 part thereof, and the use and disposition of the proceeds  
71 of any insurance; and

72 (i) The keeping of books of account, relating to such  
73 undertaking and the audit and inspection thereof, and  
74 the furnishing to the holders of bonds issued hereunder  
75 or their representatives, reports prepared, certified or  
76 approved by accountants designated or approved by the  
77 holders of bonds issued hereunder.

78 Any such ordinance or trust indenture may also con-  
79 tain such other additional covenants as shall be deemed  
80 necessary or desirable for the security of the holders  
81 of bonds issued hereunder, notwithstanding that such  
82 other covenants are not expressly enumerated above, it  
83 being the intention hereof to grant to municipalities  
84 plenary power and authority to make any and all cove-  
85 nants or agreements necessary in order to secure greater  
86 marketability for bonds issued hereunder as fully and  
87 to the same extent as such covenants or agreements  
88 could be made by a private corporation rendering similar  
89 services and facilities and to grant to municipalities full

90 and complete power and authority to enter into any con-  
91 tracts, covenants or agreements with holders of bonds  
92 issued hereunder not inconsistent with the constitution  
93 of this state.

**§8-20-9. Operating contract.**

1 Any such municipality may enter into contracts or  
2 agreements with any persons for (1) the repair, main-  
3 tenance and operation and management of the facilities  
4 and properties of said combined waterworks and sewer-  
5 age system, or any part thereof, or (2) the collection and  
6 disbursement of the income and revenues thereof, or for  
7 both (1) and (2), for such period of time and under  
8 such terms and conditions as shall be agreed upon be-  
9 tween such municipality and such persons. Any such  
10 municipality shall have plenary power and authority to  
11 provide in the ordinance authorizing the issuance of  
12 bonds hereunder, or in any trust indenture securing such  
13 bonds, that such contracts or agreements shall be valid  
14 and binding upon the municipality as long as any of said  
15 bonds, or interest thereon, is outstanding and unpaid.

**§8-20-10. Power and authority of municipality to enact ordi-  
nances and make rules and regulations and fix  
rates or charges; change in rates or charges; de-  
linquent rates or charges as liens; civil action for  
recovery thereof.**

1 The governing body of any municipality availing itself  
2 of the provisions of this article shall have plenary power  
3 and authority to make, enact and enforce all needful rules  
4 and regulations for the repair, maintenance and opera-  
5 tion and management of the combined waterworks and  
6 sewerage system of such municipality and for the use  
7 thereof, and shall also have plenary power and authority  
8 to make, enact and enforce all needful rules and regula-  
9 tions and ordinances for the care and protection of any  
10 such system, which may be conducive to the preservation  
11 of the public health, comfort and convenience and to  
12 rendering the water supply of such municipality pure  
13 and the sewerage harmless insofar as it is reasonably  
14 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

6 adequate reserve fund, an adequate depreciation fund,  
7 and paying the principal of and interest upon the revenue  
8 bonds issued by the municipality under the provisions of  
9 of this article. The ordinance pursuant to which any such  
10 bonds are issued shall pledge the revenues derived from  
11 the combined waterworks and sewerage system to the  
12 purposes aforesaid and shall definitely fix and determine  
13 the amount of revenues which shall be necessary and set  
14 apart in a special fund for the bond requirements. The  
15 amounts as and when so set apart into said special fund  
16 for the bond requirements shall be remitted to the state  
17 sinking fund commission to be retained and paid out by  
18 said commission consistent with the provisions of this  
19 article and the ordinance pursuant to which such bonds  
20 have been issued.

**§8-20-13. System of accounts; audit.**

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

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

1 Whenever a municipality collects rates or charges from  
2 users of any part of a sewerage system located outside the  
3 corporate limits of such municipality for sewerage service  
4 rendered to such users, pursuant to the provisions of this  
5 article or other act or law, such municipality shall be  
6 responsible for the repair and maintenance of such  
7 sewerage system and the county court of the county or  
8 counties in which such sewerage system is located shall  
9 not be liable or responsible for the repair and maintenance  
10 of such sewerage system.

**§8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.**

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

1 Any municipality is hereby empowered and authorized  
2 to accept grants, and procure loans or temporary ad-  
3 vances, for the purpose of paying part or all of the cost  
4 of acquisition, construction, establishment, extension or  
5 equipment of combined waterworks and sewerage sys-

6 tems and the construction of additions, betterments and  
7 improvements thereto, from the United States of America  
8 or any federal or public agency or department of the  
9 United States or any private agency, corporation or in-  
10 dividual, which loans or temporary advances may be  
11 repaid out of the proceeds of bonds authorized to be  
12 issued under the provisions of this article and to enter  
13 into the necessary contracts and agreements to carry  
14 out the purposes hereof with the United States of  
15 America or any federal or public agency or department  
16 of the United States, or with any private agency, corpora-  
17 tion or individual.

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

**§8-20-17. Additional and alternative method for constructing,  
etc., and financing combined waterworks and  
sewerage system; cumulative authority.**

1 This article shall, without reference to any other statute  
2 or charter provision, be deemed full authority for  
3 the acquisition, construction, establishment, extension,  
4 equipment, additions, betterment, improvement, repair,  
5 maintenance and operation of or to the combined water-  
6 works and sewerage system herein provided for and for  
7 the issuance and sale of the bonds by this article author-  
8 ized, and shall be construed as an additional and alterna-  
9 tive method therefor and for the financing thereof, and  
10 no petition, referendum or election or other or further  
11 proceeding with respect to any such undertaking or to  
12 the issuance or sale of bonds under this article and no  
13 publication of any resolution, ordinance, notice or pro-  
14 ceeding relating to any such undertaking or to the is-  
15 suance or sale of such bonds shall be required, except  
16 as prescribed by this article, any provisions of other  
17 statutes of the state to the contrary notwithstanding:

18 *Provided*, That all functions, powers and duties of the  
19 state department of health and the division of water  
20 resources of the department of natural resources shall  
21 remain unaffected by this article.

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

PART V. OPERATION BY BOARD; CONSTRUCTION.

**§8-20-18. Alternative procedure for acquisition, construction,  
etc., of combined waterworks and sewerage  
system.**

1 (a) As an alternative to the procedure hereinabove  
2 provided, any municipality is hereby empowered and  
3 authorized to acquire, construct, establish, extend, equip,  
4 repair, maintain and operate a combined waterworks and  
5 sewerage system or to construct, maintain and operate  
6 additions, betterments and improvements thereto,  
7 whether acquired, constructed, established, extended or  
8 equipped under the provisions of this article or not, and  
9 to collect the revenues therefrom for the services ren-  
10 dered thereby, through the supervision and control of a  
11 committee, by whatever name called, composed of all or  
12 of a portion of the governing body, or of a board or com-  
13 mission appointed by such governing body, as may be  
14 provided by the governing body, and if such alternative  
15 is followed, said committee, board or commission shall  
16 have and be limited to all the powers, authority and duties  
17 granted to and imposed upon a board as provided in  
18 article sixteen of this chapter.

19 (b) In the event that the waterworks or sewerage  
20 system or both are in existence prior to the creation of  
21 the combined waterworks and sewerage system, and the  
22 waterworks or sewerage system or both are supervised  
23 and controlled by a committee, board or commission, and  
24 the alternative provided for in subsection (a) of this  
25 section is to be followed with respect to the supervision  
26 and control of the combined waterworks and sewerage  
27 system, the governing body may by ordinance, after the

28 creation of the combined waterworks and sewerage sys-  
 29 tem, provide (1) the manner of and procedure for trans-  
 30 ferring such supervision and control from each such  
 31 separate committee, board or commission to the com-  
 32 mittee, board or commission which is supervising and  
 33 controlling the combined waterworks and sewerage sys-  
 34 tem, or (2) the manner of and procedure for combining  
 35 each such separate committee, board or commission into  
 36 one committee, board or commission and transferring  
 37 thereto such supervision and control as aforesaid.

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

1 This article is necessary for the public health, safety  
 2 and welfare and shall be liberally construed to effectuate  
 3 its purposes.

**ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSIONERS.**

**PART I. ESTABLISHMENT; ORGANIZATION.**

**§8-21-1. Cities may establish board.**

1 Every city is hereby empowered and authorized to  
 2 provide for by charter provision, or to create by ordi-  
 3 nance, a board of park and recreation commissioners,  
 4 for the purpose of establishing, constructing, improving,  
 5 extending, developing, maintaining and operating a city  
 6 public park and recreation system.

**§8-21-2. Board a public corporate body; perpetual existence; seal; name; powers.**

1 The board of park and recreation commissioners  
 2 provided for by charter provision, or created by ordi-  
 3 nance, pursuant to the authority of this article, shall  
 4 be a public corporate body, with perpetual existence  
 5 and a common seal. It shall be known as the board of  
 6 park and recreation commissioners of such city. It shall  
 7 have the power to purchase, hold, sell and convey real  
 8 or personal property; receive any gift, grant, donation,  
 9 bequest or devise; sue and be sued; contract and be  
 10 contracted with; and do any and all things and acts  
 11 which may be necessary, appropriate, convenient or  
 12 incidental to carry out and effectuate the purposes and

13 provisions of this article. For convenience of reference  
14 herein, the board of park and recreation commissioners  
15 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  
2 more than five members as may be provided by charter  
3 provision or ordinance, a majority of whom shall con-  
4 stitute a quorum for the transaction of business, except  
5 as hereinafter in this article provided. Each member  
6 of said board must be a resident and freeholder of the  
7 city. It may be provided either by charter provision  
8 or by ordinance for the appointment of the members  
9 thereof by the governing body, but unless and until  
10 such provision is made, the members of the board shall  
11 be elected by the qualified voters of the city at appro-  
12 priate regular municipal elections. Membership on the  
13 governing body shall not disqualify any member for  
14 election to the board. If provision is made for the  
15 appointment of members as aforesaid and the board  
16 consists of three or four members, one member of the  
17 governing body, if otherwise qualified, may be appointed  
18 by the governing body, and if the board consists of five  
19 members not more than two members of the governing  
20 body so qualified may be so appointed. The term of the  
21 board membership of any such member of the governing  
22 body so appointed shall continue during his term as a  
23 member of such governing body and until his successor  
24 is appointed or elected and qualified. The terms of other  
25 appointed or of elected members shall be for six years,  
26 and until their successors have been duly appointed  
27 or elected and qualified: *Provided*, That notwithstanding  
28 the fact that there be no charter provision or ordinance  
29 for appointment of the members of the board, the gov-  
30 erning body of the city shall appoint the members of  
31 the first board, such appointees to serve, one for a term  
32 of six years, one for a term of four years, and one for  
33 a term of two years. The date upon which the terms  
34 of such board members shall begin shall be specified  
35 by ordinance. When any member of the board, during  
36 his term of office, shall cease to be a resident and free-

37 holder of the city, he shall thereby be disqualified as a  
38 member of said board and his office shall thereupon  
39 become vacant.

**§8-21-4. Filling vacancies.**

1 When a vacancy occurs on said board by reason of  
2 death, resignation, change of residence from the city,  
3 failure to remain a freeholder of the city, or due to  
4 any other cause, the remaining member or members of  
5 said board shall appoint a successor or successors, or  
6 if there should be no members left on said board, the  
7 governing body of the city shall appoint successors, and  
8 in either event, the appointments shall be for the unex-  
9 pired term or terms.

**§8-21-5. Oath of members; organization of board; secretary;  
treasurer.**

1 After appointment or election, the members of the  
2 board shall qualify by taking and filing with the recorder  
3 of the city the oath prescribed by law for public officials,  
4 and they shall not be permitted to serve upon said board  
5 until they have so qualified. If any member of said  
6 board shall fail to so qualify on or before the date upon  
7 which he should assume the duties of his office, a vacancy  
8 shall exist which shall be filled as provided in section  
9 four of this article.

10 At the first meeting held after the first board has been  
11 appointed, as hereinbefore provided, and thereafter on  
12 a date to be fixed by ordinance, the members of the  
13 board shall organize by electing one of their number  
14 president, and another vice president, and by electing  
15 a secretary who need not be a member of the board.  
16 The secretary shall keep an accurate record of all the  
17 fiscal affairs of the board, and shall keep a minute book  
18 in which he shall record the proceedings and transactions  
19 of each meeting of the board. The secretary shall be  
20 paid such compensation for his services as the board  
21 shall fix from year to year. The city treasurer shall be  
22 ex officio treasurer of said board, and he shall take the  
23 oath prescribed by law and shall furnish such bond as  
24 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 compen-  
2 sation for their services but they shall be entitled to  
3 reimbursement for all reasonable and necessary expenses  
4 actually incurred in the performance of their duties as  
5 members of said board. They shall not be personally  
6 interested, directly or indirectly, in any contract entered  
7 into by said board, or hold any remunerative position  
8 in connection with the establishment, construction, im-  
9 provement, extension, development, maintenance or  
10 operation of any of the property under their control  
11 as members of said board.

**PART II. POWERS.**

**§8-21-7. Office; powers.**

1 The governing body shall furnish said board an office  
2 in the city building where it may hold its meetings  
3 and keep its records. Any board operating under the  
4 provisions of this article shall have complete and exclu-  
5 sive control and management of all of the properties  
6 which shall be operated in connection with the public  
7 park and recreation system for the city, and shall have  
8 power to employ such persons as, in its opinion, may  
9 be necessary for the establishment, construction, im-  
10 provement, extension, development, maintenance or  
11 operation of the property under its control, at such wages  
12 or salaries as it shall deem proper, and shall have full  
13 control of all employees.

**§8-21-8. Purchase, lease or condemnation of real property.**

1 The board is hereby granted the power and authority  
2 to acquire in its name or in the name of the city by  
3 purchase, lease, or by exercise of the power of eminent  
4 domain, or otherwise, such land or lands as it shall deter-  
5 mine to be necessary, appropriate, convenient or inci-  
6 dental to the establishment, construction, improvement,  
7 extension, development, maintenance or operation of a  
8 system of public parks, parkways, playgrounds, athletic  
9 fields, stadiums, swimming pools, skating rinks or arenas

10 and other public park and recreational facilities for the  
11 city, whether of a like or different nature.

**§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.**

1 The board is hereby empowered and authorized to take  
2 title in its name or in the name of the city to all real and  
3 personal property acquired by it for the use of the public  
4 or useful to the public in the establishment, construction,  
5 improvement, extension, development, maintenance or  
6 operation of all public parks, parkways, playgrounds,  
7 athletic fields, stadiums, swimming pools, skating rinks or  
8 arenas and all other public park and recreational facilities  
9 for the city, whether of a like or different nature, and  
10 shall manage and dispose of the same as, in its opinion,  
11 will best serve the interests of the public in carrying out  
12 the purposes of this article. The city and all other public  
13 bodies owning real property intended to be used for public  
14 parks and recreation are hereby authorized to convey the  
15 same to said board to be held by it for such purposes, and  
16 said board is hereby authorized to receive the same.  
17 Nothing contained in this chapter shall be construed as  
18 limiting said board from going beyond the corporate  
19 limits of the city, anywhere within the state, to lease,  
20 purchase or otherwise acquire any real property for the  
21 purposes herein set forth. The board shall have the right  
22 to sell and convey only such part of the real property  
23 that it may acquire by gift, devise, purchase or other-  
24 wise, as it may determine to be of no advantage in the  
25 establishment, construction, improvement, extension, de-  
26 velopment, maintenance or operation of said public parks,  
27 parkways, playgrounds, athletic fields, stadiums, swim-  
28 ming pools, skating rinks or arenas and other public park  
29 and recreational facilities, whether of a like or different  
30 nature; except that the board shall have the power and  
31 authority to make such sales and conveyances of its real  
32 property as may be necessary, appropriate or convenient  
33 to enable the city to obtain the benefits of article sixteen  
34 of this chapter or any other similar act or legislative

35 authorization. Under no circumstances shall any of such  
36 real property of the board be sold or conveyed except  
37 by unanimous vote of all of the members of said board.  
38 All deeds conveying the real property of said board shall  
39 be executed in its official name by its president or vice  
40 president, shall have its seal affixed and shall be duly  
41 attested by its secretary.

**§8-21-10. General powers of board; enactment and enforcement of rules and regulations; counsel.**

1 The board shall have the necessary, appropriate, con-  
2 venient and incidental powers and authority to manage  
3 and control all public parks, parkways, playgrounds,  
4 athletic fields, stadiums, swimming pools, skating rinks  
5 or arenas and other public park and recreational facilities  
6 of all kinds used as a part of said public park and recrea-  
7 tion system or as a means of maintaining places of beauty,  
8 education and recreation, and promoting the health,  
9 property, lives, decency, morality and good order of the  
10 general public, and particularly of the inhabitants of the  
11 city and vicinity; to abate or cause to be abated all  
12 nuisances affecting same; to regulate or prohibit the sell-  
13 ing of any article, goods, wares or merchandise within  
14 said park and recreation system so designated; to regulate  
15 or prohibit the placing of signs, billboards, posters and  
16 advertisements within said park and recreation system  
17 as so designated, or the grounds immediately adjacent  
18 thereto; to have the same kept in good order and free  
19 from obstruction for the use and benefit of the public;  
20 to restrict and prohibit vagrants, mendicants, beggars,  
21 tramps, prostitutes or disorderly individuals therefrom;  
22 to establish, construct, improve, extend, develop, main-  
23 tain and operate such parks, parkways, playgrounds,  
24 athletic fields, stadiums, swimming pools, skating rinks  
25 or arenas and other public park and recreational facilities,  
26 whether of a like or different nature, on any grounds  
27 controlled by said board; to acquire for public use by  
28 lease or otherwise lands either within or without the  
29 corporate limits of the city; to cause any public street,  
30 avenue, road, alley, way, bridle path or walkway, which  
31 is a part of the public park and recreation system, to be

32 graded, drained and surfaced; to construct, maintain and  
33 operate all necessary sewers and water lines in connec-  
34 tion with said public park and recreation system; and  
35 to do any and all other things or acts which may in any  
36 way be necessary, appropriate, convenient or incidental  
37 to the use and enjoyment of said public park and recrea-  
38 tion system by the general public as a place or places of  
39 beauty, education, entertainment and recreation.

40 In order to accomplish the foregoing purposes, said  
41 board is hereby empowered and authorized to promulgate,  
42 and amend from time to time, such rules and regulations  
43 as may be necessary, appropriate, convenient or inci-  
44 dental thereto; after codification of such rules and regula-  
45 tions, or any amendments thereto, by ordinance of the  
46 governing body which may provide penalties for a viola-  
47 tion thereof, which codification is hereby authorized, to  
48 enforce the same by appropriate proceedings in any  
49 proper tribunal of this state, or any county, district or  
50 municipality thereof; and to employ such police officers  
51 as it shall deem proper and necessary. The city attorney  
52 shall be the official counsel for said board and shall advise  
53 it on all legal matters, but said board may, in its own  
54 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  
2 for the privilege of using any of the recreational facili-  
3 ties provided in said park and recreation system and  
4 may use the funds so received for the purpose of estab-  
5 lishing, constructing, improving, extending, developing,  
6 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  
2 is hereby empowered and authorized to receive and  
3 disburse for such purposes, any moneys appropriated  
4 to it by the governing body of the city, together with  
5 any other funds which may come into its hands by gift,  
6 grant, donation, bequest, devise, or from its own opera-  
7 tion, or otherwise.

**§8-21-13. Public park and recreation bonds.**

1 Every city is hereby empowered and authorized to  
2 issue, in the manner prescribed by law, bonds for the  
3 purpose of raising funds to establish, construct, improve,  
4 extend, develop, maintain or operate, or any combination  
5 of the foregoing, a system of public parks and recre-  
6 ational facilities for such city, or to refund any bonds  
7 of the city, the proceeds of which were expended in the  
8 establishing, constructing, improving, extending, devel-  
9 oping, maintaining or operating of such public park and  
10 recreation system, or any part thereof. Any bonds issued  
11 for any of the purposes stated in this section shall contain  
12 in the title or subtitle thereto the words "public park  
13 and recreation bonds," in order to identify the same,  
14 and shall be of such form, denomination and maturity  
15 and shall bear such rate of interest as shall be fixed by  
16 ordinance of the governing body of the city. The gov-  
17 erning body may provide for the issuance of bonds for  
18 other lawful purposes of the city in the same ordinance  
19 in which provision shall be made for the issuance of  
20 bonds under the provisions of this section. The board  
21 shall pay all of the costs and expenses of any election  
22 which shall be held to authorize the issuance of public  
23 park and recreation bonds only. The costs and expenses  
24 of holding an election to authorize the issuance of public  
25 park and recreation bonds and bonds for other city pur-  
26 poses shall be paid by the board and the city respectively,  
27 in the proportion that the public park and recreation  
28 bonds bear to the total amount of bonds authorized.

29 Whenever the governing body of the city and the  
30 requisite majority of the legal votes cast at the election  
31 thereon shall authorize, in the manner prescribed by  
32 law, the issuance of bonds for the purpose of establishing,  
33 constructing, improving, extending, developing, main-  
34 taining or operating, or any combination of the fore-  
35 going, a system of public parks and recreational facilities  
36 for the city, or for refunding any outstanding bonds,  
37 the proceeds of which were applied to any of said pur-  
38 poses, said bonds shall be issued and delivered to the  
39 board to be by it sold in the manner prescribed by law,  
40 and the proceeds thereof shall be paid into the treasury

41 of the board, and the same shall be applied and utilized  
 42 by the board for the purposes prescribed by the ordi-  
 43 nance authorizing the issuance of such bonds. In any  
 44 ordinance for the issuance of bonds for such purposes,  
 45 it shall be a sufficient statement of the purposes for  
 46 creating the debt to specify that the same is for the  
 47 purpose of establishing, constructing, improving, extend-  
 48 ing, developing, maintaining or operating, or any com-  
 49 bination of the foregoing, a public park and recreation  
 50 system for the city, without specifying the particular  
 51 establishment, construction, improvement, extension,  
 52 development, maintenance or operation contemplated;  
 53 but an ordinance for refunding bonds shall designate  
 54 the issue and the number of bonds which it is proposed  
 55 to refund.

#### PART IV. CONSTRUCTION.

##### §8-21-14. Construction of article.

1 The provisions of this article shall be construed as con-  
 2 ferring additional power and authority upon cities acting  
 3 hereunder, and shall not be construed as affecting any  
 4 power or authority heretofore conferred upon any city  
 5 by the Legislature by general, special or local law or  
 6 municipal charter, or parts thereof.

#### **ARTICLE 22. 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.

1 Any municipality may elect to become a participating  
 2 public employer under the West Virginia public em-  
 3 ployees retirement system created and established by,  
 4 and administered pursuant to, the provisions of article  
 5 ten, chapter five of this code, for the coverage of all  
 6 employees eligible under the provisions of said article  
 7 ten, except policemen and firemen covered by a police-

8 men's pension and relief fund or firemen's pension and  
9 relief fund.

PART II. GENERAL RETIREMENT SYSTEMS FOR  
CLASS I AND CLASS II CITIES.

**§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.**

1 Every Class I and Class II city which is not a par-  
2 ticipating public employer in the said West Virginia  
3 public employees retirement system is hereby empowered  
4 and authorized to and may establish and maintain an  
5 "employees' retirement and benefit fund" in accordance  
6 with the provisions of this section two and sections  
7 three through fourteen of this article. Any Class I or  
8 Class II city which has heretofore established such a fund  
9 in accordance with the acts of the Legislature referred  
10 to in section fifteen of this article may continue to main-  
11 tain said fund in accordance with the provisions of this  
12 section two and sections three through fourteen of this  
13 article, or said acts, as specified in said section fifteen.

**§8-22-3. Definitions.**

1 For the purpose of sections two through fifteen of this  
2 article:

3 (a) "Prior service credit" shall mean the number of  
4 years that the member has been in the service of the  
5 city prior to the effective date of the employees' retire-  
6 ment and benefit fund;

7 (b) "Earned service credit" shall mean the number of  
8 years that the member has contributed to the em-  
9 ployees' retirement and benefit fund;

10 (c) "Total service credit" shall mean the total of all  
11 prior service credit and all earned service credit;

12 (d) "Fund" shall mean the employees' retirement and  
13 benefit fund;

14 (e) "Board" shall mean the board of trustees of the  
15 fund;

16 (f) "Member" shall mean an eligible employee of the  
17 city, who is a member of the fund;

18 (g) "Total disability in line of duty" shall mean total  
19 and permanent disablement from performing any work  
20 for pay, whether for the city by which employed at date  
21 of disability or other employer, which shall be caused  
22 by accidental injury sustained in the course of the opera-  
23 tions usual to his employment and while in line of duty,  
24 and shall include all operations necessary, incident or  
25 appurtenant thereto, or connected therewith, whether  
26 such operations are conducted at the usual place of em-  
27 ployment or elsewhere in connection with or in relation  
28 to his usual and customary employment;

29 (h) "Total disability not in line of duty" shall mean  
30 total and permanent disablement from performing any  
31 work for pay, whether for the city by which employed  
32 at date of disability or other employer, from any cause  
33 other than that set forth in subdivision (g) of this  
34 section;

35 (i) The term "actuarial equivalent" shall mean an  
36 annuity of equal value to the accumulated contributions,  
37 annuity or benefit when computed upon the basis of the  
38 actuarial tables in use by the fund;

39 (j) "Monthly salary" shall mean the amount earned  
40 each month by a member as an employee of the city:  
41 *Provided*, That to and including June thirty, one thou-  
42 sand nine hundred sixty-seven, the maximum amount  
43 of salary to be considered hereunder for purposes of  
44 contributions and in the computation of benefits shall be  
45 four hundred dollars per month; and

46 (k) "Average salary" shall mean the highest annual  
47 average salary earned by a member during a period of  
48 five consecutive years within the total service of the  
49 member, subject to a maximum amount of four hundred  
50 dollars per month to and including June thirty, one  
51 thousand nine hundred sixty-seven, and no such maxi-  
52 mum amount after such date.

#### §8-22-4. Board of trustees.

1 The governing body of each such city desiring to estab-  
2 lish and maintain a fund as authorized in sections two  
3 through fourteen of this article shall by ordinance pro-  
4 vide for a board of trustees of the fund.

5 The said board of trustees shall consist of the mayor  
6 and four members of the fund, to be appointed by the  
7 mayor, with the advice and consent of a majority of  
8 the members of the fund. The initial appointments shall  
9 be for a term of one, two, three and four years, respec-  
10 tively, after which all appointments shall be for a term  
11 of four years.

12 The presiding officer of the board shall be the mayor,  
13 and the secretary thereof shall be appointed by said  
14 board. It shall be the duty of such secretary to keep a  
15 full and permanent record of all the proceedings of the  
16 board, and said board may fix his compensation for this  
17 work which shall be paid out of said fund.

18 The mayor or any three members of the board shall  
19 have the power to call a meeting at any time that it is  
20 necessary in order to carry out the business of the board.  
21 Three members of the board shall constitute a quorum  
22 to transact business, but it shall require three or more  
23 affirmative votes to pass any matter before the board.

24 The board shall have charge of and administer the  
25 fund and shall order payments therefrom, and no money  
26 shall be paid out of the fund except upon the order of  
27 the board.

28 The governing body shall have plenary power and  
29 authority to make any and all rules and regulations per-  
30 taining to the fund not inconsistent with the provisions  
31 of sections two through fifteen of this article, the con-  
32 stitution and the laws of this state.

33 Such board shall be a public corporation by the name  
34 and style of "The Board of Trustees of the Employees'  
35 Retirement and Benefit Fund of (name the city)," by  
36 which name the board may sue and be sued, plead and  
37 be impleaded, contract and be contracted with, take  
38 and hold real and personal property, for the use of said  
39 fund, and have and use a common seal. Said board may  
40 also in its corporate name do and perform any and all  
41 other acts and business pertaining to the trust created  
42 hereby or by any conveyance, devise or dedication made  
43 for the uses and purposes of said board.

**§8-22-5. Employees eligible for participation in fund.**

1 Employees eligible for participation in the fund shall  
2 include all employees who are employed by the city on  
3 a permanent basis. The following employees, however,  
4 shall not be eligible for participation in the fund:

5 (1) Appointive members of administrative boards and  
6 commissions, except employees of such boards and com-  
7 missions;

8 (2) Individuals employed under contract for a definite  
9 period or for the performance of a particular or special  
10 service;

11 (3) Employees serving on a part-time basis of less  
12 than one-half time;

13 (4) Policemen and firemen covered by a policemen's  
14 pension and relief fund or firemen's pension and relief  
15 fund;

16 (5) Employees who are paid in part by the state,  
17 county or other governmental agency, and only in part  
18 by the city;

19 (6) Employees who are past sixty years of age on  
20 the effective date of the fund; and

21 (7) Employees who are hired after the effective date  
22 of the fund and who were past fifty years of age at the  
23 time they were so employed.

24 In case of doubt, the board of trustees of the fund may  
25 make determination as to any individual's eligibility to  
26 become a member of the fund.

27 All employees eligible for participation at the effective  
28 date of the fund shall become members of the fund,  
29 unless they file a written election not to become a mem-  
30 ber within thirty days after the effective date of the fund.

**§8-22-6. Contributions; prior, earned and total service credits; service breaks.**

1 Until June thirty, one thousand nine hundred sixty-  
2 seven, each member shall pay into the fund six percent  
3 of his monthly salary up to four hundred dollars a month.  
4 After June thirty, one thousand nine hundred sixty-  
5 seven, each member shall contribute six percent of his  
6 monthly salary without any such maximum limitation.

7 Each member shall continue to make such contributions  
8 until such time as such member retires or until he has  
9 contributed to the fund for a period of thirty-five years,  
10 that is, has thirty-five years of "earned service credit."

11 For prior service, each participating employee, in the  
12 employ of the city on the effective date of the fund,  
13 shall be credited, as of such date, with a prior service  
14 credit equal to the period or periods of service that the  
15 member has rendered to the city prior to the effective  
16 date of the fund. Any employee who is in the employ  
17 of the city on the effective date of the fund and who  
18 becomes a member of the fund shall be entitled to prior  
19 service credit even though such prior service was not  
20 continuous. Any individual who is not in the employ  
21 of the city on the effective date of the fund but who  
22 has been employed by the city in the past shall be  
23 entitled to prior service credit if he returns to the service  
24 of the city within two years from the date of the ter-  
25 mination of his service and becomes a member of the  
26 fund within such two-year period.

27 A member upon separation from the service shall be  
28 entitled to withdraw his contributions without interest  
29 in lieu of any benefits to which he may be entitled. If  
30 such employee returns to the service of the city within  
31 two years and becomes a member of the fund, he shall  
32 be considered as a new employee and shall have for-  
33 feited all prior service credits unless he shall repay to  
34 the fund in cash at the time of reemployment the amount  
35 of money which he has withdrawn plus four percent  
36 interest compounded annually on said amount during  
37 the time he was separated from the service. If, however,  
38 the break in service of such member is more than two  
39 years, he shall not be entitled to any prior service credit  
40 nor shall he be entitled to redeposit withdrawals but  
41 he shall reenter the fund as a new member.

**§8-22-7. Retirement pensions.**

1 (a) After the effective date of the fund, any member  
2 of the fund who has at least ten years of total service  
3 credit shall receive a vested right to a retirement pension  
4 which he may exercise upon or after attainment of age  
5 sixty. When he has attained the age of sixty years he

6 may, at his option, apply for a retirement pension, the  
7 amount thereof to be determined in accordance with  
8 the provisions of subsection (d) of this section.

9 (b) Retirement for all members of the fund shall  
10 be compulsory at the age of sixty-five, subject to the  
11 following conditions: The employee may be permitted  
12 to continue in the service if he so desires and if his  
13 services are still valuable to the city. Whether an  
14 employee's services are valuable at the age of sixty-five  
15 shall be determined by the appointing officer of the  
16 city. If he determines that such services are valuable,  
17 his determination must be certified to the board for  
18 approval. If the board approves, the employee may  
19 continue in the service of the city. The appointing  
20 officer shall annually certify to the board relative to the  
21 ability and competency of all employees over age sixty-  
22 five. The amount of any pension under the provisions  
23 of this subsection shall be determined in accordance  
24 with the provisions of subsection (d) of this section.

25 (c) Although he has not attained the age of sixty,  
26 any member who has thirty-five years' total service  
27 and who becomes so physically or mentally disabled as  
28 to render him unfit for the performance of the duties  
29 of the position he occupies shall be entitled to an annual  
30 retirement pension, the amount thereof to be determined  
31 in accordance with the provisions of subsection (d) of  
32 this section.

33 (d) A member of the fund, upon retirement, shall  
34 be entitled to the following annual retirement pension,  
35 payable in twelve monthly installments:

36 For thirty-five years of total service credit to and  
37 including twenty-four years of total service credit, fifty  
38 percent of average salary plus one and two-thirds per-  
39 cent of average salary per year of service for each year  
40 above twenty-three years;

41 For twenty-three years of total service credit, fifty  
42 percent of average salary: *Provided*, That if a member  
43 has twenty-three years of total service credit he shall  
44 be entitled to a minimum retirement pension of one  
45 hundred dollars per month;

46 For twenty-two years of total service credit, forty-nine  
47 percent of average salary;

48 For twenty-one years of total service credit, forty-  
49 eight percent of average salary;

50 For twenty years of total service credit, forty-seven  
51 percent of average salary;

52 For nineteen years of total service credit, forty-five  
53 percent of average salary;

54 For eighteen years of total service credit, forty-three  
55 percent of average salary;

56 For seventeen years of total service credit, forty-one  
57 percent of average salary;

58 For sixteen years of total service credit, thirty-nine  
59 percent of average salary;

60 For fifteen years of total service credit, thirty-six per-  
61 cent of average salary;

62 For fourteen years of total service credit, thirty-three  
63 percent of average salary;

64 For thirteen years of total service credit, thirty-one  
65 percent of average salary;

66 For twelve years of total service credit, twenty-nine  
67 percent of average salary;

68 For eleven years of total service credit, twenty-seven  
69 percent of average salary; and

70 For ten years of total service credit, twenty-five per-  
71 cent of average salary.

72 The rate of a retirement pension shall be prorated for  
73 any fractional part of the total service credit of an em-  
74 ployee of less than a full year.

75 (e) With the condition that no optional benefit shall  
76 be effective if the member dies within thirty days after  
77 the effective date of his retirement, such member may  
78 elect at least one year prior to such effective date of his  
79 retirement to receive a lesser retirement pension, on  
80 a joint and last survivor basis, in order to provide, on  
81 an actuarial equivalent basis, an annuity to a designated  
82 beneficiary under any of the following two options:

83 Option 1. Upon his death while on retirement, his  
84 lesser retirement pension shall be continued throughout

85 the life of and paid to such individual having an insur-  
86 able interest in his life, as he shall have named in a  
87 written designation duly acknowledged and filed with  
88 the board.

89 Option 2. Upon his death while on retirement, one-  
90 half of his lesser retirement pension shall be continued  
91 throughout the life of and paid to such individual having  
92 an insurable interest in his life as he shall have named  
93 in a written designation duly acknowledged and filed  
94 with the board.

95 (f) A member who has attained the age of sixty  
96 years and who has less than ten years' total service credit  
97 shall be entitled to an annuity which shall be the ac-  
98 tual equivalent of his total accumulation account at  
99 the time of his retirement.

#### §8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under  
2 any one of the following mutually exclusive provisions:

3 (1) If a member receives total disability in line of  
4 duty, he shall be entitled during the time of his dis-  
5 ability to a monthly disability pension equal to fifty per-  
6 cent of the monthly salary of the member at date of  
7 disability: *Provided*, That the minimum payment shall  
8 be one hundred dollars per month.

9 (2) If a member receives total disability not in line  
10 of duty while an employee of the city after he has had  
11 at least ten years' total service credit and such member  
12 is not entitled to a retirement pension under the pro-  
13 visions of section seven of this article, he shall be en-  
14 titled during the time of his disability to one-half of the  
15 retirement pension to which he would have been entitled  
16 under the provisions of said section seven had he been  
17 sixty years of age at date of disability and had elected  
18 to take retirement: *Provided*, That he shall be entitled  
19 to a minimum payment of fifty dollars per month and a  
20 maximum payment of one hundred dollars per month.

21 (3) If a member becomes so physically or mentally  
22 disabled as to render him unfit for the performance of  
23 the duties of the position he occupies, but his disability  
24 does not constitute either total disability in line of duty

25 or total disability not in line of duty, and such member  
26 has less than ten years' total service credit, he shall be en-  
27 titled to an annuity which shall be the actuarial equiva-  
28 lent of his total accumulation at the date of his disability.

29 The board of trustees of the fund shall order a periodic  
30 reexamination of members of the fund receiving a dis-  
31 ability pension, and if the disability no longer exists  
32 the payment thereunder shall be discontinued: *Provided*,  
33 That no such reexamination of any such member shall  
34 be ordered as aforesaid after such member attains the  
35 age of sixty years.

**§8-22-9. Death benefits; return of contributions.**

1 (a) A beneficiary or beneficiaries of a deceased mem-  
2 ber, which member was not receiving a retirement pen-  
3 sion under the provisions of section seven of this article  
4 at the date of his death, may qualify for death benefits  
5 under either of the following mutually exclusive pro-  
6 visions:

7 (1) If the member died as a result of personal injury  
8 or disease arising out of and in the course of his em-  
9 ployment with the city, the surviving spouse shall be  
10 entitled during widowhood or widowerhood to a monthly  
11 benefit equal to thirty-three and one-third percent of the  
12 final monthly salary of the member, but not to exceed  
13 one hundred and twenty-five dollars per month. In the  
14 event there be no surviving spouse, or if remarriage  
15 occurs before the youngest child attains age eighteen,  
16 each child under age eighteen shall be entitled until age  
17 eighteen to a monthly benefit equal to twenty percent  
18 of the member's final monthly salary, subject to a total  
19 payment to all such children of fifty percent of such  
20 final monthly salary, or one hundred twenty-five dollars  
21 per month, whichever is the lesser. If there be no sur-  
22 viving spouse or children under age eighteen, the de-  
23 ceased member's dependent father or mother or both,  
24 the question of dependency to be determined by the  
25 board, shall each be entitled until death to a monthly  
26 payment equal to one-sixth of the deceased member's  
27 final monthly salary, but the payment to either parent  
28 shall not exceed fifty dollars per month.

29 (2) If the member died from any cause other than  
30 that stated in subdivision (1) of this subsection, and such  
31 member at the date of his death had ten or more years'  
32 total service credit, his beneficiary or beneficiaries shall  
33 be entitled, for a period not to exceed ten years, to death  
34 benefits in accordance with the retirement pension table  
35 contained in section seven of this article. The death  
36 benefits shall be paid to such individual or individuals  
37 having an insurable interest in the member's life as such  
38 member shall have nominated in a designation filed with  
39 the board. As to any spouse beneficiary, the marriage  
40 must have occurred at least one year prior to the death  
41 of the member in order that the spouse may be eligible  
42 for benefits under this subdivision (2).

43 (b) If a member receiving a retirement pension under  
44 the provisions of section seven of this article at the date  
45 of his death dies with a spouse surviving [concerning  
46 which retirement pension the optional benefit provisions  
47 set forth in subsection (e) of said section seven are not  
48 applicable], and such member had been receiving such  
49 retirement pension for less than ten years, such sur-  
50 viving spouse shall be entitled to receive death benefits  
51 equivalent to the deceased member's retirement pension  
52 for the remaining period of ten years dating from the  
53 date of the member's retirement; but a surviving spouse  
54 shall not be entitled to death benefits under the pro-  
55 visions of this subsection unless such surviving spouse  
56 was married to the member before the date of his retire-  
57 ment and such marriage took place at least one year  
58 prior to the date of the death of the member. If the  
59 surviving spouse remarries, such spouse's death benefits  
60 shall be terminated and shall not be resumed upon sub-  
61 sequent change in the marital status of such spouse.

62 (c) If a member dies with less than ten years' total  
63 service credit so that he was not entitled to a retirement  
64 pension during life, the member's total contributions to  
65 the fund, without interest, shall be returned to such  
66 individual or individuals having an insurable interest  
67 in the member's life as such member shall have nominated  
68 in a designation filed with the board, and in the absence  
69 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

8 for the actuarial valuation of the fund. The board of  
9 trustees shall adopt appropriate tables for the purpose  
10 of evaluating and computing retirement, disability and  
11 death allowances.

**§8-22-13. Reports by board of trustees.**

1 At such times as the board of trustees may deem it  
2 necessary, but at least once within the first three years  
3 of the operation of the fund and each five-year period  
4 thereafter, the board of trustees shall employ a competent  
5 actuary to prepare a report containing an evaluation of  
6 the present and prospective assets and liabilities of the  
7 fund.

8 The board of trustees shall submit to the governing  
9 body an annual report showing the condition of the fund  
10 under its control. It shall certify in such report the  
11 amount of accumulated cash and securities in the fund  
12 and shall present a full account of the operation of the  
13 system.

**§8-22-14. Custodian of fund; duties; bond.**

1 The treasurer of the city shall be the custodian of all  
2 of the assets of the fund, and shall deposit and pay out  
3 the moneys of the fund upon, and in accordance with,  
4 any proper order of the board of trustees. Such treasurer  
5 shall be liable upon his official bond as treasurer for the  
6 faithful performance of his duties in respect to such  
7 fund, and the official bond of the treasurer covering such  
8 fund shall be executed with a good and financially respon-  
9 sible surety company, authorized to do business in this  
10 state, as surety for such fund. Such fund shall not be  
11 used for any other purpose than provided in sections two  
12 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  
2 fourteen of this article to the contrary, the provisions  
3 of said sections two through fourteen shall not be ap-  
4 plicable to any fund established by any city prior to the  
5 effective date of this section, unless and until such city  
6 shall by ordinance provide for the application thereof.

7 In the absence of any such ordinance, any such estab-  
8 lished fund shall be governed and controlled by and  
9 administered in accordance with the provisions of chap-  
10 ter one hundred fourteen, acts of the Legislature, reg-  
11 ular session, one thousand nine hundred forty-seven, and  
12 the amendments by (1) chapter ninety-two, acts of the  
13 Legislature, regular session, one thousand nine hun-  
14 dred forty-nine, (2) chapter one hundred twenty-nine,  
15 acts of the Legislature, regular session, one thousand  
16 nine hundred fifty-five, and (3) chapter thirty-nine, acts  
17 of the Legislature, regular session, one thousand nine  
18 hundred sixty-eight, if and only if an ordinance were  
19 adopted on and after May eight, one thousand nine hun-  
20 dred sixty-eight, and prior to the effective date of this  
21 section providing for the application of said chapter  
22 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.**

1 In every Class I and Class II city having, or which  
2 may hereafter have, a paid police department and a paid  
3 fire department, or either of such departments, the gov-  
4 erning body shall, and in every Class III city and Class  
5 IV town or village having, or which may hereafter have,  
6 a paid police department and a paid fire department, or  
7 either of such departments, the governing body may, by  
8 ordinance provide for the establishment and maintenance  
9 of a policemen's pension and relief fund, and for a fire-  
10 men's pension and relief fund, for the purposes herein-  
11 after enumerated, and, thereupon, there shall be created  
12 boards of trustees which shall administer and distribute  
13 the moneys authorized to be raised by this section and  
14 the following sections of this article. For the purposes  
15 of this section and sections seventeen through twenty-  
16 eight of this article, the term "paid police department"  
17 or "paid fire department" shall be taken to mean only a  
18 municipal police department or municipal fire depart-  
19 ment, as the case may be, maintained and paid for out  
20 of public funds and whose employees are paid on a full-

21 time basis out of public funds. The term shall not be  
22 taken to mean any such department whose employees  
23 are paid nominal salaries or wages or are only paid for  
24 services actually rendered on an hourly basis.

25 Unless and until other provision is made by subse-  
26 quent legislative action, any policemen's pension and  
27 relief fund and any firemen's pension and relief fund  
28 established in accordance with the provisions of former  
29 article six of this chapter or this article twenty-two  
30 shall be or remain mandatory and shall be governed by  
31 the provisions of sections sixteen through twenty-eight  
32 of this article twenty-two (with like effect, in the case  
33 of a Class III city or Class IV town or village, as if such  
34 Class III city or Class IV town or village were a Class  
35 I or Class II city), and shall not be affected by the transi-  
36 tion from one class of municipal corporation to a lower  
37 class as specified in section three, article one of this  
38 chapter.

**§8-22-17. Powers of boards of trustees.**

1 Such board of trustees, or boards of trustees, shall be  
2 public corporations by the name and style of "The Board  
3 of Trustees of the Policemen's Pension and Relief Fund  
4 of (name of municipality)," or "The Board of Trustees  
5 of the Firemen's Pension and Relief Fund of (name of  
6 municipality)," as the case may be, by which names they  
7 may sue and be sued, plead and be impleaded, contract  
8 and be contracted with, take and hold real and personal  
9 property for the use of said policemen's pension and  
10 relief fund or said firemen's pension and relief fund  
11 and have and use a common seal. In the absence of such  
12 a seal, the seal of the president of any such corporation  
13 shall be equivalent to such common seal. Any such board  
14 of trustees may also in its corporate name do and perform  
15 any and all other acts and business pertaining to the  
16 trust created hereby or by any conveyance, devise or  
17 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  
2 relief fund shall consist of the mayor of the municipality

3 and four members of the paid police department, to be  
4 chosen as hereinafter in this section specified. The mayor  
5 of such municipality shall give notice of an election  
6 to be held on the second Monday of the month following  
7 the adoption of the ordinance providing for the estab-  
8 lishment and maintenance of such fund, which notice  
9 shall be served upon each member of the paid police  
10 department and which shall notify each member that  
11 between the hours of nine in the forenoon and six in  
12 the afternoon, on the day designated for such election,  
13 an election will be held for such purpose and that each  
14 member shall furnish in writing the names of four  
15 members of the paid police department voted for; and  
16 all votes so cast shall be counted and canvassed by the  
17 mayor and the governing body for the first election,  
18 and thereafter the votes shall be counted by the then  
19 existing members of such board, who after such election  
20 shall announce the results, and the four members of  
21 the paid police department receiving the highest num-  
22 ber of votes shall, with the mayor, constitute "The Board  
23 of Trustees of the Policemen's Pension and Relief Fund  
24 of (name of municipality)." As to the first election  
25 held following the adoption of the ordinance providing  
26 for the establishment and maintenance of such fund,  
27 the member receiving the highest number of votes  
28 shall serve for a period of four years, the member  
29 receiving the second highest number of votes shall serve  
30 for a period of three years, the member receiving the  
31 third highest number of votes shall serve for a period  
32 of two years, and the member receiving the fourth  
33 highest number of votes shall serve for a period of one  
34 year. After such first election, the board shall hold a  
35 similar election each year to elect one member to suc-  
36 ceed, for a term of four years, the retiring member.  
37 In the case of a tie vote being received by any two  
38 individuals for the office of trustee, such tie vote shall  
39 be decided by casting lots, or in any other way which  
40 may be agreed upon by the individuals for whom such  
41 tie vote was cast. The results of such election shall be  
42 entered in the record of the proceedings of the board  
43 and the members so elected shall, except as hereinabove  
44 specified with respect to the first election, serve for

45 four years and until their successors are elected and  
46 have qualified. The election for such members of the  
47 board of trustees shall be held annually upon the  
48 second Monday of the same month during which the  
49 first election was held. In case of a vacancy by death,  
50 resignation, or otherwise, among the members so  
51 elected, the remaining members of the board shall  
52 choose the successor, or successors, until the next annual  
53 election at which latter time all vacancies shall be  
54 filled.

55 The board of trustees of the firemen's pension and  
56 relief fund shall consist of the mayor of the municipi-  
57 pality and four members of the paid fire department,  
58 to be chosen in the same manner and for such terms  
59 as is provided above in this section for the election  
60 of policemen to the policemen's pension and relief fund  
61 board of trustees.

62 The presiding officer of any such board of trustees  
63 shall be the mayor of the municipality, and the secre-  
64 tary thereof shall be appointed by the board. It shall  
65 be the duty of such secretary to keep a full and per-  
66 manent record of all of the proceedings of the board,  
67 and said trustees may fix the secretary's compensation  
68 for this work, which shall be paid out of the funds of  
69 said policemen's pension and relief fund or firemen's  
70 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  
2 policemen's pension and relief fund or a firemen's pension  
3 and relief fund, or both, the same shall be maintained  
4 as follows: The governing body of the municipality  
5 shall levy annually and in the manner provided by  
6 law for other municipal levies, and include within the  
7 maximum levy or levies permitted by law, and if neces-  
8 sary in excess of any charter provision, a tax at such  
9 rate as will, after crediting all interest, if any, to be  
10 received in such year from the investments of the  
11 respective boards, provide funds equal to the sum of  
12 (1) the full amount of estimated expenditures of the  
13 boards of trustees of the respective funds, and (2) an

14 additional amount equal to ten percent of such estimated  
15 expenditures, said ten percent amount to be taken,  
16 accumulated and invested, if possible, as surplus reserve:  
17 *Provided*, That in no event shall such levy for each of  
18 the respective boards of trustees be less than one cent  
19 nor more than five cents on each one hundred dollars  
20 of all real and personal property as listed for taxation  
21 in such municipality.

22 The levies authorized under the provisions of this  
23 section, or any part of them, may by the governing  
24 body be laid in addition to all other municipal levies,  
25 and to that extent, beyond the limit of levy imposed  
26 by the charter of such municipality; and such levies  
27 shall supersede and if necessary exclude levies for other  
28 purposes if such priority or exclusion is necessary under  
29 limitations upon taxes or tax levies imposed by law.

30 Such public corporations are authorized to take by  
31 gift, grant, devise or bequest, any money or real or per-  
32 sonal property, upon such terms as to the investment  
33 and expenditure thereof as may be fixed by the grantor  
34 or determined by said trustees.

35 In addition to all other sums provided for pensions  
36 in this section, it shall be the duty of every munici-  
37 pality in which any such fund or funds have been or  
38 shall be established to assess and collect from each  
39 member of the paid police department or paid fire de-  
40 partment or both each month, the sum of four percent  
41 of the actual salary or compensation of such member;  
42 and the amount so collected shall become a regular  
43 part of the policemen's pension and relief fund, if  
44 collected from a policeman, and of the firemen's pension  
45 and relief fund, if collected from a fireman.

46 Any member of a paid police or fire department who  
47 is removed or discharged or who before retirement  
48 on any retirement pension or disability pension severs  
49 his connection with said department, provided he has  
50 served two full years or more, whether or not conse-  
51 cutive, shall, upon request, be refunded all pension and  
52 relief fund deductions made from his salary or compen-  
53 sation, but without interest. In the event such refund  
54 is made and such member subsequently reenters the

55 department no credit shall be allowed him for any  
56 former service, unless any such member of a paid police  
57 or fire department repays to the pension and relief  
58 fund all sums refunded to him within one year from  
59 the date he reenters the department with interest at  
60 the rate of six percent per annum: *Provided, however,*  
61 That any member who, on or before June three, one  
62 thousand nine hundred fifty-five, reentered the paid  
63 police or fire department shall be allowed credit for  
64 any former service in the same department reentered  
65 if he within one year from said June three, one thousand  
66 nine hundred fifty-five, repaid all sums withdrawn or  
67 refunded to him with interest at the rate of six percent  
68 per annum, but in no case shall interest be charged  
69 for more than three years. Any probationary member  
70 of a paid police or fire department who is not given  
71 an absolute appointment at the end of his probationary  
72 period shall, upon request, be refunded all pension and  
73 relief fund deductions made from his salary or com-  
74 pensation, but without interest.

**§8-22-20. When arrest fee to be collected for municipal police-  
men'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  
12 dollar shall be taxed as part of the costs, in addition  
13 to other fees authorized by law, and shall be collected  
14 from the person convicted or furnishing bail, and such  
15 arrest fee shall be paid into the policemen's pension  
16 and relief fund of the municipality of the arresting  
17 officer.

**§8-22-21. Duties and bond of custodian of funds.**

1 The treasurer of the municipality shall be the cus-  
2 todian of all of the assets of the policemen's pension  
3 and relief fund and firemen's pension and relief fund,  
4 and shall deposit and pay out the moneys thereof upon,  
5 and in accordance with, any proper order of the board  
6 of trustees. Such treasurer shall be liable upon his  
7 official bond as treasurer for the faithful performance  
8 of his duties in respect to such fund or funds, and the  
9 official bond of the treasurer covering such fund or  
10 funds shall be executed with a good and financially  
11 responsible surety company, authorized to do business  
12 in this state, as surety for such fund or funds. Such  
13 fund or funds shall be trust funds and shall not be used  
14 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  
2 received by it either in interest-bearing general obliga-  
3 tion bonds of the United States, or of this state, or of the  
4 municipality, or of the county or school district in which  
5 the municipality or any portion of the territory thereof  
6 may be located, or in improved real estate first lien  
7 security worth at least twice the amount loaned thereon,  
8 based on a sound appraisal by a competent appraiser  
9 and duly certified by him, or in savings accounts in  
10 state and national banking institutions to the extent  
11 that such accounts are insured by the federal deposit  
12 insurance corporation, or in state building and loan  
13 associations or federal savings and loan associations to  
14 the extent that such interests are insured by the federal  
15 savings and loan insurance corporation or by any other  
16 similar federal instrumentality that may be hereafter  
17 created, or in any combination of the foregoing invest-  
18 ments. Said board of trustees shall make a report to  
19 the governing body of the municipality on the condition  
20 of its fund on the thirty-first day of December of each  
21 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  
2 relief fund and the board of trustees of the firemen's  
3 pension and relief fund shall make rules and regula-  
4 tions, not inconsistent with the provisions of sections  
5 sixteen through twenty-eight of this article, for the  
6 distribution of the moneys of such funds according to  
7 the qualifications of those to whom any portion of such  
8 moneys shall be paid and the amount thereof: *Provided,*  
9 That such rules and regulations shall not be enforced  
10 until the same have been approved by the governing  
11 body.

12 At the time of the original appointment of any mem-  
13 ber to the paid police or fire department, such member  
14 shall, at the request of the board of trustees, furnish to  
15 said board a certified copy of his birth certificate or  
16 other proof of his date of birth satisfactory to the board.

**§8-22-24. Disability pensions; temporary disability payments.**

1 (a) If any member of any such paid police or fire de-  
2 partment of any such municipality shall become and be  
3 found upon examination by a majority of a board of  
4 medical examiners, which board shall consist of not less  
5 than three physicians appointed by the board of trustees,  
6 to have become so physically or mentally permanently  
7 disabled by reason of service rendered in the perform-  
8 ance of his duties in such department, as to render neces-  
9 sary his retirement from all service in such department,  
10 or if any member who has been such a member of either  
11 of such departments for a period of not less than five  
12 consecutive years preceding his disability become and be  
13 found upon such an examination to have become so  
14 physically or mentally permanently disabled, from any  
15 reason other than as specified above in this section, as  
16 to render necessary his retirement from all service in  
17 such department, such board of trustees shall retire such  
18 permanently disabled members from all service in such  
19 department; and said board of trustees of such pension  
20 and relief fund shall authorize the payment to each  
21 such permanently disabled member monthly from the

22 pension and relief fund a disability pension, the amount  
23 thereof to be determined as specified in subsection (f)  
24 of this section.

25 (b) If any member of any such department shall at  
26 any time be injured or become sick, regardless of the  
27 cause therefor, so as to render such member temporarily  
28 disabled, he shall be paid, during such disability for not  
29 exceeding twenty-six weeks, from said pension and  
30 relief fund temporary disability payments, the amount  
31 thereof to be determined as specified in said subsection  
32 (f) for the determination of payments under a disability  
33 pension.

34 (c) No member shall be eligible for any disability  
35 pension or any temporary disability payments unless such  
36 member shall have presented himself for an examination  
37 at the time of his appointment to the department and his  
38 condition was then approved by a majority of a board  
39 of medical examiners appointed as aforesaid by such  
40 pension board: *Provided*, That this provision shall not  
41 apply to any individual who became a member of either  
42 of said departments on or before March eight, one thou-  
43 sand nine hundred thirty-five. Any such pension board  
44 may, if it so elects, designate as a member or members  
45 of its board of medical examiners any physician or  
46 physicians appointed by the policemen's civil service  
47 commission or firemen's civil service commission of such  
48 municipality to conduct medical examinations on behalf  
49 of any such commission under the provisions of article  
50 fourteen or article fifteen of this chapter, as the case  
51 may be.

52 (d) Any member who has been heretofore, or shall  
53 hereafter be, allowed a disability pension or temporary  
54 disability payments under the provisions of sections six-  
55 teen through twenty-eight of this article may be re-  
56 quired by such board to be reexamined at any time and  
57 if he is then not disabled as aforesaid he shall be ordered  
58 by the mayor of the municipality to return to duty in  
59 his former position in the paid police or fire department,  
60 as the case may be, and his disability pension or tem-  
61 porary disability payments shall be discontinued: *Pro-*

62 *vided, however,* That this provision shall not apply to  
63 any member until such member can and shall be restored  
64 to his former position in such department.

65 (e) All medical examinations conducted under the  
66 provisions of this section shall be ordered by the pension  
67 board.

68 (f) The monthly sum to be paid to each permanently  
69 disabled member of a paid police or fire department en-  
70 titled thereto shall be equal to fifty percent of the mon-  
71 thly salary or compensation being received by such  
72 member, at the time he is so disabled, or the sum of one  
73 hundred fifty dollars per month, whichever shall be  
74 greater: *Provided,* That any member who is permanently  
75 disabled, after having served twenty years in such de-  
76 partment, shall be entitled to such sum in twelve  
77 monthly installments as shall equal fifty percent of such  
78 member's average annual salary or compensation re-  
79 ceived during the five fiscal years, not necessarily con-  
80 secutive, in which he received his highest salary or  
81 compensation while a member of the department, and  
82 also one additional percent (to be added to the fifty  
83 percent) per each year served in excess of said twenty  
84 years (up to a maximum of five additional percent), or a  
85 total amount of one hundred fifty dollars per month,  
86 whichever shall be greater.

**88-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire department  
2 who is entitled to a retirement pension hereunder, and  
3 who has been in the honorable service of such depart-  
4 ment for twenty years, may, upon written application  
5 to the board of trustees, be retired from all service in  
6 such department without medical examination or dis-  
7 ability; and on such retirement the board of trustees  
8 shall authorize the payment of annual retirement pension  
9 benefits commencing upon his retirement or upon his  
10 attaining the age of fifty years, whichever is later, pay-  
11 able in twelve monthly installments for each year of  
12 the remainder of his life, in an amount equal to fifty  
13 percent of such member's average annual salary or com-  
14 pensation received during the five fiscal years, not neces-

15 sarily consecutive, in which such member received his  
16 highest salary or compensation while a member of the  
17 department, or an amount of one hundred fifty dollars  
18 per month, whichever shall be greater.

19 (b) Any member of any such department who is en-  
20 titled to a retirement pension under the provisions of  
21 subsection (a) of this section and who has been in the  
22 honorable service of such department for more than  
23 twenty years at the time of his retirement, as herein pro-  
24 vided, shall, in addition to the fifty percent authorized in  
25 said subsection (a), receive one additional percent, to be  
26 added to the fifty percent, per each year served in excess  
27 of said twenty years, up to a maximum of five additional  
28 percent.

29 (c) Any member of any such department whose  
30 service has been interrupted by duty with the armed  
31 forces of the United States as provided in section twenty-  
32 seven of this article, shall be eligible for retirement  
33 pension benefits immediately upon retirement, regard-  
34 less of his age, if he shall otherwise be eligible for such  
35 retirement pension benefits.

36 (d) Any member of a paid police or fire department  
37 shall be retired at the age of sixty-five years in the man-  
38 ner provided in this subsection. When a member of the  
39 paid police or fire department shall have reached the age  
40 of sixty-five years, the said board of trustees shall notify  
41 the mayor of this fact, within thirty days of such member's  
42 sixty-fifth birthday; and the mayor shall cause such sixty-  
43 five year old member of the paid police or fire department  
44 to be retired within a period of not more than thirty addi-  
45 tional days. Upon retirement under the provisions of this  
46 subsection (d), such member, whether he has been em-  
47 ployed in said department for twenty years or not, shall  
48 receive retirement pension benefits payable in twelve  
49 monthly installments for each year of the remainder of his  
50 life, in an amount equal to fifty percent of such member's  
51 average annual salary or compensation received during  
52 the five fiscal years, not necessarily consecutive, in which  
53 such member received his highest salary or compensation  
54 while a member of the department, or an amount of one

55 hundred fifty dollars per month, whichever shall be  
56 greater, and if such member has been employed in said  
57 department for more than twenty years, the provisions  
58 of subsection (b) of this section shall apply.

59 (e) It shall be the duty of each member of a paid  
60 police or fire department at the time a fund is hereafter  
61 established to furnish the necessary proof of his date  
62 of birth to the said board of trustees, as specified in  
63 section twenty-three of this article, within a reasonable  
64 length of time, said length of time to be determined by  
65 the said board of trustees; and then the board of trustees  
66 and the mayor shall proceed to act in the manner pro-  
67 vided in subsection (d) of this section and shall cause  
68 all members of the paid police or fire department who  
69 are over the age of sixty-five years to be retired in not  
70 less than sixty days from the date the fund is established.  
71 Upon retirement under the provisions of this subsection  
72 (e), such member, whether he has been employed in  
73 said department for twenty years or not, shall re-  
74 ceive retirement pension benefits payable in twelve  
75 monthly installments for each year of the remainder of  
76 his life, in an amount equal to fifty percent of such  
77 member's average annual salary or compensation re-  
78 ceived during the five fiscal years, not necessarily con-  
79 secutive, in which such member received his highest  
80 salary or compensation while a member of the depart-  
81 ment, or an amount of one hundred fifty dollars per  
82 month, whichever shall be greater, and if such member  
83 has been employed in said department for more than  
84 twenty years, the provisions of subsection (b) of this  
85 section shall apply.

**§8-22-26. Death benefits.**

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-

9 sections (a) and (b) of section twenty-five of this article,  
10 leaving in either case surviving a dependent spouse, or  
11 any dependent child or children under the age of eighteen  
12 years, or dependent father or mother or both, or any  
13 dependent brothers or sisters or both under the age of  
14 eighteen years; or

15 (2) Any former member of any such department  
16 who is on a disability pension under the provisions of  
17 said section twenty-four, or has attained the age of fifty  
18 years and is receiving or is entitled to receive retire-  
19 ment pension benefits under the provisions of subsection  
20 (a) or both subsections (a) and (b) of section twenty-  
21 five of this article, shall die, from any cause other than  
22 as specified in subsection (b) of this section twenty-six,  
23 leaving in either case surviving a dependent spouse to  
24 whom the marriage took place prior to the date of such  
25 member's retirement on a disability pension or a retire-  
26 ment pension, or any dependent child or children under  
27 the age of eighteen years who were born prior to or  
28 within ten months after the date of such member's re-  
29 tirement on a disability pension or a retirement pension,  
30 or dependent father or mother or both, or any dependent  
31 brothers or sisters or both under the age of eighteen  
32 years; or

33 (3) Any former member of any such department who  
34 has retired under the provisions of subsection (a) or both  
35 subsections (a) and (b) of section twenty-five of this  
36 article, shall die before attaining the age of fifty years,  
37 from any cause other than as specified in subsection (b) of  
38 this section twenty-six, leaving surviving a dependent  
39 spouse, or any dependent child or children under the  
40 age of eighteen years, or dependent father or mother or  
41 both, or any dependent brothers or sisters or both under  
42 the age of eighteen years; then in any of the cases set  
43 forth above in (1), (2) and (3), the board of trustees  
44 of such pension and relief fund shall, immediately follow-  
45 ing the death of such member, pay to or for each of  
46 such entitled surviving dependents the following pen-  
47 sion benefits, viz.: To such dependent spouse, until death  
48 or remarriage, a sum per month equal to twenty-five  
49 percent of such member's average monthly salary or

50 compensation received during the five fiscal years, not  
51 necessarily consecutive, in which such member received  
52 his highest salary or compensation while a member of  
53 the department, hereinafter for convenience referred to  
54 in this section as "monthly average," or an amount of  
55 seventy-five dollars per month, whichever shall be greater;  
56 to each such dependent child a sum per month equal to  
57 ten percent of such monthly average, or the sum of thirty  
58 dollars per month for each such child, whichever shall  
59 be greater, until such child shall attain the age of  
60 eighteen years or marry, whichever first occurs; to each  
61 such dependent orphaned child a sum per month equal  
62 to fifteen percent of such monthly average, or the sum  
63 of forty-five dollars per month for each such child, which-  
64 ever shall be greater, until such child shall attain the  
65 age of eighteen years or marry, whichever first occurs;  
66 to each such dependent father or mother a sum per  
67 month for each equal to ten percent of such monthly  
68 average, or the sum of thirty dollars per month for each  
69 such father and mother, whichever shall be greater; to  
70 each such dependent brother or sister the sum of five  
71 dollars per month until such individual shall attain the  
72 age of eighteen years or marry, whichever first occurs,  
73 but in no event shall the aggregate amount paid to such  
74 brothers and sisters exceed thirty dollars per month; but  
75 if at any time, because of the number of dependents,  
76 all such dependents cannot be paid in full as herein  
77 provided, then each dependent shall receive his prorata  
78 share of such payments: *Provided, however,* That in no  
79 case shall the payments to the surviving spouse and  
80 children be cut below sixty percent of the total amount  
81 to be paid to all dependents.

82 (b) The dependent spouse, child or children, or de-  
83 pendent father or mother, or dependent brothers or sis-  
84 ters, of any such member who shall die by reason of  
85 service rendered in the performance of such member's  
86 duties shall, regardless of the length of such member's  
87 service and irrespective of whether such member was  
88 or was not entitled to receive or was or was not receiv-  
89 ing a disability pension or temporary disability payments  
90 at the time of his death, receive the death benefits pro-

91 vided for in subsection (a) of this section, and if such  
92 member had less than five years' service at the time of  
93 his death, the monthly average shall be computed on the  
94 basis of the actual number of years of service.

95 (c) The provisions of this section shall not be con-  
96 strued as creating or establishing any contractual or  
97 vested rights in favor of any individual who may be or  
98 become qualified as a beneficiary of the death benefits  
99 herein authorized to be made, all the provisions hereof  
100 and benefits provided for hereunder being expressly sub-  
101 ject to such subsequent legislative enactments as may  
102 provide for any change, modification or elimination of  
103 the beneficiaries or benefits specified herein.

**§8-22-27. General provisions concerning disability pensions,  
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member  
2 in a paid police or fire department for the purpose of  
3 ascertaining certain disability pension benefits, all re-  
4 tirement pension benefits and certain death benefits, the  
5 following provisions shall be applicable:

6 (1) Absence from the service because of sickness or  
7 injury shall not be construed as time out of service; and

8 (2) Any member of any paid police or fire department  
9 covered by the provisions of sections sixteen through  
10 twenty-eight of this article who has been required to  
11 or shall at any future time be required to enter the  
12 armed forces of the United States by conscription, by  
13 reason of being a member of some reserve unit of the  
14 armed forces or a member of the West Virginia national  
15 guard or air national guard, or who enlists in one of  
16 the armed forces of the United States during hostilities,  
17 and who upon receipt of an honorable discharge from  
18 such armed forces presents himself for resumption of  
19 duty to his appointing municipal official within six  
20 months from his date of discharge, and is accepted by the  
21 pension board's board of medical examiners as being  
22 mentally and physically capable of performing his re-  
23 quired duties as a member of such paid police or fire de-  
24 partment, shall be given credit for continuous service in  
25 said paid police or fire department, and his rights shall be

26 governed as herein provided. No member of a paid police  
27 or fire department shall be required to pay the monthly  
28 assessment as now required by law, during his period of  
29 service in the armed forces of the United States.

30 (b) As to any former member of a paid police or fire  
31 department receiving disability pension benefits or re-  
32 tirement pension benefits from a policemen's or firemen's  
33 pension and relief fund, on the effective date of this  
34 article, the following provisions shall govern and control  
35 the amount of such pension benefits:

36 (1) A former member who on June thirty, one thou-  
37 sand nine hundred sixty-two, was receiving disability  
38 pension benefits or retirement pension benefits from a  
39 policemen's or firemen's pension and relief fund, shall  
40 continue to receive pension benefits in the amount of  
41 one hundred fifty dollars per month; and

42 (2) A former member who became entitled to dis-  
43 ability pension benefits or retirement pension benefits  
44 on or after July one, one thousand nine hundred sixty-  
45 two, shall receive the disability pension benefits or re-  
46 tirement pension benefits provided for in section twenty-  
47 four or section twenty-five of this article, as the case  
48 may be.

49 (c) As to any dependent spouse, child or children, or  
50 dependent father or mother, or dependent brothers or  
51 sisters, of any former member of a paid police or fire  
52 department, receiving any death benefits from a police-  
53 men's pension and relief fund or firemen's pension and  
54 relief fund, on the effective date of this article, the  
55 following provisions shall govern and control the amount  
56 of such death benefits:

57 (1) A dependent spouse, child or children, or de-  
58 pendent father or mother, or dependent brothers or  
59 sisters, of any former member, who on June thirty, one  
60 thousand nine hundred sixty-two, was receiving any  
61 death benefits from a policemen's pension and relief fund  
62 or firemen's pension and relief fund, shall continue to  
63 receive death benefits in the following amounts: To a  
64 dependent spouse, until death or remarriage, the sum  
65 of seventy-five dollars per month; to each dependent  
66 child the sum of thirty dollars per month, until such

67 child shall attain the age of eighteen years or marry,  
68 whichever first occurs; to each dependent orphaned child  
69 the sum of forty-five dollars per month, until such child  
70 shall attain the age of eighteen years or marry, which-  
71 ever first occurs; to each dependent father and mother  
72 the sum of thirty dollars per month for each; to each  
73 dependent brother or sister the sum of five dollars per  
74 month, until such individual shall attain the age of  
75 eighteen years or marry, whichever first occurs, but in  
76 no event shall the aggregate amount paid to such brothers  
77 and sisters exceed thirty dollars per month; but if at  
78 any time, because of the number of dependents, all such  
79 dependents cannot be paid in full as herein provided,  
80 then each dependent shall receive his prorata share of  
81 such payments: *Provided further*, That in no case shall  
82 the payments to the surviving spouse and children be  
83 cut below sixty percent of the total amount to be paid to  
84 all dependents;

85 (2) A dependent spouse, child or children, or de-  
86 pendent father or mother, or dependent brothers or  
87 sisters, of any former member, who became eligible for  
88 death benefits on or after July one, one thousand nine  
89 hundred sixty-two, shall receive the death benefits pro-  
90 vided 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  
2 the creation of any such fund, unless otherwise author-  
3 ized by ordinance of the municipality, no payment shall  
4 be made to any member or beneficiary except from the  
5 income arising from said fund; and if at any time there  
6 shall not be sufficient money to the credit of said pension  
7 and relief fund to pay each member and beneficiary  
8 entitled to the benefits thereof the full amount per  
9 month, as herein provided, then an equal percentage  
10 of such monthly payments shall be made to each mem-  
11 ber and beneficiary thereof, until said fund is so replen-  
12 ished as to warrant payment in full to each of such  
13 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.**

1 Any city which owns a waterworks system or sewer-  
2 age system or combined waterworks and sewerage sys-  
3 tem, which does not hereafter become a participating  
4 public employer under the said West Virginia public  
5 employees retirement system, which does not establish  
6 and maintain an employee's retirement and benefit fund  
7 in accordance with the provisions of sections two  
8 through fourteen of this article and which has hereto-  
9 fore provided, under the provisions of former section  
10 twenty-one-a, article four of this chapter, a pension  
11 plan or plans on behalf of and pertaining to all or part  
12 of the employees of said waterworks system or sewer-  
13 age system or combined waterworks and sewerage  
14 system, may continue to maintain such plan or plans,  
15 financed from the general operation funds of said water-  
16 works system or sewerage system or combined water-  
17 works and sewerage system, and administered by a  
18 pension board or pension commission. Any such pension  
19 board or pension commission shall continue to be  
20 composed of such members as shall be approved by  
21 the governing body, giving proper representation to  
22 the employees of such waterworks system or sewerage  
23 system or combined waterworks and sewerage system.  
24 The chief financial executive officer or treasurer of such  
25 pension board or pension commission shall continue to  
26 maintain bond with a surety company qualified to do  
27 business in this state in an amount equal to the value  
28 of any funds or securities in the control of or owned  
29 by the pension board or pension commission. After  
30 reserving such funds as may be deemed necessary by  
31 the pension board or pension commission to provide  
32 such amounts as may be required to meet temporary  
33 commitments, the remainder shall continue to be in-  
34 vested in general obligation bonds of the United States,  
35 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.**

1 It is the purpose of this article to permit local govern-  
2 mental units to make the most efficient use of their  
3 power and authority by enabling them to cooperate  
4 with each other on a basis of mutual advantage and to  
5 consolidate functions and thereby to provide services  
6 and facilities in a manner and pursuant to forms of  
7 governmental organization which will result in econ-  
8 omies in the operation of local government and which  
9 will accord best with the geographic, economic, popula-  
10 tion and other factors influencing the needs and devel-  
11 opment of local governmental services and facilities,  
12 and thus promote the public health, safety and welfare.

**§8-23-2. Definitions.**

1 For the purposes of this article:

2 (1) The term "public agency" shall mean any mu-  
3 nicipality, county or other political subdivision of this  
4 state, or any county board of education of this state;  
5 and

6 (2) The term "public works" shall mean any im-  
7 provement or project involving an outlay of a capital  
8 nature which may be required by or convenient for  
9 the purposes of any public agency, including, without  
10 limiting the generality of the foregoing, the construc-  
11 tion, reconstruction, establishment, acquisition, improve-  
12 ment, renovation, extension, enlargement, increase,  
13 equipment, maintenance, repair (including replace-  
14 ments) and operation of jails, jail facilities, municipal  
15 buildings, police stations, fire stations, libraries, mu-  
16 seums, other public buildings, incinerator plants, land  
17 fill or other garbage disposal systems, hospitals, piers,  
18 docks, terminals, airports, drainage systems, flood con-  
19 trol systems, flood walls, sewers, culverts, bridges (in-  
20 cluding approaches, causeways, viaducts, underpasses  
21 and connecting roadways), public markets, cemeteries,  
22 motor vehicle parking facilities (including parking lots,  
23 buildings, ramps, curb-line parking, meters and other

24 facilities deemed necessary, appropriate, useful, con-  
25 venient or incidental to the regulation, control and  
26 parking of motor vehicles), stadiums, gymnasiums,  
27 sports arenas, auditoriums, public recreation centers,  
28 public recreation parks, swimming pools, roller skating  
29 rinks, ice skating rinks, tennis courts, golf courses, polo  
30 grounds, or other public improvements, or the grading,  
31 regrading, paving, repaving, surfacing, resurfacing, curb-  
32 ing, recurbing, widening or otherwise improving of any  
33 street, avenue, road, alley or way.

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

1 Any power or powers, privilege or privileges, authority  
2 or undertaking, exercised or capable of exercise, or  
3 which may be engaged in, and any public works which  
4 may be undertaken, by a public agency acting alone  
5 may be exercised, enjoyed, engaged in or undertaken  
6 jointly with any other public agency which could like-  
7 wise act alone.

8 Any two or more public agencies may enter into a  
9 written agreement with one another for joint or coop-  
10 erative action pursuant to the provisions of this section.  
11 Appropriate action by ordinance, resolution, or other-  
12 wise pursuant to law, of the governing bodies of the  
13 participating public agencies shall be necessary before  
14 any such agreement shall become effective.

15 Any such agreement shall specify the following:

16 (1) Its duration;

17 (2) The precise organization, composition and nature  
18 of any separate legal or administrative entity created  
19 thereby, together with the powers delegated thereto,  
20 provided such entity may be legally created;

21 (3) Its purpose or purposes;

22 (4) The manner of financing the joint or cooperative  
23 undertaking and of establishing and maintaining a  
24 budget therefor;

25 (5) The permissible method or methods to be em-  
26 ployed in accomplishing the partial or complete ter-  
27 mination of the agreement and for disposing of property  
28 upon such partial or complete termination; and

29 (6) Any other necessary and proper matters.

30 In the event that the agreement does not establish a  
31 separate legal or administrative entity to conduct the  
32 joint or cooperative undertaking, the agreement shall,  
33 in addition to the items enumerated above, contain the  
34 following:

35 (1) Provision for an administrator or a joint board  
36 responsible for administering the joint or cooperative  
37 undertaking, and in the event a joint board is provided  
38 for, there shall be a representative on the board from  
39 each of the public agencies which are party to the  
40 agreement; and

41 (2) The manner of acquiring, holding and disposing  
42 of real and personal property used in the joint or coop-  
43 erative undertaking.

44 No agreement made pursuant to the provisions of this  
45 section shall relieve any public agency of any obliga-  
46 tion or responsibility imposed upon it by law, except  
47 that to the extent of actual and timely performance  
48 thereof by a joint board or other legal or administrative  
49 entity created by an agreement made hereunder, said  
50 performance may be offered in satisfaction of the obliga-  
51 tion or responsibility.

52 Every agreement made pursuant to the provisions of  
53 this section shall, prior to and as a condition precedent  
54 to its becoming effective, be submitted to the attorney  
55 general who shall determine whether the agreement is  
56 in proper form and is compatible with the laws of this  
57 state. The attorney general shall approve any such  
58 agreement submitted to him unless he shall find that  
59 it does not meet the conditions set forth herein, in which  
60 event he shall detail in writing to the governing bodies  
61 of the public agencies concerned the specific respects  
62 in which the proposed agreement fails to meet the re-  
63 quirements of law. Failure to disapprove any such  
64 agreement so submitted within thirty days of its sub-  
65 mission shall constitute approval thereof.

66 The financing of joint projects by agreement shall be  
67 as provided by law.

**§8-23-4. Filing of intergovernmental agreements.**

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 intergovernmental 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.**

1 Any one or more public agencies are hereby em-  
2 powered and authorized to contract with any one or  
3 more other public agencies for the performance of any  
4 governmental service, activity or undertaking which each  
5 public agency entering into the contract is authorized  
6 by law to perform, provided that such contract shall be  
7 authorized by the governing body of each party to the  
8 contract. Such contract shall set forth fully the pur-  
9 poses, power, authority, rights, objectives and responsi-  
10 bilities of the contracting parties. Any contracting party  
11 may make such payments for the performance of such  
12 service, activity or undertaking and as reimbursement  
13 for expenses incurred with respect thereto, as may be  
14 specified in the contract, and the public agency to which  
15 such payments are to be made is hereby empowered and  
16 authorized to receive the same.

**§8-23-8. Duration of intergovernmental agreements and contracts.**

1 Any intergovernmental agreement entered into in ac-  
2 cordance with the provisions of section three of this  
3 article, and any contract for the performance of a service,  
4 activity or undertaking entered into in accordance with  
5 the provisions of section seven of this article, shall be  
6 limited in duration to one fiscal year, but the same  
7 may be annually renewed each fiscal year: *Provided*, That  
8 any such agreement or contract may be for such period  
9 in excess of one fiscal year as is specified in the agree-  
10 ment or contract, if such agreement or contract is ratified  
11 by a majority of the legal votes cast by the qualified  
12 voters of the several jurisdictions represented by the  
13 contracting parties voting separately at a regular or  
14 special election.

PART III. CONSTRUCTION.

**§8-23-9. Construction.**

1 The provisions of this article are in addition to and  
2 not in derogation of any power and authority vested

3 in any public agency under any constitutional, statutory  
 4 or charter provisions which may now or hereafter be in  
 5 effect, and under no circumstances whatever shall the  
 6 provisions of this article be construed as in any way  
 7 limiting the power and authority to take joint or co-  
 8 operative action or enter into agreements or contracts  
 9 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  
 2 county court of every county may by ordinance create  
 3 a planning commission in order to promote the orderly  
 4 development of its governmental units and its environs.  
 5 It is the object of this article to encourage local units  
 6 of government to improve the present health, safety,  
 7 convenience and welfare of their citizens and to plan  
 8 for the future development of their communities to the  
 9 end that highway systems be carefully planned; that new  
 10 community centers grow only with adequate highway,  
 11 utility, health, educational and recreational facilities;  
 12 that the needs of agriculture, industry and business be  
 13 recognized in future growth; that residential areas pro-  
 14 vide healthy surroundings for family life; and that the  
 15 growth of the community is commensurate with and  
 16 promotive of the efficient and economical use of public  
 17 funds.

18 In accomplishing this objective, it is intended that the  
 19 planning commission shall serve in an advisory capacity  
 20 to the governing body of a municipality or a county  
 21 court, that certain regulatory powers be created over  
 22 developments affecting the public welfare and not now  
 23 otherwise controlled, and that additional powers and  
 24 authority be granted to the governing bodies of munici-  
 25 palities and to counties to carry out the objective and  
 26 overall purposes of this article.

**§8-24-2. Continuation of planning commissions heretofore established.**

1 Any planning commission heretofore established shall  
2 continue to operate as though established under the  
3 terms of this article. All actions lawfully taken under  
4 prior acts are hereby validated and continued in effect  
5 until amended or repealed by action taken under the  
6 authority of this article.

7 The membership of existing commissions shall con-  
8 tinue unchanged until the first regular meeting of the  
9 governing body of a municipality or the county court in  
10 January of the year following enactment of this article.  
11 At that time, any appointments or changes necessary  
12 shall be made to bring the membership of the commis-  
13 sions into conformity with the provisions of this article.

**§8-24-3. Definitions.**

1 As used in this article:

2 (1) "Commission or planning commission" shall mean  
3 a municipal planning commission or a county planning  
4 commission, as the case may be;

5 (2) "Comprehensive plan" shall mean a complete com-  
6 prehensive plan or any of its parts such as a compre-  
7 hensive plan of land use and zoning, of thoroughfares,  
8 of sanitation, of recreation and other related matters,  
9 and including such ordinance or ordinances as may be  
10 deemed necessary to implement such complete compre-  
11 hensive plan or parts thereof by legislative approval and  
12 provision for such rules and regulations as are deemed  
13 necessary and their enforcement;

14 (3) "Public place" includes any tracts owned by the  
15 state or its subdivisions;

16 (4) "Streets" includes streets, avenues, boulevards,  
17 highways, roads, lanes, alleys and all public ways;

18 (5) "Unit of government" means any federal, state,  
19 regional, county or municipal government or govern-  
20 mental corporation; and

21 (6) "Utility" means any facility used in rendering  
22 service which the public has a right to demand.

PART II. SAME--EXERCISE OF POWERS AND AUTHORITY;  
ORGANIZATION AND FUNCTION OF COMMISSIONS.

**§8-24-4. How powers and authority exercised.**

1 Where power and authority are conferred herein, singly  
2 or disjunctively, on the governing body or administrative  
3 authority of a municipality, that power and authority  
4 may be exercised only in relation to a municipal planning  
5 commission. Where power and authority are conferred  
6 herein, singly or disjunctively, on a county court, that  
7 power may be exercised only in relation to a county  
8 planning commission.

**§8-24-5. Municipal planning commission.**

1 A municipal planning commission shall consist of not  
2 less than five nor more than fifteen individuals, the exact  
3 number to be specified in the ordinance creating such  
4 commission, all of whom shall be freeholders and resi-  
5 dents of the municipality, who shall be qualified by  
6 knowledge and experience in matters pertaining to the  
7 development of the municipality, who shall include repre-  
8 sentatives of business, industry and labor, and who shall  
9 be nominated by the administrative authority and con-  
10 firmed by the governing body of the municipality or ap-  
11 pointed by the governing body where the administrative  
12 authority and governing body are the same. At least  
13 three-fifths of all of the members must have been resi-  
14 dents of the municipality for at least ten years prior to  
15 nomination and confirmation or appointment. One mem-  
16 ber of the commission shall also be a member of the  
17 governing body of the municipality and one member shall  
18 also be a member of the administrative department of  
19 the municipality, the term of these two members to be  
20 coextensive with the term of office to which they have  
21 been elected or appointed, unless the governing body and  
22 administrative authority of the municipality at the first  
23 regular meeting of the commission each year designate  
24 others to serve as the municipality's representatives.  
25 The remaining members of the commission first selected  
26 shall serve respectively for terms of one year, two years  
27 and three years, divided equally or as nearly equally  
28 as possible between these terms. Thereafter, members

29 shall be selected for terms of three years each. Vacancies  
30 shall be filled for the unexpired term only, in the same  
31 manner as original selections are made. Members of the  
32 commission shall serve without compensation, but shall  
33 be reimbursed for all reasonable and necessary expenses  
34 actually incurred in the performance of their official  
35 duties.

**§8-24-6. County planning commission.**

1 A county planning commission shall consist of not less  
2 than five nor more than fifteen individuals, the exact  
3 number to be specified in the ordinance creating such  
4 commission, all of whom shall be freeholders and resi-  
5 dents of the county, who shall be qualified by knowledge  
6 and experience in matters pertaining to the development  
7 of the county, who shall include representatives of busi-  
8 ness, industry, labor and farming, and who shall be ap-  
9 pointed by the county court. At least three-fifths of all  
10 of the members must have been residents of the county  
11 for at least ten years prior to appointment. One member  
12 of the commission shall also be a member of the county  
13 court, the term of such member to be coextensive with  
14 the term of office to which he has been elected, unless  
15 the county court at the first regular meeting of the com-  
16 mission each year appoints another member to serve  
17 as its representative. The remaining members of the  
18 commission first appointed shall serve respectively for  
19 terms of one year, two years and three years, divided  
20 equally or as nearly equally as possible between these  
21 terms. Thereafter, members shall be appointed for terms  
22 of three years each. Vacancies shall be filled by appoint-  
23 ment by the county court for the unexpired term only.  
24 Members of the commission shall serve without compen-  
25 sation, but shall be reimbursed for all reasonable and  
26 necessary expenses actually incurred in the performance  
27 of their official duties. An individual may at the same  
28 time serve as a member of a municipal planning com-  
29 mission and as a member of a county planning com-  
30 mission.

**§8-24-7. Advisory members.**

1 In the event a municipality which has or shall establish  
2 a planning commission is located within or partly within

3 a county which has or shall have a county planning com-  
4 mission, a designated representative of the county plan-  
5 ning commission shall be an advisory member of the  
6 municipal planning commission. A designated representa-  
7 tive of a municipal planning commission of a municipality  
8 located within or partly within a county which has or  
9 shall have a county planning commission shall be an  
10 advisory member of the county planning commission. All  
11 such advisory members shall have all the privileges of  
12 membership except the right to vote.

**§8-24-8. Regular and special meetings.**

1 The commission shall fix the time for holding regular  
2 meetings, but it shall meet at least once in the months  
3 of January, April, July and October.

4 Special meetings of the commission may be called by  
5 the president or by at least two members upon written  
6 request to the secretary. Whether called by the president  
7 or by two or more members, the secretary shall send to  
8 all of the members, at least two days in advance of a  
9 special meeting, a written notice fixing the date, time  
10 and place of the meeting, but written notice of a special  
11 meeting is not required if the date, time and place of the  
12 special meeting have been fixed in a regular meeting,  
13 or if all of the members are present at the special meeting.

**§8-24-9. Quorum.**

1 A majority of the members of a commission shall con-  
2 stitute a quorum. No action of a commission shall be  
3 official, however, unless authorized by a majority of all  
4 of the members of the commission at a regular or properly  
5 called special meeting.

**§8-24-10. Offices; appropriation for expenses.**

1 The county court in the case of a county planning  
2 commission, and the governing body of the municipality  
3 in the case of a municipal planning commission, shall  
4 provide the commission with suitable offices for the hold-  
5 ing of meetings and the preservation of plans, maps,  
6 documents and accounts, and shall provide by appro-  
7 priation a sum sufficient to defray the reasonable ex-  
8 penses of the commission.

**§8-24-11. Election of officers.**

1 At its first regular meeting in each year the commis-  
2 sion shall elect from its members a president and vice  
3 president. The vice president shall have the power and  
4 authority to act as president of the commission during  
5 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  
2 and fix the compensation of a secretary and such em-  
3 ployees as are necessary for the discharge of the duties  
4 and responsibilities of the commission. All such com-  
5 pensation, however, shall be in conformity to and in  
6 compliance with the salaries and compensation thereto-  
7 fore fixed by the governing body or county court of such  
8 municipalities or counties.

9 A commission may make contracts for special or tem-  
10 porary services and any professional counsel. The prose-  
11 cuting attorney of a county, upon request, shall, without  
12 additional compensation, render legal assistance and  
13 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  
2 a county having an established planning commission  
3 may, by ordinance, designate such county planning com-  
4 mission as the municipal planning commission. The  
5 county court of any county within which a municipality  
6 having an established planning commission is located  
7 may, by ordinance, designate such municipal planning  
8 commission as the county planning commission. In the  
9 event any such municipality is located partly within  
10 one county and partly within another county or counties,  
11 the foregoing provisions of this section shall apply only  
12 to the county within which the major portion of the  
13 territory of the municipality is located.

14 A county planning commission designated as a muni-  
15 cipal planning commission shall have for that municipality

16 all the powers, authority and duties granted under this  
17 article to a municipal planning commission. A municipal  
18 planning commission designated as a county planning  
19 commission shall have for that county all the powers,  
20 authority and duties granted under this article to a  
21 county planning commission.

22 Any municipality designating a county planning com-  
23 mission as its municipal planning commission may con-  
24 tract annually to pay to the county a proportionate part  
25 of the expenses which is properly chargeable to the plan-  
26 ning service rendered to such municipality, and any such  
27 payments received by the county shall be appropriated  
28 by the county to the county planning commission in  
29 addition to any funds budgeted for planning purposes,  
30 although the county court may, if it so elects, agree to  
31 pay the total cost. Any county designating a municipal  
32 planning commission as its county planning commission  
33 may contract annually to pay to the municipality a pro-  
34 portionate part of the expenses which is properly charge-  
35 able to the planning service rendered to such county,  
36 and any such payments received by the municipality  
37 shall be appropriated by the municipality to the municip-  
38 al planning commission in addition to any funds budgeted  
39 for planning purposes.

### PART III. SAME—POWERS, AUTHORITY AND DUTIES.

#### §8-24-14. Administrative powers and authority.

- 1 To effectuate the purposes of this article, a commission
- 2 shall have the power, authority and duty to:
  - 3 (1) Exercise general supervision of and make rules
  - 4 and regulations for the administration of the affairs of
  - 5 the commission;
  - 6 (2) Prescribe uniform rules and regulations per-
  - 7 taining to its investigations and hearings;
  - 8 (3) Supervise the fiscal affairs and responsibilities of
  - 9 the commission;
  - 10 (4) Prescribe the qualifications of, appoint, remove
  - 11 and fix the compensation of, the employees of the com-
  - 12 mission, such compensation to be in conformity to and
  - 13 in compliance with the salaries and compensation there-

14 tofore fixed by the governing body or county court of such  
15 municipalities or counties;

16 (5) Delegate to employees authority to perform  
17 ministerial acts in all cases except where final action  
18 of the commission is necessary;

19 (6) Keep an accurate and complete record of all de-  
20 partmental proceedings, and record and file all bonds  
21 and contracts and assume responsibility for the custody  
22 and preservation of all papers and documents of the  
23 commission;

24 (7) Make recommendations and an annual report to  
25 the governing body of the municipality or to the county  
26 court concerning the operation of the commission and  
27 the status of planning within its jurisdiction;

28 (8) Prepare, publish and distribute reports, ordinances  
29 and other material relating to the activities authorized  
30 under this article;

31 (9) Adopt a seal, and certify all official acts;

32 (10) Invoke any legal, equitable or special remedy  
33 for the enforcement of the provisions of this article or  
34 any ordinance, rule and regulation or any action taken  
35 thereunder;

36 (11) Prepare and submit an annual budget in the same  
37 manner as other departments of municipal and county  
38 government and the commission shall be limited in all  
39 expenditures to the provisions made therefor by the  
40 governing body of such municipality or by the county  
41 court of such county;

42 (12) If deemed advisable, establish an advisory com-  
43 mittee or committees; and

44 (13) Delegate to a committee composed of one or more  
45 members of the commission the power to hold any public  
46 hearings or conferences required or permitted under  
47 this article to be held by the commission. If the hearing  
48 or conference is held by a committee, a written record  
49 of the substance of the hearing or conference shall be  
50 made and preserved with the records of the commission  
51 for not less than five years. The committee shall have

52 authority only to conduct the hearing and report to  
53 the commission.

**§8-24-15. Appropriations; expenditures; disposition of gifts; participation in federal planning assistance programs.**

1 After the governing body of a municipality or a county  
2 court has adopted an ordinance creating a planning  
3 commission, the governing body or county court shall  
4 appropriate funds to carry out the duties of the com-  
5 mission.

6 The planning commission shall have the power and  
7 authority to expend, under regular municipal or county  
8 procedure as provided by law, all sums appropriated  
9 to it for the purposes and activities authorized under  
10 this article.

11 A municipality or county may accept gifts and dona-  
12 tions for planning commission purposes. Any moneys  
13 so accepted shall be deposited with the municipality or  
14 county in a special nonreverting planning commission  
15 fund to be available for expenditures by the planning  
16 commission for the purpose designated by the donor.  
17 The disbursing officer of a municipality or county shall  
18 draw warrants against such special nonreverting fund  
19 only upon vouchers signed by the president and secre-  
20 tary of the planning commission.

21 A municipal or county planning commission is em-  
22 powered and authorized to spend funds made available  
23 for the purposes of this article, and to accept and use  
24 funds provided for the purposes of this article by the  
25 government of the United States and any other agency  
26 or group whose interests are in harmony with such  
27 purposes, in accordance with federal requirements and  
28 subject to such conditions or limitations as the constitu-  
29 tion or law of the state may provide. In this connection  
30 a municipal or county planning commission is hereby  
31 expressly authorized to participate in the federal plan-  
32 ning assistance programs as set forth in the "Federal  
33 Housing Act of 1954," as amended, and any subsequent  
34 acts.

## PART IV. SAME—COMPREHENSIVE PLAN.

**§8-24-16. Comprehensive plan for physical development of territory—Generally.**

1 A planning commission shall make and recommend  
2 for adoption to the governing body of the municipality  
3 or to the county court, as the case may be, a compre-  
4 hensive plan for the physical development of the terri-  
5 tory within its jurisdiction. Any county plan may  
6 include the planning of towns or villages to the extent  
7 to which, in the commission's judgment, they are re-  
8 lated to the planning of the unincorporated territory  
9 of the county as a whole: *Provided*, That the plan shall  
10 not be considered as a comprehensive plan for any town  
11 or village without the consent of any planning com-  
12 mission and the governing body of such town or village.  
13 The county plan shall be coordinated with the plans of  
14 the state road commission, insofar as it relates to high-  
15 ways or thoroughfares under the jurisdiction of that  
16 commission. A county planning commission may pre-  
17 pare, and the county court is empowered and authorized  
18 to adopt, a comprehensive plan and zoning ordinance  
19 for either the entire county, or for any part or parts  
20 thereof which constitute an effective region or regions  
21 for planning and zoning purposes without the necessity  
22 of adopting a plan and ordinance for any other part.  
23 In determining what constitutes an effective region or  
24 regions for planning and zoning purposes, due consider-  
25 ation shall be given to such factors as population density,  
26 health, general welfare, water and sanitation require-  
27 ments, and future potential for residential, commercial,  
28 industrial or public use. The procedure for the prepara-  
29 tion and adoption of a comprehensive plan and zoning  
30 ordinance for a part of such county shall be the same as  
31 the procedure for the preparation and adoption of a plan  
32 and ordinance for the entire county, except that the  
33 election provided for in section forty-eight of this article  
34 shall be restricted to the qualified electors residing within  
35 the part or parts affected.

36 The comprehensive plan, with the accompanying  
37 maps, plats, charts and descriptive and explanatory mat-  
38 ter, shall show recommendations for the development

39 of the territory covered by the plan and may include,  
40 among other things, the general location, character and  
41 extent of streets, viaducts, bridges, waterways and  
42 waterfront developments, parkways, playgrounds, for-  
43 ests, reservations, parks, airports and other public ways,  
44 grounds, places and spaces; the general location and  
45 extent of publicly owned utilities and terminals, and  
46 other purposes; the acceptance, widening, removal, ex-  
47 tension, relocation, narrowing, vacation, abandonment  
48 or change of use of any of the foregoing public ways,  
49 grounds, places, spaces, buildings, properties, utilities  
50 or terminals; the general character, location and extent  
51 of community centers, municipal sites or housing devel-  
52 opment; the general location and extent of forests, agric-  
53 ultural areas and open-development areas for the purposes  
54 of conservation, food and water supply, sanitary drainage  
55 facilities or the protection of urban development; a land  
56 classification and utilization program; the distribution  
57 of population, and the uses of land for trade, industry,  
58 habitation, recreation, agriculture, forestry, soil and water  
59 conservation and other purposes.

60 In the preparation of a comprehensive plan, a planning  
61 commission shall make careful and comprehensive sur-  
62 veys and studies of the existing conditions and probable  
63 future changes of such conditions within the territory  
64 under its jurisdiction. The comprehensive plan shall be  
65 made with the general purpose of guiding and accom-  
66 plishing a coordinated, adjusted and harmonious devel-  
67 opment of the area which will, in accordance with present  
68 and future needs and resources, best promote the health,  
69 safety, morals, order, convenience, prosperity or general  
70 welfare of the inhabitants, as well as efficiency and  
71 economy in the process of development, including, among  
72 other things, such distribution of population and of the  
73 uses of land for urbanization, trade, industry, habitation,  
74 recreation, agriculture, forestry and other purposes as  
75 will tend:

76 (1) To create conditions favorable to health, safety,  
77 transportation, prosperity, civic activities and recrea-  
78 tional, educational and cultural opportunities;

79 (2) To reduce the wastes of physical, financial or

80 human resources which result from either excessive  
81 congestion or excessive scattering of population; and  
82 (3) Toward the efficient and economic utilization,  
83 conservation and production of the supply of food and  
84 water and of drainage, sanitary and other facilities and  
85 resources.

**§8-24-17. Same—Contents.**

- 1 A comprehensive plan may include the following or
- 2 a study of the following:
  - 3 (a) Careful and comprehensive surveys and studies
  - 4 of existing conditions and the probable future growth
  - 5 of the municipality and its environs or of the county;
  - 6 (b) Maps, plats, charts and descriptive material pre-
  - 7 senting basic information, locations, extent and character
  - 8 of any of the following:
    - 9 (1) History, population and physical site conditions;
    - 10 (2) Land use, including the height, area, bulk, location
    - 11 and use of private and public structures and premises;
    - 12 (3) Population densities;
    - 13 (4) Community centers and neighborhood units;
    - 14 (5) Blighted and slum areas;
    - 15 (6) Streets, including bridges, viaducts, subways,
    - 16 parkways and other public ways and places;
    - 17 (7) Sewers, sanitation and drainage, including han-
    - 18 dling, treatment and disposal of excess drainage waters,
    - 19 sewage, garbage, refuse, wastes, ashes, trash and other
    - 20 similar matters;
    - 21 (8) Stream pollution;
    - 22 (9) Flood control and prevention;
    - 23 (10) Public and private utilities, including water,
    - 24 light, heat, communication and other services;
    - 25 (11) Transportation, including rail, bus, truck, air
    - 26 and water transport and their terminal facilities;
    - 27 (12) Local mass transportation, including motor and
    - 28 trolley busses; street, elevated or underground railways
    - 29 and taxicabs;
    - 30 (13) Parks and recreation, including parks, play-
    - 31 grounds, reservations, forests, wildlife refuges and other

32 public grounds, spaces and facilities of a recreational  
33 nature;

34 (14) Public buildings and institutions, including gov-  
35 ernmental administration and service buildings, hospitals,  
36 infirmaries, clinics, penal and correctional institutions  
37 and other civic and social service buildings;

38 (15) Education, including location and extent of  
39 schools, colleges and universities;

40 (16) Land utilization, including residence, industry,  
41 agriculture, forests and other uses;

42 (17) Conservation of water, soil, agricultural and  
43 mineral resources; and

44 (18) Any other factors which are a part of the physi-  
45 cal, economic or social situation within the municipality  
46 or county;

47 (c) Reports, maps, charts and recommendations  
48 setting forth plans for the development, redevelopment,  
49 improvement, extension and revision of the subjects  
50 and physical situations of the municipality or county  
51 set out in subdivision (b) of this section so as to sub-  
52 stantially accomplish the objective set forth in section  
53 one of this article;

54 (d) A long-range development program of public  
55 works projects, based on the recommended plans of the  
56 commission, for the purpose of eliminating unplanned,  
57 unsightly, untimely and extravagant projects and with  
58 a view to stabilizing industry and employment, and  
59 the keeping of such program up to date by yearly  
60 revisions; and

61 (e) A long-range financial program of governmental  
62 expenditures in order that such development program  
63 may be carried out, and the keeping of such program  
64 up to date, for all separate taxing units within the  
65 municipality or county, respectively, for the purpose of  
66 assuring efficient and economic use of public funds.

**§8-24-18. Same—Notice and public hearing.**

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

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

**§8-24-19. Same—Adoption by commission.**

1 After a public hearing has been held, the commission  
2 may by resolution adopt the comprehensive plan and  
3 recommend the ordinance to the governing body of the  
4 municipality or to the county court.

**§8-24-20. Same—Certification and presentment to governing body or county court.**

1 Upon adoption of the comprehensive plan and recom-  
2 mendation of the ordinance, the secretary shall certify  
3 a copy of the plan to the governing body of the city or  
4 to the county court.

5 At the first meeting of the governing body of the  
6 municipality or of the county court after adoption of  
7 the plan, the secretary or a member of the commission  
8 shall present the plan and ordinance to the governing  
9 body or to the county court.

**§8-24-21. Same—Consideration of plan and ordinance by governing body or county court; publication.**

1 After certification of the plan and ordinance to the  
2 governing body of the municipality or to the county  
3 court, the governing body of the municipality or the  
4 county court shall proceed to a consideration of the  
5 plan and ordinance and shall either adopt, reject or  
6 amend the same. If the ordinance adopting the compre-  
7 hensive plan is published, the plan may be incorporated  
8 by reference in the ordinance and the full text of said  
9 plan not published.

**§8-24-22. Same—Rejection or amendment by governing body or county court; consideration and report by commission.**

1 If the governing body of the municipality or the county  
2 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 to 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-  
mission.**

1 A municipal planning commission shall adopt a com-  
2 prehensive plan for the development of the municipality,  
3 but the authority of such municipal planning commis-  
4 sion shall not extend beyond the corporate limits of the  
5 municipality.

**§8-24-27. Cooperation between planning commissions; co-  
operation between commissions and governing and  
administrative bodies and officials.**

1 In the exercise of the powers and authority granted  
2 by this article, the planning commission of any munici-  
3 pality or county may cooperate with the planning com-  
4 missions or governing and administrative bodies and  
5 officials of other municipalities within or without such  
6 county and of other counties, with a view to coordinating  
7 and integrating the planning and zoning of such munici-  
8 pality or county with the plans of such other munici-  
9 palities and of such other counties, and may appoint such  
10 committee or committees and may adopt such rules and  
11 regulations as may be thought proper to effect such  
12 cooperation. Such planning commissions and governing  
13 and administrative bodies and officials of other munici-  
14 palities and counties are hereby authorized to cooperate  
15 with such municipal or county planning commissions for  
16 the purposes of such coordination and integration. Sim-

17 ilarly, such municipal or county planning commissions  
18 may cooperate with the department of natural resources  
19 of this state and make use of advice and information  
20 furnished by such department and by other appropriate  
21 state and federal officials, departments and agencies, and  
22 all state departments and agencies having information,  
23 maps and data pertinent to the planning and zoning of  
24 such municipality or county may make such available  
25 for the use of such planning commissions.

**PART V. SAME—COMPREHENSIVE PLAN; SUBDIVISION CONTROL.**

**§8-24-28. Subdivision plats—Approval required prior to re-  
cordation.**

1 After a comprehensive plan and an ordinance contain-  
2 ing provisions for subdivision control and the approval  
3 of plats and replats have been adopted by the governing  
4 body of the municipality or by the county court and a  
5 certified copy of the ordinance has been filed with the  
6 clerk of the county court (being in the case of a municipi-  
7 pal plan and ordinance the county court of the county in  
8 which the municipality is located), a plat of a sub-  
9 division shall not be recorded by the clerk of such county  
10 court unless it has first been approved by the planning  
11 commission having jurisdiction over the area. If in the  
12 case of a municipal plan and ordinance, the municipality  
13 is located in more than one county, a certified copy of  
14 the ordinance shall be filed with the clerk of the county  
15 court of each such county.

**§8-24-29. Same—Application for approval; notice and hearing.**

1 A person desiring the approval of a plat shall submit a  
2 written application for approval, together with a copy of  
3 the proposed plat, to the planning commission having  
4 jurisdiction.

5 Upon receipt of the application, the commission, if it  
6 tentatively approves the application, shall set a date,  
7 time and place for a hearing, notify the applicant in  
8 writing, and notify by publication in the manner speci-  
9 fied in section eighteen of this article or otherwise any  
10 person or governmental unit having a probable interest  
11 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  
2 shall be granted, the commission shall determine if the  
3 plat provides for:

4 (1) Coordination of subdivision streets with existing  
5 and planned streets;

6 (2) Coordination with and extension of facilities in-  
7 cluded in the comprehensive plan;

8 (3) Establishment of minimum width, depth and  
9 area of lots within the projected subdivision;

10 (4) Distribution of population and traffic in a manner  
11 tending to create conditions favorable to health, safety,  
12 convenience and the harmonious development of the  
13 municipality or county; and

14 (5) Fair allocations of areas for streets, parks, schools,  
15 public and semipublic buildings, homes, utilities, busi-  
16 ness and industry.

17 As a condition of approval of a plat the commission  
18 may specify:

19 (1) The manner in which streets shall be laid out,  
20 graded and improved;

21 (2) Provisions for water, sewage and other utility  
22 services;

23 (3) Provision for schools;

24 (4) Provision for essential municipal services; and

25 (5) Provision for recreational facilities.

**§8-24-31. Same—Effect of approval or disapproval.**

1 After hearing and within a reasonable time after the  
2 filing of an application for approval of the plat, the com-  
3 mission shall approve or disapprove it. If the commission  
4 approves the application, it shall affix the commission's  
5 seal upon the plat. If it disapproves the application, it  
6 shall set forth its reasons in its own records and provide  
7 the applicant with a copy thereof.

**§8-24-32. Same—Application fees.**

1 The commission may establish a uniform schedule of  
2 fees proportioned to the cost of checking and verifying

3 proposed plats. An applicant shall pay the specified fee  
4 at the time of filing his application.

**§8-24-33. Same—Plats filed without approval.**

1 After a comprehensive plan and an ordinance contain-  
2 ing provisions for subdivision control and the approval  
3 of plats and replats have been adopted and a certified  
4 copy of the ordinance has been filed with the clerk of  
5 the county court as aforesaid, the filing and recording  
6 of a plat involving the subdivision of lands covered by  
7 such comprehensive plan and ordinance shall be without  
8 legal effect unless approved by the commission: *Provided*,  
9 That failure to comply with this section shall not in-  
10 validate or affect the title to any land within the area of  
11 such plat: *Provided, however*, That if such plat shall  
12 bear the seal of the commission it shall be presumed to  
13 have been approved thereby.

**§8-24-34. Same—Conditional approval; bonds.**

1 The commission may approve a plat for a subdivision  
2 in which the improvements and installations have not  
3 been completed as required by the ordinance for the  
4 approval of plats if the applicant provides a bond which  
5 shall:

6 (1) Run to the municipality or county which estab-  
7 lished the commission;

8 (2) Be in an amount determined by the commission  
9 to be sufficient to complete the improvements and in-  
10 stallations in compliance with the ordinance;

11 (3) Be with surety satisfactory to the commission;  
12 and

13 (4) Specify the time for the completion of the im-  
14 provements and installations.

15 Any funds received from any such bonds shall be used  
16 by the legally constituted body charged with making  
17 public improvements for the municipality or county only  
18 for completion of the improvements and installations for  
19 which such bonds were provided, and without prior ap-  
20 propriation. The municipality or county is hereby au-  
21 thorized 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 con-  
2 taining provisions for subdivision control and the ap-  
3 proval of plats and replats have been adopted and a  
4 certified copy of the ordinance has been filed with the  
5 clerk of the county court as aforesaid, the municipal  
6 planning commission, in the case of a municipal plan and  
7 ordinance, shall have exclusive control over the approval  
8 of all plats involving land covered by such municipal  
9 plan and ordinance and located within the corporate  
10 limits of such municipality, and the county planning  
11 commission, in the case of a county plan and ordinance,  
12 shall have exclusive control over the approval of plats  
13 involving unincorporated lands covered by such county  
14 plan and ordinance and located within its jurisdiction.

15 All control over plats granted by other statutes, so far  
16 as such statutes are in harmony with the provisions of  
17 this article, shall be transferred to the commission having  
18 jurisdiction over the lands involved. Existing provisions  
19 for platting control, so far as they are inconsistent with  
20 the provisions of this article, are hereby repealed to the  
21 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  
2 structure shall not be located and an improvement loca-  
3 tion permit for a structure on platted or unplatted lands  
4 shall not be issued unless the structure and its location  
5 conform to the municipality's comprehensive plan and  
6 ordinance. A structure shall not be located and an im-  
7 provement location permit shall not be issued for a struc-  
8 ture on unincorporated lands within the jurisdiction of  
9 the county planning commission unless the structure and  
10 its location conform to the county's comprehensive plan  
11 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.****§8-24-39. Zoning authority 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

19 trades, callings, industries, commercial enterprises and  
20 the location of buildings designed for specified uses;

21 (5) To regulate and control, or prohibit in certain  
22 areas, junk yards, salvage yards, used parts yards, dumps  
23 or automobile or appliance graveyards, or the mainten-  
24 ance and operation of secondhand stores or outlets in  
25 residential areas;

26 (6) To classify and designate the rural lands among  
27 agricultural, industrial, commercial, residential and other  
28 uses and purposes; and

29 (7) To divide the municipality or county into dis-  
30 tricts of such kind, character, number, shape and area  
31 as may be deemed necessary to carry out the purposes  
32 of this section.

#### PART IX. SAME—ZONING DISTRICTS.

##### §8-24-40. Zoning districts—Generally.

1 The various kinds of districts created and designated  
2 as use, height, area, volume or bulk districts, as well as  
3 districts created for any other purpose necessary to carry  
4 out the purposes of section thirty-nine of this article,  
5 need not necessarily cover or include the same territory,  
6 and may overlap or coincide. The districts created shall  
7 also be subject to the following:

8 (1) Rules and regulations as to height, area, bulk  
9 and use of buildings and as to the area of all yards, courts  
10 and open spaces shall be uniform for each class of build-  
11 ings throughout each district;

12 (2) For each district designated for the location of  
13 trades, callings, industries, commercial enterprises or  
14 buildings designated for specified uses, rules and regula-  
15 tions may be enforced specifying uses that shall be ex-  
16 cluded or subjected to reasonable requirements of a  
17 special nature and designating the use for which build-  
18 ings may not be erected, altered or used;

19 (3) The rules and regulations in one or more districts  
20 of the same kind or character may differ from those in  
21 other like districts but shall be uniform for each district;  
22 and

23 (4) Several parts of the municipality or county may  
 24 be classified within a single district although not con-  
 25 tiguous.

**§8-24-41. Same—Preliminary study.**

1 In establishing such districts and rules and regulations  
 2 the governing body of a municipality or the county court  
 3 shall give reasonable regard to existing conditions, the  
 4 character of buildings erected in each district, the most  
 5 desirable use for which the land in each district may be  
 6 adapted and the conservation of property values through-  
 7 out 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  
 2 the rules and regulations and restrictions to be enforced  
 3 therein shall be prepared by the planning commission.  
 4 The commission may prepare the tentative report on  
 5 its own initiative or the governing body of the munici-  
 6 pality or the county court may require its preparation.  
 7 The commission shall hold public preliminary hearings  
 8 and conferences, on such dates and at such times and  
 9 places and upon such notice as it may determine to be  
 10 necessary to inform and aid itself in the preparation of  
 11 the tentative report.

12 The tentative report, which shall include the proposed  
 13 zoning ordinance with explanatory maps, shall be made  
 14 to the governing body of the municipality or to the county  
 15 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  
 2 court shall consider the tentative report of the planning  
 3 commission and shall return it, with any suggestions  
 4 and recommendations, to the planning commission for  
 5 its final report.

6 No zoning ordinance hereunder shall be adopted until  
 7 after the final report of the planning commission has  
 8 been received by the governing body of the municipality  
 9 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 plan-  
2 ning commission, the governing body of the municipality  
3 or the county court shall afford all interested persons  
4 an opportunity to be heard with reference to it at public  
5 hearings, convenient for all persons affected, to be held  
6 on dates and at times and places to be specified in notices  
7 to be published, within fourteen consecutive days next  
8 preceding the date set for the hearings, as Class II legal  
9 advertisements in compliance with the provisions of  
10 article three, chapter fifty-nine of this code, and the  
11 publication area for such publication shall be the munici-  
12 pality or county, as the case may be. The notices shall  
13 state the dates, times and places of the hearings, that  
14 the report contains a comprehensive zoning ordinance  
15 for the municipality or county, that written objections  
16 to the final report filed with the recorder of the munici-  
17 pality or with the clerk of the county court at or before  
18 the hearings will be heard and that the hearings will  
19 be continued from time to time as may be found neces-  
20 sary. During the period between the date of the first  
21 publication of the notice and the date of the hearing,  
22 the final report shall be on file in the office of the plan-  
23 ning commission for public examination. Upon com-  
24 pletion of the public hearings, the governing body of  
25 the municipality or the county court shall proceed to the  
26 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  
2 court may, from time to time, amend, supplement or  
3 change the rules and regulations and districts fixed by  
4 ordinance hereunder.

**§8-24-46. Changes of zoning rules and regulations—Petition  
for change.**

1 Petitions, duly signed, may be presented to the recorder  
2 of the municipality or to the clerk of the county court  
3 requesting an amendment, supplement or change of the  
4 rules and regulations of the zoning ordinance by:

- 5 (1) The planning commission; or
- 6 (2) The owners of fifty percent or more of the real
- 7 property area to which the petition relates.

**§8-24-47. Same—Considered as amendments to comprehensive plan; notice and hearing.**

1 Amendments, supplements or changes of the rules and  
2 regulations of the zoning ordinance shall be considered  
3 as amendments to the comprehensive plan. Any pro-  
4 posed ordinance for the amendment, supplement, change  
5 or repeal of the zoning ordinance not originating upon  
6 petition of the planning commission shall be referred  
7 to the planning commission for consideration and report  
8 before any final action is taken by the governing body  
9 of the municipality or the county court.

10 Prior to submission to the governing body of a munici-  
11 pality or to the county court of a planning commission  
12 petition or a report on a proposed ordinance referred  
13 to it for an amendment, supplement, change or repeal  
14 of the zoning ordinance, the planning commission shall  
15 give notice and hold a public hearing in the manner  
16 prescribed for adoption of a comprehensive plan in  
17 section eighteen of this article, except that publication  
18 of notice of the date, time and place of hearing upon  
19 a proposed amendment, supplement, change or repeal  
20 of the zoning ordinance need be made only fifteen or  
21 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.**

1 If, within sixty days following adoption of the zoning  
2 ordinance by the governing body of the municipality  
3 or by the county court, a petition is filed with the re-  
4 corder or the clerk of the county court praying for  
5 submission of such zoning ordinance for approval or  
6 rejection to the qualified voters residing in the area  
7 within the jurisdiction of the municipal or county plan-  
8 ning commission, such ordinance shall not take effect  
9 until the same shall have been approved by a majority  
10 of the legal votes cast thereon at any regular primary

11 or general election or special election called for that  
12 purpose. The petition may be in any number of counter-  
13 parts but must be signed in their own handwriting by  
14 a number of qualified voters residing in the area affected  
15 by the proposed zoning equal, notwithstanding the pro-  
16 visions of subdivision ten, subsection (b), section two,  
17 article one of this chapter, to not less than fifteen percent  
18 of the total legal votes cast in the affected area for  
19 all candidates for governor at the last preceding general  
20 election at which a governor was elected. Only quali-  
21 fied voters residing in the area affected by the pro-  
22 posed ordinance shall be eligible to vote with respect  
23 thereto.

24 Upon the ballots, or ballot labels where voting ma-  
25 chines are used, there shall be written or printed the  
26 following:

27  For Zoning

28  Against Zoning

29 If a majority of the legal votes cast upon the question  
30 be for zoning, the provisions of said zoning ordinance  
31 shall, upon the date the results of such an election are  
32 declared, be effective. If a majority of the legal votes  
33 cast upon the question be against zoning, said zoning  
34 ordinance shall not take effect, but the question may  
35 again be submitted to a vote at any regular primary  
36 or general election in the manner herein provided.

37 Subject to the provisions of the immediately preced-  
38 ing sentence, voting upon the question of zoning may  
39 be conducted at any regular primary or general election  
40 or special election, as the governing body of the munici-  
41 pality or the county court in its order submitting the  
42 same to a vote may designate.

43 Notice of all elections at which the question of zoning  
44 is to be voted upon shall be given by publication of the  
45 order calling for a vote on such question as a Class  
46 II-0 legal advertisement in compliance with the pro-  
47 visions of article three, chapter fifty-nine of this code,  
48 and the publication area for such publication shall be  
49 the area in which voting on the question of zoning is to  
50 be conducted.

51 Any election at which the question of zoning is voted  
52 upon shall be held at the voting precincts established  
53 for holding primary or general elections. All of the  
54 provisions of the general election laws of this state  
55 concerning primary, general or special elections, when  
56 not in conflict with the provisions of this article, shall  
57 apply to voting and elections hereunder, insofar as prac-  
58 ticable.

PART XIII. SAME--EXISTING ORDINANCES AND USES.

**§8-24-49. Validation of existing ordinances.**

1 All zoning ordinances, and all amendments, supple-  
2 ments and changes thereto, legally adopted under any  
3 prior enabling acts, and all actions taken under the  
4 authority of any such ordinances, are hereby validated  
5 and continued in effect until amended or repealed by  
6 action of the governing body of the municipality or the  
7 county court taken under authority of this article. These  
8 ordinances shall have the same effect as though previ-  
9 ously adopted as a comprehensive plan of land use or  
10 parts thereof.

**§8-24-50. Existing uses safeguarded.**

1 Such zoning ordinance or ordinances shall not prohibit  
2 the continuance of the use of any land, building or  
3 structure for the purpose for which such land, building  
4 or structure is used at the time such ordinance or ordin-  
5 ances take effect, but any alteration or addition to any  
6 land or any alteration, addition or replacement of or  
7 to any existing building or structure for the purpose of  
8 carrying on any use prohibited under the zoning rules  
9 and regulations applicable to the district may be pro-  
10 hibited: *Provided*, That no such prohibition shall apply  
11 to alterations or additions to or replacement of buildings  
12 or structures by any farm, industry or manufacturer,  
13 or to the use of land presently owned by any farm,  
14 industry or manufacturer but not used for agricultural,  
15 industrial or manufacturing purposes, or to the use or  
16 acquisition of additional land which may be required  
17 for the protection, continuing development or expansion  
18 of any agricultural, industrial or manufacturing oper-  
19 ation or any present or future satellite agricultural,

20 industrial or manufacturing use. If a nonconforming  
21 use has been abandoned, any future use of such land,  
22 building or structure shall be in conformity with the  
23 provisions of the ordinance regulating the use in the  
24 district in which such land, building or structure may  
25 be located: *Provided, however,* That abandonment of  
26 any particular agricultural, industrial or manufacturing  
27 process shall not be construed as abandonment of agri-  
28 cultural, industrial or manufacturing use.

29 Nothing contained in this article shall be deemed to  
30 authorize an ordinance, rule and regulation which would  
31 prevent, outside of urban areas, the complete use and  
32 alienation of any timber and any and all minerals, in-  
33 cluding coal, oil and gas, by the owner or alienee thereof.  
34 For the purpose of this section, urban area shall include  
35 all lands or lots within the jurisdiction of a municipal  
36 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.**

1 As a part of the zoning ordinance, the governing body  
2 of the municipality or the county court shall create a  
3 board of zoning appeals consisting of five members to  
4 be appointed by the governing body of the municipality  
5 or by the county court, as the case may be.

6 The members of the board of zoning appeals shall  
7 be individuals who are freeholders and residents of the  
8 municipality or county, as the case may be, and at least  
9 three-fifths of such members must have been residents  
10 of the municipality or county, as the case may be, for  
11 at least ten years preceding the time of their appoint-  
12 ment. No member of the board of zoning appeals shall  
13 be a member of the planning commission nor shall any  
14 member hold other elective or appointive office in the  
15 municipal or county government. Members of the board  
16 shall serve without compensation, but shall be reim-  
17 bursed for all reasonable and necessary expenses actually  
18 incurred in the performance of their official duties.

19 Upon the creation of a board of zoning appeals, the

20 members shall be appointed for the following terms:  
21 One for a term of one year; two for a term of two  
22 years; and two for a term of three years. The terms  
23 shall expire on the first day of January of the first,  
24 second and third year, respectively, following their  
25 appointment. Thereafter, as their terms expire, each  
26 new appointment shall be for a term of three years.

27 If a vacancy occurs, by resignation or otherwise, among  
28 the members of the board of zoning appeals, the govern-  
29 ing body of the municipality or the county court, as the  
30 case may be, shall appoint a member for the unexpired  
31 term.

**§8-24-52. Same—Officers; quorum; compensation of secretary and employees.**

1 At its first meeting of each year, the board of zoning  
2 appeals shall elect a chairman and vice chairman from  
3 its membership. The vice chairman shall have the power  
4 and authority to act as chairman during the absence or  
5 disability of the chairman.

6 A majority of the members of a board of zoning appeals  
7 shall constitute a quorum. No action of a board shall  
8 be official, however, unless authorized by a majority  
9 of all of the members of the board.

10 The board of zoning appeals may appoint and fix the  
11 compensation of a secretary and such employees as are  
12 necessary for the discharge of its duties, all in con-  
13 formity to and in compliance with the salaries and com-  
14 pensation theretofore fixed by the municipality or county  
15 court.

**§8-24-53. Same—Offices; appropriation for expenses.**

1 The governing body of the municipality in the case  
2 of a municipal board of zoning appeals and the county  
3 court in the case of a county board of zoning appeals  
4 shall provide the board with suitable offices for the  
5 holding of meetings and the preservation of plans, maps,  
6 documents and accounts, and shall provide by appro-  
7 priation a sum sufficient to defray the reasonable expenses  
8 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  
2 and regulations concerning the filing of appeals, appli-  
3 cations for variances and exceptions, the giving of notice  
4 and the conduct of hearings as shall be necessary to  
5 carry out its duties under the terms of this article.

6 The board shall keep minutes of its proceedings, keep  
7 records of all official actions and shall record the vote  
8 on all actions taken. All minutes and records shall be  
9 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  
3 any order, requirement, decision or determination made  
4 by an administrative official or board charged with the  
5 enforcement of any ordinance or rule and regulation  
6 adopted pursuant to sections thirty-nine through forty-  
7 nine of this article;

8 (2) Permit and authorize exceptions to the district  
9 rules and regulations only in the classes of cases or in  
10 particular situations, as specified in the ordinance;

11 (3) Hear and decide special exceptions to the terms  
12 of the ordinance upon which the board is required to  
13 act under the ordinance; and

14 (4) Authorize upon appeal in specific cases such  
15 variance from the terms of the ordinance as will not be  
16 contrary to the public interest, where, owing to special  
17 conditions, a literal enforcement of the provisions of  
18 the ordinance will result in unnecessary hardship, and  
19 so that the spirit of the ordinance shall be observed and  
20 substantial justice done.

21 In exercising its powers and authority, the board of  
22 zoning appeals may reverse or affirm, in whole or in  
23 part, or may modify the order, requirement, decision  
24 or determination appealed from, as in its opinion ought  
25 to be done in the premises, and to this end shall have

26 all the powers and authority of the official or board from  
27 whom or which the appeal is taken.

**PART XVI. SAME—BOARD OF ZONING APPEALS—PERFECTING  
APPEAL AND HEARING THEREON.**

**§8-24-56. Appeal from decision of administrative official or  
board.**

1 An appeal taken from any order, requirement, decision  
2 or determination made by an administrative official or  
3 board charged with the enforcement of any ordinance  
4 or rule and regulation adopted pursuant to sections  
5 thirty-nine through forty-nine of this article shall be  
6 filed with the board of zoning appeals.

7 The appeal shall specify the grounds thereof and shall  
8 be filed within such time and in such form as may be  
9 prescribed by the board by general rule and regulation.

10 The administrative official or board from whom or  
11 which the appeal is taken shall, upon request of the  
12 board of zoning appeals, transmit to it all documents,  
13 plans and papers constituting the record of the action  
14 from which an appeal was taken.

**§8-24-57. Hearing of appeal.**

1 The board of zoning appeals shall fix a reasonable  
2 time for the hearing of an appeal. Public notice of the  
3 hearing shall be given in the manner specified in section  
4 eighteen of this article, and due notice shall be given  
5 additionally to the interested parties.

6 The board of zoning appeals may require the party  
7 taking the appeal to assume the cost of public notice  
8 and due notice to interested parties.

9 At the hearing, any party may appear in person, by  
10 agent or by an attorney at law admitted to practice in  
11 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  
2 board of zoning appeals, all proceedings and work on  
3 the premises in question shall be stayed unless the  
4 official or board from whom or which the appeal was

5 taken shall certify to the board of zoning appeals that  
6 by reason of facts stated in the certificate a stay would  
7 cause imminent peril to life or property. If such certifi-  
8 cate be filed, proceedings or work on the premises shall  
9 not be stayed except by a restraining order which may  
10 be granted by the circuit court of the county in which  
11 the premises affected are located, upon application  
12 therefor, on notice to the official or board from whom  
13 or which the appeal is taken and the owner of the prem-  
14 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  
2 shall be subject to review by certiorari.

3 Any person or persons jointly or severally aggrieved  
4 by any decision or order of the board of zoning appeals  
5 may present to the circuit court of the county in which  
6 the premises affected are located a petition duly verified,  
7 setting forth that such decision or order is illegal in  
8 whole or in part, and specifying the grounds of the  
9 alleged illegality. The petition must be presented to  
10 the court within thirty days after the date of the decision  
11 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  
2 the clerk of the circuit court of the county in which  
3 the premises affected are located, the petitioner shall  
4 cause a notice to be issued and served by the sheriff  
5 of the county upon the adverse party or parties, if any,  
6 as shown by the record of the appeal in the office of  
7 the board of zoning appeals, and upon the chairman  
8 or secretary of the board of zoning appeals.

9 The adverse party or parties shall be any property  
10 owner whom or which the record of the board of zoning  
11 appeals shows to have appeared at the hearing before  
12 the board in opposition to the petitioner. If the record  
13 shows a written remonstrance or other document op-  
14 posing the request of petitioner containing the names

15 of more than three property owners, the petitioner shall  
16 be required to cause notice to be issued and served upon  
17 the three property owners whose names first appear  
18 upon the remonstrance or document. Notice to the other  
19 parties named in the remonstrance or document shall  
20 not be required.

21 The notice shall state that a petition for a writ of  
22 certiorari has been filed in the circuit court of the  
23 county asking for a review of the decision or order of  
24 the board of zoning appeals, shall designate the premises  
25 affected and shall specify the date of the decision or  
26 order complained of.

27 Service of the notice by the sheriff on the chairman  
28 or secretary of the board of zoning appeals shall con-  
29 stitute notice to the board and to the municipality or  
30 county and to any official or board thereof charged with  
31 the enforcement of the zoning ordinance, and no further  
32 summons or notice with reference to the filing of such  
33 petition shall be necessary.

**§8-24-61. Action of court or judge on petition.**

1 Upon presentation of a petition for a writ of certiorari,  
2 the circuit court of the county in which the premises  
3 affected are located, or a judge thereof in vacation, shall  
4 direct the board of zoning appeals to show cause within  
5 twenty days from the date of such citation why a writ  
6 of certiorari should not issue. If such board fails to show  
7 to the satisfaction of the court or judge that a writ  
8 should not issue then the court or judge may allow a  
9 writ of certiorari directed to the board of zoning appeals.  
10 The writ shall prescribe the time in which a return  
11 shall be made to it. This time shall not be less than  
12 ten days from the date of issuance of the writ and may  
13 be extended by the court or judge thereof.

**§8-24-62. Stay of work on allowance of writ.**

1 The allowance of the writ of certiorari shall not stay  
2 proceedings or work on the premises affected by the  
3 decision or order to be brought up for review. The  
4 court or judge may, however, upon application and on  
5 notice to all parties to the decision or order and on due  
6 cause shown grant such relief as the circumstances of

7 the case may require, including an order staying the  
8 proceedings or work until final determination of the case  
9 by the court or judge thereof.

10 Such staying order may be issued by the court or  
11 judge without requiring the petitioner to enter into a  
12 written undertaking with the adverse party or parties  
13 affected thereby for the payment of damages by reason  
14 of such staying order.

**§8-24-63. Return to writ by board of zoning appeals.**

1 The return to the writ of certiorari by the board of  
2 zoning appeals must concisely set forth such facts and  
3 data as may be pertinent and present material to show  
4 the grounds of the decision or order appealed from.  
5 The return must be verified by the secretary of the  
6 board.

7 The board shall not be required to return the original  
8 papers acted upon by it. It shall be sufficient to return  
9 certified copies of all or such portion of the papers as  
10 may be called for by the writ.

**§8-24-64. Action by circuit court or judge thereof.**

1 The court or judge may consider and determine the  
2 sufficiency of the allegations of illegality contained in  
3 the petition without further pleadings and may make  
4 a determination and render a judgment with reference  
5 to the legality of the decision or order of the board of  
6 zoning appeals on the facts set out in the petition and  
7 return to the writ of certiorari.

8 If it shall appear to the court or judge that testimony  
9 is necessary for the proper disposition of the matter,  
10 the court or judge may take evidence to supplement the  
11 evidence and facts disclosed by the petition and return  
12 to the writ of certiorari, but no such review shall be  
13 by trial de novo.

14 In passing upon the legality of the decision or order  
15 of the board of zoning appeals, the court or judge may  
16 reverse or affirm, in whole or in part, or may modify such  
17 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  
2 appeals of this state from the final judgment of the  
3 court or judge reversing, affirming or modifying the  
4 decision or order of the board of zoning appeals within  
5 the same time, in the same manner, and upon the same  
6 terms, conditions and limitations as appeals in other  
7 civil cases.

**PART XVIII. ENFORCEMENT PROVISIONS.**

**§8-24-66. Enforcement.**

1 The governing body of a municipality or the county  
2 court may provide penalties, as set out in section sixty-  
3 eight of this article, for failure to comply with the pro-  
4 visions of any ordinance or rule and regulation adopted  
5 pursuant to the provisions of this article and may declare  
6 that any buildings erected, raised or converted or land  
7 or premises used in violation of any provision of any  
8 ordinance or rule and regulation adopted under the  
9 authority of sections thirty-nine through sixty-five of  
10 this article shall be common nuisances and the owner  
11 of the building, land or premises shall be liable for  
12 maintaining a common nuisance.

**§8-24-67. Injunction.**

1 The planning commission, the board of zoning appeals  
2 or any designated enforcement official may seek an in-  
3 junction in the circuit court of the county to restrain  
4 a person or unit of government from violating the  
5 provisions of this article or of any ordinance or rule  
6 and regulation adopted pursuant hereto. The planning  
7 commission, the board of zoning appeals or any desig-  
8 nated enforcement official may also seek a mandatory  
9 injunction in the circuit court directing a person or  
10 unit of government to remove a structure erected in  
11 violation of the provisions of this article or of any  
12 ordinance or rule and regulation adopted pursuant  
13 hereto. If the planning commission, the board of zoning  
14 appeals or the designated enforcement official is suc-  
15 cessful in any such suit, the respondent shall bear the  
16 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 ity 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,

9 the provisions of the ordinance or rule and regulation  
10 adopted under the authority of this article shall govern.  
11 Whenever any other statute, including a special legis-  
12 lative charter, or local ordinance or rule and regulation  
13 requires a greater width of size of yards, courts or other  
14 open spaces, or requires a lower height of building or  
15 a less number of stories, or requires a greater percentage  
16 of lot to be left unoccupied, or imposes other higher  
17 standards than are required by any ordinance or rule  
18 and regulation adopted under the authority of this article,  
19 the provisions of such other statute, including a special  
20 legislative charter, or such other local ordinance or rule  
21 and regulation shall govern.

**§8-24-71. General repealer; planning and zoning outside corporate limits exercised under prior acts.**

1 All acts or parts of acts, including special legislative  
2 charters, inconsistent with the provisions of this article  
3 are hereby repealed to the extent of their inconsistency,  
4 except as provided in section seventy of this article.

5 In amplification of the provisions of sections two,  
6 twenty-four and forty-nine of this article, and notwith-  
7 standing any other provision of this article to the con-  
8 trary, any comprehensive plan and any zoning ordinance  
9 or rule and regulation adopted by any municipality af-  
10 fecting land located beyond the corporate limits of such  
11 municipality under any prior planning and zoning act  
12 of the Legislature granting such extraterritorial juris-  
13 diction to such municipality shall remain valid and en-  
14 forceable, and any such municipality which adopted or  
15 enacted any such plan or ordinance or rule and regu-  
16 lation under such prior act may continue to exercise  
17 planning and zoning control and authority, under the  
18 provisions of this article, over any territory located be-  
19 yond the corporate limits thereof which is covered under  
20 the plan or ordinance or rule and regulation adopted or  
21 enacted under any such prior act, and under no circum-  
22 stances whatever shall a municipality which has not  
23 heretofore exercised extraterritorial jurisdiction under  
24 any such prior act hereafter have any power or authority,  
25 notwithstanding any provision of this chapter to the con-  
26 trary, to exercise any such extraterritorial jurisdiction.

**ARTICLE 25. INTERGOVERNMENTAL RELATIONS — REGIONAL PLANNING.****PART I. PURPOSE; CREATION; ORGANIZATION AND FUNCTION.****§8-25-1. Statement of purpose**

1 The Legislature hereby recognizes the social and eco-  
2 nomic interdependence of the people residing within a  
3 given region of the state and the common interest they  
4 share in its future development. The Legislature hereby  
5 further recognizes that plans and decisions made by local  
6 governments within a region with respect to land use,  
7 circulation patterns, capital improvements and the like,  
8 affect the welfare of neighboring jurisdictions and there-  
9 fore should be developed jointly. It is, therefore, the  
10 aim of this article to provide a means for: (1) Formula-  
11 tion and execution of objectives and policies necessary  
12 for the orderly growth and development of a region as  
13 a whole; and (2) coordination of the objectives, plans  
14 and policies of the separate units of government com-  
15 prising the area; all being hereby declared to be public  
16 purposes.

**§8-25-2. Creation of a regional planning commission.**

1 A regional planning commission may be established  
2 as a public agency pursuant to the following procedures  
3 and with the approval of the commissioner of commerce:  
4 (a) Two or more municipalities, two or more coun-  
5 ties, or one county or two or more counties and a munici-  
6 pality or municipalities within the county or counties  
7 may, by agreement among their respective governing  
8 bodies, create or reorganize a regional planning commis-  
9 sion: *Provided*, That a municipality or county not having  
10 a planning commission shall not participate in the  
11 creation or reorganization of a regional planning com-  
12 mission: *Provided, however*, That (1) in the case of  
13 municipalities, the one within the region with the largest  
14 population shall be a party to the agreement; and (2)  
15 the total number of both counties and municipalities  
16 participating in the agreement shall equal fifty percent  
17 or more of the total number of counties and municipalities  
18 within the region. The agreement shall be effected  
19 through the adoption by the governing body of each

20 participating government, acting individually, of an ap-  
21 propriate resolution. A copy of such agreement shall  
22 be filed with the commissioner of commerce.

23 (b) Any additional county or municipality within  
24 the region may become a party to the original agreement  
25 or a new agreement reorganizing the commission.

**§8-25-3. Definition of the term "region."**

1 As used in this article, the term "region" shall mean  
2 a specific geographic area in which a regional planning  
3 commission shall have jurisdiction, which area shall be  
4 fixed and determined by the commissioner of commerce  
5 and be stipulated with his approval in the agreement  
6 by which the commission is established or reorganized:  
7 *Provided*, That no territory within a municipality or  
8 county not having a planning commission shall be in-  
9 cluded in the area, except that territory within a  
10 municipality having a planning commission may be  
11 included even though the county in which it is located  
12 does not have a planning commission.

**§8-25-4. Membership and organization of commission; meet-  
ings.**

1 Except as provided below, the membership of a re-  
2 gional planning commission shall consist of representa-  
3 tives from each participating government or stipulated  
4 combinations thereof, in number to be specified in the  
5 agreement: *Provided*, That at least one member of the  
6 planning commission of each participating government  
7 and one member of the governing body of each par-  
8 ticipating government shall be members of the commis-  
9 sion, and all members of the commission shall be  
10 qualified by knowledge and experience in matters  
11 pertaining to the planning and development of munic-  
12 ipalities, counties or regions, with the exception of the  
13 member or members of the governing body of each  
14 participating governmental unit. A commission may  
15 appoint not to exceed two members from the general  
16 public, such members to have demonstrated outstanding  
17 leadership in community affairs. The terms of the mem-  
18 bers of a commission, the manner of their appointment  
19 or removal, and the method and manner of filing any

20 vacancies on a commission, as well as any additional  
21 qualifications for membership on a commission, shall be  
22 specified in the agreement. A representative of the state  
23 government may be designated by the governor to attend  
24 meetings of a commission.

25 The members of a commission shall serve without  
26 compensation, but shall be reimbursed for all reasonable  
27 and necessary expenses actually incurred in the per-  
28 formance of their commission duties. A commission shall  
29 elect a chairman from among its members, and shall  
30 establish its own rules and regulations and such com-  
31 mittees as it deems necessary to carry on its work.  
32 Such committees may have as members persons other  
33 than members of the commission. A commission shall  
34 meet as often as necessary, but not less than four times  
35 a year.

**§8-25-5. Annual budget; appropriations; depositories; ex-  
penditures; accounting.**

1 A regional planning commission shall adopt an annual  
2 budget, to be submitted to the participating governments  
3 which shall each contribute to the financing of the  
4 commission according to the formula specified in the  
5 agreement, and each such government is hereby em-  
6 powered and authorized to appropriate and expend funds  
7 for services rendered to it by the commission. Money  
8 received by a commission shall be deposited in such  
9 depository as may be specified in the agreement and be  
10 paid out in such manner as the commission may deter-  
11 mine. A commission shall upon demand at any time  
12 make a full and complete accounting of all funds to  
13 with respect thereto, either separately, jointly or coop-  
14 without demand make to the participating governments  
15 an annual accounting thereof.

**§8-25-6. Financial aid; contracts; reports.**

1 A regional planning commission is hereby empowered  
2 and authorized to accept and expend funds and grants  
3 provided for the purposes hereof by the government of  
4 the United States or its departments or agencies, by  
5 departments and agencies of this state or of any other  
6 state, by one or more municipalities, counties or other

7 political subdivisions of this state or of any other state,  
8 or by any other agency whose interests are in harmony  
9 with the purposes hereof, including planning commis-  
10 sions, all in accordance with any federal requirements  
11 and subject to any conditions or limitations the constitu-  
12 tion or law of the state may provide, and to contract  
13 with respect thereto, either separately, jointly, or coop-  
14 eratively, if the contract is approved by the attorney  
15 general, and to provide such information and reports  
16 as may be necessary to secure such financial aid. In  
17 this connection, any such commission is hereby expressly  
18 empowered and authorized to participate in any federal  
19 planning assistance program.

**§8-25-7. Cooperation by and with other planning commissions,  
governmental units and officials; authority of political  
subdivisions to expend funds.**

1 To effectuate the purposes of this article, a regional  
2 planning commission and the planning commissions of  
3 the participating governments in the region may co-  
4 operate with regional planning commissions for other  
5 regions or the planning commissions of the participating  
6 governments therein, with the governing or administra-  
7 tive bodies and officials of any municipality, county or  
8 other political subdivision, including those in other  
9 states, with federal and state departments, agencies and  
10 officials, including those of other states, and with any  
11 other agency whose interests are in harmony with the  
12 purposes of this article, with a view to coordinating and  
13 integrating the planning for the cooperating govern-  
14 mental units, and may appoint such committees and may  
15 adopt such rules and regulations as may be thought  
16 proper to effect such cooperation; and, for the purpose  
17 of such coordination and integration, may contract with  
18 respect thereto with such bodies, departments, agencies  
19 and officials, all in accordance with any federal require-  
20 ments and subject to any conditions or limitations the  
21 constitution or law of the state may provide, if the con-  
22 tract is approved by the attorney general. The governing  
23 or administrative bodies and officials of municipalities,  
24 counties and other political subdivisions within this  
25 state are hereby empowered and authorized to cooperate

26 in this manner with such planning commissions and with  
27 the governing or administrative bodies and officials of  
28 political subdivisions in other states for the purposes of  
29 such coordination and integration.

30 All municipalities, counties and other political sub-  
31 divisions within this state are hereby empowered and  
32 authorized to appropriate and expend funds for services  
33 they obtain through cooperative arrangements made pur-  
34 suant to the provisions of this section.

**§8-25-8. Director and staff.**

1 A regional planning commission may appoint a director,  
2 who shall be qualified for the position by training and  
3 experience and who shall serve at the will and pleasure  
4 of the commission. The director shall be the chief ad-  
5 ministrative and planning officer and regular technical  
6 advisor of the commission, and shall appoint and remove  
7 the staff of the commission. When authorized by the  
8 regional planning commission, such director may enter  
9 into agreements with the planning commissions of the  
10 participating governments for the temporary transfer  
11 or joint use of staff employees, and may contract for  
12 professional or consultant services from other govern-  
13 mental and private agencies.

14 In the event a director is not appointed, a commission  
15 may exercise the power and authority granted to a di-  
16 rector by the provisions of this section as well as the  
17 other power and authority granted to it by the provisions  
18 of this article.

**PART II. POWERS AND DUTIES.**

**§8-25-9. Powers and duties of regional planning commission generally.**

1 A regional planning commission shall:  
2 (a) Prepare, and from time to time revise, amend,  
3 extend or add to, a plan or plans for the development  
4 of the region. Any such plan or plans shall be based  
5 on studies of physical, social, economic and governmental  
6 conditions and trends, and shall aim at the coordinated  
7 development of the region in order to promote the general  
8 health, welfare, convenience and prosperity of its peo-

9 ple. The plan or plans shall embody the policy recom-  
10 mendations of the regional planning commission, and  
11 may include, but shall not be limited to:

12 (1) A statement of the objectives, standards and prin-  
13 ciples sought to be expressed in the plan or plans.

14 (2) Recommendations for the most desirable pattern  
15 and intensity of general land use within the region in  
16 the light of the best available information concerning  
17 natural environmental factors, the present and prospec-  
18 tive economic and demographic bases of the region, and  
19 the relation of land use within the region to land use in  
20 adjoining areas. The land use pattern shall include pro-  
21 vision for open as well as urban, suburban and rural  
22 development.

23 (3) Recommendations for the general circulation pat-  
24 tern for the region, including land, water and air trans-  
25 portation and communication facilities, whether used for  
26 movement within the region or to and from adjacent  
27 areas.

28 (4) Recommendations concerning the need for and  
29 proposed general location of public and private works  
30 and facilities, which by reason of their function, size,  
31 extent or for any other cause are of a regional, as dis-  
32 tinguished from purely local, concern.

33 (5) Recommendations for the long-range program-  
34 ming and financing of capital projects and facilities.

35 (6) Such other recommendations as it may deem ap-  
36 propriate concerning such current and impending prob-  
37 lems as may affect the region.

38 (b) Prepare, and from time to time revise, recom-  
39 mended ordinances and rules and regulations which  
40 would implement the regional plan or plans.

41 (c) Prepare studies of the region's resources, both  
42 natural and human, with respect to existing and emerg-  
43 ing problems of industry, commerce, transportation, popu-  
44 lation, housing, agriculture, public service, local govern-  
45 ments and any other matters which are relevant to re-  
46 gional planning.

47 (d) Collect, process and analyze, at regular intervals,  
48 the social and economic statistics for the region which

49 are necessary to planning studies, and make the results  
50 of such collection, processing and analysis available to  
51 the general public.

52 (e) Participate with other governmental agencies,  
53 educational institutions and private organizations in the  
54 coordination of the regional research activities described  
55 in paragraphs (c) and (d) of this section.

56 (f) Cooperate with, and provide planning assistance  
57 to, municipalities, counties and municipal and county  
58 planning commissions within the region, and coordinate  
59 regional planning with the planning activities and plans  
60 of the state and of the municipalities and counties within  
61 the region, as well as neighboring areas, including those  
62 in adjoining states, and the programs of federal depart-  
63 ments and agencies.

64 (g) Provide information to officials, departments,  
65 agencies and instrumentalities of the federal, state and  
66 local governments, and to the public at large, in order  
67 to foster public awareness and understanding of the  
68 objectives of the regional plan and the functions of re-  
69 gional and local planning, and in order to stimulate pub-  
70 lic interest and participation in the orderly, integrated  
71 development of the region.

72 (h) Receive and review for compatibility with re-  
73 gional plans all proposed comprehensive land use, circu-  
74 lation and public facilities plans and projects, ordinances  
75 and rules and regulations, official maps and building  
76 codes of local governments in the geographic area and  
77 all amendments or revisions of such plans, rules and  
78 regulations and maps, and make recommendations for  
79 their modification where deemed necessary to achieve  
80 such compatibility.

81 (i) Review applications of participating governments  
82 for capital project financial assistance from the federal  
83 government and state governments, and comment upon  
84 their consistency with the regional development plan;  
85 and review and comment upon state plans for highways  
86 and public works within the area to promote coordina-  
87 tion of all intergovernmental activities in the region on  
88 a continuing basis.

89 (j) Exercise all other power and authority necessary  
90 and proper for the discharge of its duties.

91 In developing a comprehensive plan, the plan may be  
92 for all or part of the territory in the region, or for all  
93 or part of the territory in the region and any territory  
94 adjacent to the region, including that without the state,  
95 which, in the opinion of the commission, bears a sub-  
96 stantial relation to the planning for territory within the  
97 region: *Provided*, That any plan for a part of the region  
98 shall be for territory which does not begin and terminate  
99 within the boundaries of any single participating gov-  
100 ernment. In developing a plan, a commission shall give  
101 consideration to any comprehensive or general develop-  
102 ment plan existing in any participating government.

103 During the preparation of a plan, a commission shall  
104 periodically consult with the planning commissions of  
105 the various participating governments involved in the  
106 plan and make every effort to develop a plan which will  
107 meet with the approval of the planning commissions of  
108 such governments.

### PART III. IMPLEMENTATION OF REGIONAL PLANS.

#### **§8-25-10. Certification and implementation of regional plans.**

1 All comprehensive regional plans, including zoning  
2 ordinances and subdivision regulations, prepared pur-  
3 suant to the provisions of this article, shall, after adoption  
4 by the regional planning commission, be certified by the  
5 commission to all planning commissions of the participat-  
6 ing 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  
2 or a part thereof for any participating government until  
3 it has been adopted by its governing body in accordance  
4 with the provisions of sections eighteen through twenty-  
5 two, article twenty-four of this chapter, and when so  
6 adopted it shall supersede any previous comprehensive  
7 plan or any part of such plan of the participating govern-  
8 ment inconsistent therewith. Before rejecting or amend-  
9 ing a plan as certified by the regional planning commis-

10 sion, the planning commission or the governing body of  
11 the participating government shall refer the plan to the  
12 regional planning commission which prepared it for its  
13 recommendations in regard to such rejection or amend-  
14 ment, but any report of such regional planning commis-  
15 sion after such a reference shall be advisory only.

16 Amendments to a regional plan, including ordinances  
17 and regulations, shall be adopted in the same manner  
18 as provided herein for the adoption of the original plan,  
19 except that if the planning commission or governing body  
20 of a participating government desires an amendment, it  
21 may request the regional planning commission to prepare  
22 the amendment and certify it to the local planning com-  
23 mission as herein provided.

24 After the adoption or rejection of a regional plan, a  
25 regional planning commission shall from time to time  
26 reexamine the plan with the view of keeping it up to  
27 date.

28 After the adoption of such plan by a participating  
29 government, its planning commission shall thereafter  
30 act in effectuating the plan in that jurisdiction.

#### §8-25-12. Cooperation by local governments.

1 Any municipality or county within the geographic area  
2 of the region may, and all participating governments and  
3 their planning commissions shall, file with the regional  
4 planning commission all current and proposed plans,  
5 zoning ordinances, official maps, building codes, sub-  
6 division regulations, and project plans for capital facilities,  
7 and amendments to and revisions of any of the foregoing,  
8 as well as copies of their regular and special reports  
9 dealing with planning matters. Each municipality or  
10 county within the geographic area of the region shall  
11 afford the regional planning commission having jurisdic-  
12 tion therein a reasonable opportunity to comment upon  
13 any such proposed plans, zoning ordinances, subdivision  
14 regulations and project plans for capital facilities and  
15 shall consider such comments, if any, prior to adopting  
16 any such plan, ordinance, regulation or project plan.

## PART IV. REPORTS.

**§8-25-13. Annual report.**

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<sup>8</sup> 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 munici-  
 23 pality 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-

28 commissioner of commerce or a representative designated by  
29 him shall represent the state in the deliberations of  
30 any interstate regional planning commission or its  
31 agencies or instrumentalities but this state shall not be a  
32 voting member of any interstate regional planning com-  
33 mission or any agency or instrumentality thereof.

**§8-26-2. Definition of region.**

1 The term "region," as used in this article, shall mean a  
2 specific metropolitan interstate area designated by the  
3 proper federal agency pursuant to the "Demonstration  
4 Cities and Metropolitan Development Act of 1966" and  
5 any amendments thereto, as well as all other interstate  
6 areas which would benefit from cooperative planning.  
7 Before any area in this state is included within an inter-  
8 state region for interstate planning, it shall be approved  
9 by the commissioner of the department of commerce:  
10 *Provided*, That no territory within any municipality or  
11 county not having a planning commission shall be in-  
12 cluded in an interstate area.

**§8-26-3. Membership and organization of commission; reports and audits.**

1 Any member of an interstate regional planning com-  
2 mission may hold any other public office, appointive or  
3 elective, if not prohibited by some other statute or con-  
4 stitutional provision, and a member thereof may also  
5 serve as a member of a municipal, county or regional  
6 planning commission. The members of the commission  
7 shall serve without compensation but may be reimbursed  
8 for all reasonable and necessary expenses actually in-  
9 curred in the discharge of their commission duties. The  
10 commission shall elect its own chairman or other of-  
11 ficers from among its members and shall establish its own  
12 rules and regulations and bylaws, schedule of meetings  
13 and such committees with such powers as it may deem  
14 necessary to carry on its work.

15 Any such commission shall make a quarterly report to  
16 the governing body of each municipality and to the  
17 county court of each county contributing to the financial  
18 support of such commission, containing an itemized ac-

19 count of its receipts and disbursements during the pre-  
20 ceding quarter. Such report shall be made within thirty  
21 days after the end of each quarter. At the end of each  
22 fiscal year, any such commission shall arrange for an  
23 independent audit of its financial affairs and within  
24 thirty days after the end of such fiscal year, such com-  
25 mission shall furnish a copy of the report of such audit  
26 to any such governing body or county court and shall  
27 cause a copy thereof to be published as a Class I legal  
28 advertisement in compliance with the provisions of article  
29 three, chapter fifty-nine of this code, and the publication  
30 area for such publication shall be each municipality and  
31 county which contributed to the financial support of such  
32 commission.

#### PART II. POWERS AND DUTIES.

##### **§8-26-4. Powers and duties of an interstate regional planning commission.**

- 1 (a) An interstate regional planning commission may  
2 make studies, maps, plans and reports relative to the  
3 region and shall recommend procedures and policies to  
4 the appropriate authorities, based on physical, social,  
5 economic and governmental conditions and trends, to  
6 promote the coordinated development of the region and  
7 the general health, welfare, convenience and prosperity  
8 of the people of the region. Such planning and coordina-  
9 tion may reflect the following planning criteria:
- 10 (1) Goals, objectives, standards and principles for the  
11 development of the region;
  - 12 (2) The distribution and intensity of general land  
13 use and open space;
  - 14 (3) The general circulation pattern for the region,  
15 including land, water and air transportation and com-  
16 munication facilities, and continuing comprehensive trans-  
17 portation planning;
  - 18 (4) The general location, character and extent of pub-  
19 lic and private works and facilities which are of area-  
20 wide or regional, as distinguished from purely local, con-  
21 cern; and
  - 22 (5) Long-range programming and financing of capital  
23 projects and facilities.

24 (b) The commission shall:

25 (1) Review plans and proposals for projects and pro-  
26 grams of interstate or regional significance which may be  
27 proposed by others;

28 (2) Review and make recommendations concerning  
29 administrative and regulatory measures to implement  
30 area-wide or regional plans;

31 (3) Review and make recommendations concerning  
32 effective utilization of such federal and state assistance  
33 as may be available on a regional basis or as may have  
34 a regional impact;

35 (4) Collect, analyze and report on statistics and other  
36 information concerning traffic, housing, population and  
37 social, economic and physical conditions of the region;

38 (5) Make recommendations to governmental bodies  
39 within such region for such actions as are necessary and  
40 proper to further the coordinated development of the  
41 region; and

42 (6) Conduct necessary investigations and research  
43 and cooperate with other public and private agencies  
44 or persons to conduct such investigations and research  
45 on planning problems affecting the region.

**§8-26-5. Appropriations, receipts and expenses.**

1 (a) Any political subdivision which becomes a mem-  
2 ber of any interstate regional planning commission may  
3 contract each fiscal year with said interstate regional  
4 planning commission to pay a proportionate part of the  
5 expenses properly chargeable to the planning services  
6 rendered to such political subdivision, and any funds  
7 budgeted for interstate planning may be paid over by  
8 the political subdivision to the interstate regional plan-  
9 ning commission.

10 (b) An interstate regional planning commission may  
11 accept and use funds, grants and services from the federal  
12 government or its agencies, from departments, agencies  
13 and instrumentalities of any adjoining state, and from  
14 any municipality, county or other political subdivision  
15 of this or any adjoining state, including municipal, county,  
16 regional or other planning commissions of this or any  
17 adjoining state, or from private sources, or services from  
18 departments, agencies or instrumentalities of this state,

19 and may contract with respect thereto and provide such  
20 information and reports as may be necessary to secure  
21 such financial or other aid. Within the amounts thus  
22 agreed upon and appropriated or otherwise received,  
23 any commission may employ such engineers, planners,  
24 consultants and other employees as are necessary and  
25 may rent or own such space and make such purchases  
26 as it deems necessary to its use.

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN  
MASS TRANSPORTATION SYSTEMS.**

**PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF  
AUTHORITIES.**

**§8-27-1. Short title.**

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.

**§8-27-3. Definitions.**

1 As used in this article, unless a different meaning ap-  
2 pears from the context:

3 (a) "Authority" means any urban mass transportation  
4 authority created pursuant to the provisions of this  
5 article;

6 (b) "Board" means the board of any urban mass  
7 transportation authority;

8 (c) "Contiguous counties" means two or more coun-  
9 ties which constitute a compact territorial unit within  
10 an unbroken boundary wherein one county touches at  
11 least one other county, but does not require that each  
12 county touch all of the other counties so combining;

13 (d) "Facilities and equipment" means all real and  
14 personal property of every kind and character owned or  
15 held by any urban mass transportation system for the  
16 purpose of providing transportation by bus or rail or  
17 other conveyance serving the public;

18 (e) "Participating government" means any munici-  
19 pality or county establishing or participating in an urban  
20 mass transportation authority;

21 (f) "Project" means any undertaking of an authority;

22 (g) "Revenues" means the gross receipts derived di-  
23 rectly or indirectly from or in connection with the opera-  
24 tion by an authority of any urban mass transportation  
25 system or systems and shall include, without limitation,  
26 all fees, rates, fares, rentals or other income actually  
27 received or receivable by or for the account of an au-  
28 thority from the operation of the system, and any other  
29 receipts from whatever source derived;

30 (h) "Service area of the authority" means and in-  
31 cludes an area commensurate with the area served by an  
32 existing system or systems acquired or to be acquired  
33 by an authority, or if there be no existing system, the  
34 area shall extend to and include an area to be defined  
35 in the certificate of convenience and necessity issued  
36 by the public service commission under the applicable  
37 provisions of chapter twenty-four and chapter twenty-  
38 four-a of this code;

39 (i) "System" means any urban mass transportation  
40 system;

41 (j) "Trust indenture" means a security instrument  
 42 entered into by an authority pursuant to which bonds or  
 43 notes are issued;

44 (k) "Urban area" means any area that includes a  
 45 municipality or other built-up place which is appropriate  
 46 for a system to serve commuters or others in the locality  
 47 taking into consideration the local patterns and trends  
 48 of growth;

49 (l) "Urban mass transportation system" means any  
 50 common carrier of passengers for hire which operates  
 51 equipment over regular routes within the service area of  
 52 the authority; and

53 (m) The singular shall include the plural and the  
 54 plural shall include the singular.

**§8-27-4. Urban mass transportation authorities authorized;  
 authorities to be public corporations.**

1 Any municipality or county, or both, or any two or  
 2 more municipalities within any county or contiguous  
 3 counties, or any two or more contiguous counties, or any  
 4 combination thereof, may create an urban mass transpor-  
 5 tation authority. Such authority shall be created upon  
 6 the adoption, by the governing body of each participating  
 7 government, acting individually, of an appropriate ordi-  
 8 nance or order. Each authority shall constitute a public  
 9 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.**

1 The management and control of any authority, its  
 2 operations, business and affairs shall be lodged in a board  
 3 of not less than five nor more than fifteen individuals  
 4 who shall be known as members of the board and who  
 5 shall be appointed for terms of three years each by the  
 6 governing bodies of the participating governments. Prior  
 7 to making the initial appointments to the board, the  
 8 governing bodies of the participating governments shall  
 9 agree to make such initial appointments so that approxi-

10 mately one-third of the total number of the members to  
11 be so appointed shall be appointed for a term of one year,  
12 approximately one-third of such total number of the  
13 members shall be appointed for a term of two years and  
14 approximately one-third of such total number of the  
15 members shall be appointed for a term of three years.  
16 As the term of each such initial appointee expires, the  
17 successor to fill the vacancy created by such expired term  
18 shall be appointed for a term of three years. The number  
19 of members representing each participating government  
20 shall be as agreed upon from time to time by the govern-  
21 ing bodies of the said participating governments. Each  
22 member of the board shall have one vote on all matters  
23 coming before it. Any individual who is a resident of,  
24 or member of the governing body of, any participating  
25 government is eligible to serve as a member of the board.  
26 The governing body of each participating government shall  
27 inform the authority of its appointments or reappoint-  
28 ments to the board by delivering to the authority a cer-  
29 tified copy of the ordinance or order making the appoint-  
30 ment or reappointment. If any member of the board  
31 dies, resigns, or for any other reason ceases to be a mem-  
32 ber of the board, the governing body of the participating  
33 government which such member represented shall ap-  
34 point another individual to fill the unexpired portion of  
35 the term of such member.

**§8-27-6. Compensation of members; expenses.**

1 As compensation for his services on the board each  
2 member shall receive from the authority the sum of fifty  
3 dollars for each meeting actually attended. The total  
4 compensation paid to any member by the authority for  
5 any fiscal year shall not exceed in the aggregate the sum  
6 of six hundred dollars. Each member shall also be reim-  
7 bursed by the authority for all reasonable and necessary  
8 expenses actually incurred in the discharge of his duties  
9 as a member of the board.

**§8-27-7. Meetings of authority; officers; employees; official bonds; records of authority public records.**

1 At its first meeting, to be held no later than sixty days  
2 from the creation of the authority as provided in section

3 four of this article, the board shall elect from its mem-  
4 bership a president to act during the next ensuing fiscal  
5 year, or until his successor is elected and qualified. At  
6 that time, the board shall also elect a vice president, a  
7 secretary and a treasurer and such other officers as may  
8 be required, who need not be members of the board,  
9 whose duties shall be defined and whose compensation  
10 shall be fixed by the board and paid out of the funds of  
11 the authority. The treasurer, and such other officers and  
12 employees as the board shall direct, shall furnish bond  
13 for the use and benefit of the authority in such penal  
14 sum as may be fixed by the board and conditioned upon  
15 the faithful discharge by such treasurer and such other  
16 officers and employees so directed by the board of the  
17 duties of their respective offices or employment, and upon  
18 accounting for and paying over all moneys which may  
19 come into their possession by virtue of such office or  
20 employment. At its first meeting the board shall also  
21 fix the time and place for holding regular meetings, but  
22 it shall meet at least once in the months of January, April,  
23 July and October. Special meetings of the board may be  
24 called by the president or by two members upon written  
25 request to the secretary. The secretary shall send to all  
26 the members, at least two days in advance of a special  
27 meeting, a written notice setting forth the time and place  
28 of the special meeting and the matters to be considered  
29 at such special meeting. Written notice of a special meet-  
30 ing is not required if the time of the special meeting has  
31 been fixed in a regular meeting, or if all the members  
32 are present at the special meeting. All regular meetings  
33 shall be general meetings for the consideration of any and  
34 all matters which may properly come before an authority.  
35 All proceedings of the authority shall be entered in a  
36 permanently bound record book, properly indexed, and  
37 the same shall be carefully preserved by the secretary  
38 of the authority. All records of the authority shall be  
39 public records.

**§8-27-8. Quorum; majority vote required.**

1 A majority of the members of the board, which majority  
2 must include members from a majority of the partici-

3 pating governments, shall constitute a quorum. The vote  
4 of a majority of all members present at any meeting of  
5 the board shall be necessary to take any action.

**§8-27-9. Budget.**

1 The board shall establish the beginning and ending of  
2 its fiscal year, which period shall constitute its budget  
3 year, and at least thirty days prior to the beginning of  
4 the first full fiscal year after the creation of the authority  
5 and annually thereafter the treasurer shall prepare and  
6 submit to the board a tentative budget. Such tentative  
7 budget shall be considered by the board, and, subject  
8 to any revisions or amendments that may be determined  
9 by said board, shall be adopted as the budget for the en-  
10 suing fiscal year. No expenditures in excess of the budget  
11 shall be made during such fiscal year unless expressly  
12 authorized and directed by the board. It shall not be  
13 necessary to include in such budget any statement of  
14 necessary expenditures for annual interest or principal  
15 payments on bonds or for capital outlays, but it shall be  
16 the duty of the board to make provisions for their pay-  
17 ment as they become due.

PART III. POWERS AND DUTIES OF AUTHORITIES.

**§8-27-10. Powers and duties of authorities generally.**

1 Each authority is hereby given the power:  
2 (a) To sue and be sued, implead and be impleaded;  
3 (b) To have and use a seal and alter the same at  
4 pleasure;  
5 (c) To make and adopt all rules and regulations and  
6 bylaws as may be necessary or desirable to enable it to  
7 exercise the powers and perform the duties conferred or  
8 imposed upon it by the provisions of this article;  
9 (d) To employ, in its discretion, planning, architect-  
10 tural and engineering consultants, attorneys, accountants,  
11 construction, financial, transportation and traffic experts  
12 and consultants, superintendents, managers and such  
13 other employees and agents as may be necessary in its  
14 judgment, and to fix their compensation;  
15 (e) To acquire by grant, purchase, gift, devise or lease  
16 and to hold, use, sell, lease or otherwise dispose of real

17 and personal property of every kind and nature whatso-  
18 ever, licenses, franchises, rights and interests necessary  
19 for the full exercise of its powers pursuant to the pro-  
20 visions of this article, or which may be convenient or  
21 useful for the carrying out of such powers;

22 (f) To acquire, construct, reconstruct, complete, de-  
23 velop, improve, own, equip, maintain and operate any  
24 system or systems, or any part thereof, including, without  
25 limitation, the power to acquire by purchase, lease or gift  
26 all or any part of any licenses, franchises, rights, interests,  
27 engineering and technical studies, data or reports owned  
28 or held by any person and determined by its board to be  
29 necessary, convenient or useful to the authority in con-  
30 nection with the acquisition, construction, reconstruction,  
31 completion, development, improvement, ownership, equip-  
32 ping, maintenance or operation of any system or systems  
33 and to reimburse public utilities for relocation of any  
34 utility line or facility made necessary by the construction,  
35 reconstruction, completion, development, improvement,  
36 equipping, maintenance or operation of any system or  
37 systems;

38 (g) To acquire any land, rights or easements deemed  
39 necessary or incidental for the purposes of the authority  
40 by eminent domain to the same extent and to be exer-  
41 cised in the same manner as now or hereafter provided by  
42 law for such right of eminent domain by business corpo-  
43 rations;

44 (h) To enter into contracts and agreements which are  
45 necessary, convenient or useful to carry out the pur-  
46 poses of this article with any person, public corporation,  
47 state or any agency or political subdivision thereof and  
48 the federal government and any department or agency  
49 thereof, including, without limitation, contracts and  
50 agreements for the joint use of any property and rights  
51 by the authority and any person or authority operating  
52 any system, whether within or without the service area  
53 of the authority, and contracts and agreements with any  
54 person or authority for the maintenance, servicing, stor-  
55 age, operation or use of any system or part thereof,  
56 facility or equipment on such basis as shall seem proper  
57 to its board;

58 (i) To enter into contracts and agreements for super-  
59 intendence and management services with any person,  
60 who has executive personnel with experience and skill  
61 applicable to the superintendence and management of  
62 any system, for the furnishing of its services and the  
63 services of experienced and qualified personnel for the  
64 superintendence and management of any system or any  
65 part thereof, including, without limitation, superinten-  
66 dence over personnel, purchases, properties and opera-  
67 tions and all matters relating thereto, and any revenue  
68 bond trust indenture may require such contract or agree-  
69 ment, but the personnel whose services are to be so  
70 furnished under any such contract or agreement shall  
71 not include any member of the board, any member of the  
72 immediate family of a member of the board or any agents  
73 or employees of the authority, and no such contract or  
74 agreement shall extend beyond a term of ten years or such  
75 longer time as there are outstanding any revenue bonds  
76 under a trust indenture which requires such contract or  
77 agreement;

78 (j) To assume any lien indebtedness of any system  
79 or part thereof acquired by it under the provisions of  
80 this article;

81 (k) To execute security agreements, contracts, leases,  
82 equipment trust certificates and any other forms of  
83 contracts or agreements, granting or creating a lien,  
84 security interest, encumbrance or other security in, on  
85 or to facilities and equipment, containing such terms and  
86 provisions as the board deems necessary;

87 (l) To apply for, receive and use grants, grants-in-  
88 aid, donations and contributions from any source or  
89 sources, including, but not limited to, the federal govern-  
90 ment and any agency or department thereof, and a state  
91 government whose constitution does not prohibit such  
92 grants, grants-in-aid, donations and contributions, and  
93 any agency or department thereof, and to accept and use  
94 bequests, devises, gifts and donations from any person;

95 (m) To lease any system or any part thereof to, or  
96 contract for the use of any system or any part thereof  
97 by, any person, but a trust indenture may prohibit,  
98 limit or restrict the exercise of such power;

99 (n) To acquire for cash or in exchange for its bonds  
100 all or any part of any publicly or privately owned  
101 system or systems;

102 (o) To make or cause to be made either by itself or  
103 in cooperation with other persons or organizations,  
104 whether public or private, traffic surveys, population  
105 surveys and such other surveys and studies as it shall  
106 consider useful in the performance of its duties or the  
107 exercise of its powers under the provisions of this article  
108 and in connection therewith the authority may contract  
109 with any person or organization for such planning  
110 services;

111 (p) To enter into contracts and agreements with any  
112 public or private system either within or contiguous to  
113 its boundaries for the transfer of passengers between it  
114 and the system operating in territory contiguous to its  
115 boundaries;

116 (q) To fix and establish from time to time, subject  
117 to the approval of the public service commission, such  
118 fees, rates or other charges and routes, time schedules  
119 and standards of service as will provide revenues in each  
120 year at least sufficient to pay the principal of and interest  
121 on all bonds issued by the authority, and reasonable re-  
122 serves therefor, as the same shall become due, together  
123 with the cost of administration, maintenance, repair and  
124 operation of such system or systems in each year, to-  
125 gether with all other payments required in each such  
126 year by the resolution which authorized the issuance of  
127 such bonds, or the trust indenture securing the same, in-  
128 cluding, without limitation, reasonable reserves or mar-  
129 gins for any of such purposes, and every authority shall  
130 file and keep on file the information specified in section  
131 two, article six, chapter twenty-four-a of this code in  
132 the manner and form as therein provided;

133 (r) To issue revenue bonds of the authority for any  
134 of its purposes or projects and to refund its bonds, all as  
135 provided in this article;

136 (s) To encumber or mortgage all or any part of its  
137 facilities and equipment;

138 (t) To prepare plans for and assist in the relocation

139 of persons displaced by the authority and to make re-  
140 location payments to or with respect to such persons for  
141 moving expenses and losses of property for which reim-  
142 bursement or compensation is not otherwise made, in-  
143 cluding the making of such payments financed by the  
144 federal government; and

145 (u) To do any and all things necessary or convenient  
146 to carry out the powers given in this article unless other-  
147 wise forbidden by law.

148 The exercise of any of the powers herein granted is  
149 expressly made subject to the provisions of section  
150 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.**

1 Contributions may be made to authorities from time  
2 to time by the participating governments and by any  
3 other municipalities, counties or persons that shall desire  
4 to do so. All such funds and all of the other funds  
5 received by any authority shall be deposited in a separate  
6 account in such banking institution or institutions as  
7 its board may direct and shall be withdrawn therefrom  
8 only in such manner as its board may direct. Each  
9 authority shall keep strict account of all its receipts  
10 and expenditures and shall make a quarterly report  
11 to the participating governments which have made con-  
12 tributions to it and such report shall contain an itemized  
13 account of its receipts and disbursements during the  
14 preceding quarter. Such report shall be made within  
15 sixty days after the termination of the quarter. Within  
16 ninety days after the end of each fiscal year, each author-  
17 ity shall make an annual report containing an itemized  
18 statement of its receipts and disbursements for the pre-  
19 ceding fiscal year, and any and all other information  
20 which the board may deem pertinent, to all of the par-  
21 ticipating governments. The books, records and accounts  
22 of each authority shall be subject to audit and exam-  
23 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 organiza-  
2 tion, shall prepare a comprehensive plan with respect  
3 to a program for a unified or officially coordinated system  
4 as a part of a comprehensively planned development of  
5 the urban area within its service area. Said program,  
6 to the maximum extent feasible, shall provide for the  
7 participation of privately owned systems.

8 In the preparation of a comprehensive plan, an author-  
9 ity shall make careful and comprehensive surveys and  
10 studies of the existing conditions and probable future  
11 changes of such conditions within its service area. The  
12 comprehensive plan shall be made for the general purpose  
13 of guiding and accomplishing a coordinated, adjusted  
14 and harmonious development of systems within the  
15 service area which, in accordance with present and  
16 future needs and resources, will best promote the health,  
17 safety and general welfare of the inhabitants of the  
18 service area, as well as the orderly and economical  
19 development and expansion of the service area.

20 Prior to the adoption of a comprehensive plan, the  
21 authority shall submit its tentative plan to the governing  
22 bodies of the participating governments and hold a public  
23 hearing in the service area on the plan. At least thirty  
24 days prior to the date set for hearing, the authority  
25 shall publish a notice of the time and place of the  
26 hearing as a Class II legal advertisement in compliance  
27 with the provisions of article three, chapter fifty-nine  
28 of this code, and the publication area for such publication  
29 shall be the service area of the authority. After a public  
30 hearing has been held, the authority may by resolution  
31 adopt the comprehensive plan and may from time to  
32 time amend, supplement or change the comprehensive  
33 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

2 system, the authority shall adopt a proper resolution  
3 which shall include:

4 (a) The estimated cost of the acquisition or con-  
5 struction and all incidental expenses connected there-  
6 with;

7 (b) The probable sources of revenue and the esti-  
8 mated amount thereof;

9 (c) The estimated cost of administration, mainte-  
10 nance, repair and operation thereof;

11 (d) The proposed methods of financing; and

12 (e) Any other information which the authority shall  
13 deem appropriate.

14 Such resolution shall also:

15 (a) Order the acquisition or construction of such  
16 system;

17 (b) If appropriate, direct that revenue bonds in such  
18 amount as the authority may deem necessary to pay all  
19 or any part of the cost of acquisition or construction of  
20 such system be issued pursuant to the provisions of  
21 this article; and

22 (c) Set forth the amount of the principal of the  
23 indebtedness, the maximum term the bonds proposed to  
24 be issued shall run before maturity and the maximum  
25 rate of interest to be paid and such other details with  
26 respect to the bonds and the trust indenture, if any,  
27 securing the same as the authority may deem necessary  
28 or desirable.

29 Before such resolution shall become effective, the  
30 authority shall submit such resolution to the governing  
31 bodies of the participating governments and hold a  
32 public hearing in the service area on the resolution. At  
33 least thirty days prior to the date set for hearing, the  
34 authority shall publish a notice of the time and place  
35 of hearing as a Class II legal advertisement in com-  
36 pliance with the provisions of article three, chapter fifty-  
37 nine of this code, and the publication area for such  
38 publication shall be the service area of the authority.  
39 At such hearing all objections and suggestions shall be  
40 heard and after the hearing has been held the authority  
41 shall take such action as it shall deem proper.

**§8-27-14. Revenue and refunding bonds generally.**

1 The authority is hereby empowered and authorized  
2 to provide by resolution, from time to time, for the  
3 issuance of revenue bonds of the authority for the  
4 purpose of paying all or any part of the cost of acquiring,  
5 constructing or improving a system or systems, or any  
6 part thereof, or the facilities and equipment therefor,  
7 as the case may be, or for any other purpose or project  
8 authorized by the provisions of this article. The purposes  
9 for which revenue bonds may be issued may include  
10 the payment of all costs and estimated costs incidental  
11 to or connected with the accomplishment of such pur-  
12 pose or project including, without limitation, engineering,  
13 inspection and legal fees, the fees of fiscal agents and  
14 financial consultants and other fees, bond and other  
15 reserve funds, working capital, bond interest estimated  
16 to accrue during the construction period and for a period  
17 not to exceed two years thereafter, and expenses of all  
18 proceedings for the authorization, issuance and sale of  
19 the bonds.

20 The bonds of each issue shall be dated, shall bear  
21 interest at such rate or rates not exceeding six percent  
22 per annum, payable semiannually, and shall mature at  
23 such time or times not exceeding forty years from their  
24 date or dates, as may be determined by the authority,  
25 and may be made redeemable before maturity, at the  
26 option of the authority, at such price or prices and under  
27 such terms and conditions as may be fixed by the  
28 authority prior to the issuance of the bonds. The author-  
29 ity shall determine the form of the bonds, including  
30 any interest coupons to be attached thereto, and shall  
31 fix the denomination or denominations of the bonds  
32 and the place or places of payment of the principal and  
33 interest, which may be at any banking institution or  
34 trust company within or without the state. The bonds  
35 shall be signed by the president of the authority or  
36 shall bear his facsimile signature, and the official seal  
37 of the authority, or a facsimile thereof, shall be impressed  
38 or imprinted thereupon and attested by the secretary  
39 of the authority, and any coupons attached to the bonds  
40 shall bear the facsimile signature of the president of

41 the authority. All such signatures, countersignatures  
42 and seal may be printed, lithographed or mechanically  
43 reproduced, except that one of such signatures or counter-  
44 signatures on the bonds shall be manually affixed,  
45 unless the resolution authorizing the issuance of such  
46 bonds shall otherwise provide. If any officer whose  
47 signature or countersignature or a facsimile of whose  
48 signature or countersignature appears on bonds or  
49 coupons ceases to be such officer before the delivery of  
50 the bonds, his signature shall be as effective as if he  
51 had remained in office until such delivery. The bonds  
52 may be issued in coupon or in registered form, or both,  
53 as each authority may determine and provision may  
54 be made for the registration of any coupon bonds as  
55 to principal alone, and also as to both principal and  
56 interest, for the reconversion into coupon bonds of any  
57 bonds registered as to both principal and interest, and  
58 for the interchange of registered and coupon bonds.  
59 Notwithstanding the form or tenor thereof, and in the  
60 absence of any express recital on the face thereof that  
61 the bond is nonnegotiable, all such bonds shall be, and  
62 shall be treated as, negotiable instruments for all  
63 purposes except when registered in the name of a  
64 registered owner.

65 The authority may exchange its bonds, in whole or  
66 in part, for any system or systems, or any parts thereof,  
67 or facilities and equipment therefor, or may sell its  
68 bonds, in whole or in part, in such manner either at  
69 public or private sale and for such price as it may  
70 determine will best effect the purposes of this article  
71 and be for the best interest of the authority.

72 Prior to the preparation of definitive bonds, the  
73 authority may, under like restrictions, issue interim  
74 receipts or temporary bonds with or without coupons,  
75 exchangeable for definitive bonds when such bonds shall  
76 have been executed and are available for delivery. The  
77 authority may also provide for the replacement of any  
78 bonds which shall become mutilated or shall be destroyed  
79 or lost.

80 The authority is hereby empowered and authorized  
81 to provide by resolution, from time to time, for the  
82 issuance, sale or exchange of revenue refunding bonds

83 of such authority for the purpose of refunding any  
84 bonds then outstanding which shall have been issued  
85 under the provisions of this article, including the pay-  
86 ment of any redemption premium thereon and any  
87 interest accrued or to accrue to the date of redemption  
88 of such bonds, and the payment of all expenses incidental  
89 thereto. The authority is further empowered and author-  
90 ized to provide by resolution, from time to time, for  
91 the issuance, sale or exchange of revenue bonds of such  
92 authority for the combined purpose of refunding any  
93 bonds then outstanding, as herein provided, and paying  
94 all or any part of the cost of any additional project or  
95 projects. All provisions of this article applicable to  
96 the issuance of revenue bonds are applicable to the  
97 issuance of refunding bonds and to the sale or exchange  
98 thereof.

**§8-27-15. Trust indenture generally.**

1 In the discretion of the authority, any bonds issued  
2 under the provisions of this article may be secured by  
3 a trust indenture by and between such authority and  
4 a corporate trustee, which may be any trust company  
5 or banking institution having the powers of a trust  
6 company within or without the state, or any person  
7 in the United States having power to enter into the same,  
8 including any federal agency.

9 Any resolution authorizing the issuance of such bonds  
10 or any trust indenture securing the same may contain  
11 such provisions for protecting and enforcing the rights  
12 and remedies of the bondholders and of the trustee  
13 as the authority may deem necessary and proper and  
14 not in violation of law, including provisions pledging  
15 all or any part of the revenues of such authority or  
16 encumbering all or any part of the facilities and equip-  
17 ment of such authority to secure the payment of the  
18 bonds subject to such agreements with bondholders  
19 as may then exist; limiting the purpose to which the  
20 proceeds of sale of any bonds then or thereafter to  
21 be issued may be applied; defining the duties of such  
22 authority in relation to the acquisition, construction,  
23 improvement, maintenance, repair, operation and in-  
24 surance of any project or projects in connection with

25 which such bonds shall have been authorized; providing  
26 for the custody, safeguarding and application of all  
27 moneys, limiting the issuance of additional bonds; pre-  
28 scribing a procedure by which the provisions of any  
29 trust indenture or contract with bondholders may be  
30 amended or modified; requiring such authority to fix  
31 and establish such fees, rates or other charges and  
32 routes, time schedules and standards of service as will  
33 provide revenues in each year at least sufficient to  
34 pay the principal of and interest on all bonds issued  
35 by such authority and reasonable reserves therefor  
36 as the same shall become due, together with the cost  
37 of administration, maintenance, repair and operation  
38 of such system or systems in each year, including,  
39 without limitation, reasonable reserves or margins or  
40 sinking funds for any of such purposes, subject to the  
41 provisions of section eighteen of this article; defining  
42 the acts or omissions to act which shall constitute a  
43 default in the duties of such authority to the holders  
44 of its bonds and providing the rights and remedies  
45 of such holders and of the trustee in the event of  
46 default and the manner and terms upon which such  
47 default may be declared cured; vesting in a trustee  
48 such property rights, powers and duties, in trust, as  
49 such authority may determine; and such other additional  
50 provisions as such authority may deem necessary or  
51 desirable for the security of the holders of bonds  
52 issued under the provisions of this article, notwith-  
53 standing that such other provisions are not expressly  
54 enumerated in this section, it being the intention to  
55 grant to the authority the power to make any and all  
56 covenants or agreements necessary to secure greater  
57 marketability of bonds issued under the provisions of  
58 this article, as fully and to the same extent as such  
59 covenants or agreements could be made by a private  
60 corporation rendering similar services, and to grant  
61 to such authorities full and complete power to enter  
62 into any contract, covenant or agreement with holders  
63 of bonds issued under the provisions of this article  
64 not inconsistent with this article or the constitution of  
65 this state.

**§8-27-16. Sinking fund; sinking fund commission; purchase of outstanding bonds.**

1 Before the issuance of any bonds under the provisions  
2 of this article, the authority shall, by resolution, provide  
3 for a sinking fund for the payment of the bonds and  
4 the interest thereon, and the payment of the charges  
5 of banking institutions or trust companies for making  
6 payment of such bonds and interest, out of the net  
7 revenues of said system, and, in this connection, shall  
8 set aside and pledge a sufficient amount of the net  
9 revenues of the system for such purpose, such net  
10 revenues being hereby defined to mean the revenues  
11 of the system remaining after the payment of the reason-  
12 able expense of administration, maintenance, repair and  
13 operation, such amount to be paid by such authority  
14 into the sinking fund at intervals, to be determined by  
15 resolution adopted prior to the issuance of the bonds,  
16 for (a) the interest upon such bonds as such interest  
17 shall fall due; (b) the necessary fiscal agency charges  
18 for paying bonds and interest; (c) the payment of the  
19 bonds as they fall due, or, if all the bonds mature at  
20 one time, the proper maintenance of a sinking fund  
21 sufficient for the payment thereof at such time; and  
22 (d) a margin for safety and for the payment of premium  
23 upon bonds retired by call or purchase as provided in  
24 this article. Such required payments shall constitute  
25 a first charge upon all the net revenues of such authority.  
26 Prior to the issuance of any bonds, the authority may,  
27 by resolution, be given the right to use or direct the  
28 state sinking fund commission to use such sinking fund,  
29 or any part thereof, in the purchase of any of the out-  
30 standing bonds payable therefrom, at the market prices  
31 thereof, but not exceeding the price, if any, at which  
32 the same shall in the same year be payable or redeem-  
33 able, and all bonds redeemed or purchased shall forth-  
34 with be cancelled, and shall not again be issued. In  
35 addition to the payments into the sinking fund provided  
36 for above, the authority may at any time in its dis-  
37 cretion transfer all or any part of the balance of the  
38 net revenues, after reserving an amount deemed by  
39 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

9 hire: *Provided*, That it shall be the mandatory duty of  
10 the public service commission to fix and establish, from  
11 time to time, such fees, rates or other charges and routes,  
12 time schedules and standards of service for each au-  
13 thority as will provide revenues in each year at least  
14 sufficient to pay the principal of and interest on all bonds  
15 issued by that authority, and reasonable reserves therefor,  
16 as the same shall become due in each year, together with  
17 the cost of administration, maintenance, repair and opera-  
18 tion of such system or systems in each year, together with  
19 all other payments required in each year by the resolu-  
20 tion which authorized the issuance of such bonds or the  
21 trust indenture securing the same, including reasonable  
22 reserves, margins or sinking funds for any of such pur-  
23 poses.

#### PART VII. INDEBTEDNESS; EXEMPTION FROM TAXATION.

##### §8-27-19. Indebtedness of authorities.

1 Each authority may issue bonds, borrow money and  
2 incur any proper indebtedness and issue any other obliga-  
3 tions as authorized by law or provided in this article.  
4 No such indebtedness or obligation incurred by any au-  
5 thority shall give any right against any member of the  
6 governing body of any participating government or any  
7 member of the board of any authority. Any obligation  
8 or indebtedness of any nature of any authority shall never  
9 constitute an obligation or indebtedness of any participat-  
10 ing government or the governing body of any participat-  
11 ing government, within the meaning of any constitutional  
12 provision or statutory limitation, and shall never con-  
13 stitute or give rise to a pecuniary liability of any partic-  
14 ipating government or the governing body of any partic-  
15 ipating government, or be a charge against the general  
16 credit or taxing power of any participating government  
17 or the governing body of any participating government,  
18 and such fact shall be plainly stated on the face of any  
19 bonds issued by any authority. The rights of creditors  
20 of any authority shall be solely against the authority  
21 as a corporate body and shall be satisfied only out of  
22 revenues, moneys or property received or held by it in  
23 its corporate capacity.

**§8-27-20. Exemption from taxation.**

1 It is hereby found, determined and declared that the  
2 creation of any authority and the carrying out of its  
3 purposes is in all respects for the benefit of the people  
4 of this state in general, and of the participating govern-  
5 ments in particular, and is a public purpose; and that  
6 the authority will be performing an essential govern-  
7 mental function in the exercise of the powers conferred  
8 upon it by the provisions of this article. Accordingly, each  
9 authority and, without limitation, its revenues, property,  
10 operations and activities shall be exempt from the pay-  
11 ment of any taxes or fees to the state or any of its political  
12 subdivisions or to any officer or employee of the state or  
13 any of its political subdivisions, except the special assess-  
14 ment provided for in section six, article six, chapter  
15 twenty-four-a of this code. The revenue bonds and other  
16 evidences of indebtedness issued pursuant to the pro-  
17 visions of this article, and the interest thereon, shall be  
18 exempt from taxation, except inheritance and transfer  
19 taxes.

**PART VIII. EMPLOYEES OF EXISTING SYSTEMS.****§8-27-21. Protection of employees of existing transportation systems.**

1 Whenever any authority acquires any existing system  
2 pursuant to the provisions of this article, the employees of  
3 such system shall be protected in the following manner:  
4 (a) The employees of such system shall be retained to  
5 the fullest extent possible consistent with sound manage-  
6 ment, and if terminated or laid off shall be assured  
7 priority of reemployment;  
8 (b) The individual employees who are retained shall  
9 be retained in positions the same as, or no worse than,  
10 their positions prior to the acquisition of such system;  
11 (c) The rights, privileges and benefits of the em-  
12 ployees under existing collective bargaining agreements  
13 shall not be affected and the owning authority shall  
14 assume the duties and obligations of the acquired system  
15 under any such agreement;  
16 (d) Collective bargaining rights shall be continued  
17 with respect to employees of any acquired system;

18 (e) The rights, privileges and benefits of the employees  
19 under any existing pension or retirement plan or plans  
20 shall not be affected and the owning authority shall as-  
21 sume the duties and obligations of the acquired system  
22 under any such plan or plans;

23 (f) The owning authority shall provide paid training  
24 or retraining programs when necessary; and

25 (g) The authority owning a system, or any of the  
26 employees of any system owned by the authority, shall,  
27 in the case of any labor dispute relating to the terms and  
28 conditions of employment which is not settled through  
29 any established grievance procedure, have the right to  
30 submit the dispute to final and binding arbitration by a  
31 board of arbitration consisting of three arbitrators, one  
32 arbitrator to be chosen by the authority, one by the em-  
33 ployee and the third to be chosen by the two arbitrators  
34 selected by the authority and the employee. A decision  
35 of a majority of the members of the board of arbitration  
36 shall be final and binding on the parties. The parties  
37 shall each pay the arbitrator of its or his own selection,  
38 and they shall jointly pay the third arbitrator and any  
39 other expenses connected with submitting such labor  
40 dispute to the board of arbitration.

41 In the event any authority acquires a system and (1)  
42 leases such acquired system, or (2) enters into a manage-  
43 ment contract for superintendence and management  
44 services for the operation of such acquired system pur-  
45 suant to any provision of this article, the lease or con-  
46 tract shall include terms and provisions insuring the pro-  
47 tection specified in this section.

PART IX. CONFLICT OF INTEREST; BIDS; LEGAL  
INVESTMENTS; CONSTRUCTION.

§8-27-22. Conflict of interest.

1 No member of any authority, nor any of its officers,  
2 employees, agents or consultants, shall have any interest  
3 in any firm, partnership, corporation, company, associa-  
4 tion or joint-stock association engaged in the business of  
5 providing public transportation in the area encompassed  
6 by the authority, or in the manufacture, sale or lease of  
7 passenger transportation equipment or facilities. No

8 member of any authority, nor any of its officers, em-  
9 ployees, agents or consultants, shall contract with the  
10 authority or be interested in, either directly or indirectly,  
11 any contract with such authority or in the sale of prop-  
12 erty, either real or personal, to such authority. The term  
13 "agents" as used in this section shall not be deemed for  
14 the purposes of this section to include any persons or  
15 authorities which lease from or contract for superin-  
16 tendence and management services with any authority  
17 for the administration, maintenance, repair or operation  
18 of any system.

**§8-27-23. Competitive bids; publication of solicitation for sealed bids.**

1 A purchase of or contract for all supplies, equipment  
2 and materials and a contract for the construction of  
3 facilities by any authority, when the expenditure required  
4 exceeds the sum of one thousand dollars, shall be based  
5 on competitive sealed bids. Such bids shall be obtained  
6 by public notice published as a Class II legal advertise-  
7 ment in compliance with the provisions of article three,  
8 chapter fifty-nine of this code, and the publication area  
9 for such publication shall be the service area of such  
10 authority. The second publication shall be made at least  
11 fourteen days before the final date for submitting bids.  
12 In addition to such publication, the notice may also be  
13 published by any other advertising medium such au-  
14 thority may deem advisable, and such authority may also  
15 solicit sealed bids by sending requests by mail to pros-  
16 pective suppliers and by posting notice on a bulletin  
17 board in the office of such authority.

**§8-27-24. Bonds made legal investments.**

1 Banking institutions, building and loan associations,  
2 and insurance companies organized under the laws of  
3 this state, may lawfully invest their own funds in bonds  
4 issued under the provisions of this article.

**§8-27-25. Article constitutes complete authority; liberal construction.**

1 This article shall constitute full and complete authority  
2 for the creation of any authority and for carrying out

3 the powers and duties of any such authority and for the  
4 issuance, sale or exchange of revenue bonds by such  
5 authority as provided in this article. The provisions of  
6 this article shall be liberally construed to accomplish  
7 its purpose and no procedure or proceedings, notices,  
8 consents or approvals shall be required in connection  
9 therewith except as may be prescribed by this article:  
10 *Provided*, That all applicable functions, powers, authori-  
11 ties and duties of the public service commission shall  
12 remain unaffected except as provided in this article.

**ARTICLE 28. INTERGOVERNMENTAL RELATIONS—AIRPORTS  
AND AVIGATION.**

**PART I. DEFINITIONS; OPERATION OF AIRPORTS.**

**§8-28-1. Definitions.**

1 When used in this article, the terms "airport" and  
2 "aircraft" shall have the meanings ascribed to them in  
3 section one, article two-a, chapter twenty-nine of this  
4 code.

**§8-28-2. Establishment, lease and operation of airports by  
municipalities and counties; jurisdiction of county  
court.**

1 Any municipality or county may acquire, establish,  
2 construct, lease, equip, improve, maintain and operate for  
3 such municipality or county an airport for the use of air-  
4 craft, and may acquire or lease for such purpose real  
5 property within or without or partly within and partly  
6 without the corporate limits of such municipality, or  
7 within or without or partly within and partly without  
8 such county, or may set apart and use for such purpose  
9 real property owned by the municipality or county,  
10 which is not needed for any other public use, however  
11 such real property was acquired. Any county court now  
12 owning or leasing or hereafter acquiring or leasing any  
13 real property without or partly without the limits of its  
14 county for the purpose of acquiring, establishing, con-  
15 structing, improving, maintaining and operating an air-  
16 port, shall have the same and all jurisdiction over such  
17 property, its maintenance and operation, as it has with  
18 respect to real property owned or leased and operated

19 by it for airport purposes within the limits of its own  
20 county.

**§8-28-3. Acquisition of property for airport; payment therefor.**

1 Real property necessary for such airport may be ac-  
2 quired by gift, or by purchase if such municipality or  
3 county is able to agree with the owners of such real  
4 property on the terms thereof, and otherwise by con-  
5 demnation, in the manner provided by law under which  
6 such municipality or county is authorized to acquire real  
7 property for public use. The purchase price or award for  
8 any property acquired for airport purposes may be paid  
9 by appropriation of moneys available therefor or wholly  
10 or partly from the proceeds of sale of the bonds of such  
11 municipality or county, as the governing body or county  
12 court shall determine, subject, however, to the general  
13 provisions of law for the issuance and sale of bonds of  
14 municipalities and counties for public purposes generally.

**§8-28-4. Construction, maintenance and operation of airport;  
expenses; rules and regulations and fees.**

1 The governing body or county court of such munici-  
2 pality or county may direct or employ or vest jurisdic-  
3 tion in any appropriate officer, board or body of such  
4 municipality or county to locate, acquire, establish, con-  
5 struct, lease, equip, improve, maintain and operate such  
6 airport for such municipality or county, but the site so  
7 located and the acquisition, establishment, construction,  
8 leasing, equipment, improvement, maintenance and opera-  
9 tion of such airport shall be subject to the approval of  
10 such governing body or county court, as the case may  
11 be. The expense of the acquisition, establishment, con-  
12 struction, leasing, equipment, improvement, maintenance  
13 and operation shall be a municipal or county charge, as  
14 the case may be.

15 The governing body or county court may adopt rules  
16 and regulations and establish fees or charges for the use  
17 of such airport, or may authorize the officer, board or  
18 body of such municipality or county having jurisdiction  
19 to adopt such rules and regulations and establish such  
20 fees and charges, subject, however, to the approval of

21 such governing body or county court before they shall  
22 take effect.

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.**

1 The governing body or county court is hereby em-  
2 powered and authorized to adopt and promulgate rules  
3 and regulations to: (1) control the movement and dis-  
4 position of vehicular and pedestrian traffic within one-  
5 fourth mile of any building or installation of any airport  
6 owned or operated or owned and operated by any such  
7 municipality or county court, (2) regulate and control  
8 vehicular parking within such areas by the installation  
9 of parking meters or by other methods, and (3) impose  
10 reasonable charges for the use of the parking space so  
11 metered or otherwise allocated, so as to provide maximum  
12 opportunity for the public use thereof.

13 Violation of any such rule and regulation shall con-  
14 stitute a misdemeanor and the offender, upon conviction  
15 in the manner provided by law, may be fined not less  
16 than two dollars nor more than ten dollars for each such  
17 violation.

18 Justices of the peace shall have concurrent jurisdic-  
19 tion with the circuit courts and with statutory courts of  
20 record having criminal jurisdiction for the trial of of-  
21 fenses 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.**

1 One or more municipalities or counties or both may join  
2 with another or other municipalities or counties or both  
3 for the purpose of acquiring, establishing, constructing,  
4 leasing, equipping, improving, maintaining and operating  
5 an airport. Any such airport may be located at such  
6 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 propo-  
25 sals. 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-

38 ment, improvement, maintenance and operation of such  
39 airport or grounds, and if there be no such outstanding  
40 bonded indebtedness, then such income shall be paid  
41 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  
2 court of a county to which this article is applicable may  
3 lay a levy, not to exceed five cents on each one hundred  
4 dollars of valuation, for a period not exceeding three  
5 years, and appropriate therefrom funds for the purpose  
6 of acquiring, establishing, constructing, equipping or  
7 improving an airport. Funds necessary for providing  
8 maintenance and operating expenses for such airport may  
9 be appropriated out of the general funds of the municipi-  
10 pality or county: *Provided*, That nothing contained herein  
11 shall in any way affect any rights, powers and privileges  
12 of any municipality or county court under any special  
13 act of the Legislature providing for the laying of levies  
14 or the expenditure of funds for acquiring, establishing,  
15 constructing, equipping, improving, maintaining or oper-  
16 ating 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  
2 contrary, a municipality organized and existing under  
3 the laws of an adjoining state, the nearest corporate  
4 limits thereof being not more than ten miles distant  
5 from the nearest boundary of this state, may acquire or  
6 lease real property situate within this state, the nearest  
7 boundary of such real property being not greater than  
8 ten miles from the nearest corporate limits of such  
9 municipality of an adjoining state, for use in connection  
10 with the acquisition, establishment, construction, lease,  
11 equipment, improvement, maintenance or operation for

12 such municipality of an adjoining state of an airport  
 13 exclusively for nonprofit public use; and any such  
 14 municipality shall have the right to acquire real property  
 15 necessary for such airport by gift or by purchase, and  
 16 otherwise by condemnation, and the use of real property  
 17 in this state under the provisions hereof shall be deemed  
 18 to be a public use for which private property may be  
 19 taken or damaged, for just compensation. All property,  
 20 real and personal, acquired, held and used in this state  
 21 pursuant to the provisions of this section shall be public  
 22 property and therefore exempt from taxation in the  
 23 manner provided by section nine, article three, chapter  
 24 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-  
 3 tiguous counties and one or more municipalities located  
 4 therein or partly therein, of this state, are hereby  
 5 authorized to create and establish one or more authori-  
 6 ties for the purpose of acquiring, establishing, construct-  
 7 ing, equipping, improving, financing, maintaining and  
 8 operating a regional airport or airports, as the case may  
 9 be, for the use of aircraft: *Provided*, That no such  
 10 municipality or county shall participate in such authority  
 11 unless and until the governing body or county court  
 12 so provides. As used in this article, the terms "airport"  
 13 and "aircraft" shall have the meanings ascribed to them  
 14 in section one, article two-a, chapter twenty-nine of this  
 15 code, the term "contiguous counties" means two or more  
 16 counties which constitute a compact territorial unit  
 17 within an unbroken boundary wherein one county  
 18 touches at least one other county, but does not require  
 19 that each county touch all of the other counties so com-  
 20 bining, and the term "authority" means a regional air-

21 port authority created pursuant to the provisions of  
22 this article.

**§8-29-2. Authorities to be public corporations.**

1 Each authority when created and established, and  
2 the members thereof, shall constitute a public corporation  
3 and as such, shall have perpetual succession, may con-  
4 tract and be contracted with, sue and be sued, and have  
5 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  
2 to acquire, establish, construct, equip, improve, finance,  
3 maintain and operate a regional airport or landing field  
4 and appurtenant facilities so located to best serve the  
5 region in which they are located. Each authority shall  
6 be subject to the jurisdiction of the state aeronautics  
7 commission to the same extent as a state or municipal  
8 airport.

**§8-29-4. Management of authority vested in members; ap-  
pointment and terms of members; vote of members;  
valuation of property contributed to an authority;  
participation by additional municipalities or coun-  
ties without state.**

1 The management and control of each authority, its  
2 property, operations, business and affairs shall be lodged  
3 in a board of not less than five nor more than twenty-  
4 one individuals who shall be known as members of the  
5 authority and who shall be appointed for terms of three  
6 years each by the municipalities and county courts con-  
7 tributing moneys or property to the authority. However,  
8 the first board shall be comprised of one member  
9 appointed by each participating municipality and one  
10 member appointed by each participating county court,  
11 and any such member shall serve a term of one year,  
12 beginning as of the date the authority is created. No  
13 more than three members shall serve from one county  
14 on the first board.

15 Each municipality or county shall have one vote for  
16 each five thousand dollars it has contributed to the

17 authority in the form of moneys or property. When  
18 property is contributed, the contributing municipality or  
19 county court and the authority shall agree in writing  
20 at the time the contribution is made as to the fair market  
21 value of such property, which valuation shall determine  
22 the number of votes to be allocated to the municipality  
23 or county on the basis thereof. For the fiscal year during  
24 which any authority is formed, the number of votes to  
25 which any municipality or county shall be entitled shall  
26 be determined as of the time of formation of the author-  
27 ity and shall govern until the end of that fiscal year,  
28 even though additional moneys or property are con-  
29 tributed during that fiscal year. Thereafter, the number  
30 of votes shall be determined at the end of each fiscal  
31 year and such determination shall govern for the en-  
32 suing fiscal year, even though additional moneys or prop-  
33 erty are contributed during that fiscal year. Subsequent  
34 to its formation, any authority may permit any muni-  
35 cipality or county without this state to participate in the  
36 affairs of the authority, to appoint members of the  
37 authority in the same manner, and to have such vote  
38 or votes beginning as of the next ensuing fiscal year,  
39 as prescribed by law with respect to the original par-  
40 ticipating municipalities or counties or any combination  
41 thereof.

**§8-29-5. Substitution of members.**

1 If any member of an authority die, or resign, or be  
2 removed, or for any other reason cease to be a member  
3 of the authority, the municipality or the county court  
4 (or other similar body in the case of an out-of-state  
5 participating county) which such member represented  
6 shall appoint another individual to fill the unexpired  
7 portion of the term of such member.

**§8-29-6. Qualification of members.**

1 All members of the board of each authority shall be  
2 residents of the municipality or county which said mem-  
3 bers represent.

**§8-29-7. Compensation of members.**

1 No member of the board of an authority shall receive

2 any compensation, whether in form of salary, per diem  
3 allowance or otherwise, for or in connection with his  
4 services as such member. Each member shall, however,  
5 be entitled to reimbursement by the authority for all  
6 reasonable and necessary expenses actually incurred in  
7 connection with the performance of his duties as such  
8 member.

PART II. GENERAL POWERS OF AUTHORITIES.

§8-29-8. Powers of authorities generally.

1 Each authority is hereby given plenary power and  
2 authority as follows:  
3 (1) To make and adopt all necessary bylaws and  
4 rules and regulations for its organization and operations  
5 not inconsistent with law;  
6 (2) To elect its own officers, to appoint committees  
7 and to employ and fix the compensation for personnel  
8 necessary for its operation;  
9 (3) To enter into contracts with any person, including  
10 both public and private corporations, or governmental  
11 department or agency, and generally to do any and all  
12 things necessary or convenient for the purpose of acquir-  
13 ing, establishing, constructing, equipping, improving,  
14 financing, maintaining and operating a public airport  
15 to best serve the region in which it is located;  
16 (4) To delegate any authority given to it by law  
17 to any of its officers, committees, agents or employees;  
18 (5) To apply for, receive and use grants-in-aid,  
19 donations and contributions from any source or sources,  
20 including, but not limited to, the federal government  
21 and any department or agency thereof, and this state  
22 subject to any constitutional and statutory limitations  
23 with respect thereto, and to accept and use bequests,  
24 devises, gifts and donations from any person;  
25 (6) To acquire lands and hold title thereto in its  
26 own name;  
27 (7) To purchase, own, hold, sell and dispose of per-  
28 sonal property and to sell, lease or otherwise dispose  
29 of any real property which it may own;  
30 (8) To borrow money and execute and deliver nego-  
31 tiable notes, mortgage bonds, other bonds, debentures

32 and other evidences of indebtedness therefor, and give  
 33 such security therefor as shall be requisite, including  
 34 giving a mortgage or deed of trust on its airport prop-  
 35 erties and facilities or assigning or pledging the gross  
 36 or net revenues therefrom;

37 (9) To raise funds by the issuance and sale of revenue  
 38 bonds in the manner provided by the applicable pro-  
 39 visions of article sixteen of this chapter, it being hereby  
 40 expressly provided that for the purpose of the issuance  
 41 and sale of revenue bonds, each authority is a "governing  
 42 body" as that term is used in said article sixteen  
 43 only;

44 (10) To establish, charge and collect reasonable fees  
 45 and charges for services or for the use of any part of its  
 46 property or facilities, or for both services and such  
 47 use;

48 (11) To expend its funds in the execution of the  
 49 powers and authority herein given;

50 (12) To apply for, receive and use loans, grants,  
 51 donations, technical assistance and contributions from  
 52 any regional or area commissions that may be estab-  
 53 lished; and

54 (13) To prescribe by bylaw the manner of financial  
 55 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.

1 The county court of the county in which any such air-  
 2 port or the major portion thereof is located is hereby em-  
 3 powered and authorized, upon request of the authority,  
 4 to adopt and promulgate rules and regulations to: (1)  
 5 control the movement and disposition of vehicular and  
 6 pedestrian traffic within one-fourth mile of any building  
 7 or installation of any such airport, (2) regulate and con-  
 8 trol vehicular parking within such areas by the installa-  
 9 tion of parking meters or by other methods, and (3) im-  
 10 pose reasonable charges for the use of the parking space  
 11 so metered or otherwise allocated, so as to provide maxi-

12 mum opportunity for the public use thereof.

13 Violation of any such rule and regulation shall con-  
14 stitute a misdemeanor and the offender, upon conviction  
15 in the manner provided by law, may be fined not less  
16 than two dollars nor more than ten dollars for each such  
17 violation.

18 Justices of the peace shall have concurrent jurisdiction  
19 with the circuit courts and with statutory courts of record  
20 having criminal jurisdiction for the trial of offenses under  
21 this section.

**PART IV. INDEBTEDNESS; FUNDS; EMINENT DOMAIN; EXEMPTION  
FROM TAXATION; DISPOSITION OF SURPLUSES.**

**§8-29-10. Indebtedness of authorities.**

1 Each authority may incur any proper indebtedness and  
2 issue any obligations and give any security therefor  
3 which it may deem necessary and advisable in connection  
4 with carrying out its purposes as hereinbefore mentioned.

5 No indebtedness or obligation incurred by an authority  
6 shall give any right against any member of the govern-  
7 ing body of any of said municipalities, or the county  
8 court (or other similar body in the case of an out-of-state  
9 participating county) of any of said counties, or any  
10 member of the board of the authority. No indebtedness  
11 of any nature of an authority shall constitute an in-  
12 debtedness of any municipality or county or the govern-  
13 ing body of any such municipality or the county court (or  
14 other similar body in the case of an out-of-state partici-  
15 pating county) of any such county, or be a charge against  
16 any property of any municipality or county. The rights  
17 of creditors of an authority shall be solely against the  
18 authority as a corporate body and shall be satisfied only  
19 out of property held by it in its corporate capacity.

**§8-29-11. Agreements in connection with obtaining funds.**

1 Each authority may, in connection with obtaining  
2 moneys or property for its purposes, enter into any agree-  
3 ment with any person, including the federal government,  
4 or any department, agency or subdivision thereof, con-  
5 taining such provisions, covenants, terms and conditions  
6 as the authority may deem advisable.

**§8-29-12. Authorities to have right of eminent domain.**

1 Whenever it shall be deemed necessary by an authority,  
2 in connection with the exercise of its powers herein con-  
3 ferred, to take or acquire any lands, structures or build-  
4 ings or other rights, either in fee or as easements, for the  
5 purposes herein set forth, the authority may purchase  
6 the same directly or through its agents from the owner  
7 or owners thereof, or failing to agree with the owner  
8 or owners thereof, the authority may exercise the power  
9 of eminent domain in the manner provided for condem-  
10 nation proceedings in chapter fifty-four of this code, and  
11 such purposes are hereby declared to be public uses for  
12 which private property may be taken or damaged:  
13 *Provided*, That under no circumstances shall an authority  
14 have the right of immediate entry.

**§8-29-13. Property, bonds and obligations of authorities exempt from taxation.**

1 Each authority shall be exempt from the payment of  
2 any taxes or fees to the state or any subdivisions thereof  
3 or any municipalities or to any officer or employee of the  
4 state or of any subdivision thereof or of any municipality.  
5 The property of each authority shall be exempt from  
6 all municipal and county taxes. Bonds, notes, debentures  
7 and other evidences of indebtedness of the authority are  
8 declared to be issued for a public purpose and to be  
9 public instrumentalities, and, together with interest  
10 thereon, shall be exempt from taxation.

**§8-29-14. Authorities may lease facilities.**

1 Each authority may lease its airport and all or any  
2 part of the appurtenances and facilities therewith to any  
3 available lessee, subject to all constitutional and statutory  
4 limitations with respect thereto, at such rental and upon  
5 such terms and conditions as the authority shall deem  
6 proper. Such leases shall be for some purpose associated  
7 with airport activities, and shall be subordinate to any  
8 mortgage or deed of trust executed by the authority.

**§8-29-15. Disposition of surplus of authorities.**

1 If an authority should realize a surplus, whether from  
2 operating the airport or leasing it for operation, over and

3 above the amount required for the equipping, improve-  
4 ment, maintenance and operation of the airport and for  
5 meeting all required payments on its obligations, it shall  
6 set aside such reserve for future equipping, improve-  
7 ments, maintenance, operations and contingencies as it  
8 shall deem proper and shall then apply the residue of  
9 such surplus, if any, to the payment of any recognized  
10 and established obligations not then due, and after all  
11 such recognized and established obligations have been  
12 paid off and discharged in full, the authority shall, at the  
13 end of each fiscal year, set aside the reserve for future  
14 equipping, improvements, maintenance, operations and  
15 contingencies, as aforesaid, and then pay the residue of  
16 such surplus, if any, to the municipalities and counties in  
17 direct proportion to their contribution of moneys and  
18 property.

**§8-29-16. Contributions to authorities; funds and accounts of authorities.**

1 Contributions of moneys may be made to authorities  
2 from time to time by the participating municipalities and  
3 counties, and persons that shall desire to do so. All such  
4 moneys and all other moneys received by an authority  
5 shall be deposited in such banking institution or banking  
6 institutions as the authority may direct and shall be with-  
7 drawn therefrom in such manner as the authority may  
8 direct. Each authority shall keep strict account of all of  
9 its receipts and expenditures and shall each quarter  
10 make a quarterly report thereon to the municipalities and  
11 counties which have made contributions of moneys or  
12 property, and such report shall contain an itemized ac-  
13 count of its receipts and disbursements during the pre-  
14 ceding quarter. Such report shall be made within sixty  
15 days after the termination of the quarter. Within sixty  
16 days after the end of each fiscal year, each authority  
17 shall make an annual report containing a summary of its  
18 receipts and disbursements for the preceding fiscal year,  
19 and publish the same as a Class II-O legal advertisement  
20 in compliance with the provisions of article three, chapter  
21 fifty-nine of this code, and the publication area for such  
22 publication shall be the municipalities and counties, as  
23 provided in section one of this article. The books, records

24 and accounts of each authority shall be subject to audit  
 25 and examination by the office of the state tax commis-  
 26 sioner and by any other proper public official or body  
 27 in the manner provided by law.

**§8-29-17. Participation.**

1 The municipalities and counties or any one or more  
 2 of them participating therein, jointly or severally, are  
 3 hereby empowered and authorized to appoint members  
 4 of the said authorities and to contribute to the cost of  
 5 acquiring, establishing, constructing, equipping, improv-  
 6 ing, maintaining and operating the said regional airports  
 7 and appurtenant facilities.

8 Any of the municipalities or counties as provided in  
 9 section one of this article is hereby empowered and au-  
 10 thorized to convey or transfer to the authorities property  
 11 of any kind heretofore acquired by the municipalities or  
 12 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  
 2 the payment of all of the debts of an authority, the par-  
 3 ticipating municipalities or counties or any combination  
 4 thereof which have contributed at least sixty percent of  
 5 the total value of all moneys and property (the value  
 6 of which property is determined as specified in section  
 7 four of this article) contributed to the authority by the  
 8 participating municipalities and counties may by resolu-  
 9 tion provide for the dissolution of the authority and for  
 10 (1) the conveyance of the real and tangible personal  
 11 property contributed to it to those participating muni-  
 12 cipalities and counties which contributed the same, (2)  
 13 equitable distribution among the contributing muni-  
 14 cipalities and counties of any real and tangible personal  
 15 property purchased or condemned by the authority or  
 16 of the proceeds of sale thereof, or the fair value thereof,  
 17 and (3) the equitable distribution of all moneys on hand  
 18 to the participating municipalities and counties in direct  
 19 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  
2 to be within the workmen's compensation statute of this  
3 state and premiums on their compensation shall be paid  
4 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  
2 acquisition, establishment, construction, equipping, im-  
3 provement, financing, maintenance and operation of re-  
4 gional airports in a prudent and economical manner, and  
5 this article shall be liberally construed as giving to any  
6 authority created and established hereunder full and com-  
7 plete power reasonably required to give effect to the pur-  
8 poses hereof. The provisions of this article are in addi-  
9 tion to and not in derogation of any power granted to  
10 or vested in municipalities and county courts under any  
11 constitutional, statutory or charter provisions which may  
12 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,  
2 maintain and operate for such municipality or county a  
3 flood control project, including the removal of accumu-  
4 lated snags and other debris from and the clearing and  
5 straightening of the channel of navigable streams and  
6 tributaries thereof, and any such municipality or county  
7 may accept any and all benefits, moneys, services and  
8 assistance from the federal government in connection  
9 with any agreement as authorized by federal statutes and  
10 laws relating to flood control, and any such municipality  
11 or county under such agreements as are required by  
12 Section 701c, Title 33, United States Code or other federal  
13 statutes is hereby empowered and authorized to give  
14 assurances satisfactory to the secretary of the army or  
15 other proper federal authority that such municipality or  
16 county will: (a) Provide without cost to the United

17 States, all lands, easements and rights of way necessary  
18 for the construction of the project; (b) hold and save  
19 the United States free from damages due to the con-  
20 struction works; and (c) maintain and operate all the  
21 works after completion in accordance with regulations  
22 prescribed by the secretary of the army.

23 Any such municipality or county is hereby further  
24 empowered and authorized to levy, within all constitu-  
25 tional and statutory limitations, for the maintenance or  
26 operation of a flood control project; to purchase land  
27 situate therein for the same; to institute condemnation  
28 proceedings for the acquiring of any land required under  
29 the flood control project; and to authorize the issuance  
30 and sale of bonds within all constitutional and statutory  
31 limitations, as is provided under general law for the  
32 issuance and sale of bonds by municipalities and coun-  
33 ties for public purposes generally. Any levy shall be  
34 equal and uniform throughout the municipality or county,  
35 as the case may be. Real or personal property or moneys  
36 may also be acquired for such purpose by gifts to such  
37 municipality or county.

38 Any municipality or county is hereby empowered and  
39 authorized to adopt zoning ordinances restricting the use  
40 of the lands and the construction of buildings and struc-  
41 tures within the flood control area and one hundred feet  
42 on each side thereof and to enforce such ordinances by  
43 fine or imprisonment, or both, in the circuit court of the  
44 county in which the offense occurred in the case of a  
45 county ordinance, or by injunction proceedings in the  
46 circuit court of the county in which the offense occurred.  
47 Prosecution for violation of any such municipal ordinance  
48 shall be as in any other municipal ordinance violation  
49 case.

50 The power and authority granted by this section may  
51 be exercised by any municipality or county in coopera-  
52 tion with each other or separately where such flood con-  
53 trol project is located, regardless of the sponsoring agency  
54 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  
2 empowered and authorized to grant an exclusive or  
3 nonexclusive franchise to any person. No franchise, how-  
4 ever, shall hereafter be granted by the governing body of  
5 any municipality or by the county court of any county  
6 where the application for such franchise has not been  
7 filed, with the recorder of such municipality or the clerk  
8 of such county court at least thirty days prior to the time  
9 when it is to be acted upon by such governing body  
10 or county court, and where notice of such application,  
11 stating the object of such franchise, has not been given  
12 by publication thereof as a Class II legal advertisement  
13 in compliance with the provisions of article three,  
14 chapter fifty-nine of this code, for which publication  
15 the publication area shall be the municipality or the  
16 county, as the case may be, wherein such franchise is  
17 to be granted. No such franchise shall be granted within  
18 thirty days after the application has been filed, nor  
19 until an opportunity has been given any person interested  
20 in the granting or refusing of such franchise to be  
21 heard. No such franchise shall hereafter be granted  
22 by any municipality or county court for a longer term  
23 than fifty years: *Provided*, That nothing in this section  
24 shall prevent the renewal of any such franchise for a  
25 term not exceeding fifty years, when the same shall  
26 have expired. No such franchise hereafter granted  
27 for any longer term than fifty years shall be of any  
28 force or validity. Notwithstanding the provisions of  
29 this article or any other provisions of this chapter, other  
30 general law or any charter, the failure or inability of  
31 any person to obtain from any municipality or county  
32 court a franchise for the rendering of a public service  
33 shall in no way whatever affect the power and authority  
34 granted to, and the duties and obligations imposed upon,

35 such person under the provisions of chapter twenty-four  
36 of this code or by the public service commission.

PART II. COMPELLING COMPLIANCE WITH FRANCHISE.

**§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.**

1 (a) The Legislature hereby finds that the support  
2 of nonstock, nonprofit corporations dedicated to making  
3 available to the general public museums or facilities  
4 for the appreciation or enjoyment of art, music, dance,  
5 drama, nature or science is for the general welfare  
6 of the public and is a public purpose. This section is  
7 enacted in view of this finding and shall be liberally  
8 construed in the light thereof.

9 (b) When a nonstock, nonprofit corporation, char-  
10 tered under the laws of this state, (1) is organized for  
11 the construction, maintenance or operation of museums  
12 or facilities for the appreciation or enjoyment of art,  
13 music, dance, drama, nature or science, and provides  
14 in its charter that its buildings or facilities, or a desig-  
15 nated portion thereof, shall be devoted to the use by  
16 the public for all purposes set forth in such charter  
17 without regard to race, religion, national origin or eco-  
18 nomic circumstance, and free from charge except such  
19 as is necessary to provide the means to keep the buildings,  
20 facilities and grounds in proper condition and repair,  
21 and to pay the cost of insurance, care, inangement,  
22 operations, teaching and attendants, so that the general  
23 public may have the benefit of such establishment for  
24 the uses set forth in such corporation's charter at as  
25 little expense as possible, (2) provides in its charter  
26 that no member trustee, or member of the board of  
27 directors (by whatever name the same may be called),  
28 of the corporation shall receive any compensation, gain  
29 or profit from such corporation, and (3) is operated in  
30 compliance with such charter provisions as aforesaid,  
31 then, notwithstanding any statutory or municipal charter  
32 provisions to the contrary, the municipality in which  
33 such nonstock, nonprofit corporation is operating, if

34 any, and the county court of any county in which such  
35 corporation is operating, may appropriate funds subject  
36 to the provisions and limitations set forth in subsections  
37 (c) and (d) of this section, to such nonstock, nonprofit  
38 corporation, for such public purposes: *Provided*, That  
39 such funds may be expended and otherwise utilized  
40 only within the municipality or county, as the case may  
41 be, making the appropriation thereof. In every such  
42 case, the governing body of any such municipality or  
43 the county court and such corporation may agree for  
44 the appointment of additional members to the board of  
45 directors of such corporation by such governing body  
46 or county court, either as regular members or in an ex  
47 officio capacity.

48 (c) No funds appropriated by a municipality or  
49 county court under the authority of this section shall  
50 be disbursed by any such nonstock, nonprofit corpora-  
51 tion unless and until the expenditure thereof has been  
52 approved by the governing body of such municipality  
53 or the county court, as the case may be, which made  
54 such appropriation, and such corporation shall upon  
55 demand at any time make a full and complete accounting  
56 of all such funds to such governing body or county court,  
57 as the case may be, and shall in every event without  
58 demand make to such governing body or county court an  
59 annual accounting thereof.

60 (d) Under no circumstances whatever shall any action  
61 taken by any municipality or county court under the  
62 authority of this section give rise to or create any  
63 indebtedness on the part of the municipality, the govern-  
64 ing body of such municipality, the county, such county  
65 court, any member of such governing body or the county  
66 court or any municipal or county official or employee.

## PART II. AREA DEVELOPMENT CORPORATIONS.

### §8-32-2. Membership and participation in area development corporations.

1 Every municipality is hereby empowered and author-  
2 ized to become associated with and to participate as a  
3 member of any area development corporation chartered  
4 as a nonstock, nonprofit corporation under the laws of

5 this state for the purposes of promoting, developing  
6 and advancing the business prosperity and economic  
7 welfare of the area embraced, its citizens and its indus-  
8 trial complex; encouraging and assisting through loans,  
9 investments or other business transactions in locating  
10 new business and industry within such area and re-  
11 habilitating and assisting existing businesses and in-  
12 dustries therein; stimulating and promoting the expansion  
13 of all kinds of business and industrial activity which  
14 will tend to advance, develop and maintain economic  
15 stability and provide maximum opportunities for em-  
16 ployment in such area; cooperating and acting in con-  
17 junction with other organizations, federal, state or local,  
18 in the promotion and advancement of industrial, com-  
19 mercial, agricultural and recreational developments  
20 within such area; and furnishing money and credit,  
21 land and industrial sites, technical assistance and such  
22 other aid as may be deemed requisite for the promotion,  
23 development and conduct of all types of business,  
24 agricultural and recreational activities within each area:  
25 *Provided*, That it is specified in the charter of such  
26 corporation that no member trustee or member of the  
27 board of directors (by whatever name the same may  
28 be called) of the corporation shall receive any com-  
29 pensation, gain or profit from such corporation, and  
30 such corporation is operated in compliance with all  
31 charter provisions. The Legislature hereby finds that  
32 the aforesaid purposes of such nonstock, nonprofit area  
33 development corporations are for the general welfare  
34 of the public and are public purposes. This section is  
35 enacted in view of this finding and shall be liberally  
36 construed in the light thereof.

37 Every municipality is hereby empowered and author-  
38 ized to contribute to the cost of the operations and  
39 projects of such area development corporation by ap-  
40 propriating for such purposes money from its general  
41 funds not otherwise appropriated. Every municipality  
42 is hereby empowered and authorized, notwithstanding  
43 any other provision of this chapter to the contrary, to  
44 transfer and convey to such area development corpo-  
45 ration property of any kind heretofore acquired by such  
46 municipality for or adaptable to use in industrial and

47 economic development, such transfers or conveyances to  
48 be without consideration or for such price and upon  
49 such terms and conditions as such municipality shall deem  
50 proper.

51 Every municipality shall require as a condition of  
52 any such appropriation, transfer or conveyance that  
53 the area development corporation receiving the same  
54 shall upon demand at any time by such municipality  
55 make a full and complete accounting thereto of all  
56 receipts and disbursements and shall in every event  
57 without demand, within thirty days after the close of  
58 the quarter, make to such municipality a report con-  
59 taining an itemized statement of its receipts and dis-  
60 bursements during the preceding quarter, and make  
61 available to audit and examination by the office of the  
62 state tax commissioner and any other proper public  
63 official or body its books, records and accounts.

64 Under no circumstances whatever shall any action  
65 taken by any municipality under the authority of this  
66 section give rise to or create any indebtedness on the  
67 part of the municipality, the governing body of such  
68 municipality, any member of such governing body or  
69 any municipal official or employee.

#### PART III. OBTAINING FEDERAL GRANTS.

##### **§8-32-3. Power to secure federal grants for certain nonprofit organizations.**

1 (a) Notwithstanding any statutory or charter pro-  
2 visions to the contrary, every municipality is, subject to  
3 the provisions and limitations set forth in subsections  
4 (b) and (c) of this section, hereby empowered and au-  
5 thorized to make application for, receive and accept  
6 grants from the federal government, or any agency  
7 thereof, for, on behalf of and for use by a nonstock, non-  
8 profit corporation chartered under the laws of this state  
9 for charitable, patriotic or philanthropic or other public  
10 purposes and operating within the corporate limits of  
11 said municipality. The Legislature hereby finds that the  
12 support of such nonstock, nonprofit corporations is for  
13 the general welfare of the public and is a public purpose.  
14 This section is enacted in view of this finding and shall

15 be liberally construed in the light thereof.

16 (b) No federal funds received by a municipality  
17 under the authority of this section shall be disbursed by  
18 any such nonstock, nonprofit corporation unless and until  
19 the expenditure thereof has been approved by the gov-  
20 erning body of such municipality, and such corporation  
21 shall upon demand at any time make a full and complete  
22 accounting of all such funds to such governing body.

23 (c) Under no circumstances whatever shall any action  
24 taken by any municipality under the authority of this  
25 section give rise to or create any indebtedness on the  
26 part of such municipality, the governing body of such  
27 municipality, any member thereof or any municipal  
28 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.**

1 Any municipality or county, or one or more munici-  
2 palities and any county, or any two or more municipalities  
3 within any county or counties, or any combination thereof,  
4 may create and establish a municipal building commis-  
5 sion, a county building commission, or a municipal-  
6 county building commission, as the case may be (herein-  
7 after in this article referred to as commission or com-  
8 missions). Such commissions shall be formed by an  
9 ordinance or order, as appropriate, by each governmental  
10 body establishing the same.

**§8-33-2. Commissions are public corporations.**

1 Each commission, when created, shall be a public cor-  
2 poration and shall have perpetual existence.

**§8-33-3. Authority vested in board; composition of board; ap-  
pointment; qualifications and terms of members;  
vacancies; reimbursement of expenses.**

1 All property, powers and duties and the management  
2 and control of each commission shall be vested in a board

3 consisting of representatives appointed by the govern-  
4 mental body or bodies creating and establishing such  
5 commission. In the case of a municipal building com-  
6 mission or a county building commission such board  
7 shall consist of not less than three nor more than five  
8 members and in the case of a municipal-county building  
9 commission each participating municipality shall appoint  
10 two members and each participating county shall appoint  
11 three members. All members of any board shall be ap-  
12 pointed for terms of five years. Prior to making the  
13 initial appointments to the board, the governmental body  
14 or bodies shall make such initial appointments so that  
15 approximately one-fifth of the total number of members  
16 of the board shall be appointed for a term of one year,  
17 approximately one-fifth of the total number of members  
18 of the board shall be appointed for a term of two years,  
19 approximately one-fifth of the total number of members  
20 of the board shall be appointed for a term of three years,  
21 approximately one-fifth of the total number of members  
22 of the board shall be appointed for a term of four years,  
23 and approximately one-fifth of the total number of mem-  
24 bers of the board shall be appointed for a term of five  
25 years. As the term of each such initial appointee expires  
26 the successor to fill the vacancy created by such expired  
27 term shall be appointed for a term of five years.

28 If any member of any board die, resign or for any rea-  
29 son cease to be a member of the board, the governmental  
30 body which such member represented shall appoint an-  
31 other individual to fill the unexpired portion of the term  
32 of such member. No more than two-thirds of the total  
33 number of members of the board of each commission  
34 shall be from the same political party and no member  
35 of any such board shall hold any office ( other than the  
36 office of notary public) or employment under the United  
37 States of America, the state of West Virginia, any county  
38 or political subdivisions thereof, or any political party.  
39 All members of any board shall be residents of the  
40 municipality or county for which appointed. No mem-  
41 ber of any board shall receive any compensation for his  
42 services as such, but each member shall be reimbursed  
43 by the commission for any reasonable and necessary

44 expenses actually incurred in the discharge of his duties  
45 as a member of the board.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

1 Each commission shall have plenary power and au-  
2 thority to:  
3 (a) Sue and be sued;  
4 (b) Contract and be contracted with;  
5 (c) Adopt, use and alter a common seal;  
6 (d) Make and adopt all necessary, appropriate and  
7 lawful bylaws and rules and regulations pertaining to its  
8 affairs;  
9 (e) Elect such officers, appoint such committee and  
10 agents and employ and fix the compensation of such em-  
11 ployees and contractors as may be necessary for the  
12 conduct of the affairs and operations of the commission;  
13 (f) (1) Acquire, purchase, own and hold any prop-  
14 erty, real or personal, and (2) acquire, construct, equip,  
15 maintain and operate public buildings, structures, proj-  
16 ects and appurtenant facilities, of any type or types for  
17 which the governmental body or bodies creating such  
18 commission are permitted by law to expend public funds  
19 (all hereinafter in this article referred to as facilities);  
20 (g) Apply for, receive and use grants-in-aid, donations  
21 and contributions from any source or sources, including  
22 but not limited to the United States of America, or any  
23 department or agency thereof, and accept and use be-  
24 quests, devises, gifts and donations from any source  
25 whatsoever;  
26 (h) Sell, encumber or dispose of any property, real or  
27 personal;  
28 (i) Issue negotiable bonds, notes, debentures or other  
29 evidences of indebtedness and provide for the rights of  
30 the holders thereof, incur any proper indebtedness and  
31 issue any obligations and give any security therefor  
32 which it may deem necessary or advisable in connection  
33 with exercising powers as provided herein;  
34 (j) Raise funds by the issuance and sale of revenue  
35 bonds in the manner provided by the applicable provi-  
36 sions of article sixteen of this chapter, it being hereby

37 expressly provided that for the purpose of the issuance  
38 and sale of revenue bonds, each commission is a "govern-  
39 ing body" as that term is used in said article sixteen only;

40 (k) Exercise the power of eminent domain in the  
41 manner provided in chapter fifty-four of this code for  
42 business corporations, for the purposes set forth in sub-  
43 division (f) of this section, which purposes are hereby  
44 declared public purposes for which private property may  
45 be taken or damaged;

46 (l) Lease its property or any part thereof, for public  
47 purposes, to such persons and upon such terms as the  
48 commission deems proper, but when any municipality  
49 or county court is a lessee under any such lease, such  
50 lease must contain a provision granting to such munici-  
51 pality or county court the option to terminate such lease  
52 during any fiscal year covered thereby; and

53 (m) Do all things reasonable and necessary to carry  
54 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  
4 governmental bodies shall apply to the indebtedness of  
5 a commission. No indebtedness of any nature of a com-  
6 mission shall constitute an indebtedness of any munici-  
7 pality or county creating and establishing such commis-  
8 sion or a charge against any property of said munici-  
9 palities or counties. No indebtedness or obligation in-  
10 curred by any commission shall give any right against  
11 any member of the governing body of any municipality  
12 or any member of the county court of any county or any  
13 member of the board of any commission. The rights of  
14 creditors of any commission shall be solely against the  
15 commission as a corporate body and shall be satisfied  
16 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

3 and operation of its facilities and for meeting all required  
4 payments on its obligations, it shall set aside such reserve  
5 for future improvements, maintenance, operations and  
6 contingencies as it shall deem proper and shall then  
7 apply the residue of such surplus, if any, to the payment  
8 of any recognized and established obligations not then  
9 due, and after all such recognized and established obliga-  
10 tions have been paid and discharged in full, the commis-  
11 sion shall, at the end of each fiscal year, set aside the  
12 reserve for future improvements, maintenance, opera-  
13 tions and contingencies, as aforesaid, and then pay the  
14 residue of such surplus, if any, to the governmental bodies  
15 creating and establishing such commission in direct pro-  
16 portion to their financial contribution.

**§8-33-7. Property, bonds and obligations of commissions  
exempt from taxation.**

1 Each commission shall be exempt from the payment  
2 of any taxes or fees to the state or any subdivisions  
3 thereof or any municipalities or to any officer or em-  
4 ployee of the state or of any subdivision thereof or of  
5 any municipality. The property of each commission  
6 shall be exempt from all municipal and county taxes.  
7 Bonds, notes, debentures and other evidences of in-  
8 debtedness of each commission are declared to be issued  
9 for a public purpose and to be public instrumentalities,  
10 and, together with interest thereon, shall be exempt  
11 from taxation.

**§8-33-8. Contributions to commissions; funds and accounts of  
commissions; reports; audits.**

1 Contributions may be made to each commission from  
2 time to time by the governmental body or bodies cre-  
3 ating and establishing it, and persons that shall desire  
4 to do so. All funds received by each commission shall  
5 be deposited in such banking institution or banking  
6 institutions as the board may direct and shall be with-  
7 drawn therefrom in such manner as the board may  
8 direct. Each commission shall keep strict account of  
9 all of its receipts and expenditures and shall each quarter  
10 make a quarterly report thereon to the municipalities,  
11 counties and persons which have made contributions to

12 it, and such report shall contain an itemized account  
13 of its receipts and disbursements during the preceding  
14 quarter. Such report shall be made within sixty days  
15 after the termination of the quarter. Within sixty days  
16 after the end of each fiscal year, each commission shall  
17 make an annual report containing an itemized statement  
18 of its receipts and disbursements for the preceding fiscal  
19 year and publish the same as a Class II-0 legal advertise-  
20 ment in compliance with the provisions of article three,  
21 chapter fifty-nine of this code, and the publication area  
22 for such publication shall be each county in which the  
23 commission's facilities are located. The books, records  
24 and accounts of each commission shall be subject to  
25 audit and examination by the state tax commissioner  
26 and by other proper public official or body in the manner  
27 provided by law.

**§8-33-9. Authority to convey or transfer property to commission.**

1 Any municipality or county is hereby empowered and  
2 authorized to convey or transfer to a commission which  
3 it has created and established either alone or with  
4 another governmental body, property of any kind, here-  
5 tofore acquired by said municipality or county, to carry  
6 out the purposes of said commission. When property  
7 is conveyed or transferred as aforesaid, the conveying  
8 or transferring municipality or county court and the  
9 board shall agree in writing at the time the conveyance  
10 or transfer is made as to the fair market value of such  
11 property. The members of the board appointed by any  
12 municipality or county court conveying or transferring  
13 property shall not participate in connection with, other-  
14 wise than to provide a quorum, or vote on, any motion  
15 or resolution by which the board agrees to the fair  
16 market value of the property so conveyed or transferred.

**§8-33-10. Sale of property by commission.**

1 In the event a majority of the governmental bodies  
2 contributing funds or property to a commission shall so  
3 direct in writing and if all indebtedness of said com-  
4 mission has been paid in full, the commission shall sell  
5 all or any part of its properties and assets so directed

6 and distribute the proceeds thereof among the govern-  
7 mental bodies creating and establishing it in direct  
8 proportion to their contributions of funds or property  
9 to the commission.

PART IV. WORKMEN'S COMPENSATION; CONSTRUCTION.

**§8-33-11. Workmen's compensation.**

1 Each commission shall subscribe to the workmen's  
2 compensation fund of this state and pay all necessary  
3 premiums thereto, to the end that all eligible employees  
4 of such commission shall be covered by workmen's  
5 compensation.

**§8-33-12. Liberal construction.**

1 The provisions of this article are hereby declared to  
2 be remedial and shall be liberally construed to effectuate  
3 the purposes hereof. The provisions of this article are  
4 in addition to and not in derogation of any power granted  
5 to or vested in municipalities and county courts under  
6 any constitutional, statutory or charter provisions which  
7 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  
2 mayor or police court judge or municipal court judge  
3 to imprisonment or to the payment of a fine of ten  
4 dollars or more (and in no case shall a fine of less than  
5 ten dollars be given if the defendant, his agent or attorney  
6 object thereto) shall be allowed an appeal de novo to the  
7 circuit or other court of the county exercising juris-  
8 diction over appeals in criminal cases from justices of  
9 the peace courts in the county, upon entering into an  
10 appeal bond with surety deemed sufficient in a penalty  
11 double the amount of fine and costs, with condition that  
12 the person appealing will perform and satisfy any judg-  
13 ment which may be rendered against him by the circuit  
14 or such other court on such appeal. Any such appeal  
15 must be perfected within ten days from and after the  
16 date upon which the sentence is imposed. When the  
17 municipality is located in more than one county, the

18 appeal shall be taken to the circuit court or other court  
19 as aforesaid of the county in which the major portion  
20 of the territory of the municipality is located. If such  
21 appeal be taken, the appeal bond and other papers in  
22 the case shall be forthwith delivered by the mayor,  
23 recorder or police court judge or municipal court judge  
24 to the clerk of the court to which such appeal is taken,  
25 and such court shall proceed to try the case as upon  
26 indictment or presentment, and render such judgment,  
27 without remanding the case, as the law and the evi-  
28 dence may require. If the judgment be against the  
29 accused, it shall include the costs incurred in the pro-  
30 ceedings before the mayor or police court judge or  
31 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.**

1 Any municipality heretofore incorporated or which  
2 shall hereafter be incorporated and which has no sub-  
3 stantial indebtedness, and which shall fail for one year  
4 to exercise its corporate powers and privileges, or which  
5 has not twenty qualified voters, or in which there were  
6 not twenty legal votes cast at its last election, or the  
7 population of which shall be reduced below one hundred  
8 persons and so remain for six consecutive months, shall  
9 in either event have its charter or certificate of incorpo-  
10 ration and all rights, powers and privileges so conferred  
11 upon such municipality forfeited.

12 The county court of the county wherein any such  
13 municipality or the major portion of the territory thereof  
14 is located shall have jurisdiction to hear and determine  
15 all matters relating to the forfeiture of such charter or  
16 certificate of incorporation, upon the petition of one or  
17 more of its inhabitants, and to dissolve such municipal  
18 corporation. Ten days' notice of the filing of such peti-  
19 tion with the clerk of the county court of such county,  
20 served upon the mayor and recorder or on the last  
21 mayor or recorder thereof, shall be sufficient notice upon

22 which such county court shall so act, and upon the  
23 proper proof of the allegations of such petition, any  
24 such charter or certificate of incorporation shall be  
25 declared forfeited and the municipal corporation dis-  
26 solved and all debts of such municipality shall be ordered  
27 paid and the forfeiture and dissolution shall not become  
28 effective until such debts have been paid. Upon such  
29 forfeiture and dissolution all interest of such municipality  
30 in corporate funds, if any, in excess of the amounts  
31 required to pay corporate debts shall be and the same  
32 is hereby transferred to and vested in the state of West  
33 Virginia to be controlled by the state auditor. If the  
34 territory so incorporated, or a major part thereof, either  
35 in area or in population, shall, however, within one year  
36 next after such declaration of forfeiture and dissolution  
37 by the county court be reincorporated under this chapter,  
38 then the auditor of the state of West Virginia shall  
39 convey unto such new municipality all of the rights of  
40 the state of West Virginia in and to the corporate prop-  
41 erty, moneys, claims, demands and taxes collected or  
42 uncollected, of the former municipal corporation so  
43 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.**

1 Upon petition of twenty-five or more percent of the  
2 legal voters of any Class III city or Class IV town or  
3 village, the governing body thereof shall submit to the  
4 qualified voters of such municipal corporation at the next  
5 regular municipal election, or at a special municipal  
6 election called for that purpose, the question of continu-  
7 ing or dissolving such municipal corporation. It shall  
8 be the responsibility of the governing body to verify the  
9 total number of eligible petitioners and to determine  
10 whether the required percentage of petitioners has been  
11 obtained. The ballots, or ballot labels where voting  
12 machines are used, shall have written or printed on them  
13 the words:

14  For Continuance of Municipal Corporation

15  For Dissolution of Municipal Corporation

16 If a majority of the legal votes cast be for dissolution,  
17 then such municipal corporation shall by operation of law  
18 be dissolved upon termination of the term of the govern-  
19 ing body then in office: *Provided*, That all debts or other  
20 obligations outstanding against such municipal corpora-  
21 tion shall be settled in full. If a majority of the legal  
22 votes cast be for continuance, then such municipal cor-  
23 poration shall continue in existence unless and until  
24 dissolved at some later date under the provisions of  
25 section one of this article or this section two: *Provided*,  
26 however, That another election under the provisions of  
27 this section two shall not be held within two years of  
28 the last such election. Any election under the provisions  
29 of this section two shall be held, conducted and super-  
30 intended and the result thereof ascertained, certified,  
31 returned and canvassed in the same manner and by the  
32 same persons as an election for municipal officers of such  
33 municipal corporation.

**ARTICLE 36. CONSTITUTIONALITY AND SEVERABILITY.**

**§8-36-1. Constitutionality and severability.**

1 (a) If any article, section, subsection, subdivision, pro-  
2 vision, clause or phrase of this chapter or the application  
3 thereof to any person or circumstance is held unconstitu-  
4 tional or invalid, such unconstitutionality or invalidity  
5 shall not affect other articles, sections, subsections, sub-  
6 divisions, provisions, clauses or phrases or applications of  
7 the chapter, and to this end each and every article, section,  
8 subsection, subdivision, provision, clause and phrase of  
9 this chapter is declared to be severable. The Legislature  
10 hereby declares that it would have enacted the remain-  
11 ing articles, sections, subsections, subdivisions, provisions,  
12 clauses and phrases of this chapter even if it had known  
13 that any articles, sections, subsections, subdivisions, pro-  
14 visions, clauses and phrases thereof would be declared to  
15 be unconstitutional or invalid, and that it would have  
16 enacted this chapter even if it had known that the applica-  
17 tion thereof to any person or circumstance would be held  
18 to be unconstitutional or invalid.

19 (b) The provisions of subsection (a) of this section

20 shall be fully applicable to all future amendments or  
21 additions to this chapter, with like effect as if the pro-  
22 visions of said subsection (a) were set forth in extenso  
23 in every such amendment or addition and were reenacted  
24 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.

1 Any person who sustains an injury to his person or  
2 property by reason of any road or bridge under the con-  
3 trol of the county court or any road, bridge, street, alley  
4 or sidewalk in any incorporated city, town or village  
5 being out of repair due to the negligence of the county  
6 court, incorporated city, town or village may recover  
7 all damages sustained by him by reason of such injury  
8 in an action against the county court, city, town or  
9 village in which such road, bridge, street, alley or side-  
10 walk may be, except that such city, town or village shall  
11 not be subject to such action unless it is required by  
12 charter, general law or ordinance to keep the road, bridge,  
13 street, alley or sidewalk therein, at the place where such  
14 injury is sustained, in repair. If it is not so required, the  
15 action and remedy shall be against the county court.  
16 When judgment is obtained against the county court,  
17 such court shall at the time of the laying of the next  
18 annual levy, levy upon the taxable property of the district  
19 in which such injury is sustained a sufficient sum to pay  
20 such judgment with interest and costs, and the costs  
21 of collecting the same, and when it is obtained against  
22 the city, town or village the proper municipal authorities  
23 thereof shall lay such levies at the time of levying the  
24 next annual levy on the property subject to taxation in  
25 such city, town or village. In case of a failure by either  
26 so to do, or to pay the judgment as required by law, the  
27 circuit court of the county for which such county court  
28 acts or in which such city, town or village or the major  
29 portion of the territory thereof is located shall compel  
30 the laying of such levy, or the payment of such judgment,  
31 or both, by mandamus.

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

William Tompa  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Howard Myers  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Steph A. Jones  
President of the Senate

Sam F. Brumby  
Speaker House of Delegates

The within approved this the 12<sup>th</sup>  
day of March, 1969.

Arch Shouse Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/12/69 ~~MAR 17~~ 10 23 AM '69

Time 11:55 A.M. OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA