

No. 267

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. FOR COMM. SUB. FOR

SENATE BILL NO. 267

(By Senators BOETTNER, JONES, ETAL)



PASSED MARCH 12, 1988

In Effect from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 267

(SENATORS BOETTNER, JONES AND TONKOVICH, MR. PRESIDENT, *original
sponsors*)

[Passed March 12, 1988; in effect from passage.]

AN ACT to amend and reenact sections three and thirty-nine, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article twenty-six-a of said chapter; to amend and reenact sections one, two, five, six and seven, article one, chapter twenty-nine of said code; to further amend said article one by adding thereto a new section, designated section fourteen; and to amend and reenact section five, article three of said chapter, all relating to municipal corporations; planning and zoning; definitions; urban and rural zoning — zoning generally; zoning authority generally; municipal and county historic landmarks commissions; legislative determinations; definitions; legislative intent; conflict between regulations of zoning district and historic district and properties; municipality or county may establish historic landmarks commission; appointments; detailed provisions to be

provided by ordinance or order; appropriation of funds; powers and duties of commission; designation; report; certificate of appropriateness; scope of review; standards of review; review procedures; variances; appeals; court action or proceedings to prevent improper changes or illegal acts or conduct; violations of this article; penalties; notice to county assessor of designation of historic district; assistance of state agencies; coordination; annual reports; creation of department of culture and history; divisions and commissions; purposes; definitions; effective date; general powers of commissioner; archives and history division; director; archives and history commission; protection of historic and prehistoric sites; penalties; voluntary endangered historic properties check-off program; and promulgation of regulations and state fire code.

Be it enacted by the Legislature of West Virginia:

That sections three and thirty-nine, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article twenty-six-a of said chapter be amended and reenacted; that sections one, two, five, six and seven, article one, chapter twenty-nine of said code be amended and reenacted; that said article one be further amended by adding thereto a new section, designated section fourteen; and that section five, article three of said chapter be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 24. PLANNING AND ZONING.

§8-24-3. Definitions.

- 1 As used in this article:
- 2 (a) "Commission or planning commission" shall mean a
- 3 municipal planning commission or a county planning
- 4 commission, as the case may be;
- 5 (b) "Comprehensive plan" shall mean a complete
- 6 comprehensive plan or any of its parts such as a
- 7 comprehensive plan of land use and zoning, of
- 8 thoroughfares, of sanitation, of recreation and other related
- 9 matters, and including such ordinance or ordinances as may
- 10 be deemed necessary to implement such complete

11 comprehensive plan or parts thereof by legislative approval
12 and provision for such rules and regulations as are deemed
13 necessary and their enforcement;

14 (c) "Exterior architectural features" includes the
15 architectural character and general composition of the
16 exterior of a structure, including, but not limited to, the
17 kind, color and texture of the building material, and the
18 type, design and character of all windows, doors, light
19 fixtures, signs, other appurtenant elements and natural
20 features when they are integral to the significance of the
21 site, all of which are subject to public view from a public
22 street, way or place;

23 (d) "Historic district" is a geographically definable area
24 possessing a significant concentration, linkage or
25 continuity of sites, buildings, structures or objects united
26 historically or aesthetically by plan or physical
27 development;

28 (e) "Historic landmark" is a site, building, structure or
29 object designated as a "Landmark" either on a national,
30 state or local register;

31 (f) "Historic site" is the location of a significant event, a
32 prehistoric or historic occupation or activity, or a building
33 or structure whether standing, ruined or vanished, where
34 the location itself possesses historical, cultural or
35 archaeological value regardless of the value of any existing
36 structure;

37 (g) "Public place" includes any tracts owned by the
38 state or its subdivisions;

39 (h) "Streets" includes streets, avenues, boulevards,
40 highways, roads, lanes, alleys and all public ways;

41 (i) "Unit of government" means any federal, state,
42 regional, county or municipal government or governmental
43 corporation; and

44 (j) "Utility" means any facility used in rendering service
45 which the public has a right to demand.

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 congestion

4 in the public streets may be lessened or avoided; that the
5 public health, safety, comfort, morals, convenience and
6 general public welfare may be promoted; that the
7 preservation of historic landmarks, sites, districts and
8 buildings be promoted; and that the objective set forth in
9 section one of this article may be further accomplished, the
10 governing body of a municipality or a county commission
11 shall have the following powers:

12 (a) To classify, regulate and limit the height, area, bulk
13 and use of buildings hereafter to be erected;

14 (b) To regulate the height, area, bulk, exterior
15 architectural features and use of buildings hereafter to be
16 erected within designated historic districts;

17 (c) To regulate the alteration of exterior architectural
18 features of buildings within historic districts and to
19 regulate the alteration of historic landmarks and sites;

20 (d) To regulate and determine the area of front, rear and
21 side yards, courts and other open spaces about such
22 buildings;

23 (e) To regulate and determine the use and intensity of
24 use of land and lot areas;

25 (f) To classify, regulate and restrict the location of
26 trades, callings, industries, commercial enterprises and the
27 location of buildings designed for specified uses;

28 (g) To regulate and control, or prohibit in certain areas,
29 junk yards, salvage yards, used parts yards, dumps or
30 automobile or appliance graveyards, or the maintenance
31 and operation of secondhand stores or outlets in residential
32 areas;

33 (h) To classify and designate the rural lands among
34 agricultural, industrial, commercial, residential and other
35 uses and purposes; and

36 (i) To divide the municipality or county into districts of
37 such kind, character, number, shape and area as may be
38 deemed necessary to carry out the purposes of this section.

**ARTICLE 26A. MUNICIPAL AND COUNTY HISTORIC LANDMARKS
COMMISSIONS.**

§8-26A-1. Legislative determinations.

1 It is hereby declared as a matter of legislative
2 determination:

3 (a) That the state of West Virginia is richly endowed
4 with numerous historic buildings, structures, sites and
5 districts which represent the historical, architectural and
6 cultural heritage of this state;

7 (b) That West Virginia heritage, represented by such
8 historic buildings, structures, sites and districts can best be
9 identified, studied, preserved and protected for the general
10 welfare of residents of this state and this nation by
11 authorizing and empowering action for this purpose at the
12 local level;

13 (c) That the preservation and protection of such historic
14 buildings, structures, sites and districts aid economic
15 development through revitalization of this state's central
16 business districts, improvement of property values and
17 enhancement of this state's historic attractions to tourists
18 and visitors; and aid the development of education of this
19 state by preservation of such heritage for future
20 generations;

21 (d) That the preservation of this heritage is essential to
22 the promotion of the prosperity, education and general
23 welfare of the people; and

24 (e) That the Legislature hereby finds that it is the public
25 policy and the public interest of this state to engage in a
26 comprehensive program of historic preservation,
27 undertaken at all levels of government, along with the
28 private sector, to promote the use and preservation of such
29 heritage for the education and general welfare of the people
30 of this state; and, accordingly, this article shall be broadly
31 construed in order to accomplish the purposes herein set
32 forth.

§8-26A-2. Definitions.

1 As used in this article:

2 (a) "Exterior architectural features" include the
3 architectural character and general composition of the
4 exterior of a structure, including but not limited to, the
5 kind, color and texture of the building material and the
6 type, design and character of all windows, doors, light
7 fixtures, signs, other appurtenant elements and natural
8 features when they are integral to the significance of the
9 site, all of which are subject to public view from a public
10 street, way or place.

11 (b) "Historic district" is a geographically definable area

12 possessing a significant concentration, linkage or
13 continuity of sites, buildings, structures or objects united
14 historically or aesthetically by plan or physical
15 development.

16 (c) "Historic landmark" is a site, building, structure or
17 object designated as a "Landmark" either on a national,
18 state or local register.

19 (d) "Historic site" is the location of a significant event, a
20 prehistoric or historic occupation or activity, or a building
21 or structure, whether standing, ruined or vanished, where
22 the location itself possesses historical, cultural or
23 archaeological value regardless of the value of any existing
24 structure.

§8-26A-3. Legislative intent; conflict between regulations of zoning district and historic district and properties.

1 The historic district and property regulation provided in
2 this article is intended to identify, study, preserve and
3 protect historic buildings and structures, sites and districts,
4 some of which are located in zoning districts. Historic
5 properties and districts lying within the boundaries of a
6 zoning district are subject to the regulations for both the
7 zoning district and historic district and properties. If there
8 is a conflict between the requirements of the zoning district
9 and the requirements of the historic district or property, the
10 zoning district requirements apply.

§8-26A-4. Municipality or county may establish historic landmarks commission; appointments; detailed provisions to be provided by ordinance or order; appropriation of funds.

1 Any municipality by ordinance and any county by order
2 of the county commission entered of record may, if it so
3 desires, establish a municipal historic landmarks
4 commission or county historic landmarks commission,
5 hereinafter in this article referred to as the commission, to
6 consist of five members, appointed by the mayor or county
7 commission, as the case may be.

8 In any such ordinance or order, the governing body shall
9 include provisions specifying (a) the terms of the members
10 of such commission; (b) a method of filling vacancies; (c)

11 whether the members of the commission are to be
12 reimbursed for all reasonable and necessary expenses
13 actually incurred in the performance of their duties; (d) the
14 officers of the commission to be elected from the
15 membership thereof; (e) requirements as to meetings of the
16 commission; (f) requirements as to a quorum of the
17 commission; (g) requirements as to voting by members of
18 the commission; and (h) such other matters as may be
19 deemed necessary or desirable for the proper functioning of
20 the commission. In the event the ordinance or order
21 establishing such commission shall authorize the
22 commission to issue certificates of appropriateness, the
23 ordinance or order shall require a majority of the members
24 to have demonstrated special interest, experience or
25 education in history, architecture, planning, real estate or
26 law, to extent such persons are available in the community.
27 In establishing such a commission and making
28 appointments to it, a local governing body may seek the
29 advice of any national, state or local historical agency,
30 society or organization.

31 Any such commission may also be authorized and
32 empowered by any such ordinance or order to employ,
33 within the limits of funds available therefor, such
34 employees, assistants, technical personnel and consultants
35 as are necessary to discharge the duties and responsibilities
36 of the commission.

37 Any municipality or county establishing any such
38 commission shall have plenary power and authority to
39 appropriate funds to such commission for expenditure by
40 the commission for the purposes of this article.

§8-26A-5. Powers and duties of commission.

1 Any such commission shall be authorized, but not
2 required, within the jurisdictional limits of the
3 municipality or county, as the case may be, and within the
4 limits of available funds, to:

- 5 (a) Make a survey of, and designate as historic
6 landmarks, buildings, structures and districts which
7 constitute the principal historical and architectural sites
8 which are of local, regional, statewide or national
9 significance, in accordance with section six of this article;
- 10 (b) Prepare a register of buildings, structures, sites and

11 districts which meet the requirements of subsection (a) of
12 this section, publish lists of such properties and, with the
13 consent of the property owners, inspect such properties
14 from time to time and publish a register thereof from time to
15 time setting forth appropriate information concerning the
16 registered buildings, structures, sites and districts;

17 (c) Review applications for certificates of
18 appropriateness and grant or deny the same in accordance
19 with section seven of this article;

20 (d) With the consent of the property owners, mark with
21 appropriately designed markers, buildings, structures and
22 sites which it has registered;

23 (e) Establish standards for the care and management of
24 designated historic landmarks and withdraw such
25 certification for failure to maintain the standards so
26 prescribed;

27 (f) Acquire by purchase, gift or lease and administer
28 registered landmarks and easements and interests therein,
29 both real and personal;

30 (g) Lease or sell property so acquired under terms and
31 conditions designed to insure the proper preservation of the
32 historic landmark in question;

33 (h) Aid and encourage the municipality or county in
34 which the district or landmark is located to adopt
35 ordinances and resolutions for the preservation of
36 landmarks and historic districts, their buildings, structures
37 and character;

38 (i) Prepare and place historical markers on or along the
39 highway or street closest to the location which is intended
40 to be identified by such marker;

41 (j) Seek the advice and assistance of individuals, groups
42 and departments and agencies of government who or which
43 are conducting historical preservation programs and
44 coordinate the same insofar as possible;

45 (k) Seek and accept gifts, bequests, endowments and
46 funds from any and all sources for the accomplishment of
47 the functions of the commission;

48 (l) Adopt rules and regulations concerning the
49 operation of the commission, the functions and
50 responsibilities of its officers, employees, assistants and
51 other personnel and such other matters as may be necessary
52 to carry out the purposes of this article; and

53 (m) Adopt such other rules and regulations as may be
54 deemed necessary to effectuate the purposes of this article,
55 but no such rules and regulations shall be inconsistent with
56 any plan of the planning commission of such municipality
57 or county: *Provided*, That in no case shall such rules and
58 regulations take precedence over locally adopted
59 ordinances.

§8-26A-6. Designation; report.

1 Prior to designation of an historic landmark or historic
2 district, the commission shall make or cause to be made a
3 report on the historical, cultural, architectural significance
4 of each building, structure, site and district proposed for
5 designation, based upon the following standards:

6 No building, structure, site or district shall be deemed to
7 be an historic one unless it has been prominently identified
8 with or best represents, some major aspect of the cultural,
9 political, economic, military or social history of the locality,
10 region, state or nation, or has had a major relationship with
11 the life of an historic personage or event representing some
12 major aspect of, or ideals related to, the history of the
13 locality, region, state or nation. In the case of buildings or
14 structures which are to be so designated, they shall embody
15 the principal or unique features of an architectural type or
16 demonstrate the style of a period of our history or method of
17 construction, or serve as an illustration of the work of a
18 master builder, designer or architect whose genius
19 influenced the period in which he worked or has
20 significance in current times.

21 The commission shall submit such report, including maps
22 and photographs as necessary, to the West Virginia
23 department of culture and history. In the case of a report for
24 a proposed historic district, the commission shall submit
25 with the report a map showing boundaries of the proposed
26 district. The West Virginia department of culture and
27 history may prepare written comments within forty-five
28 days on the report.

29 In the event that any such ordinance or order establishing
30 the commission has authorized the commission to issue
31 certificates of appropriateness, the local governing body
32 shall hold a public hearing on the proposed designation of

33 the historic property or historic district, and any proposed
34 regulations and requirements for the historic district.
35 Notice of the hearing shall be published at least two times in
36 the principal newspaper of general circulation within the
37 municipality or county in which the property or properties
38 to be designated are located; and written notice of the
39 hearing shall be mailed by certified mail with signed return
40 receipt required by the commission to all owners and
41 occupants of such properties. All the notices shall be
42 published or mailed not less than ten nor more than twenty
43 days prior to the date set for the public hearing. Following
44 the public hearing, unless the owner of a proposed property
45 or fifty percent of the ownership interest in a proposed
46 district objects to such designation or regulations and
47 requirements within thirty days following the public
48 hearing, the local governing body may designate the
49 property or properties as historic, and approve, amend or
50 reject the proposed regulations or requirements. Within
51 thirty days following such designation or approval, the
52 owners and occupants of each designated historic property
53 shall be given written notification of such designation or
54 approval by the local governing body, which notice shall
55 apprise said owners and occupants of the necessity of
56 obtaining a certificate of appropriateness prior to
57 undertaking any material change in the appearance of the
58 historic landmark designated or within an historic district.

59 In the event any such order or ordinance establishing a
60 commission does not authorize the commission to regulate
61 historic properties through issuance of a certificate of
62 appropriateness, the survey report may be adopted by the
63 commission, with any recommended amendments or
64 changes by the state agency, and the historic landmark or
65 historic district shall be designated as historic.

66 Any such designated historic landmark or district
67 designated by this article shall be shown on the official
68 zoning map of the county or municipality or, that in the
69 absence of an official zoning map, the designated property
70 be shown on a map of the county or municipality and kept
71 by the county or municipality as a public record to provide
72 notice of such designation in addition to other such
73 notification requirements of this section.

§8-26A-7. Certificate of appropriateness; scope of review; standards of review; review procedures; variances, appeals.

1 In the event that any commission shall exercise authority
2 to issue a certificate of appropriateness to regulate new
3 construction, alteration, removal or demolition of
4 buildings, sites or structures within an historic district or
5 individually designated as an historic landmark, the
6 commission shall have plenary power and authority to
7 regulate such properties, according to the following
8 provisions:

9 (a) No private buildings, site or structure shall be erected,
10 altered, restored, moved or demolished until after an
11 application for a certificate of appropriateness as to
12 exterior architectural features has been submitted to and
13 approved by the commission, except as otherwise provided
14 by the governing body in the ordinance or order
15 establishing such commission or as provided by rules,
16 regulations, policies, procedures and standards adopted
17 and published by said commission. For the purposes of this
18 article, "exterior architectural features" shall include such
19 portion of the exterior of a structure as is open to view from
20 a public street, way or place. Similarly, if earthworks of
21 historical or archaeological importance exist in the historic
22 district there shall be no excavating or moving of earth,
23 rock or subsoil or any development upon or around
24 earthworks without a certificate of appropriateness. The
25 style, material, size and location of outdoor advertising
26 signs and bill posters shall be under the control of such
27 commission.

28 (1) The commission may request such plans, elevations,
29 specifications, drawings, photographs and other
30 information as may be reasonably deemed necessary by the
31 commission to enable it to make a determination on the
32 application for a certificate of appropriateness.

33 (2) The commission shall hold a public hearing upon
34 each application for a certificate of appropriateness. Notice
35 of the time and place of said hearing shall be given by
36 publication in a newspaper having general circulation in
37 the area served by the governmental unit, provided it has
38 one, at least seven days before such hearing, and by posting
39 such notice on or near the main entrance of any hall or room

40 where the commission usually meets. The commission shall
41 take such action as required to inform the owners of any
42 property likely to be affected by the application and shall
43 give the applicant and such owners an opportunity to be
44 heard.

45 (3) The commission shall approve or reject an
46 application for a certificate of appropriateness within
47 forty-five days after the filing thereof by the owner or
48 occupant of a historic property or a building, site or
49 structure located within a historic district. Evidence of
50 approval shall be by a certificate of appropriateness issued
51 by the commission.

52 (4) In passing upon the appropriateness of proposed
53 action, the commission shall consider, in addition to any
54 other pertinent factors, the historical and architectural
55 integrity and significance; architectural style; design,
56 arrangement, texture and materials of exterior
57 architectural features; and the relationship and general
58 compatibility thereof to the historical value and exterior
59 architectural style and pertinent features of other
60 structures in the surrounding area.

61 (5) The commission shall approve the application and
62 issue a certificate of appropriateness if it finds that the
63 proposed action would be appropriate. In the event the
64 commission rejects an application, such commission shall
65 place upon its records and shall transmit a record of such
66 action and reasons therefore, in writing, to the applicant. In
67 such written record, the commission may make
68 recommendations relative to design, arrangement, texture,
69 material and similar features. The applicant, if he so
70 desires, may make modifications to the plans and may
71 resubmit the application at any time after doing so.

72 (6) In cases where the application covers a material
73 change in the appearance of a structure which would
74 require the issuance of a building permit, the rejection of an
75 application for a certificate of appropriateness by the
76 commission shall be binding upon the building inspector or
77 other administrative office charged with issuing building
78 permits.

79 (7) Where such action is authorized by the local
80 governing body and is reasonably necessary or appropriate
81 for the preservation of a unique historic property, the

82 commission may enter into negotiations with the owner for
83 the acquisition by gift, purchase, exchange or otherwise of
84 the property or any interest therein.

85 (8) If the strict application of any provision of this
86 article would result in exceptional practical difficulty or
87 undue economic hardship upon any owner of any specific
88 property, the commission, in passing upon applications,
89 shall have the power to vary or modify strict adherence to
90 the provisions or to interpret the meaning of the provision
91 so as to relieve such difficulty or hardship: *Provided*, That
92 such variance, modification or interpretation shall remain
93 in harmony with the general purpose and intent of the
94 provisions so that architectural or historical integrity or
95 character of the property shall be conserved and substantial
96 justice done. In granting variations, the commission may
97 impose such reasonable and additional stipulations and
98 conditions as will in its judgment best fulfill the purpose of
99 this article.

100 (9) The commission shall keep a record of all
101 applications for certificates of appropriateness and of all its
102 proceedings.

103 (10) Any person adversely affected by any
104 determinations made by the commission relative to the
105 issuance or denial of a certificate of appropriateness may
106 appeal such determination to the circuit court in the county
107 in which said commission is located.

108 (11) Nothing in this article shall be construed to prevent
109 the ordinary maintenance or repair of any exterior
110 architectural feature in or on a historic property, which
111 maintenance or repair does not involve a material change in
112 design, material or outer appearance thereof, nor to prevent
113 any property owner from making any use of his property not
114 prohibited by other laws, ordinances or regulations.

115 (12) Undertakings permitted, funded, licensed or
116 otherwise assisted by the state shall be reviewed in
117 accordance with section 29, article 1, chapter 5, subsection
118 (e) of this code and shall be considered exempt from review
119 for certification of appropriateness as described in this
120 section.

§8-26A-8. Court action or proceedings to prevent improper changes or illegal acts or conduct.

1 The municipal or county governing body or the historic

2 landmarks commission shall be authorized to institute any
3 appropriate action or proceeding in a court of competent
4 jurisdiction to prevent any material change in the
5 appearance of a designated historic property or historic
6 district, except those changes made in compliance with the
7 provisions of this article or to prevent any illegal acts or
8 conduct with respect to such historic property or historic
9 district.

§8-26A-9. Violations of this article; penalties.

1 Violations of any such ordinance adopted in conformity
2 with this article shall be punishable by a fine up to ten
3 percent of the total cost of the project requiring a certificate
4 of appropriateness or five hundred dollars, whichever is
5 greater, or imprisoned in the county jail not more than six
6 months, or both fined and imprisoned.

§8-26A-10. Notice to county assessor of designation of historic district.

1 When any such commission establishes an historic
2 district, it shall notify the county assessor of the county in
3 which such district or any part thereof is located of the fact
4 of such establishment and the boundaries of the district,
5 together with the restrictions which are applicable to the
6 properties located in such district. The county assessor shall
7 take such factors into consideration in assessing the
8 properties therein.

§8-26A-11. Assistance of state agencies; coordination; annual reports.

1 Upon the request of any such commission, all agencies of
2 the state shall assist such commission in the discharge of its
3 duties and functions.

4 Every such commission shall cooperate and coordinate its
5 activities with the West Virginia historical society and the
6 West Virginia department of culture and history with the
7 view of developing a unified program for the identification,
8 study, preservation and protection of all historic buildings,
9 structures and sites in this state. Such commissions shall
10 submit a brief annual report to the West Virginia
11 department of culture and history summarizing
12 commission activities. In addition, the commissions shall

13 submit reports as required in other sections of this article
14 and any other reports required by rule, regulation or
15 agreement.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.

1 Effective the first day of July, one thousand nine hundred
2 seventy-seven, there is hereby created a department of
3 culture and history and the office of commissioner of
4 culture and history. The governor shall nominate, and by
5 and with the advice and consent of the Senate, appoint the
6 commissioner, who shall be the chief executive officer of the
7 department and shall be paid an annual salary and be
8 governed by the provisions of section two-a, article seven,
9 chapter six of this code. The commissioner so appointed
10 shall have: (1) A bachelor's degree in one of the fine arts,
11 social sciences, library science or a related field; or (2) four
12 years' experience in the administration of museum
13 management, public administration, history or a related
14 field.

15 The department shall consist of two divisions and two
16 corresponding citizens commissions:

17 (1) An archives and history division, and an archives
18 and history commission; and

19 (2) An arts and humanities division and an arts and
20 humanities commission.

21 The commissioner shall exercise control and supervision
22 of the department and shall be responsible for the projects,
23 programs, and actions of each of its divisions. The purpose
24 and duty of the department is to advance, foster and
25 promote the creative and performing arts and crafts,
26 including both indoor and outdoor exhibits and
27 performances; to advance, foster, promote, identify,
28 register, acquire, mark and care for historical,
29 prehistorical, archaeological and significant architectural
30 sites, structures and objects in the state; to encourage the
31 promotion, preservation and development of significant

32 sites, structures and objects through the use of economic
33 development activities such as loans, subsidies, grants and
34 other incentives; to coordinate all cultural, historical and
35 artistic activities in the state government and at the state-
36 owned facilities; to acquire, preserve and classify books,
37 documents and memorabilia of historical interest or
38 importance; and, in general, to do all things necessary or
39 convenient to preserve and advance the culture of the state.

40 The department shall have jurisdiction and control of all
41 space in the building presently known as the West Virginia
42 science and culture center, including the deck and court
43 yards forming an integral part thereof; the building
44 presently known as West Virginia Independence Hall in
45 Wheeling, including all the grounds and appurtenances
46 thereof; "Washington Carver Camp," in Fayette County, as
47 transferred in section thirteen, article one of this chapter;
48 and any other sites as may be transferred to or acquired by
49 the department.

50 For the purposes of this article "commissioner" means
51 the commissioner of culture and history, and "department"
52 means the department of culture and history.

§29-1-2. General powers of commissioner.

1 The commissioner shall assign and allocate space in all
2 facilities assigned to the department and all space in the
3 building presently known as the West Virginia science and
4 culture center, and any other buildings or sites under the
5 control of the commissioner, and may prescribe rules and
6 regulations for the use and occupancy of said facilities,
7 including tours.

8 The commissioner shall coordinate the operations and
9 affairs of the divisions and commissions of the department
10 and assign each division or commission responsibilities
11 according to criteria he deems most efficient, productive
12 and best calculated to carry out the purposes of this article.
13 He shall provide to the fullest extent possible for
14 centralization and coordination of the bookkeeping,
15 personnel, purchasing, printing, duplicating, binding and
16 other services which can be efficiently combined. If the
17 commissioner finds it necessary, he may establish an
18 administrative division and other divisions for such

19 purposes as he deems necessary, and may appoint directors
20 thereof. The commissioner may appoint a director of the
21 West Virginia science and culture center.

22 After consultation with the directors of the divisions of
23 the department and the commissions, the commissioner
24 shall prepare a proposed departmental budget for
25 submission to the governor for each fiscal year.

26 No contract, agreement or undertaking may be entered
27 into by any division of the department which involves the
28 expenditure of funds without the express written approval
29 of the commissioner as to fiscal responsibility.

30 The commissioner shall prepare and submit to the
31 governor an annual report in accordance with the
32 provisions of section twenty, article one, chapter five of this
33 code, which report shall include a detailed account of the
34 activities of each division and commission of the
35 department.

36 The commissioner shall employ all personnel for the
37 divisions, except for persons in the professional positions
38 established within the divisions as provided in this article;
39 and shall supply support services to the commissions and to
40 the governor's mansion advisory committee.

§29-1-5. Archives and history division; director.

1 (a) The purposes and duties of the archives and history
2 division are to locate, survey, investigate, register, identify,
3 excavate, preserve, protect, restore and recommend to the
4 commissioner for acquisition historic, architectural,
5 archaeological and cultural sites, structures, documents
6 and objects worthy of preservation, relating to the state of
7 West Virginia and the territory included therein from the
8 earliest times to the present, upon its own initiative or in
9 cooperation with any private or public society,
10 organization or agency; to conduct a continuing survey and
11 study throughout the state to develop a state plan to
12 determine the needs and priorities for the preservation,
13 restoration or development of such sites, structures,
14 documents and objects; to direct, protect, excavate,
15 preserve, study, or develop such sites, structures and
16 documents; to review all undertakings permitted, funded,
17 licensed or otherwise assisted, in whole or in part, by the

18 state for the purposes of furthering the duties of the
19 department; to carry out the duties and responsibilities
20 enumerated in the National Historic Preservation Act of
21 1966, as amended, as they pertain to the duties of the
22 department; to develop and maintain a West Virginia state
23 register of historic places for use as a planning tool for state
24 and local government; to operate and maintain a state
25 library for the preservation of all public records, state
26 papers, documents and reports of all three branches of state
27 government including all boards, commissions,
28 departments and agencies as well as any other private or
29 public papers, books or documents of peculiar or historic
30 interest or significance; to preserve and protect all battle or
31 regimental flags borne by West Virginians and other
32 memorabilia of historic interest; to designate appropriate
33 monuments, tablets or markers for historic, architectural
34 and scenic sites within the state and to arrange for the
35 purchase, replacement, care of and maintenance of such
36 monuments, tablets and markers and to formulate and
37 prepare suitable copy for them; to operate and maintain a
38 state museum, and to coordinate activities with other
39 museums in the state; to cooperate with state and federal
40 agencies in archaeological work; to edit and publish a
41 quarterly historical magazine devoted to the history,
42 biography, bibliography and genealogy of West Virginia;
43 and to perform such other duties as may be assigned to the
44 division by the commissioner.

45 (b) With the advice and consent of the commission, in
46 addition to the duties above set forth, the division shall
47 determine the whereabouts of and require the return of
48 furnishings, objects and documents missing from the
49 capitol building and other state owned or controlled
50 buildings, including, but not limited to, furnishings chosen
51 or purchased for the capitol by its architect, Cass Gilbert.
52 No furnishings from the capitol may be sold or disposed of
53 except under the direction of the director of surplus state
54 property pursuant to section three-a, article eight, chapter
55 five-a of this code. If furnishings originally designated as
56 capitol building furnishings have been sold or otherwise
57 disposed of without the requisite sale procedures, such
58 furnishings shall be returned to the capitol and, upon

59 presentation of proof of the amount paid, the current owner
60 shall be reimbursed for the cost of the furnishing less any
61 appropriate depreciation or wear and tear.

62 (c) With the advice and consent of the archives and
63 history commission, the commissioner shall appoint a
64 director of the archives and history division, who shall
65 have: (1) A graduate degree in one of the social sciences, or
66 equivalent training and experience in the fields of West
67 Virginia history, history, historic preservation,
68 archaeology, or in records, library or archives management;
69 and (2) three years' experience in administration in the
70 fields of West Virginia history, history, historic
71 preservation, archaeology, or in records, library or archives
72 management. Notwithstanding these qualifications, the
73 person serving as the state historian and archivist on the
74 date of enactment of this article shall be eligible for
75 appointment as the director of the archives and history
76 division. The director of the archives and history division
77 shall serve as the state historian and archivist, and shall be
78 the state historic preservation officer or a deputy state
79 historic preservation officer.

80 (d) With the approval of the commissioner, the director
81 shall establish professional positions within the division
82 and develop appropriate organizational structures to carry
83 out the duties of the division. The director shall employ the
84 personnel with applicable professional qualifications to fill
85 positions within the organizational structure with the
86 minimum professional qualifications necessary to carry out
87 the provisions of the National Historic Preservation Act of
88 1966, as amended. At the minimum, the following
89 professions shall be represented within the division staff:
90 Historian, architectural historian, a licensed architect who
91 specializes in historical preservation, archaeologist
92 specializing in historic and prehistoric archaeology,
93 archivist, librarian and technical and clerical positions as
94 are required.

95 (e) The director shall promulgate rules and regulations
96 with the approval of the archives and history commission
97 and in accordance with the state administrative procedure
98 act concerning: (1) The professional policies and functions
99 of the archives and history division; (2) the review of all
100 undertakings permitted, funded, licensed or otherwise

101 assisted, in whole or in part, by the state as indicated in
102 subsection (a) of this section, in order to carry out the duties
103 and responsibilities of the division; (3) the establishment
104 and maintenance of a West Virginia state register of historic
105 places, including the criteria for eligibility of buildings,
106 structures, sites, districts and objects for the state register
107 and procedures for nominations to the state register and
108 protection of nominated and listed properties; (4) the
109 review of historic structures in accordance with compliance
110 alternatives and other provisions in any state fire
111 regulation and shall coordinate standards with the
112 appropriate regulatory officials regarding their
113 application; (5) review of historic structures in conjunction
114 with existing state or local building codes, and shall
115 coordinate standards with the appropriate regulatory
116 officials for their application; and (6) the expenditure of
117 funds provided for threatened and endangered historic
118 properties by the voluntary check-off program established
119 under section fourteen, article one of this chapter and such
120 other rules and regulations as may be deemed necessary to
121 effectuate the purposes of this article.

§29-1-6. Archives and history commission.

1 The West Virginia antiquities commission established by
2 article twelve, chapter five of this code shall continue in
3 existence until the first day of July, one thousand nine
4 hundred seventy-seven at which time it shall be abolished,
5 and replaced by an archives and history commission which
6 is hereby created and which shall be composed of nine
7 appointed members.

8 The governor shall nominate, and by and with the advice
9 and consent of the Senate, appoint the members of the
10 commission for staggered terms of three years. A person
11 appointed to fill a vacancy shall be appointed only for the
12 remainder of that term. Of the members of the archives and
13 history commission first appointed, three shall be
14 appointed for a term ending the thirtieth day of June, one
15 thousand nine hundred seventy-eight, and three each for
16 terms ending one and two years thereafter: *Provided*, That
17 each person serving as a member of the West Virginia
18 antiquities commission, for a term which has not expired on
19 the effective date of this article, shall be appointed by the

20 governor without Senate confirmation to the archives and
21 history commission, as one of the nine appointed members,
22 for the term ending the thirtieth day of June in the year in
23 which his term would expire as a member of the West
24 Virginia antiquities commission.

25 No more than five of the appointed members may be of
26 the same political party. Members of the commission shall
27 be appointed so as to fairly represent both sexes, the ethnic
28 and cultural diversity of the state and the geographic
29 regions of the state. The archives and history commission
30 shall contain the required professional representation
31 necessary to carry out the provisions of the National
32 Historic Preservation Act of 1966, as amended, and shall be
33 considered to be the "state review board" and shall follow
34 all rules and regulations as specified therein. This
35 representation shall include the following professions:
36 Historian, architectural historian, historical architect,
37 archaeologist specializing in historic and prehistoric
38 archaeology.

39 The commission shall elect one of its members chairman.
40 It shall meet at such time as shall be specified by the
41 chairman. Notice of each meeting shall be given to each
42 member by the chairman at least five days in advance of the
43 meeting. A majority of the members shall constitute a
44 quorum for the transaction of business. The director of the
45 archives and history division shall be an ex officio
46 nonvoting member of the commission and shall serve as
47 secretary. The director, or a majority of the members, may
48 also call a meeting upon such notice as provided in this
49 section.

50 Each member or ex officio member of the commission
51 shall serve without compensation, but shall be reimbursed
52 for all reasonable and necessary expenses actually incurred
53 in the performance of his duties; except that in the event the
54 expenses are paid, or are to be paid, by a third party, the
55 member or ex officio member, as the case may be, shall not
56 be reimbursed by the state.

57 In addition to the nine appointed members, the president
58 of the state historical society and the president of the state
59 historical association of college and university teachers
60 shall serve as ex officio voting members of the archives and
61 history commission. The director of the state geological and

62 economic survey and the state historic preservation officer
63 shall serve as ex officio nonvoting members of the archives
64 and history division.

65 The commission shall have the following powers:

66 (a) To advise the commissioner and the director of the
67 archives and history division concerning the
68 accomplishment of the purposes of that division and to
69 establish a state plan with respect thereto;

70 (b) To approve and distribute grants-in-aid and awards
71 from federal and state funds relating to the purposes of the
72 archives and history division;

73 (c) To request, accept or expend federal funds to
74 accomplish the purposes of the archives and history
75 division when federal law or regulations would prohibit the
76 same by the commissioner or division director, but would
77 permit the same to be done by the archives and history
78 commission;

79 (d) To otherwise encourage and promote the purposes of
80 the archives and history division;

81 (e) To approve rules and regulations concerning the
82 professional policies and functions of the division as
83 promulgated by the director of the archives and history
84 division;

85 (f) To advise and consent to the appointment of the
86 director by the commissioner; and

87 (g) To review and approve nominations to the state
88 register of historic places.

§29-1-7. Protection of historic and prehistoric sites; penalties.

1 Historic and prehistoric landmarks, sites and districts,
2 identified by the archives and history division, on lands
3 owned or leased by the state, or on private lands where
4 investigation and development rights have been acquired
5 by the state by lease or contract, shall not be disturbed, or
6 destroyed except as permitted under section five of this
7 article.

8 Any person violating the provisions of this section shall
9 be guilty of a misdemeanor, and, upon conviction thereof,
10 shall be fined not more than five hundred dollars, or
11 imprisoned in the county jail not more than six months, or
12 both fined and imprisoned.

§29-1-14. Voluntary endangered historic properties check-off program.

1 It is in the public interest to preserve, protect and
2 perpetuate all historic and prehistoric sites for the use and
3 benefit of the citizens of West Virginia. The intent of this
4 legislation is to provide emergency funding for the
5 preservation of threatened and endangered historic and
6 prehistoric structures and sites.

7 The financing of these programs will be derived from a
8 voluntary check-off and contribution designation on state
9 personal income tax return forms of a portion or all of a
10 taxpayer's refund. The funding provided shall be
11 supplemental to existing revenues.

12 Each West Virginia personal income tax return form shall
13 contain a designation as follows:

14 "West Virginia Endangered Historic Properties Fund.

15 Check if you wish to designate a portion of your tax
16 refund to this program:

17 \$1 () \$5 () \$10 () Other \$_____ ()

18 If joint return, check if spouse wishes to designate a
19 portion of tax refund:

20 \$1 () \$5 () \$10 () Other \$____ ()"

21 Each individual taxpayer desiring to contribute to the
22 endangered historic properties program may so designate
23 by placing an "X" in the appropriate box on the state
24 personal income tax return form. His contribution shall be
25 credited to said program.

26 The tax department shall determine by the first day of
27 July of each year the total amount designated pursuant to
28 this legislation and shall report such amount to the state
29 treasurer who shall credit such amount to a special
30 department of culture and history interest bearing account.

31 At the end of each fiscal year unexpended funds in this
32 account shall be reappropriated for the subsequent year.

33 The funds shall be used for the purpose of emergency
34 action to save threatened and endangered historic
35 properties, upon the recommendations of the archives and
36 history commission: *Provided*, That such designated funds
37 shall be used for architectural services, engineering
38 services, actual construction, reconstruction, repair and
39 similar activities but not for administrative purposes. The

40 commissioner shall on the fifteenth day of January each
41 year furnish the Legislature with a report stating the
42 amount of money that has been provided and how such
43 moneys have been expended.

44 The provisions of this section shall apply to tax return
45 forms filed on and after the first day of January, one
46 thousand nine hundred eighty-nine.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5. Promulgation of regulations and state fire code.

1 (a) The state fire commission shall have the power to
2 promulgate, amend and repeal regulations for the
3 safeguarding of life and property from the hazards of fire
4 and explosion pursuant to the provisions of chapter twenty-
5 nine-a of this code. Such regulations, amendments or
6 repeals thereof shall be in accordance with standard safe
7 practice as embodied in widely recognized standards of
8 good practice for fire prevention and fire protection and
9 shall have the force and effect of law in the several counties,
10 municipalities and political subdivisions of the state.

11 (b) Pursuant to the provisions of chapter twenty-nine-a of
12 this code, the state fire commission, by the first day of
13 January, one thousand nine hundred seventy-seven, shall
14 promulgate comprehensive regulations for the
15 safeguarding of life and property from the hazards of fire
16 and explosion to be known as the state fire code.
17 Regulations embodied in the state fire code shall be in
18 accordance with standard safe practice as embodied in
19 widely recognized standards of good practice for fire
20 prevention and fire protection and shall have the force and
21 effect of law in the several counties, municipalities and
22 political subdivisions of the state. Whenever any other state
23 law, county or municipal ordinance or regulation of any fire
24 codes published by the national protection association:
25 *Provided*, That such rules shall be effective as emergency
26 rules when so promulgated until acted upon by the
27 Legislature: *Provided, however*, That the state fire marshal
28 shall provide compliance alternatives for historic
29 structures as provided for in section five, article one of this
30 chapter, which compliance alternatives shall take into
31 account the historic integrity of said historic structures;
32 and shall coordinate with the director of the archives and

33 history division the application of the rules and regulations
34 of that division.

35 (c) In interpretation and application, the state fire code
36 shall be held to be the minimum requirements for the
37 safeguarding of life and property from the hazards of fire
38 and explosion: *Provided*, That the state fire marshal shall
39 provide compliance alternatives for historic structures and
40 sites as provided for in section five, article one of this
41 chapter, which compliance alternatives shall take into
42 account the historic integrity of said historic structures and
43 sites. Whenever any other state law, county or municipal
44 ordinance or regulation of any agency thereof is more
45 stringent or imposes a higher standard than is required by
46 the state fire code, the provisions of such state law, county
47 or municipal ordinance or regulation of any agency thereof
48 shall govern, provided they are not inconsistent with the
49 laws of West Virginia and are not contrary to recognized
50 standards and good engineering practices. In any question,
51 the decision of the state fire commission determines the
52 relative priority of any such state law, county or municipal
53 ordinance or regulation of any agency thereof and
54 determines compliance with state fire regulations by
55 officials of the state, counties, municipalities and political
56 subdivisions of the state.

jaw

Attest
James S. ...
...

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

Bruce O. Allison
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Scott C. Wells
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dan Tomlin
.....
President of the Senate

W. J. C. [Signature]
.....
Speaker House of Delegates

The within *approved* this the *30th*
March
day of 1988.

Arpa. [Signature]
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:32a.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE