WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED

SENATE BILL NO. 267

(Passed by Senators Boettner, Jones, et al)

PASSED MARCH 12, 1988
In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
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 municipal planning commission or a county planning commission, as the case may be;
3  (b) "Comprehensive plan" shall mean a complete comprehensive plan or any of its parts such as a comprehensive plan of land use and zoning, of thoroughfares, of sanitation, of recreation and other related matters, and including such ordinance or ordinances as may be deemed necessary to implement such complete
comprehensive plan or parts thereof by legislative approval
and provision for such rules and regulations as are deemed
necessary and their enforcement;
(c) "Exterior architectural features" includes the
architectural character and general composition of the
exterior of a structure, including, but not limited to, the
kind, color and texture of the building material, and the
type, design and character of all windows, doors, light
fixtures, signs, other appurtenant elements and natural
features when they are integral to the significance of the
site, all of which are subject to public view from a public
street, way or place;
(d) "Historic district" is a geographically definable area
possessing a significant concentration, linkage or
continuity of sites, buildings, structures or objects united
historically or aesthetically by plan or physical
development;
(e) "Historic landmark" is a site, building, structure or
object designated as a "Landmark" either on a national,
state or local register;
(f) "Historic site" is the location of a significant event, a
prehistoric or historic occupation or activity, or a building
or structure whether standing, ruined or vanished, where
the location itself possesses historical, cultural or
archaeological value regardless of the value of any existing
structure;
(g) "Public place" includes any tracts owned by the
state or its subdivisions;
(h) "Streets" includes streets, avenues, boulevards,
highways, roads, lanes, alleys and all public ways;
(i) "Unit of government" means any federal, state,
regional, county or municipal government or governmental
 corporation; and
(j) "Utility" means any facility used in rendering service
which the public has a right to demand.

PART VIII. URBAN AND RURAL ZONING—
ZONING GENERALLY.


As an integral part of the planning of areas so that
adequate light, air, convenience of access, and safety from
fire, flood and other danger may be secured; that congestion
in the public streets may be lessened or avoided; that the
public health, safety, comfort, morals, convenience and
general public welfare may be promoted; that the
preservation of historic landmarks, sites, districts and
buildings be promoted; and that the objective set forth in
section one of this article may be further accomplished, the
governing body of a municipality or a county commission
shall have the following powers:
(a) To classify, regulate and limit the height, area, bulk
and use of buildings hereafter to be erected;
(b) To regulate the height, area, bulk, exterior
architectural features and use of buildings hereafter to be
erected within designated historic districts;
(c) To regulate the alteration of exterior architectural
features of buildings within historic districts and to
regulate the alteration of historic landmarks and sites;
(d) To regulate and determine the area of front, rear and
side yards, courts and other open spaces about such
buildings;
(e) To regulate and determine the use and intensity of
use of land and lot areas;
(f) To classify, regulate and restrict the location of
trades, callings, industries, commercial enterprises and the
location of buildings designed for specified uses;
(g) To regulate and control, or prohibit in certain areas,
junk yards, salvage yards, used parts yards, dumps or
automobile or appliance graveyards, or the maintenance
and operation of secondhand stores or outlets in residential
areas;
(h) To classify and designate the rural lands among
agricultural, industrial, commercial, residential and other
uses and purposes; and
(i) To divide the municipality or county into districts of
such kind, character, number, shape and area as may be
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
determination:
That the state of West Virginia is richly endowed with numerous historic buildings, structures, sites and districts which represent the historical, architectural and cultural heritage of this state;
(b) That West Virginia heritage, represented by such historic buildings, structures, sites and districts can best be identified, studied, preserved and protected for the general welfare of residents of this state and this nation by authorizing and empowering action for this purpose at the local level;
(c) That the preservation and protection of such historic buildings, structures, sites and districts aid economic development through revitalization of this state's central business districts, improvement of property values and enhancement of this state's historic attractions to tourists and visitors; and aid the development of education of this state by preservation of such heritage for future generations;
(d) That the preservation of this heritage is essential to the promotion of the prosperity, education and general welfare of the people; and
(e) That the Legislature hereby finds that it is the public policy and the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of government, along with the private sector, to promote the use and preservation of such heritage for the education and general welfare of the people of this state; and, accordingly, this article shall be broadly construed in order to accomplish the purposes herein set forth.
As used in this article:
(a) “Exterior architectural features” include the architectural character and general composition of the exterior of a structure, including but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.
(b) “Historic district” is a geographically definable area
possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

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

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

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

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

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

In any such ordinance or order, the governing body shall include provisions specifying (a) the terms of the members of such commission; (b) a method of filling vacancies; (c)
whether the members of the commission are to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties; (d) the officers of the commission to be elected from the membership thereof; (e) requirements as to meetings of the commission; (f) requirements as to a quorum of the commission; (g) requirements as to voting by members of the commission; and (h) such other matters as may be deemed necessary or desirable for the proper functioning of the commission. In the event the ordinance or order establishing such commission shall authorize the commission to issue certificates of appropriateness, the ordinance or order shall require a majority of the members to have demonstrated special interest, experience or education in history, architecture, planning, real estate or law, to extent such persons are available in the community. In establishing such a commission and making appointments to it, a local governing body may seek the advice of any national, state or local historical agency, society or organization.

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

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


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

(a) Make a survey of, and designate as historic landmarks, buildings, structures and districts which constitute the principal historical and architectural sites which are of local, regional, statewide or national significance, in accordance with section six of this article;

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

§8-26A-6. Designation; report.

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

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

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

In the event that any such ordinance or order establishing the commission has authorized the commission to issue certificates of appropriateness, the local governing body shall hold a public hearing on the proposed designation of
the historic property or historic district, and any proposed
regulations and requirements for the historic district. Notice of the hearing shall be published at least two times in
the principal newspaper of general circulation within the
municipality or county in which the property or properties
to be designated are located; and written notice of the
hearing shall be mailed by certified mail with signed return
receipt required by the commission to all owners and
occupants of such properties. All the notices shall be
published or mailed not less than ten nor more than twenty
days prior to the date set for the public hearing. Following
the public hearing, unless the owner of a proposed property
or fifty percent of the ownership interest in a proposed
district objects to such designation or regulations and
requirements within thirty days following the public
hearing, the local governing body may designate the
property or properties as historic, and approve, amend or
reject the proposed regulations or requirements. Within
thirty days following such designation or approval, the
owners and occupants of each designated historic property
shall be given written notification of such designation or
approval by the local governing body, which notice shall
apprise said owners and occupants of the necessity of
obtaining a certificate of appropriateness prior to
undertaking any material change in the appearance of the
historic landmark designated or within an historic district.
In the event any such order or ordinance establishing a
commission does not authorize the commission to regulate
historic properties through issuance of a certificate of
appropriateness, the survey report may be adopted by the
commission, with any recommended amendments or
changes by the state agency, and the historic landmark or
historic district shall be designated as historic.
Any such designated historic landmark or district
designated by this article shall be shown on the official
zoning map of the county or municipality or, that in the
absence of an official zoning map, the designated property
be shown on a map of the county or municipality and kept
by the county or municipality as a public record to provide
notice of such designation in addition to other such
notification requirements of this section.
§8-26A-7. Certificate of appropriateness; scope of review; standards of review; review procedures; variances, appeals.

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

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

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

(2) The commission shall hold a public hearing upon each application for a certificate of appropriateness. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the area served by the governmental unit, provided it has one, at least seven days before such hearing, and by posting such notice on or near the main entrance of any hall or room
where the commission usually meets. The commission shall take such action as required to inform the owners of any property likely to be affected by the application and shall give the applicant and such owners an opportunity to be heard.

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

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

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

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

(7) Where such action is authorized by the local governing body and is reasonably necessary or appropriate for the preservation of a unique historic property, the
commission may enter into negotiations with the owner for
the acquisition by gift, purchase, exchange or otherwise of
the property or any interest therein.
(8) If the strict application of any provision of this
article would result in exceptional practical difficulty or
undue economic hardship upon any owner of any specific
property, the commission, in passing upon applications,
shall have the power to vary or modify strict adherence to
the provisions or to interpret the meaning of the provision
so as to relieve such difficulty or hardship: Provided, That
such variance, modification or interpretation shall remain
in harmony with the general purpose and intent of the
provisions so that architectural or historical integrity or
character of the property shall be conserved and substantial
justice done. In granting variations, the commission may
impose such reasonable and additional stipulations and
conditions as will in its judgment best fulfill the purpose of
this article.
(9) The commission shall keep a record of all
applications for certificates of appropriateness and of all its
proceedings.
(10) Any person adversely affected by any
determinations made by the commission relative to the
issuance or denial of a certificate of appropriateness may
appeal such determination to the circuit court in the county
in which said commission is located.
(11) Nothing in this article shall be construed to prevent
the ordinary maintenance or repair of any exterior
architectural feature in or on a historic property, which
maintenance or repair does not involve a material change in
design, material or outer appearance thereof, nor to prevent
any property owner from making any use of his property not
prohibited by other laws, ordinances or regulations.
(12) Undertakings permitted, funded, licensed or
otherwise assisted by the state shall be reviewed in
accordance with section 29, article 1, chapter 5, subsection
e of this code and shall be considered exempt from review
for certification of appropriateness as described in this
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
landmarks commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this article or to prevent any illegal acts or conduct with respect to such historic property or historic district.

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

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

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

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

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

Upon the request of any such commission, all agencies of the state shall assist such commission in the discharge of its duties and functions. Every such commission shall cooperate and coordinate its activities with the West Virginia historical society and the West Virginia department of culture and history with the view of developing a unified program for the identification, study, preservation and protection of all historic buildings, structures and sites in this state. Such commissions shall submit a brief annual report to the West Virginia department of culture and history summarizing commission activities. In addition, the commissions shall
§ 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 seventy-seven, there is hereby created a department of culture and history and the office of commissioner of culture and history. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the department and shall be paid an annual salary and be governed by the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, history or a related field.

2 The department shall consist of two divisions and two corresponding citizens commissions:
3 (1) An archives and history division, and an archives and history commission; and
4 (2) An arts and humanities division and an arts and humanities commission.

5 The commissioner shall exercise control and supervision of the department and shall be responsible for the projects, programs, and actions of each of its divisions. The purpose and duty of the department is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant
sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural, historical and artistic activities in the state government and at the state-owned facilities; to acquire, preserve and classify books, documents and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the culture of the state.

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

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

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

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

The commissioner shall coordinate the operations and affairs of the divisions and commissions of the department and assign each division or commission responsibilities according to criteria he deems most efficient, productive and best calculated to carry out the purposes of this article. He shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. If the commissioner finds it necessary, he may establish an administrative division and other divisions for such
purposes as he deems necessary, and may appoint directors thereof. The commissioner may appoint a director of the West Virginia science and culture center.

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

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

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

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

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

(a) The purposes and duties of the archives and history division are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures, documents and objects worthy of preservation, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such sites, structures, documents and objects; to direct, protect, excavate, preserve, study, or develop such sites, structures and documents; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the
state for the purposes of furthering the duties of the department; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the department; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of and maintenance of such monuments, tablets and markers and to formulate and prepare suitable copy for them; to operate and maintain a state museum, and to coordinate activities with other museums in the state; to cooperate with state and federal agencies in archaeological work; to edit and publish a quarterly historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform such other duties as may be assigned to the division by the commissioner.

(b) With the advice and consent of the commission, in addition to the duties above set forth, the division shall determine the whereabouts of and require the return of furnishings, objects and documents missing from the capitol building and other state owned or controlled buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except under the direction of the director of surplus state property pursuant to section three-a, article eight, chapter five-a of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale procedures, such furnishings shall be returned to the capitol and, upon
presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

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

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

(e) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with the state administrative procedure act concerning: (1) The professional policies and functions of the archives and history division; (2) the review of all undertakings permitted, funded, licensed or otherwise
assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the division; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) the expenditure of funds provided for threatened and endangered historic properties by the voluntary check-off program established under section fourteen, article one of this chapter and such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

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

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

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term. Of the members of the archives and history commission first appointed, three shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred seventy-eight, and three each for terms ending one and two years thereafter: Provided, That each person serving as a member of the West Virginia antiquities commission, for a term which has not expired on the effective date of this article, shall be appointed by the
governor without Senate confirmation to the archives and
history commission, as one of the nine appointed members,
for the term ending the thirtieth day of June in the year in
which his term would expire as a member of the West
Virginia antiquities commission.

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

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

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

In addition to the nine appointed members, the president
of the state historical society and the president of the state
historical association of college and university teachers
shall serve as ex officio voting members of the archives and
history commission. The director of the state geological and
economic survey and the state historic preservation officer
shall serve as ex officio nonvoting members of the archives
and history division.

The commission shall have the following powers:
(a) To advise the commissioner and the director of the
archives and history division concerning the
accomplishment of the purposes of that division and to
establish a state plan with respect thereto;
(b) To approve and distribute grants-in-aid and awards
from federal and state funds relating to the purposes of the
archives and history division;
(c) To request, accept or expend federal funds to
accomplish the purposes of the archives and history
division when federal law or regulations would prohibit the
same by the commissioner or division director, but would
permit the same to be done by the archives and history
commission;
(d) To otherwise encourage and promote the purposes of
the archives and history division;
(e) To approve rules and regulations concerning the
professional policies and functions of the division as
promulgated by the director of the archives and history
division;
(f) To advise and consent to the appointment of the
director by the commissioner; and
(g) To review and approve nominations to the state
register of historic places.

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

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

Any person violating the provisions of this section shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than five hundred dollars, or
imprisoned in the county jail not more than six months, or
both fined and imprisoned.
§29-1-14. Voluntary endangered historic properties check-off program.

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

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

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

"West Virginia Endangered Historic Properties Fund. Check if you wish to designate a portion of your tax refund to this program:
$1 ( ) $5 ( ) $10 ( ) Other $___ ( )"

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

$1 ( ) $5 ( ) $10 ( ) Other $___ ( )"

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

The tax department shall determine by the first day of July of each year the total amount designated pursuant to this legislation and shall report such amount to the state treasurer who shall credit such amount to a special department of culture and history interest bearing account. At the end of each fiscal year unexpended funds in this account shall be reappropriated for the subsequent year.

The funds shall be used for the purpose of emergency action to save threatened and endangered historic properties, upon the recommendations of the archives and history commission: Provided, That such designated funds shall be used for architectural services, engineering services, actual construction, reconstruction, repair and similar activities but not for administrative purposes. The
commissioner shall on the fifteenth day of January each year furnish the Legislature with a report stating the amount of money that has been provided and how such moneys have been expended. The provisions of this section shall apply to tax return forms filed on and after the first day of January, one thousand nine hundred eighty-nine.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

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

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

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, the state fire commission, by the first day of January, one thousand nine hundred seventy-seven, shall promulgate comprehensive regulations for the safeguarding of life and property from the hazards of fire and explosion to be known as the state fire code. Regulations embodied in the state fire code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state. Whenever any other state law, county or municipal ordinance or regulation of any fire codes published by the national protection association:

Provided, That such rules shall be effective as emergency rules when so promulgated until acted upon by the Legislature; Provided, however, That the state fire marshal shall provide compliance alternatives for historic structures as provided for in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of said historic structures; and shall coordinate with the director of the archives and
history division the application of the rules and regulations of that division.
(c) In interpretation and application, the state fire code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: Provided, That the state fire marshal shall provide compliance alternatives for historic structures and sites as provided for in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of said historic structures and sites. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state fire code, the provisions of such state law, county or municipal ordinance or regulation of any agency thereof shall govern, provided they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state fire regulations by officials of the state, counties, municipalities and political subdivisions of the state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor